

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

The Twelfth Meeting of the Eleventh Parliament held in the Parliament Chamber on Thursday 13<sup>th</sup> January 2011, at 10.00 a.m.

**PRESENT:**

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

**GOVERNMENT:**

The Hon P R Caruana QC – Chief Minister  
The Hon F J Vinet – Minister for Housing and Communications  
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  
The Hon Lt-Col E M Britto OBE, ED – Minister for the Environment and Tourism

**IN ATTENDANCE:**

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

**PRAYER**

Mr Speaker recited the prayer.

**CONFIRMATION OF MINUTES**

The Minutes of the Meeting of Parliament which commenced on 29<sup>th</sup> September 2010 were taken as read, approved and signed by Mr Speaker.

**DOCUMENTS LAID**

**HON CHIEF MINISTER**

On behalf of and in the name of the Minister for Enterprise, Development, Technology and Transport, I have the honour to lay on the Table the Report and Audited accounts of the Gibraltar Electricity Authority for the year ending 31<sup>st</sup> March 2010.

Ordered to lie.

## **ORAL ANSWERS TO QUESTIONS**

### **ADJOURNMENT**

#### **HON J J HOLLIDAY:**

I have the honour to move that the House do now adjourn to Monday 17<sup>th</sup> January 2011 at 9.30 a.m.

Question put.                      Agreed to.

The adjournment of the House was taken at 1.30 p.m. on Thursday 13<sup>th</sup> January 2011.

### **MONDAY 17<sup>TH</sup> JANUARY 2011**

#### **PRESENT:**

The House resumed at 9.35 a.m.

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

#### **GOVERNMENT:**

The Hon J J Holliday – Minister for Enterprise, Development,  
Technology and Transport and Deputy Chief Minister  
The Hon Lt-Col E M Britto OBE, ED – Minister for the  
Environment and Tourism  
The Hon F J Vinet – Minister for Housing and Communications  
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 P R Caruana QC – Chief Minister

#### **IN ATTENDANCE:**

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

## **ORAL ANSWERS TO QUESTIONS (CONTINUED)**

## **ADJOURNMENT**

### **HON J J HOLLIDAY:**

I have the honour to move that the House do now adjourn to Thursday 20<sup>th</sup> January 2011 at 3.00 p.m.

Question put.           Agreed to.

The adjournment of the House was taken at 11.55 a.m. on Monday 17<sup>th</sup> January 2011.

### **THURSDAY 20<sup>TH</sup> JANUARY 2011**

The House resumed at 3.00 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 F J Vinet – Minister for Housing and Communications  
The Hon J J Netto – Minister for Family, Youth and Community  
Affairs  
The Hon Mrs Y Del Agua – Minister for Health and Civil  
Protection  
The Hon D A Feetham – Minister for Justice  
The Hon L Montiel – Minister for Employment, Labour and  
Industrial Relations  
The Hon C G Beltran – Minister for Education and Training

The Hon E J Reyes – Minister for Culture, Heritage, Sport and  
Leisure

### **OPPOSITION:**

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

### **ABSENT:**

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

### **IN ATTENDANCE:**

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

### **ORAL ANSWERS TO QUESTIONS (CONTINUED)**

The House recessed at 6.17 p.m.

The House resumed at 6.35 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 numbered W1/2011 to W55/2011.

## **BILLS**

### **FIRST AND SECOND READINGS**

#### **THE COUNTER-TERRORISM (AMENDMENT) ACT 2010**

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

I have the honour to move that a Bill for an Act to amend the Counter-Terrorism Act 2010, 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 Monday 7<sup>th</sup> February 2011 at 2.30 p.m.

Question put.            Agreed to.

The adjournment of the House was taken at 8.55 p.m. on Thursday 20<sup>th</sup> January 2011.

### **MONDAY 7<sup>TH</sup> FEBRUARY 2011**

The House resumed at 2.30 p.m.

## **PRESENT:**

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

## **GOVERNMENT:**

The Hon P R Caruana QC – Chief Minister  
The Hon J J Holliday – Minister for Enterprise, Development,  
Technology and Transport and Deputy Chief Minister  
The Hon Lt-Col E M Britto OBE, ED – Minister for the  
Environment and Tourism  
The Hon F J Vinet – Minister for Housing and Communications  
The Hon J J Netto – Minister for Family, Youth and Community  
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## **OPPOSITION:**

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

## **IN ATTENDANCE:**

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

## SUSPENSION OF STANDING ORDERS

### HON CHIEF MINISTER:

I beg to move under Standing Order 7(3) to suspend Standing Order 7(1) for the purpose of moving a motion suspending Standing Order 59 and, if passed by this House, for the purpose of debating the motion standing in my name of which notice was given on the 1<sup>st</sup> February 2011.

Just to inform the House there is a motion standing in my name under the after hours works Act which, under Standing Orders, the House needs to have five days notice of. As we speak, it has had four. If we pass this motion, we can take it today. In other words, you accept four instead of five days notice and if that were not acceptable to the House ... That is the purpose of this motion, to take it after four days rather than five days notice. The motion about the allowing of works at Eastern Beach Road to take place after hours.

Question put.                      Agreed to.

## GOVERNMENT MOTION

### HON CHIEF MINISTER:

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

**“That this House approve, pursuant to section 3(3) of the Construction (Government Projects) Act 2009, the insertion of the following project in Schedule 2 of the Act, namely:**

**“6. Works relating to the beautification and landscaping to the length of Eastern Beach Road.””.**

Hon Members will recall that this House passed in 2009 the Construction (Government Projects) Act to enable works on important Government projects to be undertaken during normally restricted hours when the Chief Minister considered this to be necessary or desirable in the public interest. Under section 3(2) of the Act, the Chief Minister may only issue a certificate in respect of construction projects that are listed in Schedule 2 of the Act and under section 3(3) of the Act, the Chief Minister may place projects and/or construction works in Schedule 2 by notice published in the Gazette but shall not do so without the approval by resolution of this House. Therefore, this motion is the motion seeking approval of this House to insert this project into the Schedule. In other words, if a project goes in the Schedule, I can issue a certificate to allow it to work after hours, but I cannot put it in the Schedule without the approval of this House in a resolution and this is what I am seeking from the House now.

The hon Members may be aware that quite separately, and this resolution does not relate to, and this project does not relate to any of the road works dealing with the new four lane road, dual carriage road, to and from the new tunnel entrance which is parallel but separate to it. This motion does not relate to any of that. This project relates only to the existing Eastern Beach Road which will remain exclusive for access to the buildings there at the end and the beach road which is in effect being refurbished and beautified. The importance of the resolution is that it is important, obviously, in the public interest that this project be completed before the next bathing season and, I am assured, that the work is not noisy. There is only one block of flats in occupation at the moment that might suffer some discomfort, Sunrise House, and arrangements will be made and, indeed, the certificate will be conditional on the fact that any noisy work takes place at the other end, like cutting of tiles which, I think, takes place at the car park end, so that there is no noisy machinery being used after hours in the vicinity of the block. I think we all have an interest in facilities being available for when the bathing season starts. This is one of the less controversial applications because there is very little residential

accommodation in the area that might be subject to inconvenience and I, therefore, commend the motion to the House.

Question proposed.

Question put.           The House voted.

The motion was carried unanimously.

## **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 a report on the Table.

Question put.           Agreed to.

## **DOCUMENTS LAID**

### **HON D A FEETHAM:**

I have the honour to lay on the Table the Annual Report of the Gibraltar Prison Board for the year ended 31<sup>st</sup> December 2010.

Ordered to lie.

## **BILLS**

### **FIRST AND SECOND READINGS**

## **THE COUNTER-TERRORISM (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, the Bill amends section 38, which deals with the Governor's constitutional responsibilities for internal security, of the Counter-Terrorism Act 2010. So, new clause 38(1) replicates the existing section 38. So, the existing section 38 of the Act reads as clause 38(1) now reads. So, what is new are clauses 38(2) and 38(3). A new subclause (2) places an obligation on the Minister to consult the Governor before making a Direction under section 3 in relation to any matter for which the Governor has responsibility under the Constitution. New subclause (3) provides that no court may enquire into whether the aforementioned consultation between the Minister and the Governor has taken place so as to impugn the validity of the Minister's Direction. Hon Members may recognise that phrase in section 3 from the old Constitution which had a similar language in it to make sure that the absence of required statutory consultation, as between two people, did not invalidate the effect of the decision as against the third party who could not, therefore, [*inaudible*] by question [*inaudible*].

Finally, I would like to give notice that I shall be moving a minor amendment at Committee Stage in clause 1 to delete 2010 and replace it with 2011.

So, Mr Speaker, clause 38(1) which replicates existing section 38 of the Act as it currently is legislated, already purports to save the Governor's constitutional responsibilities under the Constitution. What is now being added, in subclause (2), is a

requirement that the Minister shall consult the Governor before making it ... Hon Members will remember what this whole Counter-Terrorism Act is all about. It is actually not about preventing bombs exploding and acts of terrorism being committed. The Counter-Terrorism Act is a piece of legislation which is designed to prevent our financial system in Gibraltar from being used by terrorists for terrorism financing purposes and it gives ... and it was not new at the time. It simply re-enacted powers that were already contained in previous legislation in Gibraltar to give the Minister for Financial Services the power to direct banks in Gibraltar not to open accounts for such and such a person when they are on a terrorist ..., the United Nations or the FATF or the European Union lists of people and the Minister was able to give power ... Well, we have been asked and we have agreed to write into the Bill, even though it is already on the statute book, these new provisions to make sure that when the Minister makes his decision, he has done so after consulting with the Governor who has responsibility for internal security, to make sure that nothing that is proposed to be done, somehow, cuts across something that he knows but that we might not know, given his responsibility for internal security and his access to that sort of information. Then there is subclause (3) which is procedural, designed to ensure that when the Minister does issue an order ... In other words, that the duty to consult is as between the Governor and the Minister. But no one who gets an order from the Minister should be able to say, well I am not going to comply with this until I have made sure that all these internal procedures have been complied with. This is actually a formula of words that we have drawn directly from the old Constitution which contained this very provision in respect of an old constitutional provision which required the Governor to consult, and this was in it to make sure that nobody could query the decision to see whether the consultation had taken place or not. So, that is the reason for this. So, what is new is subclause (2), really, the statutory obligation to consult and subclause (3) is new, but is not substantive. It is just to make sure that people cannot delay complying with the order whilst they try to establish whether that

consultation has taken place or not. I commend the Bill to the House.

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

Question put.                      Agreed to.

The Bill was read a second time.

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

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

Question put.                      Agreed to.

#### **THE PUBLIC FINANCE (CONTROL AND AUDIT) (AMENDMENT) ACT 2011**

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

I have the honour to move that a Bill for an Act to amend the Public Finance (Control and Audit) Act to provide for the recurrent revenues of Government Agencies, Authorities and certain other entities to be paid into and thus constitute the revenue of the Consolidated Fund and that expenditure by such entities funded from these revenues be in future subject to appropriation and scrutiny by Parliament and related purposes, be read a first time.

Question put.                      Agreed to.

## **SECOND READING:**

### **HON CHIEF MINISTER:**

I have the honour to move that the Bill be now read a second time. Mr Speaker, hon Members will recall that in my 2009 and 2010 Budget speeches I said that, as a further step in enhancing transparency and control of public finances, the Government would bring an amendment to the Public Finance (Control and Audit) Act so that revenue and expenditure of Government Agencies and Authorities are treated as Government revenue and expenditure for all legal purposes and brought formally under the appropriation mechanism of Parliament. Specifically, what I said to the House in June 2009 was, we will bring an amendment to the Public Finance (Control and Audit) Act that will treat the revenue of Government controlled Agencies and Authorities as Government revenues and their expenditure as Government expenditure for all the purposes of the Act and thus bring them within the appropriation mechanism of this House as if they were Government departments. In this way we will effectively make that overall revenue and expenditure of the Government subject to the House's appropriation mechanism and not just the Consolidated Fund, as required by the Constitution and the Act. Then in the 2010 Budget, Mr Speaker, I lamented the fact that it had not been possible to do it by then and that we would proceed to do this during the next year. This Bill seeks to do that. The amendments proposed in it achieve the objectives explained there.

Clause 2 of the Bill provides for the revenues of the public undertakings listed in Schedule 3 of the Act to constitute revenue of the Consolidated Fund and thus be paid into the Consolidated Fund. This will require all payments hitherto made to the Agencies and Authorities, including what is currently their direct revenue and which is thus outside parliamentary control, to be approved by Parliament on payment to them from the Consolidated Fund. In addition, all the expenditure of these Agencies and Authorities, which will be funded out of the monies paid to them from the Consolidated Fund, will require to be

authorised by Parliament by an appropriation law, as if it were expenditure of a Government department.

So, Mr Speaker, just pausing there, Agencies and Authorities have, on the whole, two different sources of revenue. One is revenue that they enjoy themselves from some third party. The other is revenue from the Consolidated Fund. So, the revenue that comes from the Consolidated Fund into the Agencies or Authorities cannot be regarded by this Bill as being the revenue of the Consolidated Fund because that is where it is coming from. So, for example, the GHA may have revenue from *[inaudible]* places other than the Consolidated Fund but we may also vote a contribution from the Consolidated Fund. To the extent of that contribution, this Act disapplies it. In other words, it is not to be treated as revenue of the Consolidated Fund if the money is already in the Consolidated Fund. So that is step one. But all other revenue of the Gibraltar Health Authority, for example, is to be treated as revenue of the Consolidated Fund. It would be a nonsense for this Bill to try and convert, into revenue of the Consolidated Fund, monies which are in the Consolidated Fund and which the House already needs to vote out of the Consolidated Fund in the Appropriation Bill. But, on the expenditure side, all the expenditure of the Gibraltar Health Authority, including the revenue that is not deemed as Government revenue because it has already been voted out of the Consolidated Fund by the House in the estimates, all of the expenditure, no matter where it is funded from, is regarded as expenditure that requires the vote of this Parliament. So, in future ... I mean, in the past when we have debated the Budget Bill, we have had the Schedule and at the back of it we have had the annexes, the appendices with the various Agencies, but the House has not been voting on that expenditure. The House has only been voting on whatever is the contribution that the Consolidated Fund is making to the Gibraltar Health Authority and all the expenditure there, on those green bits of paper, are just there by way of information, gratuitously put there by the Government, for the information of the House. But the House is not voting on anything, as it is with the other votes and subheads where the hon Members can question and the House



votes all the other subheads and votes in the Government departments. In future, that will also be the case with all those present appendices, the expenditure in which will be voted on by this House, as it presently does the vote of Government departments. That is done by this mechanism of treating all the revenue as Consolidated Fund revenue because once it is in the Consolidated Fund, it requires the appropriation of Parliament to be spent. That is how what I said in 2009 we would achieve, is sought to be achieved by this Bill.

So, Mr Speaker, these proposed amendments to the Act will enable Parliament to achieve oversight and control of all revenue of these Agencies and Authorities when it has to vote all their income from the Consolidated Fund, in the form of payments to them, and Parliament will also achieve detailed appropriation mechanism control of all their expenditure in the way I have just explained. Hon Members will note that the relevant Agencies and Authorities listed in the new Schedule 3 to the Act are as follows: The Gibraltar Health Authority; The Gibraltar Electricity Authority; The Gibraltar Port Authority; The Care Agency; The Gibraltar Sport and Leisure Authority; The Gibraltar Regulatory Authority; and the Gibraltar Development Corporation and, if the Bill is passed, in due course I hope to add to that the Housing Works Agency.

Mr Speaker, the provisions of the Bill are retrospective to include last year and thus require the accounts of Gibraltar for the year ended 31<sup>st</sup> March 2010 and this year's forecast outturns in next year's Budget book, to be drawn up on this basis for information and ease of comparison purposes. Transitional provisions have been included whereby this Act constitutes an appropriation law in respect of the expenditure of the Agencies and Authorities incurred prior to the 1<sup>st</sup> April 2011, that is funded out of revenue to which this Act applies, provided that the expenditure was lawfully and properly incurred, in accordance with the law and procedures applicable to it, prior to the coming into the effect of this Act. In other words, the effect of making this Bill retrospective is that money that has already been spent in the way that it was lawful to do it at the time that it was spent,

suddenly becomes deemed to be Consolidated Fund revenue thereby needing the appropriation of this House. We are talking about things that have already happened before we passed this Bill. So, what clause 7 of the Bill says is, between now, in respect of past expenditure and the next month or so to the end of this financial year, all expenditure that is made out of these Agencies and Authorities, provided that they were lawfully made, in other words, provided that they were done as the law stood before today, is deemed to have been appropriated by this House as we pass this Bill which will deem to be the ... just as that is retrospective application of the Act, then this is retrospective appropriation authority by this House. This will mean that come the next Budget time, come the next financial year, the House will have before it all the information drawn up and struck on this basis which will mean that we will have before us the whole ... and the hon Members will recognise that this is, really, just putting into statutory form some of the things that we ... the way I have been presenting the information in the debate for some time when I have spoken of the difference between Consolidated Fund revenue and expenditure and then overall revenue and expenditure. So, in a sense, this will be the overall Government revenue and expenditure, all of which now goes into the Consolidated Fund and all of which now appears before the House for its approval to spend it. So, in other words, no longer is it a case that, for example, the expenditure to be incurred by the GHA or the Gibraltar Electricity Authority or all these other ..., is really off the radar screen of what this House can debate, say yes or not to, ask the Government the questions on, in relation to the Committee Stage of the Appropriation Bill and all of that. So, it is putting within the control at executive level, but scrutiny at Parliamentary level, what in my budgetary addresses I have been calling the overall revenue and the overall expenditure of the Government, whereas the Public Finance (Control and Audit) Act presently deals only with the Consolidated Fund revenue and the Consolidated Fund expenditure which hon Members will remember from the Budget debates is actually very much less than the complete picture. Alright, I choose to bring the overall revenue and expenditure picture but there is no obligation to do

it and the debate on the Budget could, constitutionally and lawfully, take place just in relation to the Consolidated Fund, leaving the whole of the rest of it really outside of the parliamentary mechanism. Anyway, this is what the Government have committed to doing. This is what the Government are doing and I hope the House will welcome this placing on a statutory footing of this much more complete appropriation mechanism regime. I, therefore, 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 going to be voting in favour of this. I must say I cannot see the value of the need to go back to 1<sup>st</sup> April 2009 because if the Government wants to put for the assistance of members, when it comes to looking at the picture over three years at Budget time, an illustrative column showing what it would have been like if it had already been implemented, then that can be done without the need to make it retrospective. In effect, what we are doing, by making it retrospective, is that what we are saying is, we are going to require everything that has not been voted by the House to be treated as if it had been voted by the House from 1<sup>st</sup> April 2009. That does not seem to me to be a good thing, because, in fact, it will mean that all this expenditure which has already taken place, on which we did not vote, will be treated as if it had taken place on our vote, which is not the case and which is not accurate. The fact that we are saying that we shall deem it to have come in to operation on 1<sup>st</sup> April 2009 means, of course, that there has to be a mechanism that treats the expenditure that has been properly and legally expended to be treated as if it had been voted by Parliament, when it has not been voted by Parliament. I would have thought the introduction of this could have easily happened from a current financial year without any need to do this peculiar system of having ... By recording it this way, the picture post

hoc, the post event picture shows the House having voted in April 2009 something it did not vote in 2009 and I do not see that we gain anything and we, certainly ... It does not mean that we have gained an ability, now, to scrutinise something in 2009 because we cannot go back to 2009 and scrutinise it. So, I really do not see why the Government needs to do it and I do not see what the House gains by having this. I can see the benefit of being able to look at a picture and say, well look we [*inaudible*] to compare like with like if we wanted to see how the picture looks now, compared to what it did in 2009, then it would be a useful thing. But, in fact, quite a lot of that information, as the hon Member says, is in the text when he produces, in the last couple of years he has done this, a figure which says we have spent so much on this and on this and includes both the listed Authorities in the Schedule as well as the Consolidated Fund.

I have to say that I do not quite understand why the Government, having decided to remove these things from the control of the House, as I understood it, because it made this quasi independent entities less bureaucratic in the decision making because they were not being treated as Government departments ... So, if we have lost control over the income and the expenditure of the Gibraltar Electricity Authority, it is only because the Government chose to create an Electricity Authority and replace the Electricity Department. If we are now going to regain control of the income and expenditure of the Authority, it is because although it will still be called the Gibraltar Electricity Authority, it will be treated as if it was treated by Parliament, certainly, when it was a department. That is to say, we will vote the fuel and we will vote the wages and we will vote every single element of expenditure in the Authority which is listed in the green pages, in the back pages for information purposes and which, in fact, the Government have never refused to answer questions on that when we have voted the subvention. When we voted the subvention we said, well look is the subvention produced because there is more cost of fuel or has the cost of fuel gone up or is it the volume, the Government have never

said, no I am not answering that because that is in the back for information purposes and you are not voting on it.

So, I thought that part of the rationale of creating these things was that there was a problem in running them, as it were, "more commercially" because it had a trading function when they were Government departments. In practice, we all know that this is a bit of a myth because the reality of it is that there is a flexibility, within a Head of Department's vote, to vire money left over from one thing and use it for something else, obviously, with the consent of the Treasury. The flexibility, as I understood it, that the Gibraltar Electricity Authority or the Port Authority or the Sports and Leisure Authority had, which they did not have when they were Government departments, was the ability ... The level of independence that they gained was in making, if you like, decisions based on the logic of the entity and its function and its role which might not necessarily be acceptable, or considered justified, if it had to go back to the Treasury to get the permission to vire things. Although we were not convinced and we always abstained on the Authorities and said, well look we will have to see whether, in fact, there is a gain in these Authorities. After all, the Government were spending extra money to persuade people to move to these Authorities and that was supposed to be compensated by the freedom that they would enjoy to respond more commercially, which certainly you can understand in some areas. The Electricity Authority, in other parts of the world, in other countries, is, in fact, a purely commercial entity. In the United Kingdom it has, certainly, never been run by the central Government. In the history of the United Kingdom, Electricity Boards or electricity companies have always been autonomous and self-governing and so forth.

So, obviously, we are not against all this being brought back here and we are voting on everything and even when we were not convinced of the wisdom of taking it out, we did not vote against them. We gave the Government the benefit of the doubt and we abstained on all these Authorities. But it is difficult to understand why, now, there is not going to be a loss of flexibility and freedom if we are restoring what used to be the position. In

fact, in five out of the seven ... Of these seven entities in the Schedule that are going to be brought back, five out of the seven have been created post 1996. There were only two of them in 1996 and, really, one of them was created in 1987, which was the Gibraltar Health Authority, and the other one, I do not think employed anybody before 1996. So, it really was an entity that was holding money, which was the training levy and so forth, and I think it was also at the time the money that we created in the funds that we put in as a result of having to terminate, at the request of the British Government, the Social Insurance pensions. I think the GDC was doing very little. So, it has developed into an organisation that employs many people and does many things and over which the House only votes the money for specific things in different departments. But even there, at the end of the day, there is a very clear correlation between ... The people are employed in the GDC, but they may be working in tourism or they may be working elsewhere. So, we are not against it being brought back, but we have some difficulty in understanding why this is not going to be running counter to the logic of what was being done previously, which was supposed to be to create greater freedom of decision making by the management in these areas, which presumably they did not enjoy as Government departments. But apart from those things and, in particular, the point about the 2009 ... which I think ... I do not think it is a good idea to have a law that says that something is treated as having been voted by us in 2009 when, in fact, it was not voted by us in 2009.

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

Yes, Mr Speaker, I am happy to try and explain to the hon Member some of the thinking behind it. First of all, when the Government sets up the Authorities, not a single Authority was set up by the Government as a means of taking the financial picture, in terms of appropriation control, out of the scrutiny of this House. The Authorities were set up for other reasons to do with giving a degree of operational flexibility which broke away from the monolithic regime that applies to a monolithic body

called the Civil Service. Certainly, it was not, in any case, in order that the House should no longer have the opportunity to vote, not that the hon Member has suggested the contrary. The reason why I say that is that, for that very reason, bringing the control of oversight back into the House does not, in our view, demolish or diminish any of the reasons why the Authorities and Agencies were set up. Bear in mind that Authorities and Agencies, alright they had a transfer of civil servants but thereafter new recruits can be recruited on very different terms. Deals with the pension position for future recruits in a very ... There is a whole series, as well as ... There still remains a lot of operational flexibility. It is not financeable [*inaudible*] ... The Government have never allowed the Authorities to do what they like with their money. The Treasury does not take the view of any of these Authorities, well now that they have been established by a statute separately we, the Treasury, do not concern ourselves with what they do or how they do or how they account or how they spend their money. They have always been regarded very much as within the purview of the Treasury for the purposes of all integrity and control of the use of public funds and other such system. So, this is in no sense any loss of any autonomy for which they were created in the first place. It is really the only point that I am trying to say. Bearing in mind, in particular, that these are very few of them. Well, I think, none of them. Let me just check that. Well, the Port Authority, perhaps, but that is only on the basis that it has Government assets. But almost none of these, except with the possible exception of the Port Authority, are financially autonomous of the Government. They all rely on very heavy financial contributions from the Government. There is, in a sense, ... which is different to the privatised electricity industry in the United Kingdom. Take the GEA. If the Gibraltar Electricity Authority were genuinely and commercially free standing, in the sense that it raised all the revenue that it needed from its service delivery, one could argue what the need was for public oversight. But whilst monies, voted by this House to the purposes of these Agencies, are being used, in effect, as a balancing figure to make their revenue match their expenditure, I think it is arguable, whatever might be the Government's interests in giving them operational

... and all the reasons why we have set up the Authorities and they are different in different Authorities ... They have a common stream. But, for example, in the case of the Sports Authority, it was very much so that it could be a vocational thing. People, sporty types, running, sporting facilities, rather than more civil servant types. But whatever the reason for setting up the Authority, there is, I think, a powerful case to be made that, if this organisation is only viable on the basis that at the end of the year I write it a cheque to plug the hole, those who write the cheque to plug the hole, in other words this House, should have some say in how they spend money which determines how much is the hole that we then have to write the cheque to plug. So, it is not really akin to a commercial ... This is not Lyonnaise des Eaux, for example, or AquaGib now, that makes its ends meet and, if it does not, it does not make a profit. These are, in a sense, public sector organisations which rely, for their financial solvency, on the contributions that we provide in this House.

So, what this Bill seeks to create ... It is an attempt to create a hybrid. In other words, an entity that can still enjoy all the benefits that they were created to try and engineer, whilst at the same time still being within, for financial purposes, in terms of their revenue and expenditure control, the purview of this House and, certainly, we do not, in moving this Bill, have the sense that we are, somehow, derogating from degrading or diminishing what we thought was positive about the reasons for doing it. Certainly, if somebody had said to me at the time, well you are doing this but this just makes it less transparent financially to this House and gives this House less control, I would have thought that was a negative reason for doing it. I would have thought that that would have been put on the balance sheet of pros and cons, on the cons side and I think we have reflected that spirit by always putting, making the information available and answering questions in this House. This puts it more in the statutory domain, less, sort of, an act of voluntary behaviour by the Government, if you like, and more recognising the right of this House to have a say on expenditure, deficits in which the House then has to pick up through its appropriation mechanism.

Well, Mr Speaker, I understand the point that the hon Member is making about this business of *expo facto* appropriation. The Bill does not say that the hon Members have appropriated, have considered it and have approved it. It specifically says, shall be deemed to have been and treated as if. Well, I think there is a recognition there, which is in any case more than clear on the record, that we are only trying to buy our way out of a self made technicality. In other words, the money has already been spent. The money that was used for it has, in part, already been appropriated by this House to the Agencies and Authorities at the start of the year. What does not fall into that category, came into the Authorities from the street, so to speak, and, therefore, never needed this House's approval. So, it is not as if we are pretending that this House has given careful consideration to each item of expenditure. We are recognising the fact that the House has given no consideration to those items of expenditure. But I was reluctant to bring to the House something which deemed it to be Consolidated Fund revenue and then the hon Member would, no doubt, have thought of this point, I would have stood up and said, but if it was deemed to be revenue of the Consolidated Fund, backdated, well, perhaps, who authorised its payment out of the Consolidated Fund. So, this is really just a very technical provision. One of the things that it achieves is that it enables the accounts of Gibraltar to be drawn up on this basis for the year ended March 2010. I hope that the hon Member can accept the fact that nothing in this Bill is supposed to taint him or the hon Member ... Yes, I will give way to the hon Member.

**HON J J BOSSANO:**

Surely, Mr Speaker, the accounts of March 2010 at this moment in time have been closed and have been sent to the Principal Auditor on the basis that none of this had happened?

**HON CHIEF MINISTER:**

We are just in time.

**HON J J BOSSANO:**

We are just in time. Well, to my knowledge the accounts have to be sent within nine months of the year. The year ends in March. Nine months later it is December. They have always been sent at the end of December to the Principal Auditor. They have been audited, in fact, reflecting the reality of the time. I just cannot see what the Government gain by putting the revenue back in 2009 when it was not there and putting the expenditure back in 2009 when it was not there. What I would have thought was a cleaner thing was to say, well look it is happening in the middle of this year, we will backdate it to 1<sup>st</sup> April 2010. It is going back an extra year to 2009 ... and the accounts will be accounts that are audited reflecting something that was not what was happening. I cannot understand why it is so important for the Government to do it. I would have thought it would have been better that we go back to 1<sup>st</sup> of 2010, which in itself means, effectively, we are pretending that something has happened for twelve months, which is only going to happen for two. But ...

**HON CHIEF MINISTER:**

No, Mr Speaker, [*inaudible*].

**HON J J BOSSANO:**

Yes, because the Principal Auditor will say, the money from the Consolidated Fund was spent on this and this and it is not true and the revenue that came into the Consolidated Fund came in and it is not true. It did not come in. It did not come in, in 2009 to 2010. It is going to come in as from now and it is going to be made retrospective to this current financial year beginning in

April and we have no problem because it makes sense. Otherwise, it would have to delay until next April. I can understand that. You want to bring it in this year. You have to make it retroactive for nine months. Fair enough. But why do you need to make it retroactive to a year that closed in 2010, which started in 2009, when, in fact, all the books that have been closed have been closed on the basis that this had not happened. Presumably, they have to go back and rewrite it and given that I am the culprit that makes civil servants work long hours changing figures, I would have thought the hon Member would welcome that. On this occasion, we will save them from having to do it.

**HON CHIEF MINISTER:**

Well, Mr Speaker, I am not familiar with the chronology of the diary for when accounts close. I am told that we are still in time to do it if the Bill passes in this meeting of the House. There is no question of pretending at anything. The books of the Government reflect the law as it was when the books were struck. What is now in question is the presentation of the accounts. The accounts can be struck on any basis that is provided for in law before they are signed off. So, one thing is the books of the Government and another thing is the accounts of Gibraltar. Accounts can be struck. Laws change affecting the way accounts have to be drawn up and struck and the auditors and the accountants just draw up accounts to that basis. So, whilst I understand what the hon Member is saying, there is no question of pretence here. What there is, is a statement that the accounts of Gibraltar will be struck. In other words, the revenue and expenditure will be deemed to have been dealt with, on this basis, from 1<sup>st</sup> April. This will enable the accounts to be closed, on that basis, and this is the way it is being done. If the hon Member finds anything, when the figures are published, that breaches this business about lawfully ... I hope he is not worried about that aspect of it. That there might be things that ...

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 would be taken the same day, if all hon Members agree.

Question put.                      Agreed to.

**THE CURRENCY NOTES ACT 2011**

**HON CHIEF MINISTER:**

I have the honour to move that a Bill for an Act to update the law relating to the issue by the Government, of Gibraltar currency notes, be read a first time.

Question put.                      Agreed to.

**SECOND READING:**

**HON CHIEF MINISTER:**

I have the honour to move that a Bill for a Currency Note Act 2011 be read a second time. Mr Speaker, as the hon Member will have seen, the Bill does a variety of things but, in large measure, re-enacts the existing Currency Notes Act. It also saves subsidiary legislation which will be deemed to have been made under section 11 of the Act. We toyed with the idea of simply amending the old Act but we thought it would be better, so long as we point out the differences, to end up with a new Bill setting out the whole Act.

One of the purposes of the Bill is the removal of references that are no longer relevant since the enactment of the 2006

Constitution. The first instance in which such a change has been made is in clause 4. In section 4(2) and 4(3) of the current Act, the Secretary of State approves the design and form of currency notes issued by the Government of Gibraltar. In practice, this has not occurred now for a number of years. Clause 4(2) and 4(3) of the Bill transfers these functions to the Minister with responsibility for finance.

Now, Mr Speaker, I give notice to the House that I have submitted a written notice of a proposed amendment to add to the Bill. I will speak to it in more detail at a later stage of the Bill but, basically, to insert an additional clause 4(4) simply to address this business that notes with the effigy of Her Majesty go to the Palace, directly, actually to the Palace, for Her Majesty's approval and it has been suggested to us that we might want to accommodate that in the legislation which we are happy to do. So, the proposed new subclause (4) reads: "No currency note shall be issued under this Act which bears the name and image of Her Majesty, or any other member of her family, without the prior consent of Her Majesty to the design thereof". This is not dissimilar to the process that happens with postage stamps because it bears the effigy of Her Majesty in the little corner. Her Majesty herself, the Palace [*inaudible*], some department of the British Government, the Palace itself wants to approve the design of any paper that Her Majesty's effigy appears on.

Clause 6 of the Bill relates to the conversion of Gibraltar issued currency notes and sterling. As presently formulated, the Act requires that for every pound issued in Gibraltar, currency notes and equivalent pounds sterling must be lodged either, with the Commissioner of Currency or with the Crown Agents in London. Further, the payment of monies to a person in London, in sterling, can be effected through the Crown Agents by lodging such a sum in Gibraltar. The Bill localises both aspects of this operation, so that a person who wishes to receive Gibraltar currency notes, lodges an equivalent sum in sterling with the Commissioner of Currency and, conversely, a person who wishes to receive sterling, must lodge an equivalent sum of

Gibraltar currency notes with the said Commissioner here in Gibraltar. Accordingly and, in effect, the role of the Crown Agents is removed. Paragraph (b) of the proviso to section 6 is also to be amended to remove the reference to the costs of sending telegrams which has become redundant.

Clause 8 of the Bill re-enacts section 8 of the existing Act with the following amendments. The principal amendment is to the Currency Notes Income Account which will cease to exist and with the result that the revenue and expenditure of the Note Security Fund, that was previously accounted for through this Currency Note Income Account, will now be accounted for directly through the Note Security Fund. In other words, we subsume the Income and Expenditure Fund into the Note Security Fund itself. Under subsection (3) of the Act, custody of the Note Security Fund is vested in the Crown Agents in London together with a power to invest the same. This is amended by clause 8 (3) of the Bill which will require that the Fund be held in securities that are backed by the Government of the United Kingdom or Gibraltar, subject to the matters contained in the proviso. In subclause (7), provision is made for the Minister to direct the Commissioner that any excess in the value of the Currency Notes Security Fund over the face value of the currency notes in circulation be transferred to the Consolidated Fund. This contrasts with the current provisions, which effectively require the Government to maintain a 10 per cent reserve as only sums that are in excess of 110 per cent of the face value of notes in circulation, may be transferred to the Consolidated Fund. So, we are doing away with the need for a 10 per cent reserve because we have also done away with ... The new section that reads, that for every pound in the fund there needs to be one pound in either UK or Gibraltar Government securities, used to read in the old Act, it no longer does, this is the bit that has been eliminated, used to read, backed by one pound of UK or Gibraltar Government issued securities, or any other security decided by the Crown Agents. So, the Crown Agents, the Note Security Fund could be invested in things that had a market, up and down. So, there was a need for a buffer, perhaps, to accommodate the possibility that

investment might be lost through the investment of the Fund in the market. The right to invest the sterling Note Security Fund in anything other than UK or Government of Gibraltar paper, has been eliminated and with it, we believe, the need for a 10 per cent reserve which is, as the hon Member knows, simply Gibraltar tax payer monies that sit there and in future will sit in the general reserve, cash reserves of the Government, but the Fund is no longer open to any form of market speculative investment that could result in a shortfall in its capital. In addition, and as a safeguard even in that context, if at the end of any year, either as a result of, I do not know, some UK Government paper not paying up, or some Gibraltar Government, everything is theoretically possible, or the expenses of the Fund diminishing the face value of the Fund against the notes in circulation, there is an obligation on the part of the Government to make good any deficiency, so that at the end of each financial year, the face value of notes in circulation must equate 100 per cent [*inaudible*], 100 per cent to the value of the funds in the Note Security Fund.

Clause 9 of the Bill re-enacts section 9 of the Act but amends the level of the fine to the modern formulation, thus the reference to a £20 fine becomes a fine at level 1 on the standard scale. In section 10 of the Act, the Commissioner is obliged to report annually to the Minister and a Secretary of State. The Bill removes the reporting requirement to the Secretary of State. In section 11 of the Act, the Minister requires the prior approval of the Secretary of State when making rules. In clause 11 of the Bill, the rule making power is exercisable by the Minister alone. Clauses 12 to 15 of the Bill make the necessary provisions for the repeal of the Act and transition to the new Act.

So, in short, this Bill is the Currency Notes Act equivalent of some of the other things we have done in other bits of legislation to reflect the new Constitution which has transferred this area of life exclusively to the responsibility of Gibraltar Government Ministers. It also does away, as we did earlier last year or the year before, I cannot remember, in the context of the Gibraltar Savings Bank, applying the same logic, that the Fund can no

longer be invested in a way that could result in the purpose for which the buffer, the 10 per cent buffer was designed in the first place. Those are the two principal objectives of the Act and everything else is a manifestation of one or other of those two principal objectives. I commend the Bill to the House.

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

#### **HON J J BOSSANO:**

Mr Speaker, there is an element in this buffer, as the hon Member calls it ... Let me say that I do not believe that the 10 per cent was there as a buffer because of the possibility of speculative investments by the Crown Agents. To my knowledge, it has always been there and, to my knowledge, they have never invested in anything other than gilts, ever, in the entire history. So, I do not think it was put there, initially, because it might mean that the Crown Agents would invest in something that could go down, as well as going up, because I do not think, even when it started, certainly, that situation did not exist. The Crown Agents did not invest in foreign Government stock or in the equity of companies and it has always been there. I think it has just been there because that was the approach, that the colonial currency had to be, sort of, matched by sterling plus a buffer.

However, when the hon Member, in 1996, removed the reserves of the Coinage Fund, in subsequent audited accounts, the rationale for retaining the 10 per cent has been to cover for the fact that the Coinage Fund did not have anything in reserve in respect of the amount of the value of the coins out there, because, in theory, the matching is because somebody can come along and say, well I do not want a Gibraltar £5 note, I want a UK £5 note, and we have got to be able to replace one with the other and exactly the same thing, in theory, can happen with a £1 coin. So, in fact, when the Fund has been over the 10 per cent in recent years, there has been a footnote in the



accounts saying, this is because the Treasury recommend that they should keep that as a reserve because the Coinage Fund reserve, a policy decision was taken that there was no need for it, it was just a small piggy bank, I think and, therefore, that it should be done away with. So, is it that the Treasury are now happy that there should be nothing to cover the Coinage Fund because ...? I have not questioned this before because I have been conscious of the fact that that argument was there every year in the accounts. The other point I want to ask. I take it that clause 8 (4), which talks about the liquid portion of the Fund being held in cash, that has not changed, other than with the approval of the Minister? I take it that the approval of the Minister is the new bit, but the rest is the same. Is that the case? Am I right? I am sorry, perhaps I should have asked for a copy of the ... and checked it myself.

**HON CHIEF MINISTER:**

Sorry. Is the hon Member sitting down [*inaudible*]?

**HON J J BOSSANO:**

Yes. I am giving way.

**HON CHIEF MINISTER:**

Yes, what is now subclause (4) in the Bill is currently subsection (7) of section 8 and it reads, "The liquid portion of the fund may be held in cash, or on deposit, either at the Bank of England or the Gibraltar Government Savings Bank, or in Treasury bills, or with the approval of the Minister responsible for finance, lent out at call, or for short terms, or invested in readily realisable securities". I have not had the opportunity to check it. I am reading it. I am hoping he is following the Bill to see whether there is any difference. I do not think there is. None has been pointed out to me.

**HON J J BOSSANO:**

Then, Mr Speaker, given that the rationale that has been put for the removal of the 10 per cent is because it is no longer needed, because it is no longer possible for the Crown Agents to choose to invest some of this money of the Currency Fund, or the Note Security Fund, as it is going to be now, in marketable securities, but the Minister can still decide to do it. Surely, the risk is the same whether it is being done by the Crown Agents or being done by the Minister. That is to say, the Minister may, from time to time, decide how much should be held in liquid form and he can also decide that the part of the Fund that he has decided should be in liquid form, can be invested in readily realisable securities.

**HON CHIEF MINISTER:**

I see the point he is making. Yes, well, readily realisable securities is intended to be easily cashable paper, like we discussed at the time of the Savings Bank Bill. Readily realisable securities is not intended to refer and, if he has that concern, then I suppose we can ... It is not intended to refer to stocks and shares on the Stock Exchange, or things of that sort, securities may even be defined. It was defined in the Public Finance (Borrowing Powers) Act. I think there is one Act in which it is defined but, in any case, this does not mean, this is not supposed to add anything to the ... It is, certainly, not intended to contradict the provisions of section .... Otherwise, there would be two sections in the Act which would completely contradict each other. In other words, if clause 8 (3) says, "Except as hereinafter provided the Fund shall be held in sterling securities of or guaranteed by the Government of the United Kingdom or the Government of Gibraltar", subclause (4) is not intended to re-open that door. Otherwise, what would be the point of subclause (3) if subclause (4) just allowed the Minister to do something different? The whole point of subclause (3) is that the Fund should only be invested in paper issued by one of the two Governments and I had read subclause (4) to be

consistent with that. But if he believes that it is capable of another reading, then we should amend the language. It is not intended to have another reading.

**HON J J BOSSANO:**

I put the point because, in fact, it does not make a lot of sense as it stands at the moment, because if clause 8(3) says, "Except as hereinafter provided", that means, hereinafter something else may be provided, "the Fund shall be held in sterling securities, or guaranteed by the Government of the United Kingdom".

**HON CHIEF MINISTER:**

I am perfectly happy to delete the words "or invest in readily realisable securities". If the omission of those words in subclause (4) would [*inaudible*], subclause (4) [*inaudible*] to subclause (3). Sub-clause (4) is only supposed to deal with the cash portion. Sub-clause (4) is not supposed to dilute subclause (3) in respect of the non cash portion.

**HON J J BOSSANO:**

No. I accept that.

**HON CHIEF MINISTER:**

I think what the hon Member is saying is that he thinks, that the words "or invested in readily realisable securities" may have the effect of diluting subclause (3) in respect of non cash ...

**HON J J BOSSANO:**

No. I am not saying that. As I read the law, it says unless there is a provision after subclause (3). Unless it is provided subject to this, the fund can only be invested in sterling securities of the Gibraltar Government or the United Kingdom Government, provided that the share of the Gibraltar Government is no more than 30 per cent and this is, the non cash element.

**HON CHIEF MINISTER:**

Yes. Now, subclause (4) is [*inaudible*].

**HON J J BOSSANO:**

So, therefore, subclause (4) deals with the cash element which means, therefore, that the cash element does not have to be in sterling securities.

**HON CHIEF MINISTER:**

No. What it should say. The words used should mean that the cash element need not be held in Government of Gibraltar, or United Kingdom, guaranteed in sterling securities. In other words, you do not have to buy paper with it. This is where I think it goes too far because it goes beyond that. Until you get to those words, the cash element. What could you do with the cash element? You could keep it in cash, how? Well, you could keep it in cash in a drawer, or you could place it on deposit in a cash account, either at the Bank of England or with the Gibraltar Savings Bank, or in Treasury Bills. Now, there is a very short-term market which deals with paper that is redeemable in days, is treated in the market as cash. So, so far so good, "or with the approval of the Minister lent out at call or for short terms or invested". Indeed, I think we could delete everything after the

words “Treasury Bills”. This business of, “or with the approval of the Minister lent out at call”. Well, lent out to whom?

**HON J J BOSSANO:**

I do not know.

**HON CHIEF MINISTER:**

This was in the old Act and what has happened is that the old Act has not been pruned in this respect. This is not a power that has ever been used. It is inconceivable that the Minister should want to lend out the contents of the Note Security Fund. It, certainly, had not occurred to me yet. So, I am perfectly happy to further curtail. I would be very happy to leave subclause (4) dealing only with what can safely be done with cash ...

**HON J J BOSSANO:**

Okay.

**HON CHIEF MINISTER:**

... and stop it after “or in Treasury Bills.” and delete “or with the approval of the Minister lent out at call or for short terms or invested in readily realisable securities”.

**HON J J BOSSANO:**

Right.

**HON CHIEF MINISTER:**

That would make subclause (4) residual, dealing only with what happens with the cash portion. Sub-clause (3) making it clear that what is not in cash has got to be in paper guaranteed by one or other Government. I am obliged to the hon Member.

**HON J J BOSSANO:**

I think I have covered [*inaudible*].

**HON CHIEF MINISTER:**

Yes, Mr Speaker. I am sorry, the hon Member had made one or two points before that, to which I am happy to reply. Well, just two points, really. The first one is dealing with this business that the fund was never invested in a way that it could lose capital. Well, that is not strictly true, nor is the experience in the past. In the bond market, even gilts lose capital value. What determines whether, as interest rates rise or fall, as interest rates rise, the yield and the paper is affected, and the way that the yield, even a UK Government gilt, is determined is by the rising or falling of the capital value of the £100 nominal stock.

**HON J J BOSSANO:**

[*Inaudible*].

**HON CHIEF MINISTER:**

Yes. That is still there, but in the past, it is not true. Oh, does it not say ‘short’?

**HON J J BOSSANO:**

*[Inaudible]*.

**HON CHIEF MINISTER:**

Well, it should. Yes. The hon Member will see, and that might be something that we need to correct at Committee Stage. The hon Member will see that the purpose of the eliminating of the buffer is, because we think we have avoided fluctuations in the value of the underlying asset, to do away with the need ... Of course, some fluctuations in the value of the underlying asset were such that a 10 per cent buffer would not have been sufficient, but some buffer is provided. The whole purpose of this is that the likelihood of the fund going up and down in value is eliminated but, of course, if you hold long-term paper, long-term paper is capable of fluctuating significantly because it is basically a punt on what the market thinks long-term interest rates are, which are speculative. The shorter the paper, the less volatile the price is and that means that the value of the gilt goes up and down, within a smaller margin, because it is closer to redemption at par, and if there are only eighteen months or twelve months left before the Government is going to pay you back a hundred pounds to a hundred pounds of paper, the market will not depart very radically from that valuation in the market or somebody is going to make a huge killing if it goes down, or lose a huge amount of money if they have paid more than one hundred pounds at par. But, certainly, that logic is diminished if subclause (3) has not been curtailed. I would just like to give that a few moments thought. I am grateful to the hon Member for that quip. That point that alerted me to that from a sedentary position. That is still there.

In terms of the loss of coins, I have to say I have not been cognisant of the fact. I have not focussed, as he appears to have done, that this comment was being put there. It is true that there is no fund to provide a pot out of which to redeem coins but the reality of it is that, given the limited amount of value of

coinage in circulation, coupled with the extreme rarity of anybody coming in to redeem coins, it is really just the banks when the banks cashiers take in too many coins. They bring in the coins and ask for notes instead and then those coins go back into circulation the next time a shop or a bank says, I have run out of 50p coins give me more, and, really, it the same amount of coins going round and round and round in circles. Except coins that are taken abroad, as we all do when we go abroad on holiday. Those coins are, in effect, lost for ever and will probably never be redeemed and this is how money is made, I suppose, by Governments on coinage issues. So, I do not want to comment on what has been said to be the reason for this but, certainly, it has not been pointed out to me, in the run up to the discussion of this, which must mean that the Treasury is content that there is no need to continue with the 10 per cent buffer. Otherwise, they would have armed me with a reason and, certainly, from what I know of coinage redemptions, it is a non-existent contingent liability, really. If it all happened, if suddenly everybody gathered every coin in issue and brought it to the Treasury and said, give me sterling notes for this, the reality is that the Government would have in its reserve more than sufficient money to redeem all the coinage in the unlikely event, not to say, wholly impossible event, that all the coinage were brought back for redemption. So, whatever may be the dialectic value and the argumentational value of his point, it has not been raised with me in the discussions I have been party to, in the formulation of this Bill, or the policies behind it. I must, therefore, assume that nobody in the Treasury has any concern about that question but I will, if he does not mind, reserve my position just for a moment. Perhaps, whilst my colleague is taking one of his Bills, I would like to make a call to deal with these questions about the short and long-term securities.

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.

**SUSPENSION OF STANDING ORDERS**

**HON CHIEF MINISTER:**

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

Question put.            Agreed to.

**PRIVATE MEMBERS' MOTION**

**HON P R CARUANA:**

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

**“That this House do give leave for the introduction by me of a Private Members' Bill, namely the Barclays Private Clients International (Gibraltar) Limited (Transfer of Undertaking) Bill 2011.”.**

Mr Speaker, as hon Members may know, in the past Barclays Bank have operated in Gibraltar under two legal entities, namely, Barclays Private Clients International (Gibraltar) Limited and Barclays Bank PLC, a branch of the United Kingdom parent bank. The transfer of the undertaking of Barclays Private Clients International (Gibraltar) Limited to Barclays Bank PLC will enable the bank to operate as a branch of Barclays Bank PLC, as is its wish to do. The transfer of the business, accounts, liabilities, mortgages, interests, et cetera, would

require a very significant amount of paperwork, as well as contact with clients and legal documentation and hon Members will be aware that in the past, indeed, it has become something of a tradition now in Gibraltar that when banks want to undertake this sort of legal entity reconfiguration/restructure, that we facilitate their task by allowing them to do it through a Private Member's Bill, which cuts across the need for relationship by relationship and transaction by transaction, asset by asset, security by security, documentation. That is the nature of the Bill and it is identical, or very close, to the one passed by this House in 2009, to facilitate the corporate restructuring of another bank. Mr Speaker, Barclays Bank in Gibraltar remains an important part of our financial services and financial system. They are committed and remain committed and profess to intend to remain committed to Gibraltar. They are significant and good employers and the Government believe that it is appropriate for the House to assist them in this way by the passage of the Bill. This, of course, is not the debate on the Bill itself. Simply, the debate on the motion, to give me leave to move a Bill for that purpose, which is all that is before the House at this precise moment. I commend the motion to the House.

Question proposed.

**HON F R PICARDO:**

Mr Speaker, we will be supporting the motion. Just for the purposes of those listening, this is a Private Members' Bill not because it does not enjoy the support of all the Members sitting opposite, but because it deals with a particular individual. In this case, a legal entity by a particular name and we have no difficulty with the introduction of the Bill.

Question put.            The House voted.

The motion was carried unanimously.

## **PRIVATE MEMBERS' BILL**

### **FIRST AND SECOND READING**

#### **THE BARCLAYS PRIVATE CLIENTS INTERNATIONAL (GIBRALTAR) LIMITED (TRANSFER OF UNDERTAKING) ACT 2011**

##### **HON P R CARUANA:**

I am grateful to the hon Members for their unanimous support for that motion and I have the honour to move that a Bill for an Act to make provision for and in connection with the transfer of undertaking of Barclays Private Clients International (Gibraltar) Limited to Barclays Bank PLC, be read a first time.

Question put.                      Agreed to.

##### **SECOND READING:**

##### **HON P R CARUANA:**

I have the honour to move that the Bill be now read a second time. As I have said, Mr Speaker, in the motion earlier, the Bill makes provisions for an in connection with a transfer of the undertaking of Barclays Private Clients International (Gibraltar) Limited to Barclays Bank PLC, a UK registered company, which has a branch in Gibraltar. Both Barclays Private Clients International (Gibraltar) Limited and Barclays Bank PLC are members of the same group of companies. The restructure will streamline and modernise the operation of Barclays in Gibraltar which, for historical reasons, has operated under two legal entities. The transfer will not affect the level of presence of Barclays in Gibraltar as it will continue to operate from its two current premises at Regal House and Main Street. The public will not see any change in this regard and it will continue to be able to deal with their current contacts at the bank. The staff

working in the premises of Barclays Gibraltar, that is, Barclays Private Clients International (Gibraltar) Limited, the staff working for that company are already employed by Barclays Bank PLC and the banks have confirmed to the Government that the transfer effected by the Bill is not intended to give rise to any redundancies amongst the work force.

Turning to the detail of the Bill, most of which the hon Members will be familiar with, they have seen provisions almost identical in the case of previous Private Members' Bills of this sort. Clause 1 contains the short title, together with various definitions. I would particularly draw the House's attention to the definition of the "change-over date". This is the date on which the current undertaking of Barclays (Gibraltar), that is, the company, will under the Bill vest in Barclays Bank PLC, that is, the branch. The date will be appointed by notice in the Gazette and the present intention is that this will be a date very shortly after the passing of the Bill. The House will also note that the definition of "undertaking", in relation to the Gibraltar company, excludes the company's share capital and reserves, as these fall to be dealt with on the winding up of the company under clause 10.

Clause 2 is the fundamental provision of the Bill. It provides for the vesting of the undertaking of Barclays Private Clients International (Gibraltar) Limited in Barclays Bank PLC branch, on the change-over date. Effectively, on that date, Barclays Bank PLC automatically succeeds to the undertaking of the company, as if the company and Barclays Bank PLC were the same person in law. The remainder of the provisions of the Bill, other than clauses 10 and 11, develop, supplement and refine this fundamental provision and proposition.

Clause 3 deals specifically with various types of property. The term property is widely defined in clause 1, in which, immediately before the change-over date, Barclays Private Clients International (Gibraltar) Limited has an interest. Sub-clause (1) of clause 3 deals with the generality of property which, at the time, forms part of the undertaking of the Gibraltar

company. The remaining provisions of this clause deal with property held jointly, third party rights, property subject to a trust or similar obligation and property held as custodians. The overall effect of these provisions is to put Barclays Bank PLC into the shoes of Barclays Private Clients International (Gibraltar) Limited, whilst ensuring that rights of third parties are fully safeguarded.

Clause 4 excludes three descriptions of property from the vesting provisions of the Bill. The details are set out in the Explanatory Memorandum. Two of these, the premises of Barclays (Gibraltar) and any rights or liabilities in which only Barclays (Gibraltar) and Barclays Bank PLC have an interest, remain for Barclays (Gibraltar) and Barclays Bank PLC to deal with themselves. The exclusion of financial services licences and authorisation follow from the fact that, as a matter of law, these are not transferable.

The remaining provisions of the Bill, other than clauses 10 and 11, are technical provisions which are well preceded in this type of legislation in the past. Perhaps, the most significant is clause 6, which provides that, on the change-over date, existing accounts of Barclays (Gibraltar) become accounts Barclays Bank PLC, subject to the same terms and conditions as applied before the change-over date.

Clause 10 provides for the winding up of the Gibraltar company, Barclays Private Clients International (Gibraltar) Limited, once the transfer is completed and it no longer holds any of the licences and authorisations relevant to its carrying on of financial services business. The date of the winding-up will be appointed by notice in the Gazette under subclause (3). Barclays Bank PLC is required to send a copy of the notice to the Registrar of Companies, so that he can take such action as he considers appropriate, following the winding-up.

Clause 11 which is common form in similar pieces of legislation ensures that any Government expenditure in connection with the

introduction and enactment of this Bill is to be paid by Barclays Bank PLC. I commend the Bill to the House.

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

**HON F R PICARDO:**

Yes, thank you. Mr Speaker, this Bill, of course, relates to the business of a private entity, although a very important private entity in our community. Barclays is important as an employer. It is important as part of the architecture of our international financial services sector and also of the local financial services available to residents of Gibraltar. The most important part for us, in considering this Bill, is the question of the continued employment of the staff at Barclays and that a Bill like this, which as the hon Member has said, is designed to facilitate the process with Barclays, might have itself proceeded with, without the need for such legislation, is provided only in instances where we are sure that there are not going to be any redundancies. We, on this side of the House, have received satisfactory assurances from those in positions of authority in Barclays, not just that it is not intended that this Bill will give rise to any redundancies, but that there will be no redundancies as a result of this Bill. Mr Speaker, for that reason, this Bill will have the support of both sides of the House.

Question put.                      Agreed to.

The Bill was read a second time.

**HON P R CARUANA:**

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

Question put.                      Agreed to.

## **COMMITTEE STAGE**

### **HON CHIEF MINISTER:**

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

1. The Barclays Private Clients International (Gibraltar) Limited (Transfer of Undertaking) Bill 2011.

### **THE BARCLAYS PRIVATE CLIENTS INTERNATIONAL (GIBRALTAR) LIMITED (TRANSFER OF UNDERTAKING) BILL 2011**

**Clauses 1 to 11** – were agreed to and stood part of the Bill.

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

## **THIRD READING**

### **HON CHIEF MINISTER:**

I have the honour to report that the Barclays Private Clients International (Gibraltar) Limited (Transfer of Undertaking) Bill 2011 has been considered in Committee and agreed to, without amendment, and I now move that the Bill be read a third time and passed.

Question put.

The Barclays Private Clients International (Gibraltar) Limited (Transfer of Undertaking) Bill 2011,

was agreed to and read a third time and passed.

## **BILLS**

### **FIRST AND SECOND READINGS**

### **THE DEVELOPMENT AID (AMENDMENT) ACT 2010**

### **HON J J HOLLIDAY:**

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

Question put.                      Agreed to.

### **SECOND READING**

### **HON J J HOLLIDAY:**

I have the honour to move that the Bill be now read a second time. Mr Speaker, section 15(b) to section 15(h) of the Development Aid Act, which this Bill repeals, deals with rating relief on new developments. Under those sections, essentially, the Minister has powers to stagger the increases in the rates in respect of new developments, over a period of ten years for residential developments and five years for commercial developments. The Minister also has various powers to vary the relief. This short Bill repeals those powers in respect of new developments while they will, of course, continue in respect of existing developments. The reason is that relief has served its purpose in encouraging developments and there is no longer a need for that encouragement. Mr Speaker, I wish to give notice that, at the Committee Stage of the Bill, I will seek an amendment in clause 1 so as to change the year 2010 to 2011. 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 J J HOLLIDAY:**

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

Question put.           Agreed to.

**THE CHILDREN AND YOUNG PERSONS (ALCOHOL, TOBACCO AND GAMING) (AMENDMENT) ACT 2010**

**HON D A FEETHAM:**

I have the honour to move that a Bill for an Act to amend the Children and Young Persons (Alcohol, Tobacco and Gaming) Act 2006, be read a first time.

Question put.           Agreed to.

**SECOND READING**

**HON D A FEETHAM:**

I beg to move that the Bill for the Children and Young Persons (Alcohol, Tobacco and Gaming) Amendment Act 2006, be read a second time. Mr Speaker, before I continue with my speech, I give notice to the House that I am moving an amendment to amend 2010 to 2011. The Bill was, obviously, published in 2010 and taken this year to the House.

In 2008 we conducted a public consultation exercise on whether the age at which a young person can procure or purchase alcohol should be increased from the current age limit of 16. At

the time, we made it clear that Government did not intend to change the central cornerstone in the current legislation, which is that it is not the under age child or young person who commits an offence in consuming alcohol or smoking tobacco but the adult who procures or sells that alcohol or tobacco to him or her. In other words, we would not change our policy of not criminalising young people. The majority of those consulted in the exercise wanted the relevant age to be increased and it was, therefore, obvious that there was concern in the community about this issue. Interestingly, however, much of that concern was directed at the enforcement of the current laws and the sale of alcohol to those under the age of 16. The Government also listened very carefully to the views expressed by young people through representative groups such as the Gibraltar Students Association who made very valid and persuasive submissions to the Government. Their position was that whereas they agreed with an increase in the relevant sale and procurement age for tobacco, on various health related grounds, there was very little evidence of alcohol abuse among 16 and 17 year olds, according to them, over and above the general trends in alcohol consumption amongst the population at large. They also said that, whilst it is certainly true that physiologically alcohol can, depending on the individual, affect someone under the age of 21 more severely than someone over that age, if this were the sole basis for an increase in the legal age, the relevant age should be increased to 21. They also argued that the problem of alcohol abuse needed to be tackled globally across age groups and that there were specific enforcement issues affecting the current regime which needed to be tackled in order to prevent the sale of alcohol to those under age. They also, however, accepted that it would not be unreasonable to limit the type of alcoholic drinks, in particular spirits, available to 16 and 17 year olds along the lines of some other jurisdictions. Not only were many of the arguments put to us by these groups persuasive, but they were a credit to the intelligence and the level headedness of our young people and, on behalf of the Government, I would like to take this opportunity to thank all those young people who came to my office to express views on this issue. The Government agree that the issue of anti-social

drinking and alcohol abuse cannot be tackled by simply raising the sale and procurement ages to 18. We emphasise that in the UK, where the relevant age is 18, the World Health Organisation in its 2008 report, Health Behaviour in School Aged Children, reported that English school children are amongst the most likely to have drunk alcohol under the relevant age. The Government also want to avoid a situation where over targeting 16 and 17 year olds, with a prohibitive regime, merely drives young people across the border or leads to the perennial problem with total prohibition that the activity becomes even more attractive to young people than it presently is. In this legislation, therefore, the Government are balancing the need to introduce a tighter, more effective, legislative framework protecting young people, by limiting the circumstances and the type of alcohol 16 and 17 year olds can consume, together with better enforcement and greater penalties for offenders without a total prohibition in the regime. Further, the Government are not only introducing balanced legislative change but will also work together with youth organisations and others, to undertake wider initiatives on issues such as binge drinking and smoking and its effects across age groups. The details of these will be announced, Mr Speaker, in the future.

Mr Speaker, I now deal with the individual clauses in the Bill. Clause 2 introduces new definitions which are consequential upon the changes made in the Principal Act. Amongst those definitions, are definitions of beer, wine and cider taken from section 193 of the UK Licensing Act 2003.

Clause 3 raises the age, at which it is prohibited to sell alcohol to a young person, from 16 to 18, with some exceptions. In addition, it adds a new subsection so that licensees who did not actually sell the alcohol will still be liable for the actions of employees, unless they show that they exercised due diligence, including ensuring that their staff were adequately trained, monitored and supervised. The position, in this regard, is the same as the position in England and Wales, as far as the liability of the licensee is concerned. In fact, the way that sections 3 and 9 of the Principal Act operated and were interpreted by the

Attorney General and the police as operating, was to fix liability on the person actually selling to an under 16 and that, really rarely, was going to mean a licensee, unless the licensee was directly involved in the sale, or instructed an employee to proceed with the sale. The position, therefore, is that the Bill extends liability, beyond those actually involved in the transactions, to those responsible for the establishment, if they have not exercised proper care in the training, monitoring and supervision of their staff. In accordance with this clause, a 16 or 17 year old will be able to buy alcohol at licensed premises, for example, a bar or a restaurant, provided that it is to be consumed on the premises and the alcohol consists of beer, wine, cider, of an alcoholic strength of not more than 15 per cent, or alcohol sold in or procured from a pre-packaged container, of an alcoholic strength of less than 5.5 per cent. Pre-packaged is defined as a beverage made up in advance and placed in a securely closed container by the manufacturer for retail or wholesale. It is intended to cover drinks, such as Alcopops, but not self-mixed cocktails. The effect of this clause also means that a 16 or 17 year old will not be able to buy alcohol from an off-licence shop or premises. Furthermore, in order to successfully defend a prosecution, a defendant who sold the alcohol will need to show that the relevant person, that is, a young person, produced as evidence of his age: (a) a passport; (b) an identity card; or (c) a driver's licence and that evidence would have to have convinced a reasonable person. The last caveat is intended to deal with a situation where a forged document is produced and it is obvious that it is a forged document.

Clause 4 introduces a new offence of selling alcohol to a person under the age of 18 who is drunk. The penalty is a fine up to level 5 on the standard scale or one of the higher fixed penalties as set out in new section 21A, if you are a licensee, and I will come to section 21A in due course. To escape liability, the licensee has to prove that he exercised all due diligence to avoid committing the offence, again including training, monitoring and supervision of staff. The distinction between subsection (1) and (2) is the distinction, for example, between an employee of the

licensed premises and the owner of the licence. The employee is subject to a fine on level 5, whereas the licensee risks the mandatory fines in section 21A and also revocation and suspension of the licence. The rationale for that is that you cannot expect really ... If you have, for instance, a student on a summer job who is working behind a bar and he sells to somebody under the relevant age, you cannot expect for that person ... for there to be penalties, in relation to that person, of £5,000, £10,000, £15,000, which are the really heavy fines that we are imposing in relation to licensees of the premises, if they are actually in default of the Act. We would hope that these severe penalties send a clear signal to licence holders that they have responsibilities not to sell alcohol to a young person who is already inebriated and that, whilst young people are in your establishment, you must have a measure and you take a measure of responsibility for them.

Clause 5 amends section 4 of the Principal Act in order to amend the wording of the signage to be displayed on licence premises, as a consequence of the changes introduced by the Bill.

Clause 6 amends the Principal Act so that a police officer can confiscate alcohol in the possession of an under 18 year old who is drinking, or intends to drink, in public, except in circumstances, obviously, set out in clause 8 of the Bill, which I will come to in a moment. This is an existing provision which has proved extremely useful to police officers, allowing a police officer to confiscate alcohol being consumed in public by someone under age, without arresting that person and giving that person a criminal record. The addition now is, the addition in subsection (3), where the person does commit an offence, if he refuses a reasonable request by an officer to give up the alcohol.

Clause 7 creates a new offence of breach of the peace in a public place. A police officer can now require someone to surrender his drink whether, or not, they come within clause 6. In other words, whether, or not, they are under age, if that

person is causing, or likely to cause, a breach of the peace, is intimidating any person, or behaving in an intimidating manner, or the police officer, reasonably, believes that any of the above may occur.

Clause 8 makes it unlawful for anyone to procure an alcoholic drink for a 16 or 17 year old, unless it is one of the permitted drinks. In other words, wine, beer or cider, as we saw with clause 3. That relates to sale. This now relates to procurement and it is either, bought for consumption on licensed premises, or the alcohol is bought by someone who has parental responsibility for the 16 or 17 year old, or someone who is over the age of 18 and has the consent of someone with parental responsibility for that young person. In other words, if my son is over 16 and he has a friend over for a party, who is also at my house, who is also over the age of 16 but under 18, and someone with parental responsibility for that person is content for him to have a beer or wine at my house, then it is legal for that person to do so. The idea is that if someone in parental responsibility, or parental authority, consents for their child to drink under supervision of another adult, then the state should not intervene, as long as it is a permitted drink. In other words, as long as it is beer, cider, or wine, not spirits. That then required us to insert a defence covering the position of that adult, if consent became an issue. So, there are two elements. There is a defence in this section and there are two elements to the defence. A subjective element that the adult providing the alcohol believed he would have the parent's consent, if that person knew he was drinking, and an objective element that the belief was, in all the circumstances, reasonably held. Furthermore, as in clause 3, the defences have also been tightened, as far as the type of documents that need to be produced when age is in doubt.

Clause 9 introduces a new offence of procuring alcohol for a person under 18 years who is drunk. The penalty is a fine up to £5,000.

Clause 10 deals with sale of tobacco and raises the age from 16 to 18 with no exceptions. It also targets the licensee who is subject to a fixed penalty under section 21A. The defences have also been strengthened in line with the clauses dealing with sale and procurement in relation to alcohol.

Clauses 11 raises the age to 18 for consumption of tobacco in public places. In line with changes made to the provisions relating to alcohol, although the young person commits no offence and the section gives the police the power to confiscate the tobacco from a person under age, if that young person refuses to comply with a reasonable request to give up the tobacco, then he does commit an offence, which is what I mentioned already in relation to similar provisions in relation to alcohol.

Clauses 12 to 18 raise the age for sale and procurement, in respect of tobacco, from 16 to 18.

Clauses 19 and 20 introduce a new section 21A, which increases the penalties for licensees found guilty under the Act. The licensee prosecuted for selling alcohol, or tobacco, to anyone under the age of 18, in circumstances not permitted by the Principal Act, will be liable for the following punishments: on a first offence, a fixed fine of £5,000; on a second offence, a fixed fine at £10,000 and the possibility of having your licence suspended or revoked; on a third, or subsequent offence, again a fixed fine of £15,000 and his licence will either be suspended or revoked. These are mandatory fines. They are heavy fines, hefty fines. But, Mr Speaker, we believe that they are justified and we expect that the regime, these tough new provisions in the new regime that are being introduced, that those are adhered to by licensees, otherwise they face what are very tough fines and consequences.

Clauses 21 and 22. Mr Speaker, clause 21 is a consequential amendment, and, finally, clause 22 sets out the savings and transitional provisions. The Act is to come into force on 1<sup>st</sup> April 2011 in order to give licensees and the general public time to

adjust to the changes being introduced. The Bill, in fact, was published in October of last year. So, it has been public for quite some time. Still, there is an additional period of time until 1<sup>st</sup> April 2011, so that licensees and members of the public have time to adapt to the new changes. In addition, the changes made by this Bill will not apply to anyone who has reached the age of 16 on 1<sup>st</sup> April 2011. The Government did not feel it was right for us to introduce the changes retrospectively so that somebody who has the right to drink spirits at the present moment, or to smoke at the present moment, all of a sudden, as from tomorrow, does not have that right. We believe that it is wrong to alter the law in this respect, retrospectively. So, what we have done is we have set a prospective date of 1<sup>st</sup> April 2011. Anybody who has already attained the age of 16 on that date, the changes will not apply to them. I commend the Bill to the House.

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

#### **HON G H LICUDI:**

Mr Speaker, this is a Bill which we will be supporting. As the hon Member has indicated, it has been subject to consultation in the past. Any measure which discourages young people from drinking and smoking, is a measure which we will welcome. Indeed, any measure which discourages any person from smoking at all, is a measure that I would certainly support, from a personal point of view. From the point of view of the Opposition we, certainly, welcome the introduction of the raising of the limit for drinking and smoking, from 16 to 18. There are, however, one or two points that I wish to make, not from the point of view of being critical of the Bill but, hopefully, from the point of view of seeking to improve the Bill. The hon Member has indicated, in his opening, that this Bill is not intended to change the cornerstone of the legislation which is that we should not be criminalising the young persons themselves but people who actually sell, or procure alcohol for the young person. But,

indirectly, this is what may actually happen under the provisions of this Bill. The hon Member has mentioned clause 22 of this Bill, which introduces a new section 23A. The effect of that, as the hon Member has explained, is that 16 and 17 year olds who are, either 16 or 17 as at 1<sup>st</sup> April 2011, are exempt from the provisions of this legislation. Just taking an example of section 7 of the Act, as amended that will say, a person who procures alcohol for a person under the age of 18 is guilty of an offence. One could have a situation where a 16 year old, who is exempt from the provisions of this Bill, buys alcohol. He buys it for himself, he is exempt and no offence is committed. But, if he gives that alcohol to another 16 year old, who is not exempt, then the first 16 year old commits an offence under section 7. The effect, therefore, is that, indirectly, this does criminalise certain acts of persons under 18. I do not know whether that was an intended consequence but it is, certainly, a consequence that ought to be taken into account, particularly, because the hon Member has said that it is a fundamental ..., not a fundamental, but that it is a cornerstone of the legislation that young persons, young people, should not be criminalised by this Bill and 16 and 17 year olds may well be caught by this particular provision. In relation to section 3 of the Act, which is the provision whereby a change is made so that alcoholic beverages may not be sold to people under the age of 18, and there is a new provision being inserted, whereby certain types of alcoholic drink may be sold to 16 and 17 year olds. That is where the alcoholic content is below a certain threshold. Subsection (2) of section 3 provides a defence in certain circumstances and it provides, as it will read, as amended, that it is a defence for a person charged with the commission of an offence under section 1, to prove that he believes that the person was aged, as it will be, 18 or over. That deals with a defence to section 1 but it does not deal, or take into account, the new provision which is that 16 or 17 year olds may, in certain circumstances, be sold certain types of alcoholic beverages below a certain threshold. In other words, there seems to be an inconsistency in that people who believe that someone is over 18 has an offence, but someone who believes that someone is 16 or 17 and is being sold a drink below the

alcoholic threshold, which is now being provided for by a new section, does not have a similar defence. There seems to be an inconsistency between those two provisions. A defence for one type of offence under section 3, but not a defence under the other type of offence by reason of the new provision which is being introduced.

**HON CHIEF MINISTER:**

Mr Speaker, will the hon Member give way? I just want to make sure that we understand his suggestion. He is not suggesting that somebody might need a defence, for what is not an offence? If you are allowed to sell alcohol, of a certain type, to people under a certain age, then, there are no circumstances in which you might need a defence for doing so. Now, that is my ... I may have misunderstood the point that he is making, however.

**HON G H LICUDI:**

Mr Speaker, the hon the Chief Minister is absolutely right. Certainly, you do not need a defence for something that is permitted and subsection 1B, the hon Member is right, is permissive in nature and, therefore, it does permit certain sales to be conducted. So, I take the hon Member's point. The hon Member is absolutely right.

**HON CHIEF MINISTER:**

I am not saying that that was blindly obvious. I just wanted to make sure that I was not misunderstanding a different point that he might be making.

**HON G H LICUDI:**

The hon Member is correct. It is obvious. Mr Speaker, section 4 (1) of the Act provides for a notice to be displayed. As amended, it will say, it is illegal to sell alcohol to, or procure alcohol for, anyone under the age of 18 in circumstances prohibited by law. So, whereas the present notice, which is mandatory, is very clear, it is illegal to sell alcohol, or procure alcohol, for anybody who is under 16, the new notice will say, it is illegal to do something which is prohibited by law and the notice will not have any indication as to what is and what is not permitted by law. To that extent, I would not suggest that it is a meaningless notice but it loses the efficacy of a notice which is displayed in every single licensed premises in Gibraltar, as to what is illegal, because it will simply say, it is illegal to do something which is not permitted by law and I simply say that, as a remark to the hon Member, for the hon Member to consider whether there is any way of improving that, because we will have notices in every shop and every licensed premises saying, it is illegal to sell alcohol if not permitted by the law, which simply begs the question, well what is permitted by the law?

Mr Speaker, clause 7 of the Bill introduces a new section 6A and I would simply ask the hon Member to clarify the ambit of this section. The new section will read, "Where a constable has reason to believe that any person has been consuming, or intends to consume alcohol", et cetera. As I read this provision, it applies to everyone and not just children and young persons and, therefore, what is being introduced is a new provision which applies to adults and children and young persons alike. I just wanted to make sure that this is what is intended to have. Even though we have an Act called the Children and Young Persons (Alcohol, Tobacco and Gaming) Act, we will have a provision which applies to adults and children alike.

Mr Speaker, the last point relates to, going back to the new section 23A, which has a relevant date as being 1<sup>st</sup> April 2011 and one can well understand the rationale of what the hon Member is seeking to achieve and he has said that these are

not provisions which are intended to have retrospective effect. In other words, where people have rights, already, those rights are not being taken away. I would ask the hon Member simply to consider the practical effect of fixing this at 1<sup>st</sup> April 2011. Young people, tend to go out with their peers and their peers normally are people of their school age. The effect of this is to fix a date, at which certain people will be exempt, in the middle of a school year. So, you will have 16 year olds going out together, as they have been doing previously, as friends, from their school years. Some will be caught by the provisions of this Act because they so happened, by accident, or perhaps, maybe not so much by accident, but they happen to have been born before 1<sup>st</sup> April 2011 and, therefore, will have been 16 on 1<sup>st</sup> April 2011 and others will not. That creates two issues. One is, possible tension among friends, in going out together as school friends. One is able to buy an alcoholic drink and the other is not and, secondly, whether it gives rise to any temptation by the person who is 16 on 1<sup>st</sup> April 2011 and goes out with friends who might not yet be 16, to be able to buy alcohol for that friend because they go out in a group and there might be that type of peer pressure and, simply as a suggestion, whether the hon Member would consider fixing the relevant date as a date being the start of a school year. The 1<sup>st</sup> September could be ..., 1<sup>st</sup> September and, therefore, rights which have been accumulated already, will not have been lost, or 1<sup>st</sup> September of 2011. That might be a more practical way of dealing with this and removing that, sort of, problem that might arise amongst peers and people who go out with their school friends. I reiterate that these are points that are made simply as suggestions, to try and improve the Bill and not as a way of criticising the contents of the Bill. I commend my remarks to the hon Member.

**HON CHIEF MINISTER:**

Yes, Mr Speaker. I just want to say two things. First of all, on that last point. My hon Friend, the Minister for Justice, will be, I think, sympathetic to your amendment, which is something, actually, that I have heard at home from my own children.

Almost exactly the same point made, in exactly in the same way: “but Dad, that means that some of my friends at school will ...” I think there is a point there. Of course, there is a large age group. You will still be in a position where children at school will not be able to, I think, because the age span in any one academic year could be up to twelve months minus one day. So, you have got to be wary about, you know, somebody who just stays out of a school year and somebody who just stays in, there could be twelve months minus one day’s difference in age between them. So, you have got to be a little bit careful about just treating everybody in the same year but, given that 1<sup>st</sup> April 2011 was itself a pretty arbitrarily chosen date with no particular merit to it, I think if the House were agreed that there would be some value in, at least, minimising the chances ... You would not eliminate them altogether but, at least, minimising the chances that everybody in one academic year will be treated, as far as possible, in the same way, then, I think that is a proposal that, certainly, the House ... Certainly, I would be sympathetic to and I believe my hon Colleague will be too and, I think, my other colleagues. It is a genuine concern amongst peers. Not that there is a particularly sound reason for objecting to some people, in a gang, in a grouping, able to drink and not others but, I think, given that 1<sup>st</sup> April 2011 is not a date that has any magic, you might as well choose another date, 1<sup>st</sup> September, or 1<sup>st</sup> August and that makes it less likely that, assuming that people go out in groups made of classroom friends, rather than a straddle, it is likely to minimise the effects that the hon Member is describing.

The other thing is this, Mr Speaker, that the whole philosophy of the Bill, the whole debate, indeed, that has taken place is very often characterised by language, such as, lowering the drinking age. Gibraltar has never had a minimum drinking age. The law is simply not cast in those terms. The law has always been cast in terms of the age of people, for whom it is legal to procure drinks, or to whom it is legal to sell drinks. There has never been a law that says that a 16 year old commits an offence if he drinks. Now, that actually makes this reform a little bit more complicated than you think, because you have got to try and be

effective in protecting children from something that it is not an offence for them to do, by making other people, in effect, responsible for facilitating them doing it. So, it is not a simple ... without being too draconian, on those people who may operate through employees. I mean, it is quite tough for a business owner. A petrol station company, or something, just employs people to serve out, and then these assistants, shop assistants do things. There is a balance to be struck between what is a reasonable burden to place on businesses, to vicariously protect youth from things that the law does not dare make an offence for those people themselves to do and, if so ... But the debate does not accommodate that. When the people speak of lowering the drinking age, or raising the drinking age, that is simply not the way that this area of the law is structured. So, I just thought I would just say that because it has considerably complicated the methods by which the Government thought it was effective to achieve these objectives, which I know are objectives that the whole House shares and the whole community shares. But also has to be balanced. The elimination of abuse and excess always raises the dilemma of how to deal with it, without eliminating cultural things that are okay if they are done in certain circumstances. So, which of us has not had a glass of wine, or even the odd whisky, under parental supervision at home and the idea ... It is quite a tough thing to say to a father, you cannot give your seventeen and a half year old son a whisky at home. You know, there are issues. It is not all as open and sharp and as clear. We are all clear that binge drinking, excessive drinking, by young people is dangerous, bad and should be eliminated. But the moment you depart from that general proposition, which is so easy for everybody to agree with and start saying, well what do I do and how do I do it? I remember we had long debates, internally, about this business of public place and not being able to drink. Well, does that mean that if you go for a picnic to a beach, sitting in Eastern Beach with your parents, does that mean you cannot have a drink on Eastern Beach because you are ...? It is ridiculous. It would be a ridiculous proposition, which is why the Bill is constructed in the way that it is, about parental supervision and parental consent, because it would be absurd, in the name

of abolishing binge drinking on a Friday night by under age people, that a seventeen and a half year old chap could not have a drink on Eastern Beach, with his parents, in summer, during a picnic lunch. So, this is not an area of the law which, despite peoples' temptations, lends itself to simplistic, prohibitionist, broad brushed, statutory provisions, because you very quickly bring about undesired and undesirable consequences for people that everybody would regard as innocent and not being [*inaudible*] that the legislation is intended to catch out and this is the best that we have been able to come up with, after much consultation, to balance all those somewhat complex issues.

**HON G H LICUDI:**

Will the hon Member give way?

**HON CHIEF MINISTER:**

Yes. Of course.

**HON G H LICUDI:**

Mr Speaker, as a result of something the hon Member has said, reminds me of a point I was going to make. The hon Member has mentioned businesses being vicariously liable for the acts of the employees. From the concept that the Hon Minister for Justice earlier on, in relation to the fixed penalties and the mandatory fines, we know that businesses will be vicariously liable in respect of fixed amounts which can, perhaps on occasions, act unfairly. The hon Member, the Minister for Justice, in his introduction earlier, mentioned the case of a young person, maybe a 16 or 17 year old, who is working in a shop, in a summer job and who, perhaps innocently, sells alcohol to an under age person, in breach of the provisions of this law. The hon Member's point was that there should be an

element of discretion in respect of that young person and that is why it is a fine at a level 5 on the standard scale, rather than a fixed penalty. The reality is that, for that sort of indiscretion by, maybe, a young person selling a drink to his friend, the licensee is met with a hefty penalty, which simply raises the question, might those fixed penalties not operate unfairly, in certain circumstances, or is it clearly intended to be absolute, in terms of all indiscretions being vicariously liable for all acts of employees. However irresponsible the employee may be, it will be the licensee that will pay a very hefty fine. Might it not be better, in those circumstances, to leave an element of discretion to the court, to be able to consider all the circumstances of the case?

**HON CHIEF MINISTER:**

Well, Mr Speaker, I will just speak generally to the point, without going into the detailed issues which I will leave to my hon Friend. Listening to the hon Member speak, reminded me of what happened to me with the then Chamber of Commerce, when they spent a year lambasting the Government, some years ago, for not dealing effectively with illegal labour, which was a terrible evil, which caused all sorts of terrible disadvantages to compliant businesses and how the Government had to move heaven and earth to prevent illegal labour, for which there was absolutely no excuse and then, when the Government passed a piece of legislation introducing a £1,000 fine for illegal labour, the reply was, this is draconian. Well, of course, it is draconian. If we all agreed that there was no excuse for it, that it was a terrible social evil, that there was serious dangers and serious difficulty. You cannot achieve the result, without having penalties which are both effective and deterrent in themselves. So, there is a dilemma always. There is always a dilemma when you are trying to stamp something out. You have to balance the effectiveness of the penalties with the rights of the person you are holding responsible, in the penal system, for a proportionate and fair penalty, and not one that is disproportionate or unfair. That is a dilemma. We did agonise



over that. You always agonise that whenever you introduce fixed penalties, which is why the judiciaries have historically been antipathetic towards the legislature setting fixed penalties. We had the same when we introduced fixed penalties into the Tobacco Act, when we introduced fixed fines for being in possession of commercial quantities of tobacco. But, ultimately, when things go wrong in societies, when society demands a solution to a social problem, they do not demand it from the judiciary, they demand it from the executive and from the Parliament. When courts issue penalties, in the exercise of their discretion, which are insufficiently dissuasive of the conduct, people do not then blame the courts for the continuation of ... they blame ... So, whilst the Government is not a great fan of mandatory sentences and, indeed, is in favour, ideologically and as a matter of principle, in maximising the courts' discretions, there are some issues which, because of their ... In the case of tobacco, it was of socio-political economic importance. In this case, because of the gradual undermining of society and danger to youth and others, where the Government says, here is exceptionally an issue the need to deal with which is important enough to make it more important than preserving the courts' rights to exercise discretion and decide what they think. Now, I would certainly agree that those instances should be kept as sparing and as exceptional as possible and, certainly, should not ever become the generality, rather than the exception. But I have great difficulty in signing up to the contrary view, which is that there are no circumstances in which it is appropriate to do so and, indeed, the UK no longer thinks that there are no circumstances because the hon Member knows there are instances in the UK, in recent years, where mandatory sentences have been imposed. So, if we did introduce court discretion, you would simply end up with the position where you have ..., where there would be lack of uniformity. Where courts would apply penalties based on a series of factors, which would not then deliver the necessary deterrents. The result would be less effectiveness in achieving the objectives that everybody is clamouring for, which is for the law ... I have never thought of the law as being a very good tool for prohibitionist policies, but still. It is the one that everybody looks to. So, it is there to

achieve this. So, I would not be in favour of that but, as a matter of general policy, ... and I will let my hon Colleague, the Minister for Justice, deal with how we have sought to strike that balance in this particular way.

#### **HON D A FEETHAM:**

Yes, just dealing with the licensee point. In fact, following on from, before I tackle the hon Gentleman's substantive point and just following on from what the Hon Chief Minister has actually said. The genesis, actually, for this issue of fixed fees was that it had come to my attention that, in fact, people had been taken to court, say for instance, for a second offence and the fine had only been £1,700 for the second offence and, rightly, that produces an outcry amongst members of the public, who are very concerned that alcohol is being sold to children who are under the age of 16. So, we have, purposely, set a deterrent effect or deterrent value in these provisions. But we do strike a balance because, of course, and the hon Gentleman referred to my example of the student and why, in that kind of situation, it would be wrong to have a situation where a student is then imposed fines of £5,000. I said £15,000. Actually, it is £20,000 but, of course, the reverse is also true. You may have a situation where you may have an employee that is very well supervised, very well monitored, very well trained, the employer could not have done anything further and out of, say for instance, a hypothetical situation, out of spitefulness, he sells alcohol to a member of the public. You cannot, it would not be fair, in that kind of situation, to then have the employer, the licensee, vicariously liable in those kinds of sums. Therefore, what we have done is that we have attempted to strike a balance by inserting the defence, which I outlined during the course of my speech in the Second Reading, which is the due diligence defence. If you are a licensee and you are basically charged with an offence of this nature but it is not you, personally, who has actually sold or procured the alcohol and you demonstrate, "Well, I have trained my staff, I have monitored my staff, I have supervised, I really could not have

done anything else”, then they have a defence and, of course, they would then be found not guilty of an offence and there would not be any question of your fixed fines. That is the way that we have attempted to strike the balance, but we make no apologies for the fact that there is a deterrent value and a deterrent effect to these sections.

Dealing with the hon Gentleman’s point that the Bill does not criminalise drinking but criminalises the supply. It is, certainly, true in theory. It is, certainly, true that a 16 year old can procure alcohol for a 16 year old, he does commit an offence. That is the position now, in fact, under the regime at the moment, because what we are attempting to do and what the previous regime did, was not criminalise the actual drinking, but it criminalises the supply. Within all that, there is an element of discretion on the part of the RGP as to how it deals with young people, when faced with this kind of situation. Because, of course, we have the other provisions which is the carrying, or consuming of alcohol in public places and, there, what the police do is ... The power, there, is for the police to confiscate and, usually, what happens ... I have not come across any case of a 14 or 15 year old, somebody under the age of 16, being prosecuted for procuring alcohol for somebody under the age of 16. I would expect there to be a level of common sense in a way that the actual Act applies. But the reality of the situation is that the policy is not to criminalise the drinking, but it is to criminalise the procurement and to criminalise the actual sale.

Mr Speaker, in relation to the signage, we had to come to a decision. Do we actually spell it all out in a sign which would have ended up being quite a hefty sign, or, do we, at the end of the day, have a sign that says what it says, which is that it is illegal to sell alcohol, or procure alcohol, for anyone under the age of 18, in circumstances prohibited by the law. We think that that, accurately, describes the position and, of course, it flags up the fact that, unless one is selling a permitted drink and unless one is selling in permitted circumstances, then, of course, you are committing a criminal offence.

In relation to the other point the hon Member made about any person in section 6A. Yes, it includes any person. It is not just simply the young person. We wanted to effectively bolster but, also, draw out other provisions in other statutes, in particular, in the Criminal Procedure Act, in relation to this particular area and insert it into this particular Act. Now, again we had a decision, do you just limit it to young people and there was no reason why you ought to limit. The offences being of the nature that they are, there was no reason why we ought to limit it to any young person. So, we have extended it to any person.

Mr Speaker, unless there is any other point that I have missed, those are my replies.

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

I think that the last point that my hon Colleague may have made, may not have come across as clearly as he would have wished. That provision is already to be found in another statute, as I understand, and, therefore, the choice ... The Government wanted to have all the provisions relating to youth in this Act. So, the question is do you just replicate the offence here, for youth only, or do you bring it all from the Act where it now is, into this one and then have the anomaly, which the hon Member has spotted, of having things that do not apply only to young people, in an Act that says that it is about young people.

#### **HON G H LICUDI:**

If the hon Member will give way? Is it not the result of what the hon Member has just said that we are going to have the same provision in two different pieces of legislation. Is that the position that the hon Member has explained?

**HON D A FEETHAM:**

This does not actually replicate the provision in the Criminal Procedure Act. What it does is it takes out that provision but expands upon it. So, it is not a duplication as such. It is an expansion of the provision in the Criminal Procedure Act and, as I say, we could have just simply limited the provisions to young people, but there is no reason why we ought to limit it to young people and we could have, for instance, ... The Criminal Procedure Act is going to be repealed when we introduce the Crimes Bill and also the Criminal Evidence and Procedure Act, but rather than have it in those two Acts, we took the decision to just insert it here and deal with it in that particular way.

Question put.            Agreed to.

The Bill was read a second time.

**HON D A FEETHAM:**

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

Question put.            Agreed to.

**THE GIBRALTAR LAND TITLES ACT 2010**

**HON D A FEETHAM:**

I have the honour to move that a Bill for an Act to provide for the registration of deeds and wills which relate to land situate in Gibraltar, the maintenance of a record of land transactions and matters ancillary thereto, be read a first time.

Question put.            Agreed to.

**HON D A FEETHAM:**

Mr Speaker, I beg to move that the Bill for the Land Titles Act 2010, of which I give notice of my intention to move an amendment to 2010 so that it reads 2011, be read a second time. The Bill is intended to form part of the Government's modernisation of the current system of land titles registration in Gibraltar which, as hon Members are aware, is currently dealt with by the Supreme Court. The intention is to move the Land Title Register from the Supreme Court to Land Property Services Limited, which will deal with both land titles registration and stamp duty in a one stop-shop system. In due course, secondary legislation on this Act will establish a streamlined procedure for registration with a clear system of priority of deeds. Very detailed discussions have already taken place between myself and banks, building societies and lawyers, which have led to proposals for a system that we feel is workable and is effective. This Bill will be the foundation upon which we will build those procedures. Although it does not form part of the Bill, the intention is to create a system of priorities based on a certificate of deposit. So, effectively, what will happen is that when a lawyer receives the document back, the stamp duty has already been dealt with, he will then present the document to Land Property Services Limited and they will issue a certificate of deposit, actually detailing the time and the date on which that deed has actually been received. There is then going to be a time limit, within which LPS has to come back to the lawyer with any queries, and a further time in which lawyers may ..., a window in which lawyers will have to correct any errors, for instance, that have been brought to their attention by Land Property Services. Now, within that combined window, no other deeds in respect of that property will be registered by Land Property Services and the certificate of deposit, by registering, recording the date and the time, will effectively lead to a clear system of priorities in respect of the deed, in respect of that property.

Clause 1 provides for the short title to the Act and also for the commencement provisions. Commencement will be by means

of a notice in the Gazette and not on the date of publication. This is to ensure that the proper procedures, part of which I have outlined just a moment ago, and all the necessary secondary legislation are in place before commencement.

Clause 2 contains interpretation provisions. There is no significant departure between the content of this clause and the current section 2, except that the definition of Land Titles Register appears here in full, rather than in later sections.

Clause 3 changes the place where deeds and wills, which in any way affect lands in Gibraltar, are to be registered. The change is in subclause (1), whereas the current subsection (1) refers to the Supreme Court, it will now be the Land Titles Register. Sub-clauses (2) and (3) set out the time limits for such registration and these are the same as in the current law, although the drafting of subclauses is simplified. Sub-clause (4) makes it clear that the Act only relates to grants, et cetera, of land in Gibraltar where it is for a term of over three years and subclause (5) provides that the clause is subject to clause 11 which deals with transitional provisions in relation, amongst other things, to deeds executed prior to commencement of this Bill.

Clause 4 clearly sets out that no deed may be registered without the approval of the Registrar of Land Titles. The Registrar may only refuse approval if he or she is either not satisfied that the deed has been duly executed or, if in his opinion, the application does not comply with the provisions of the Act. This is not intended to be a simply rubber stamping exercise and the Registrar, by means of subclause (3), may require evidence by means of affidavit, or otherwise, to prove to his satisfaction that the deed has been duly executed.

Clause 5 reflects the current section 3 subsection (5) and deals with the legal priority to be given to registered deeds and wills over unregistered deeds and wills.

Clause 6 reflects the current section 6 allowing for a certified copy of an order of the Court to be deemed to be the original instrument for the purpose of this Bill.

Clause 7 provides for the circumstances where a deed shall be presumed to have been duly executed. It broadly follows the current section 7 except that, of course, it makes provision for registration under this Bill. Sub-clause (2) makes it clear that the Registrar is not liable for any errors contained in documents supplied to him.

Clause 8 makes provision for certified copies of extracts from the Registrar. This again simply updates section 8 of the current Act to include registration under this Bill.

Clause 9 makes provision for the making of regulations under the Bill by the Government. The regulation making power combines the current regulation making power under section 4 (2) of the current Act and the rule making power under section 9 of the current Act. As the register is moving away from the Supreme Court, it is no longer appropriate to have rules made by the Chief Justice, governing procedure. The regulations made under this Bill will replace the current Land Titles (Registration) Rules 1991 and the Land Titles (Register) Regulations 1990, which are revoked in clause 12.

Clause 10 makes identical provisions to the current section 10, with regards to the circumstances where the express licence and authority of Her Majesty is required.

Clause 11 makes transitional and miscellaneous provisions. Sub-clauses (1) to (3) ensure that deeds and wills, duly registered when the Bill comes into force, shall be deemed to have been duly registered under the Bill, with the approval of the Registrar. Clauses 4 to 7 then make provision for the late registration of deeds and wills that should have been registered under the current and previous legislation.

Clause 12 repeals the current Act and revokes the secondary legislation made under it. I commend this Bill to the House.

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

**THE HON F R PICARDO:**

We agree that the Supreme Court is no longer the right repository for the responsibilities that relate to the registration of deeds and wills on the basis set out by the hon Gentleman in his intervention today. The existing procedures have, as Mr Speaker will know as a practitioner in the same profession as the hon Member moving the Bill and myself, been less than satisfactory in the past years since, in particular, the explosion of home ownership in Gibraltar in the early 1990s. It gave rise to a lot more of the types of documents that required registration.

Mr Speaker, across the House, no doubt, we will be monitoring how this Act, once it becomes the law, becomes effective and whether it does what we all, no doubt, hope it will. Needless to say, as we have not had sight of the regulations, although I think the hon Gentleman has indicated that they are already in an advanced form, if not already ready for publication, we cannot comment on what it is that will be the actual mechanics for implementation of this Bill and that is also something, of course, we have to reserve our position on. Other than that, this Bill will have a fair wind on this side of the House.

Question put.                      Agreed to.

The Bill was read a second time.

**HON D A FEETHAM:**

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

Question put.                      Agreed to.

**COMMITTEE STAGE**

**HON CHIEF MINISTER:**

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

1. The Counter-Terrorism (Amendment) Bill 2010;
2. The Public Finance (Control and Audit) (Amendment) Bill 2011;
3. The Currency Notes Bill 2011;
4. The Development Aid (Amendment) Bill 2010;
5. The Children and Young Persons (Alcohol, Tobacco and Gaming) (Amendment) Bill 2010;
6. The Gibraltar Land Titles Bill 2010.

**THE COUNTER-TERRORISM (AMENDMENT) BILL 2010**

**Clause 1**

**HON CHIEF MINISTER:**

Yes. Just in clause 1 of the Bill, short title, Counter-Terrorism (Amendment) Act 2011.

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

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

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

**THE PUBLIC FINANCE (CONTROL AND AUDIT)  
(AMENDMENT) BILL 2011**

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

The House recessed at 5.20 p.m.

The House resumed at 5.25 p.m.

**Clauses 3 to 7** – were agreed to and stood part of the Bill.

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

**THE CURRENCY NOTES BILL 2010**

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

**Clause 4**

**HON CHIEF MINISTER:**

Yes, Mr Chairman, I have given written notice of the text of a proposed subclause to be inserted after clause 4(3), to read:

“(4) No currency note shall be issued under this Act which bears the name and image of Her Majesty, or any other member of her family, without the prior consent of Her Majesty to the design thereof.”.

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

**Clauses 5 to 7** – were agreed to and stood part of the Bill.

**Clause 8**

**HON CHIEF MINISTER:**

Yes, Mr Chairman, to accommodate the two points made by the Hon the Leader of the Opposition, which are really both examples of the same issue that is not intended. In subclause (3), I would propose to add, after the words “Government of Gibraltar”, the following words, “with a short maturity date or otherwise not subject to capital loss in a market”. This is to accommodate the fact that one of the logics proffered for the lack of need, for no longer having a need of a buffer, is the fact that the fund is no longer exposed to investment, to capital fluctuations, wide capital fluctuations in any market conditions and this makes that point clear. Then, in subclause (4), and in similar vein. In other words, to protect the fund from anything that might prejudice that principle. Delete all the words after the word “Bills”. So, we are deleting the words, “or with the approval of the Minister lent out at call or for short terms or invested in readily realisable securities”. All those words are deleted, so that the full stop comes after the word “Bills”.

Clause 8, as amended at subclauses (3) and (4), were agreed to and stood part of the Bill.

**Clauses 9 to 15** – were agreed to and stood part of the Bill.

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

**THE DEVELOPMENT AID (AMENDMENT) BILL 2010**

**Clause 1**

**HON J J HOLLIDAY:**

Yes, Mr Chairman, as I gave notice in the Second Reading, I wish to change the date from “2010” to “2011”.

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

**Clauses 2 and 3** – were agreed to and stood part of the Bill.

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

## **THE CHILDREN AND YOUNG PERSONS (ALCOHOL, TOBACCO AND GAMING) (AMENDMENT) BILL 2010.**

### **Clause 1**

**HON D A FEETHAM:**

Yes, Mr Chairman, the year “2010” to “2011” and, in fact, I have also given notice to substitute “1<sup>st</sup> April 2011” for “day of publication” and in the light of the debate on the Second Reading and the fact that we have actually agreed to amend the final clause in the Bill, can we leave that over and come back to it, when we have dealt with that particular point? Then substitute “31<sup>st</sup> August 2011” for “day of publication”.

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

**Clauses 2 to 21** – were agreed to and stood part of the Bill.

### **Clause 22**

**HON G H LICUDI:**

Mr Chairman, in what is going to be the new section 23A.(5), which sets out the definition of relevant dates, I would propose an amendment from “1<sup>st</sup> April 2011” and substitute, therefore, with “31<sup>st</sup> August 2011”.

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

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

## **THE GIBRALTAR LAND TITLES BILL 2010**

### **Clause 1**

**HON D A FEETHAM:**

Mr Chairman, again, at “2010” change to “2011”.

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

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

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

## **THIRD READING**

**HON CHIEF MINISTER:**

I have the honour to report that:

1. The Counter-Terrorism (Amendment) Bill 2010;
2. The Public Finance (Control and Audit) (Amendment) Bill 2011;
3. The Currency Notes Bill 2011;
4. The Development Aid (Amendment) Bill 2010;
5. The Children and Young Persons (Alcohol, Tobacco and Gaming) (Amendment) Bill 2010;
6. The Gibraltar Land Titles Bill 2010,

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

Question put.

The Counter-Terrorism (Amendment) Bill 2010;

The Public Finance (Control and Audit) (Amendment) Bill 2011;

The Currency Notes Bill 2011;

The Development Aid (Amendment) Bill 2011;

The Children and Young Persons (Alcohol, Tobacco and Gaming) (Amendment) Bill 2011;

The Gibraltar Land Titles Bill 2011,

were agreed to and read a third time and passed.

## **SUSPENSION OF STANDING ORDERS**

### **HON CHIEF MINISTER:**

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

Question put.           Agreed to.

## **GOVERNMENT MOTION**

### **HON J J HOLLIDAY:**

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

**“That this House approves, in accordance with section 93(2) of the Traffic Act 2005, the Gibraltar Highway Code.”.**

Mr Speaker, it has been some time since the Highway Code was last revised. A new revised edition reflects changes and developments in traffic management and road safety and offers the latest road safety rules and advice, as well as promoting greater courtesy and understanding amongst all road users, particularly, those that more vulnerable. The Highway Code is essential reading for everybody. Its rules apply to all road users, pedestrians, cyclists, as well as motor cyclists and drivers. Added to this new edition, are rules for users of powered wheel chairs and mobility scooters, seat belts and child restraints, mobile phones and *[inaudible]* vehicle technology, driving in adverse weather conditions and motorways. It also offers tactical advice to the most vulnerable road users and pedestrians, particularly, children, older or disabled people and cyclists and motor cycles. Much of the material in the Highway Code has changed, in the *[inaudible]* over time, by necessity. The basic advice in a Highway Code many years ago, may not be applicable today, given increased traffic volumes, larger faster vehicles, more complex road layouts, updated new road signage and markings and many other factors. All road users have a responsibility to ensure their knowledge is updated, in order to adjust their awareness and actions appropriately, for the benefit of others and for their own safety. Mr Speaker, I commend this document to the House.

Question proposed.

### **HON G H LICUDI:**

Mr Speaker, this is a motion which we will be supporting on this side of the House. We recognise that the Highway Code is an invaluable guide for all road users, as roads change and, as the hon Member says, vehicles change, driving habits change. There is a need for periodical revision of the Highway Code. The Highway Code which we had previously was in need of that revision. We welcome the changes that have been made and, therefore, we will support this motion.



Question put.                      The House voted.

The motion was carried unanimously.

## **ADJOURNMENT**

### **HON CHIEF MINISTER:**

I have the honour to move that the House do now adjourn to Wednesday 16<sup>th</sup> March 2011 at 2.30 p.m.

Question put.                      Agreed to.

The adjournment of the House was taken at 5.45 p.m. on Monday 7<sup>th</sup> February 2011.

## **WEDNESDAY 16<sup>TH</sup> MARCH 2011**

The House resumed at 2.30 p.m.

### **PRESENT:**

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

### **GOVERNMENT:**

The Hon P R Caruana QC – Chief Minister  
The Hon J J Holliday – Minister for Enterprise, Development,  
Technology and Transport and Deputy Chief Minister  
The Hon Lt-Col E M Britto OBE, ED – Minister for the  
Environment and Tourism  
The Hon F J Vinet – Minister for Housing and Communications

The Hon J J Netto – Minister for Family, Youth and Community  
Affairs

The Hon Mrs Y Del Agua – Minister for Health and Civil  
Protection

The Hon D A Feetham – Minister for Justice

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

The Hon C G Beltran – Minister for Education and Training

The Hon E J Reyes – Minister for Culture, Heritage, Sport and  
Leisure

### **OPPOSITION:**

The Hon J J Bossano – Leader of the Opposition

The Hon F R Picardo

The Hon Dr J J Garcia

The Hon C A Bruzon

The Hon N F Costa

The Hon S E Linares

### **ABSENT:**

The Hon G H Licudi

### **IN ATTENDANCE:**

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

## **CONDOLENCES**

### **HON CHIEF MINISTER:**

Before we get on with today's order of business, I would just like the House to note the passing away, during this last week, of two of its past members. Mr Ken Anthony, who served in this

House between 1988 and 1992 as an Opposition Member of the AACR, has recently passed away and I think the House will wish to remember him and to extend its condolences to his family. And also Maurice Featherstone who has a long track record of participation in the life and works of our political system and of our Parliament. Maurice Featherstone was first elected as a City Councillor in 1956, indeed the year in which I was born, and he served as a Councillor until 1969. In that year, he was first elected as a member following the new Constitution, as a Member of the House of Assembly and served in his first term in opposition. Subsequently, he was re-elected as a Minister in successive AACR Governments and has served Gibraltar's political life well as Minister for Education, Health and Public Works. He was renowned for his sharp debating instincts and skills in this House and, indeed, was awarded the CBE for public service in Gibraltar. I am sure that I speak for the whole House when I extend to his family and to his widow our deep condolences and appreciation for a lifetime of service to Gibraltar, generally, and to the Parliament of which we are now all his successor members, in particular, and I am sure the whole House will wish to join me in expressing that sentiment.

**HON J J BOSSANO:**

Yes, indeed, I can confirm that the Leader of the House speaks for the whole House in the views that he has expressed and the sentiments that he has sent to the family of two former members of the House. I am probably one of the few members of the House that can, in fact, give personal testimony of the debating styles to which the hon Member referred. Throughout their political careers, we were always on opposite political sides but always on the same side in terms of personal relationship and friendship and that friendship continued when they ceased to be members of the House. Therefore, from my perspective, they were two people with whom I spent a great deal of my political life and, at a personal level, with whom I shared a long standing friendship and it is sad when you lose a friend. Of course, politically, I think the Parliament has to think of its former

members, irrespective of their political philosophy, as members of the small family that make up this Chamber in *[inaudible]* the people of Gibraltar.

**SUSPENSION OF STANDING ORDERS**

**HON CHIEF MINISTER:**

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

Question put.                      Agreed to.

**DOCUMENTS LAID**

**HON CHIEF MINISTER:**

I have the honour to lay on the Table the Annual Accounts of the Government of Gibraltar for the year ended 31<sup>st</sup> March 2010.

Ordered to lie.

**HON J J HOLLIDAY:**

I have the honour to lay on the Table the Air Traffic Survey Report 2010.

Ordered to lie.

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

I have the honour to lay on the Table the Hotel Occupancy Survey Report 2010.

Ordered to lie.

**MR SPEAKER:**

I have the honour to report that in accordance with Standing Order 12(3) the Report of the Principal Auditor on the Annual Accounts of the Government of Gibraltar for the year ended 31<sup>st</sup> March 2010 has been submitted to Parliament and I now rule that it has been laid on the Table.

**BILLS**

**FIRST AND SECOND READINGS**

**THE HOUSING WORKS AGENCY ACT 2011**

**HON CHIEF MINISTER:**

I have the honour to move that a Bill for an Act to make provision for the establishment of the Housing Works Agency to carry out building maintenance and repair works to Government rental housing and for matters connected thereto, be read a first time.

Question put.

Agreed to.

**SECOND READING**

**HON CHIEF MINISTER:**

I have the honour to move that the Bill be now read a second time. Mr Speaker, this Bill makes provision for the establishing of the Housing Works Agency as the long title suggests to carry out building maintenance and repair works to Government rental housing and for matters connected thereto.

The Bill before the House seeks to establish, in the same way as we have done on other occasions in other areas, a new statutory body, in this case called the Housing Works Agency, to take over from the Buildings and Works Department, building maintenance and repair works to Government rental housing. The Bill should be read in the context of announcements that have recently been made public by the Government. Hon Members will recall that on the 4<sup>th</sup> February the Government and trade unions came to an agreement, the union UNITE, came to an agreement, with the approval of the staff involved, to transfer the functions of the Buildings and Works Department into a new Agency. In general terms, the format of the Bill follows the structure which has been used in the past to establish others, for example, the Gibraltar Electricity Authority, the Sports and Leisure Authority and the Care Agency. The Bill, therefore, is a model which hon Members will be familiar with.

Moving on to the various clauses of the Bill. Clause 2 sets out the definitions, clause 3 establishes the Agency and clause 4 establishes it as a body corporate with perpetual succession and a public seal which shall be officially and judicially noted.

Clause 5 provides for the affairs of the Agency to be conducted by a Board and the composition of the Board to be as follows: the Minister for Housing will be its Chairman; the Principal Housing Officer of the Ministry of Housing; the Chief Executive of the Agency itself; and such number of other persons as may be appointed by the Minister.

Clause 6 states the quorum required for meetings of the Board and also the frequency with which the Board should meet, namely at least once in every three months.

Clause 7 states the functions and duties of the Agency, namely to carry out maintenance and repair works to Government rental housing stock and to provide an emergency service in respect thereof. To administer its financial, technical and human resources and other affairs. To carry out such functions and duties as the Minister may, from time to time, direct.

Under clause 8, the Agency has power to do all things necessary to carry out its functions and duties under the Act. The clause states that the Agency may contract with persons for the supply of goods, services or personnel. The Agency may erect, equip and maintain all necessary buildings, plant and equipment and may reimburse the members of the Board for such expenses as may be incurred by them in pursuance of their official duties. The Agency may also require and hold land. Under subclause 3, the Agency, with the prior consent of the Minister for Finance and the Minister for Housing, may employ a Chief Executive Officer and such other staff as the Board considers necessary or appropriate. Under subclause 5, the Agency may publish codes for regulating the terms of service, discipline and training of all persons employed by the Agency.

Clause 9 provides that the Agency may arrange for the discharge of any of its functions by a committee or sub-committee, or by an employee of the Agency or by any Government department or any other Agency or Authority.

Under clause 10, a Chief Executive Officer will be appointed. The Chief Executive Officer shall hold office for such period and on such terms as the Agency may deem appropriate. In the event of his death, illness or retirement, suspension or removal from office, another person may be appointed to act as Chief Executive Officer.

Clause 11 states that there shall be an Operations Management Board which shall consist of the Chief Executive Office, as Chairman; the Chief Operating Officer; the head of finance, administration and resources; and such other employees of the Agency as the Minister shall determine. The Operations Management Board's function is to advise and assist the CEO in the execution of his functions and of the Agency's duties and functions. The Operations Management Board shall meet at least once a month.

Under clause 12, the Agency may establish any other advisory committee to provide professional and technical advice, as may be required, to the Agency, the Chief Executive Officer and the Board of Management.

Under clause 13, the Agency shall manage its financial affairs to ensure that, taking one year with another, its outgoings are not greater than its revenue from funds voted by Parliament. Any sums received by the Agency under section 14 of the Act, all fees for the provision of services and facilities provided by the Agency and other monies properly accrued from any other source.

Clause 14 provides that the Agency shall establish a general fund into which all monies received by the Agency shall be paid and out of which all payments made by the Agency shall be paid.

Clause 15 provides that proper books of account shall be kept and that they will be subject to audit and certification by the Principal Auditor as soon as practical after the end of each year. The Principal Auditor, with reference to the accounts, shall state that he has obtained all the information and knowledge that is required to certify the books as such. Within three months after the end of the audit of its accounts for any financial year, the Agency shall prepare and submit to the Chief Minister and the Minister for Housing a written report of its operations for the year and the Minister for Housing shall lay a copy of such annual report and audited accounts on the Table in this House.

Under clause 16, the financial year of the Agency is the 1<sup>st</sup> April to the 31<sup>st</sup> March. However, the financial year of the Agency shall be the period commencing on the date of establishment of the agency and ending on the 31<sup>st</sup> March 2011, that may no longer happen.

Clause 17 says that no personal liability shall attach to any member of the Board in respect of anything done or omitted to be done in good faith, under the provisions of this or any other Act.

Clause 18 says that if the Agency has failed to comply with the provisions of this or any other Act, then it will be given notice by the Government to rectify such a default within such time as may be specified in the notice.

Clause 19 provides that no execution by attachment of property shall be issued against the Agency and clause 20 provides for consequential modifications and amendments and, in particular, the Housing Works Agency is added to the list of Authorities in the Schedule to the Public Services Ombudsman Act 1998 as an entity in respect of which the Ombudsman may investigate a complaint from an aggrieved party. Clause 21 gives the Government the power to make regulations.

Mr Speaker, the establishment of the Housing Works Agency is the latest and, in the Government's view perhaps, the most important step in the Government's extensive programme of reform and modernisation of the public service and we believe it will clearly result in an improved quality of service to the Government's tenants, as indeed the Government have said publicly. I commend the Bill to the House.

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

#### **HON C A BRUZON:**

Mr Speaker, the Opposition will not be voting against the Bill. The difficulty we have in voting yes to the Bill is that it has always been our policy not to convert Government departments into Agencies or Authorities. We do not share the Government's view that there is a need for this, but we recognise, of course, that the Government are free to act as it sees fit. What is a little bit strange, if I may say so, is that there now seems to be a move on the part of Government to treat these Agencies and Authorities, which they have created, as if they were, in some respects, still Government departments. If I may refer to a Bill passed recently in Parliament, in January, a Bill to amend the Public Finance (Control and Audit) Act to provide recurrent revenues of Government Agencies and Authorities to be paid into and thus constitute the revenue of the Consolidated Fund and that expenditure by such entities funded from these revenues be in future subject to appropriation and scrutiny, and I stress the word scrutiny, by Parliament. What happened in January in connection with the above mentioned Act and I can assure the hon Member that there is a connection with the one that we are currently discussing, I will point it out now. What happened in January this year in connection with the above mentioned Act is that the Principal Act we were told and I quote, "shall be deemed to have come into operation on the 1<sup>st</sup> day of April 2009". This is quite an extraordinary way of doing things, in our view. We had to pretend that we had voted on something that was not available to us at the time. In future, the funds that are made available to these Agencies and Authorities will have to be approved at Budget time and subjected to the scrutiny of Parliament. But how can we scrutinise funds if the details are not being made available to us as they are in connection with funds for Government departments proper. The connection, Mr Speaker, between the two Bills is that the Public Finance (Control and Audit) Act, there we read in paragraph 17(b) that the Minister may by legal notice in the Gazette add public undertakings to and remove public undertakings from the Schedule 3. The Schedule 3, of course, as the hon Members know, lists the various Authorities and Agencies. May we

assume that the Minister, under the provision or using the provision in paragraph 17(b) of the Act referred to just now, will include or add the Housing Works Agency to the list of Agencies or Authorities that appear in Schedule 3. Needless to say, Mr Speaker, even though we shall be abstaining for the reasons explained above, we obviously wish all those involved every success in their endeavours to ensure that repair works to the housing tenants are carried out in a more speedy and in a more efficient way. Mr Speaker, if calling the new department "The Housing Works Agency" is going to mean that things are going to work better, well then so be it. Only time will tell. But we shall be abstaining from the Bill, Mr Speaker.

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

Briefly, Mr Speaker, briefly. Well, Mr Speaker, this is not a debate on the amendments recently passed in this House to the Public Finance (Control and Audit) Act and I do not think it is appropriate to rehearse again, or repeat again, the points made by one side and other of this House on that occasion. But, clearly, the hon Member has not grasped the extent of the amendments to which he has referred, since he says, how can we scrutinise the financial affairs of these Agencies if the detail of funding is not available as they are for departments? Well, Mr Speaker, the whole point of the amendment that we moved in January was so that the hon Member does get those details in the same form and he will be able to scrutinise them in the same form as he does Government departments. So when he gets the Budget book now, by the end of April for the next Budget, he will see that all the expenditure of all the Agencies and Authorities is set out. Whereas before it was set out only for information, now they are set out for his permission to spend the money in that way. He now, as a result of the Bill, gets the ability to scrutinise it, not just information in a schedule in the Budget book ... Up to now he has only been voting on the contribution from the Consolidated Fund to the Agency or Authority. Now, he is actually going to be voting, not just on that, as he always has done, but he has also got the opportunity

to scrutinise in Committee Stage and vote for or against, which is the way Parliaments exercise their control, in respect of the expenditure of each of those things that used to appear in the green pages at the back of the book which are now there for that reason. So I hope he understands that it is because of that amendment that he will get the power to scrutinise, as I hope we will both be able to witness in action when we debate this year's estimates which will be presented to the House in that form and he will see that the accounts that I have tabled in the House today are already struck on that basis so that the House has some comparison and that the last year's forecast outturn will also be struck on that basis so that he can compare like for like when he is considering the estimated expenditure for the next financial year. I think he can safely assume that I shall be exercising powers to add the Agency to the Schedule, so he should not worry about that and I am glad that the hon Members wish the new Agency good luck and that they are now in favour of it. I think the position that they have adopted on this Bill, welcome as it is, is slightly different to what it has been, I think, in the past. I think there are some Authorities that they actually voted against. They have abstained on this occasion. That is fine and I am glad that they join the Government in wishing the new Agency luck and welcoming anything that improves the quality of service to the tenants, I suppose better late than never.

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

The Bill was read a second time.

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

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

Question put.           Agreed to.

#### **THE PRISON ACT 2010**

##### **HON D A FEETHAM:**

I have the honour to move that a Bill for an Act to make provision for the regulation and management of prisons and prisoners; and for connected purposes, be read a first time.

Question put.           Agreed to.

#### **SECOND READING**

##### **HON D A FEETHAM:**

I have the honour to move that a Bill for the Prison Act 2010 be read a second time. Mr Speaker, last year the Government opened a new prison, as well as more than doubled the number of prison officers employed in the Prison Service. In order to complete the modernisation of our Prison Service, we have introduced a Bill for a new Prison Act, with amendment being

2011 and not 2010. This is, of course, part of the Ministry of Justice's modernisation and overhaul of large parts of the justice system over this Parliamentary term and cannot be seen in isolation. By the end of the summer we will have completed a new Court complex and reformed all our criminal evidence and procedures both before and after a person is formally charged with an offence and most of our substantive criminal offences. It is our hope that after four years we will have laid the foundations for a more modern, efficient and fully integrated criminal justice system.

Mr Speaker, I have amendments to make to the Bill and, with your leave, I will speak to the merits of those amendments during the course of my speech. The Bill is broadly based on the current Prison Act with significant changes in key areas. It is not my intention, during the course of my speech, to deal with the provisions that reflect the old law but will happily deal with any points that may concern members, in my reply.

The most significant changes introduced by the new Bill are as follows: (a) it strengthens the independence and experience base of both the Parole Board and the Prison Board; (b) it eliminates the role of the Governor, but rather than just simply substitute Governor with Minister, it limits the role of the Minister in crucial processes, for example, the Parole process; (c) introduces a mandatory drugs and alcohol testing regime at HM Prison and as part of a parole process; (d) it overhauls the process and criteria for granting parole and making the factors taken into account by the Parole Board more transparent; (e) provides the Parole Board with greater powers to impose conditions on any release on licence that protect the public and assist in the rehabilitation of prisoners; and (f) introduces new tough penalties on anyone conveying prohibited articles such as drugs, alcohol or weapons into or out of the prison.

Mr Speaker, I will now turn in more detail to the aspects of the Bill that I have just summarised. Clauses 7 to 17 deal primarily with the role of the Prison Board and other official visitors. Firstly, the role of the Prison Board has been modernised and its

independence strengthened. The role of the Prison Board is fundamental under modern international human rights law which requires countries to have a local system of regular visits to prison from an independent body in order to prevent cruel, inhuman or degrading treatment or punishment.

The Board's principal duty, therefore, is to satisfy itself as to the treatment of prisoners and the conditions under which they live at the new prison. The Board meets once a month to discuss business that has arisen in that month and each member takes it in turn to visit the prison and hear requests and complaints made by prisoners.

It is because of the importance of the Board and to ensure compliance with international human rights law that we have introduced new provisions into the regime. The appointment of the Board is no longer by the Governor but a matter for the Minister as is commensurate with the new constitutional position. We have also strengthened the composition of the Board and it must now include amongst its members a lawyer and a doctor in order to ensure an appropriate range of expertise and to allow input from different fields of professional knowledge. The appointment of members is now fixed under clause 7(3) for a period of three years which itself strengthens the independence of members by providing security of tenure.

The independence of the Board, however, could be undermined if the Government were able to dissolve or replace its members at will. Because of this, once appointed, members cannot be removed under clause 7(7) unless the Minister is satisfied that the member has grossly misconducted himself and there is a resolution passed by a majority of this Parliament. Furthermore, as we have also done for the Parole Board, to which I will turn to later, we have now expressly stated in clause 7(9) that the exercise of the functions of the Board and its members shall not be subject to the direction or control of any person or any authority.

Under clause 8, the Board shall meet at the prison once a month but not less than eight times a year should they decide for reasons specified in a resolution of the Board that only eight times is required.

Clause 9 deals with the general duties of the Board which includes satisfying themselves as to the state of the prison, its administration and treatment of prisoners; enquiring to and report upon any matter into which the Minister asks them to enquire; report to the Minister or the Superintendent any matter which they consider important; recommend the referral to the Public Service Commission the suspension of any prison officer pending consideration of the removal of that officer from office; the power to submit to the Minister proposals and observations concerning legislation or draft legislation relating to the prison and the treatment of prisoners. Indeed, in relation to this latter duty, the Board was consulted by the Government in relation to this Bill and the Government are very grateful for their constructive input.

Clause 10 deals with specific duties of the Board as to hearing complaints and arranging visits to the prison by members.

Clause 11 deals with the facilitation of access by members of the Board to the prison and clause 12 provides for a record book to be kept by the Superintendent of comments made by the Board or its members during their visits.

Clause 15 deals with annual reports which will continue to be laid before this House.

Mr Speaker, we hope these changes to the provisions underpinning the Prison Board will not only strengthen their independence but allow them to conduct their business in a more efficient and effective way.

Mr Speaker, another significant change to the prison regime is the introduction of mandatory drugs and alcohol testing by way of clauses 48 and 49. Even in the most secure of prisons, it is



very difficult to keep drugs out completely. Currently, the prison regime works on the basis of a voluntary drug and alcohol testing programme which allows prisoners to earn special privileges. However, a voluntary system is unsatisfactory and the Government have decided to formalise the use of testing to ensure an effective strategy to tackle drug and alcohol misuse in prison.

The primary object of mandatory testing in prisons is three-fold: (a) to measure the extent of drug use in prison and therefore to eliminate all types of illegal use of drugs. Testing will build on existing procedures, for example, the use of sniffer dogs to keep the prison clean of drugs; (b) to detect and punish those using drugs; and (c) to generally discourage drug initiation and involvement among the prison population but, as we will also see, allow the Parole Board to impose drugs testing as a condition of parole to ensure people remain clean of drugs once they are released on licence into the community. The Government have already invested in the training of several members of the prison staff in ensuring the implementation of these new measures as soon as the new Act comes into force.

Mr Speaker, with regard to how samples are to be taken for the appropriate tests to be carried out, clauses 48 and 49 draw a distinction between intimate and non-intimate samples. The taking of intimate samples raises human rights issues and prison officers should, therefore, not be given unfettered discretion to take any samples from prisoners.

Clause 48 allows for a sample of urine to be used to test for drugs. Urine is the most common and cost-effective sample to test for drugs and, therefore, this clause limits testing to urine which is the only intimate sample allowed under the Act. Sub clause (2) of that clause allows for the testing using non-intimate samples either in addition to or instead of urine. This subsection has been inserted to allow the prison to use the most cost-effective and less invasive type of sample available, if this should change through modern advances. Examples of non-intimate samples are saliva, hair, non-pubic that is, and sweat.

If due to new technology, testing using saliva or other non-intimate samples proves just as effective as testing urine then the prison service should be able to carry out such testing instead of or in addition to the testing of urine. Similar provisions apply to the testing of alcohol in clause 49 where a sample of breath is the most cost-effective sample.

Mr Speaker, I shall now turn to clauses 52 to 60 of the Bill which deal primarily with the Parole Board where there are fundamental changes introduced by the Bill to the regime.

The Parole Board like the Prison Board exercises an important role in our criminal justice system. It has a quasi-judicial role in the sense that it has always provided advice to the Governor who, ultimately, made the decision as to the release of a prisoner on licence. The powers of the Governor will now be vested in the Minister for Justice but the role of the Minister, as we will see, will be far more limited.

Under clause 52, the Parole Board shall consist of at least five members and the Board shall include amongst its members a probation officer and a lawyer with more than seven years experience. Indeed, although this is not underpinned by our current legislative regime, as soon as I took office three years ago that is the practice that I instituted and there is a lawyer already serving in the Parole Board. No former prison officer can serve as a member of the Board which follows a number of European Court of Human Rights decisions in this area and, therefore, ends the position we have today where the Superintendent is a member of the Board. Subject to a necessary quorum, the Board may regulate its own procedures and the Board's annual report will be laid before this House which is not the position at the moment. Sub clause (9) also mirrors the provisions we have inserted in relation to the Prison Board, giving members security of tenure for a period of three years unless removed for gross misconduct and a resolution of this House. Again under subclause (11), the Parole Board shall not be subject to the direction or control of any person or authority.

Under the new provisions, the Minister must now ultimately act on the advice of the Parole Board when it comes to deciding whether or not a prisoner should be released on licence. If the Minister disagrees with the advice of the Parole Board, he can refer the matter to the Court, as you will see, but any decision of the Court is final. This is reflected in clauses 53 and 54. Under clause 53(1), it is provided that it shall be the duty of the Board to advise the Minister with respect to release on licence under clause 54 or recall of a prisoner released on licence pursuant to clause 59. Pursuant to an amendment that I shall be moving to clause 53(4)(a), any person appearing before the Board has a right to legal representation in order to reflect ECHR decisions in this area and, in particular, the decision of Weeks. They also have the right, of course, to make representations and receive all the relevant information about their case. In deciding whether to advise a release on licence, the Board will have to have regard to the matters contained in Schedule 1 which will vary according to the type of sentence that has been passed in relation to that prisoner. Essentially, in giving its advice, the Board has to protect the public by risk assessing the prisoner to decide whether they can safely be released into the community and they have an obligation to consider what conditions to impose on his licence which would assist in relation to his or her rehabilitation.

Clause 54 deals with the interaction between the advice of the Parole Board as to release on licence under clause 53 and the powers of the Minister. When the Minister receives the advice of the Parole Board in respect of a recommendation that a prisoner be released on licence, he cannot just simply ignore that advice as the Governor could in theory do under the existing Act. Under subclause (3), the Minister, if he does not agree with the recommendation, may ask the Board to reconsider their decision within fourteen days, setting out his reasons. The Parole Board, having considered the Minister's representations, then needs to either confirm the advice that was originally provided or not, as the case may be, again based, of course, *inter alia* on the arguments put forward by the Minister. If the Parole Board persists in its advice, then the

Minister may refer the matter to the Supreme Court which will consider the application for Parole *de novo*. In other words, it is not by way of an appeal, the Supreme Court will be considering the application as if it were the Parole Board and be exercising its own discretion based on all the factors which would have been before the Parole Board including any representations made by the Minister. Both the Parole Board and the prisoner would be served with applications as interested parties. If the Court directs release of the prisoner, then the Minister must give effect to that direction. The mechanism, therefore, allows the Minister in the first instance to make representations to the Board where he feels strongly that, on public interests grounds, someone should not be released on licence and ultimately refer the matter to the Court for determination but under no circumstances, however, can the Minister impose his own view on the Board.

Clause 55 provides that time served on remand shall count towards qualification for parole but those released are, of course, released on licence and subject to the terms of that licence which they must not breach. At this stage ..., I will touch upon it later on during the course of my speech, but the system that we have in place at the moment is that a prisoner qualifies for parole, in other words, for making an application for parole after a third of his sentence. So he serves a third of his sentence, he is entitled to apply for parole. His sentence is actually automatically remitted. So he is released, whether there has been a decision by the Parole Board or not, when he has served two thirds of his sentence, and I will come back to that in a moment because that is quite important. It is something that the Government intend to change when it introduces regulations in due course.

In the interests of transparency and good governance, clause 57 and Schedule 2 of the Bill also sets out the licence conditions to which he or she will be subject to and clause 59 deals with the procedure for recall of such a prisoner in cases of breach of his licence. Essentially, the Minister may revoke a licence acting on the advice of the Parole Board. Where it is expedient in the

public interest to recall that person, that is, the released prisoner, without consultation, for example, because the matter is too urgent to consult the Parole Board, he may do so but the Parole Board have to review the decision of the Minister at the earliest opportunity and then advise the Minister as to what should be done. Sub clauses (4) and (5) deal with the factors that the Board will take into account in giving its advice to the Minister on recall of the prisoner. These factors include not only the information available to the Minister at the time he made his own decision but any subsequent information including representations made by the prisoner himself.

In respect of a person serving a sentence for a determinate period, for example, of four years, the Board also have to consider whether: (a) the prisoner's continued liberty presents an unacceptable risk of a further offence being committed taking into account that a risk of sexual or violent offending is more serious than a risk of other types of offences; or (b) the prisoner has failed to comply with one or more of his licence conditions and that failure suggests that the objectives of probation supervision in the community have been undermined.

In respect of a person serving a term of imprisonment for life or detention during Her Majesty's pleasure, the Board has to consider whether the person's continued liberty would present an unacceptable risk of harm to another person or persons or be otherwise inconsistent with the requirements of his licence and objectives of supervision in the community. In assessing the level of risk presented by that person, the Board must address the following factors: (a) the extent to which a person's continued liberty presents a risk of harm to a specific individual or individuals or members of the public generally; (b) the immediacy and level of such risk and the extent to which it is manageable in the community; (c) the extent to which the person has failed to comply with licence conditions or the objectives of supervision, or is likely to do so in future and the effect of this on the immediacy and level of risk presented by him; and (d) any similarity between the person's behaviour and that which preceded the offence for which he was convicted.

Once the Parole Board advises the Minister on recall of the prisoner, the procedure in clause 54 kicks in. In other words, the procedure dealing with the right of the Minister to apply to the Courts if he does not agree with the advice provided by the Parole Board.

Furthermore, a novel aspect of the Bill, by way of clause 61, is that in cases where a prisoner has been convicted for a drug related offence, and it is clear that the prisoner has had a drugs problem, the Parole Board can impose a condition that he submit to regular drugs testing for a period of time during his release on licence. A positive result can result in the prisoner being sent back to prison. The aim is to ensure that people remain clean of drugs when they are released on licence into the community.

Mr Speaker, we have also revised and toughened the penalties available for the various offences contained in the current Act as well as created new offences.

Regarding the conveyance of prohibited articles into and out of prison, under clause 63 the Bill creates three groups of prohibited articles which are divided into List A, List B and List C. There are different penalties imposed for bringing these articles into prison without lawful authority or excuse. List A items are controlled drugs, explosives, firearms and any other offensive weapon and carry a maximum sentence of ten years. In fact, that goes up from six months imprisonment and a fine of £100 to now ten years imprisonment. List B items are alcohol, a mobile telephone, a camera or a sound-recording device and carry a maximum sentence of two years. List C items are any items prescribed by the Minister by regulations, for example, tobacco, money, clothing and food and the maximum penalty for an offence relating to this item is a fine at level 3 on the standard scale.

Mr Speaker, the Bill also amends the penalties for the offences of escape, attempt to escape and aiding a prisoner to escape in clauses 65, 66 and 67. The punishment for the offences of

escaping from prison and aiding the escape of a person from prison has now been increased to a maximum of ten years. Also, the penalty for attempting to escape has been increased to a maximum of five years.

Clause 70 deals with the powers of punishment and only a Justice of the Peace may impose a punishment of forfeiture of remission for an offence against discipline and, pursuant to an amendment that I shall be moving at Committee Stage, the prisoner has a right to legal representation at the hearing. That too is an ECHR requirement and hence the reason for those amendments.

Mr Speaker, I said that I would say something on this issue of remission. Just to recap, you qualify for parole after a third and your sentence is automatically, under the current regime, remitted after two thirds. So the prisoner is effectively released. Now, the system is unsatisfactory because you could have a situation where, just for arguments sake, somebody is convicted, say, for fifteen years, the man or person is a violent person and he does not misbehave in prison, so therefore, he does not lose his right to remission. But under the current regime, whether that person represents a risk to the public or not, he is automatically released with any say on the part of the Parole Board, after two thirds of his sentence. What the Government will be doing is not doing away with the remission regime altogether, because it will remain in place for certain minor offences, hence the need for this clause 70, but it will do away with the remission regime for various serious offences. So, in other words, we will have a situation where a violent person, or somebody who has committed a particularly grave offence, will have to go before a Parole Board and the Parole Board will have to be satisfied that that person does not represent a risk to the public before that person is released.

Mr Speaker, as far as the remission generally, at the moment remission is dealt with by the Prison Board. It conducts hearings which the Superintendent also participates in and where the decision may lead to a prisoner, instead of being

released after two thirds of his sentence, may be released after two thirds plus a month for something that he may have ..., for some wrong that he may have done during his time in prison. We, again, believe that that is an unsatisfactory system that because you are dealing with loss of liberty of an individual that it should be a Justice of the Peace that deals with this question of remission, hence our amendment under clause 70.

Clause 71 gives a wide ranging power to the Minister to make regulations. I have one amendment at Committee Stage. My proposed amendment at Committee Stage, I will be varying that. Although you can deal with it in the way that I have suggested, there is a neater way that one can deal with it which is by just simply adding at the end a sub paragraph (n) which will read, "including their independence in the exercise of those functions" the functions of the Parole Board. I will come to it at Committee Stage, Mr Speaker, but rather than deal with it in the main body of subclause (1), I will deal with it as a sub paragraph (n) after (m) at the very end. The whole point of that is to allow the Minister to introduce regulations to reinforce the fact that the Board is supposed to exercise functions that are independent of the Government and ensure that the way that the Board is appointed, obviously, is done in a transparent way that reinforces that independence.

Clause 73 deals with the Governor's constitutional responsibility and a formula that is similar to that which we inserted in the Aviation Act is being inserted in what is subclause (1). I have an amendment to table in the form of a new subclause (2) that provides that "The Government shall consult the Governor in relation to any matter for which the Governor has responsibility under the Constitution". The Governor still retains some residual responsibility in relation to certain areas that may impact in relation to areas that are covered by the Bill, very periphery, on the margins I should say. But nonetheless that is still the case.

Clause 74 repeals the old Prison Act and I commend this Bill to the House.

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

**HON S E LINARES:**

Mr Speaker, on the basis of what the Minister has said and, obviously, assuming that everything has been researched and looked at and brought together and that all will produce a more effective and modern prison system, the Opposition will be voting in favour of this Bill.

**HON F R PICARDO:**

Mr Speaker, I would like to thank the hon Gentleman for having taken us through the Bill. There is one part of the speech that he has given us and the amendments that he tabled which I would like to ask him to clarify a little and they relate to the amendments to clause 53(4) and clause 70 subclause (3) which will deal with this issue of legal representation. At the moment, as Mr Speaker can see, there is a reference to making representations and the right to be represented. The amendment that the hon Gentleman has told us he is going to move is going to include the right to be legally represented and the right to make legal representations, something which he has told us, in his speech, is a requirement of the Convention. I think it is right that people should have the right to be legally represented and to make legal representations should they wish to do so and I can see why that right would be protected under the Convention. But, Mr Speaker, there may be people who want to make representations which are not legal representations and who want to be represented by people who are not legal practitioners. It is unusual. It is something that could have happened under the Bill as drafted. But I think once we make the amendments that the hon Gentleman is going to move at the Committee Stage, it will only be possible to be legally represented. It may be that there is a reason why we need to open the door to legal representation and I accept that

fully, and I would just like to know whether the Minister could tell us why it is that we, potentially with this language, will also be closing the door to representation which is not legal representation. In fact, of course, we are dealing with issues here which are not industrial tribunal issues, which are serious issues involving the welfare of prisoners and it may well be that there is a good reason why it is only legal representations and only legal representatives that will, under the new language, have the right to make those representations for prisoners. But, of course, you have got the situation where a prisoner would nonetheless himself be able to make a representation. He would be able to have a legal practitioner make a representation for him. But he might not be able to have somebody else make a representation for him and I would just be grateful if the hon Gentleman could tell us what the thinking is behind that. Finally, in respect of the new clause 73 as amended, the hon Gentleman rightly refers us to the language which has already been inserted in a different Act. In respect of the new subclause (2) to clause 73, I am just a little concerned with the language that we are using there and I wonder whether the hon Gentleman could clarify for us. Where a responsibility continues to be a responsibility under the Constitution for the Governor, how is it that in that situation the Government consults the Governor and it is not the Governor that consults the Government. So if it is Mr X's responsibility, and he is the one charged with carrying it out, is it not Mr X the person who needs to be consulting others about how he discharges his responsibility and not others who need to be consulting Mr X about how he discharges his responsibility and those are just the issues which I would be grateful if the hon Gentleman might address in his reply.

**HON CHIEF MINISTER:**

Yes, Mr Speaker, if I could just deal with the last point that the hon Member has made and leave the other points to my colleague the Hon the Minister for Justice. I think the hon Member is slightly misreading subclause (2). Where something

is ..., I mean not everything is black and white. In other words, there are things which are ministerial responsibilities and there are areas of the Constitution where they are Governor's responsibilities. But there may be things which are ministerial responsibilities which nevertheless impact on the Governor's responsibility and that is the consultation that that is being referred to. Nothing in this Bill gives the Minister responsibility for something that is the Governor's constitutional responsibility. So, and, indeed, it could not. Well, it could if there had been a formal delegation. But absent of formal delegation, the hon Member is right. The Constitution prevails if it places the responsibility with the Governor or with somebody else. The Constitution gives the Attorney General independence in prosecution and things like that. Where a power is vested in somebody other than the Minister, nothing in an Act of this Parliament can derogate from that fact. So this is not dealing with situations ... This consultation clause is not dealing with the case where the Minister is doing something that is the Governor's responsibility which would justify the consultation being in the opposite direction which is that ... This is dealing with the case where the Minister is doing something which is properly within the ministerial responsibilities under the Constitution but nevertheless may have an impact on a Governor's responsibility. Just to give you an example. There may be things to do with incarcerated terrorists that may raise questions of internal security in a sort of horizontal sense or in a consequential sense and that is the consultation that is being referred to in this. I do not know if that answers the hon Members ... he would like me to give way to him?

**HON F R PICARDO:**

I am very grateful. That does answer the reasoning behind the Government's consideration of the need for subclause (2), although it raises a different question which is why we need subclause (1). I think subclause (1) is putting into an Act something which the hon Gentleman has just told us, and we all know, cannot be the case, namely, that an Act cannot derogate

from the Constitution. It is always the Constitution that is paramount. So, in that scenario, I think that we now understand the logic for subclause (2), but I think it calls into question whether we actually do need to legislate in its place, the subclause (1).

**HON CHIEF MINISTER:**

Mr Speaker, I know how threatening to his political position the hon Member finds agreeing with me on anything. But by chance we are agreeing on this issue. I entirely agree with the hon Member's underlying point that subclause (1) is wholly unnecessary. It states a legal constitutional obviousness that could not be different. All that it says is that if the Constitution gives the power to somebody else, in this case the Governor, nothing in this Act is capable of derogating. It is like saying that night follows day. You do not have to say it in any Act of Parliament. But this is an area in which the 2006 Constitution has made grave inroads in that it is new ministerial territory, if I could call it that. Before, there was always doubt about whether it was the Deputy Governor or this and all of that. In fact, the old Act still has references to Deputy Governor and the UK is more comfortable with this clause, which we have expressed the view is stating an unnecessary obviousness, as indeed it is in the other section, in the other Acts where a similar phrase exists. It is completely unnecessary but, look, if it offers others comfort, it certainly does no harm to state the obvious and that is why it is there.

**HON D A FEETHAM:**

Yes, in relation to the clause 53(4)(a) point. Indeed, the position without the proposed amendment is that although the prisoner has the right to make representations, he does not have the right to be represented by anybody. That is the position at present and it was the intention to continue with that position. It is a decision that we have taken except for ..., we have allowed

an exception to that which is legal representation. But it is a policy decision that the Government have taken to allow lawyers effectively to represent people in relation to this because there personal liberties are at stake but no one else, and it is a conscious policy decision that the Government have taken in this regard.

**HON F R PICARDO:**

Yes. I am grateful for that. It does not quite deal with the point in respect of clause 70 (3) where you are dealing with a Justice of the Peace. It is an internal prison matter. You are not dealing with a court matter there. But still a disciplinary matter in the prison, but there you are dealing with an appearance before a Justice of the Peace. Now, normally it would only be in any event a McKenzie friend or a legal representative who would be able to appear before a Justice of the Peace in court, in the Magistrates' Court. In this instance, the way the Bill was drafted earlier, anybody else could have appeared before the Justice of the Peace at that disciplinary tribunal. You could argue that that is more common because in a disciplinary process it is often the case, in an industrial sense, that an individual may be represented by a union official, for example, and you would not have the concept of a union official when you are dealing with a prisoner in a disciplinary process in the prison. The inclusion of the words, legally represented, will mean that we are once more limiting it to lawyers. So it seems that either the intention changed between draft and amendment or that we need to check the wording to ensure that it delivers just legal representation and if the hon Gentleman can address that particular amendment, I would be grateful.

**HON D A FEETHAM:**

The hon Gentleman makes a valid point and at Committee Stage we will accept the point by extending the wording, legal or other representation.

**HON CHIEF MINISTER:**

Because of the Convention point, we would rather not separate the word legal from the word representation. I realise it is not good English to say legal representation or other but, on our feet, it is difficult to choose a word. But we would like to leave the phrase, legal representation, intact and add rather than make that phrase longer.

Question put.                      Agreed to.

The Bill was read a second time.

**HON D A FEETHAM:**

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

Question put.                      Agreed to.

**COMMITTEE STAGE**

**HON CHIEF MINISTER:**

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

1. The Housing Works Agency Bill 2011;
2. The Prison Bill 2010, but to be 2011 in due course.

**THE HOUSING WORKS AGENCY BILL 2011**

**Clauses 1 to 15** – stood part of the Bill.

## **Clause 16**

### **HON CHIEF MINISTER:**

Yes, Mr Chairman, perhaps it is just enough for me to point it out to the House rather than to move an amendment. But, it now seems unlikely that there will be a financial period ending 31<sup>st</sup> March. It is much more likely that the financial situation will continue to be reported under the Buildings and Works Department and a clean start made on the 1<sup>st</sup> April, rather than just two weeks by the time this Bill gets the Governor's assent and all of that. It probably will not make sense just to have an accounting period which is all of two weeks long. So it is likely that this financial year will be seen out through the Buildings and Works. So that last line, "save that the first financial year of the Agency shall be the period commencing", it probably will not materialise. It may, therefore, be, we might, I am just thinking as I speak, whether it would then be better to delete all the words after 2006.

### **MR CHARIMAN:**

Is that now proposed as an amendment?

### **HON CHIEF MINISTER:**

I am just thinking Mr Chairman to see what implications it might have for ... Mr Chairman, I wonder whether the House would agree just to give the Government's option ... I am just worried that I am not thinking of some implication, whether the word "shall" could just be changed to "may" to give the Government the option. It may be. I cannot think right now of any reason why, because to the extent that the agreement ... The issue is that the agreement with the unions has now started. So, for example, the new bonus scheme is in operation and I just do not ... I suppose all that could continue to be paid for out of the

Buildings and Works Department, even though the agreement says that it has been paid by the Agency. Mr Chairman, the amendment that I would like to put is that "save that in the first financial year of the Agency it may be the period commencing 1<sup>st</sup> ..." It is just so that I can let the Financial Secretary decide what he would like to do about that.

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

Mr Chairman, I think that makes sense. It is not as if it is not going to be accounted for. It is just a question of how it is going to be accounted for.

### **HON CHIEF MINISTER:**

Yes. Absolutely.

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

I would have thought that makes sense. The one issue I would take ..., given that we are on that section and we are now looking at it with some degree of precision, is that everywhere else we talk about the Constitution. We do not talk about the Gibraltar Constitution Order 2006.

### **HON CHIEF MINISTER:**

Absolutely, and there is no need to do it because the Constitution is a defined term.

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

Absolutely.



**HON CHIEF MINISTER:**

So I agree. It should read, “of the Constitution”. Grateful to the hon Member for pointing that out.

**HON F R PICARDO:**

We have no difficulty with the “shall” becoming a “may” on that clause.

**HON CHIEF MINISTER:**

Also the word “the” is missing after ... It should say that “in the first financial year”. No, “save that in the first financial year of the Agency...” No, then it does not make sense.

**MR CHAIRMAN:**

Or delete “in”.

**HON CHIEF MINISTER:**

“Save that the first financial year of the Agency may be the period commencing”, “save that the first financial year of the Agency may be the period commencing on the date of the establishment of the Agency and ending on the 31<sup>st</sup> day of March 2011”.

**HON F R PICARDO:**

Yes. I think that works. We are abstaining on this Bill but we express the view that that is a better, a happier way of drafting that clause.

**MR CHAIRMAN:**

Constructively abstaining.

Clause 16, as amended, stood part of the Bill.

**Clauses 17** – stood part of the Bill

**Clause 18**

**HON CHIEF MINISTER:**

Just to prove that the Bill has been copied from other Authority’s legislation, the heading of clause 18 still ... Well, the heading of clause 18 actually still says “Authority” when it should be “Agency”, in the heading.

Clause 18, as amended, stood part of the Bill.

**Clauses 19 to 21** –stood part of the Bill.

**The Long Title** –stood part of the Bill.

**THE PRISON BILL 2010**

**Clause 1**

**HON D A FEETHAM:**

Mr Chairman, I have an amendment to make in clause 1. Substitute “2011 and comes into operation on the day appointed by the Minister by notice in the Gazette and different days may be appointed for different purposes” for “2010 and comes into operation on the day of publication”.

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

**Clauses 2 to 20** – were agreed to and stood part of the Bill.

### **Clause 21**

**HON D A FEETHAM:**

Mr Chairman, I have an amendment to make. In clause 21, re-number subclauses (3) and (4) as subclause (2) and (3).

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

**Clauses 22 to 52** – were agreed to and stood part of the Bill.

### **Clause 53**

**HON D A FEETHAM:**

Mr Chairman, in clause 53(4)(a), insert “to be legally represented and” before “to make any representations”.

Clause 53, as amended, was agreed to and stood part of the Bill.

### **Clause 54**

**HON D A FEETHAM:**

Mr Chairman, in clause 54(1) and, indeed, we will come to it in clause 59(9), substitute “(8)” for “(9)”.

Clause 54, as amended, was agreed to and stood part of the Bill.

**Clauses 55 to 58** – were agreed to and stood part of the Bill.

### **Clause 59**

**HON D A FEETHAM:**

Mr Chairman, in clause 59(9) substitute “(8)” for “(9)”.

Clause 59, as amended, was agreed to and stood part of the Bill.

**Clauses 60 to 69** – were agreed to and stood part of the Bill.

### **Clause 70**

**HON D A FEETHAM:**

Yes, in clause 70(3), Mr Chairman, we are going to do it differently to what we have discussed. But the effect will be the same. In clause 70 (3), substitute “legal representation” for “be represented” .

**HON F R PICARDO:**

“Legal representation or other representation”. I do not know whether the hon Gentleman would entertain this proposal which would I think deal with their need to keep the words together and is probably neater than what we were thinking of before, which is to say ...

**HON CHIEF MINISTER:**

*[Inaudible]*.

**HON F R PICARDO:**

Oh. Alright because..., listen to this though, in case it helps. “A prisoner shall have the right to representation including the right to legal representation before a justice of the peace at any” and then you can do it in one and you keep the words “legal representation” together.

**HON CHIEF MINISTER:**

Mr Chairman, the problem that we are grappling with, which we were about to suggest wording on, is that the power of ... the right to non-legal representation cannot be unqualified. In other words, for example, the JP has to have some say in what is appropriate [*inaudible*]. You could not get another convict, for example, to represent you, or somebody that was, for some other reason, completely inappropriate or undesirable. So we want to leave subclause (3) as it is and then have ...

**HON F R PICARDO:**

[*Inaudible*].

**HON CHIEF MINISTER:**

Well, if he just allows us thirty more seconds.

**HON F R PICARDO:**

You mean as it was going to be rather than ...

**HON CHIEF MINISTER:**

Well, no. With “legal representation” as notice was first given of amendment and ...

**HON D A FEETHAM:**

Mr Chairman, so subclause (3) stays as with the amendment I had originally intended, then we add a subclause (4) that reads “A prisoner shall, unless he be legally represented, have the right to such other representation as the justice of the peace

may consider appropriate in any case in which he would have been entitled to legal representation under subsection (3)”.

**HON F R PICARDO:**

Can the hon Gentleman take us through that slowly. So, “A prisoner shall, unless he be legally represented, ...”

**HON D A FEETHAM:**

... “have the right to such other representation as the justice of the peace may consider appropriate in any case in which he would have been entitled to legal representation under subsection (3)”. In other words, we are talking just solely about loss of remission cases which is where the legal representation comes in under subsection (3).

**HON CHIEF MINISTER:**

In other words, Mr Chairman, the right to other representation is an alternative to legal representation and only in cases where legal representation was a right. Legal representation is only a right where loss of remission is at stake. So, for example, if the punishment is going to take some other form, like loss of some other privilege, for that you would not have the right of representation.

**HON F R PICARDO:**

I think that probably works subject to this, Mr Chairman, I think “unless he be” is probably better phrased “unless he is legally represented”.

**HON CHIEF MINISTER:**

Yes. “unless he be legally represented”.

**HON F R PICARDO:**

“Unless he is legally represented”, I think is more, sort of, the language ...

**HON CHIEF MINISTER:**

“Unless he is legally represented”.

**HON F R PICARDO:**

And then when you go on to say “have the right to such other representation”. I think it is “shall have the right to such representation”. I think the “other” is unnecessary when you read it as a whole. I can see why when you are concocting it you would say “other”.

**HON CHIEF MINISTER:**

Well, it is “other” as opposed to “legally”.

**HON F R PICARDO:**

Well, yes.

**HON CHIEF MINISTER:**

Otherwise, it is not clear.

**HON F R PICARDO:**

But if you read it without the “other” now. Right. “A prisoner shall, unless he is legally represented”. So, “unless he is legally represented, have the right to such representation as the justice of the peace may consider appropriate”. I do not think you need “other” to show that it is an alternative to the legal representation.

**HON D A FEETHAM:**

Mr Chairman, both formulas work. We are quite happy to substitute “be” for “is” and take out “other” before “representation”.

**HON F R PICARDO:**

I think it works that way.

**HON D A FEETHAM:**

It works both ways but we are quite ...

**HON F R PICARDO:**

I think that if it has got the “be” instead of the “is” or the “other”, it is more our language than it is statutory language. It is more, sort of, submission language than it is statutory language. The important thing is that they should have the right and they have it with the “be” and the “is” and with the “other” or without. The important thing is that they have the right. So I will not push it further than that.

**MR CHAIRMAN:**

Has the Clerk got a note of that? No he has not.

**HON CHIEF MINISTER:**

*[Inaudible]*.

**HON F R PICARDO:**

Of representation, legal or other.

**HON D A FEETHAM:**

Does the Clerk want me to read it?

**CLERK:**

Please.

**HON D A FEETHAM:**

“A prisoner shall, unless he is legally represented, have the right to such representation as the justice of the peace may consider appropriate in any case in which he would have been entitled to legal representation under subsection (3)”.

**CLERK:**

Would the hon Member be able to read that out from the beginning again, please.

**HON D A FEETHAM:**

“(4) A prisoner shall, unless he is legally represented, have the right to such representation as the justice of the peace may consider appropriate in any case in which he would have been entitled to legal representation under subsection (3)”.

**CLERK:**

“A prisoner shall, unless he is legally represented, have the right to such representation as the justice of the peace may consider appropriate in any case in which he would have been entitled to legal representation under subsection (3)”.

**HON CHIEF MINISTER:**

My own personal view is that we need the word “other” in front of “representation”.

**HON F R PICARDO:**

I do not mind. If the hon Gentleman wants it he can have it. I have got an issue which I think we have ignored, as he knows, which is that we are now saying “the justice of the peace”. I think it should be “a justice of the peace” because you could have an eventuality where one justice of the peace decides in one hearing who can represent the prisoner, but then it is another justice of the peace who then goes on to deal with the hearing. I think it is “a justice of the peace”.

**HON CHIEF MINISTER:**

I would swap him one in consequential amendment for another. “Other representation ...” in favour of “a”.

**CLERK:**

“the right to such other representation as a justice of the peace may consider appropriate”.

Clause 70, as amended, was agreed to and stood part of the Bill.

**Clause 71**

**HON D A FEETHAM:**

Mr Chairman, in clause 71 (1), insert as a new subclause 71 (n), “the appointment and functions of the Parole Board, including their independence in the exercise of those functions”.

**CLERK:**

So what the hon Member is saying is that it is an insertion which would be 71 (1) (n) at the end. Thank you very much.

Clause 71, as amended, was agreed to and stood part of the Bill.

**Clause 72** – was agreed to and stood part of the Bill.

**Clause 73**

**HON D A FEETHAM:**

Mr Chairman, in relation to clause 73, we re-number clause 73 as clause 73(1) and insert the following subclause “(2) The Government shall consult the Governor in relation to any matter for which the Governor has responsibility under the Constitution”.

Clause 73, as amended, was agreed to and stood part of the Bill.

**Clause 74** – was agreed to and stood part of the Bill.

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

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

**THIRD READING**

**HON CHIEF MINISTER:**

I have the honour to report that:

1. The Housing Works Agency Bill 2011;
2. The Prison Bill 2010,

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

Question put.

The Housing Works Agency Bill 2011.

The House voted.

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

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

The Bill was read a third time and passed.

The Prison Bill 2011,  
was agreed to and read a third time and passed.

## **ADJOURNMENT**

### **HON CHIEF MINISTER:**

I have the honour to move that the House do now adjourn to Wednesday 27<sup>th</sup> April 2011 at 2.30 p.m.

### **MR SPEAKER:**

Nobody is going to get a week's holiday, is there not, between the two long, long weekends, so be it.

### **HON CHIEF MINISTER:**

I am certain that the hon Members of the House would not wish to take an eleven day break in the middle of the working year.

Question put. Agreed to.

The adjournment of the House was taken at 4.10 p.m. on Wednesday 16<sup>th</sup> March 2011.

## **WEDNESDAY 27<sup>TH</sup> APRIL 2011**

The House resumed at 2.30 p.m.

### **PRESENT:**

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

### **GOVERNMENT:**

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

### **OPPOSITION:**

The Hon F R Picardo – Leader of the Opposition  
The Hon J J Bossano  
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

**STATEMENT BY THE NEW LEADER OF THE OPPOSITION**

**HON F R PICARDO:**

Mr Speaker, thank you for the opportunity to make a personal statement to the House pursuant to Standing Order 49 on the occasion of our first meeting since I have become Leader of the Opposition. I confess, Mr Speaker, that I almost did not get up when you called me by that name.

It is obviously an honour and a privilege to lead my party and Her Majesty's loyal Opposition in this House. I am conscious that I step into the shoes of some very distinguished Gibraltarians who have held this post before me, not least the Hon Sir Joshua Hassan, the Hon Maurice Xiberras, the Hon Peter Isola, the Hon Adolfo Canepa and the Hon Mr Bossano from whom I assume the post today. In order to ensure that we, on this side of the House, can perform our duties as a loyal Opposition as effectively as possible, I have spoken to my shadow cabinet colleagues before today to agree with each of them how best to distribute amongst us responsibility for the portfolios of the members opposite that we will each shadow in the months that remain of the lifetime of this Parliament particularly on the debate on the estimates under the Appropriation Bill.

As I will now take primary responsibility for shadowing the Honourable the current Leader of the House, I will be relinquishing most of my earlier responsibilities and will instead,

as Leader of the Opposition, be dealing with the Economy, Public Finance, External Relations, Industrial Relations and the Media. I will also be dealing with all matters relating to the quality of democracy in Gibraltar and our policies to improve it.

I have asked the Hon Mr Linares to take over responsibility from me for the Environment, a portfolio which as all hon Members know we consider should always be central to all decision making in Government. I have asked the Hon Mr Linares to work closely with me on all matters relating to environmental policy and how it affects and is affected by other policy areas. Mr Linares will also take on responsibility for Youth and Sport from Mr Licudi and will retain responsibility for Government Services and Utilities.

Given that the Hon Mr Linares has taken on these important additional responsibilities, I have asked therefore that the Hon Mr Licudi take on responsibility for the shadow ministry for Education from the Hon Mr Linares. I have also asked the Hon Mr Licudi to take on the shadow portfolio for Financial Services, which I now relinquish. The Hon Mr Licudi will also continue to deal with issues relating to Transport.

I have therefore asked the Hon Mr Bossano to take on the responsibilities for Employment and Training which the Hon Mr Licudi relinquishes today. Given his track record as a leading member of the trade union movement, I cannot imagine anyone better suited for the post. In order to better combine the portfolios for employment with the search for employment by our young people and the unemployed, I have combined the shadow ministry for Employment and Training with responsibility for Enterprise also, thereby marrying responsibility for the interests of job creators with those of job seekers.

That is the total of the portfolios reshuffled today, Mr Speaker.

The Hon Dr Joseph Garcia's responsibilities will not change. He will continue to deal with Trade and Industry, including small businesses, the Port, Tourism and Heritage.



I have asked the Hon Mr Bruzon and the Hon Mr Costa to also continue with the responsibilities they have had to date. The Hon Charles Bruzon will therefore continue to deal with Housing, the Elderly and the Family and the Hon Mr Costa will therefore continue dealing with Health and Social Services, including the disabled.

I want to thank my colleagues for the manner in which they have to date handled the shadow ministries they have relinquished and for agreeing to take on new and in some cases additional responsibilities.

Mr Speaker, there are many issues which divide us across the floor of this House, but one which, above all others, should unite us: and that is the common interest in the prosperity and security of this nation. On any issues of national importance which affects that prosperity and security, the Honourable the Leader of the House will know that he can count on me and on all of us sitting on these benches to stand shoulder to shoulder with him should he call upon us to do so.

Mr Speaker, although some of us sit on different sides of this House, I am also sure that all hon Members will want to join me in thanking Mr Bossano for the years he has served to date as Leader of the Socialist Labour Party, both as Leader of the Opposition and as Chief Minister. We, on this side of the House, all trust that he will continue to be a member of this Parliament for many years.

Finally, Mr Speaker, a short note of thanks to you personally for allowing me to make this statement to the House and your kindness in receiving me last week with the Hon Dr Garcia. I believe it is important to transmit the importance of Parliament as an institution to all our people. For that reason, I believe this was the right place to announce this reshuffle of shadow cabinet responsibilities and I thank you.

## **MINISTERIAL STATEMENT**

### **HON CHIEF MINISTER**

Mr Speaker, in my Budget speech last year I told the House that the international financial crisis has resulted in a huge decline in private sector building activity, and also that the Ministry of Defence, due to its own budgetary problems, has cut the amount of work it gives out to our local construction companies and that this had all resulted in a precarious situation for the local construction industry, which was short of work.

I also told the House that, on the other hand, there is, as the House knew, a significant Government capital works programme under way and that access to this work had become much more important to all companies, in the prevailing market circumstances that I had described to the House. I also described to the House other factors that had contributed to the challenging scenario for many local construction companies and local suppliers of building materials and plant and equipment. For example, the fact that large non Gibraltar contractors tend not to sub contract or source locally; the fact that a number of recent financial failures among construction companies have left many local subcontractors and suppliers with significant unpaid invoices; and that this in turn has led to a loss of confidence by suppliers in extending credit to the construction industry.

Separately, many of the failed companies left unpaid PAYE and Social Insurance liabilities to the Government, a practice facilitated by the proliferation in the use by foreign construction companies of "brass plate" single purpose companies as subcontractors and labour contractors.

Mr Speaker, I also told the House that the Government attaches importance to the continued existence of a vibrant and competitive local construction industry populated by a variety of financially solid and well managed and resourced construction companies and building supplies and equipment companies.

I informed the House that the Government would therefore launch a temporary scheme the objectives of which would be the following:

Firstly, in so far as it was both lawful to do so in the context of EU procurement directives and the Government is able to protect the tax payers' interests to obtain value for money, to modify the Government procurement system to allow the Government to ensure a fair distribution of its construction work so as to sustain the greatest number of local construction and building supply companies, and thus jobs. This would require the temporary suspension of the tender system and the fair distribution of work among eligible construction companies by the direct allocation of contracts, on the basis of the transparent measured rates or some informal market testing process.

Secondly, to minimise the Government's risk of being left with unpaid PAYE, Social Insurance Contributions and other payments, by deducting PAYE and Social Insurance Contributions from all payments made to contractors and subcontractors.

Thirdly, to support the Employment Service in its task of helping its clients find work in the local construction industry, especially the long-term unemployed. Participation in the Scheme will therefore be conditional on co-operating with the Employment Service in jobs for its clients.

Fourthly, controlling the use of subcontractors to minimise abuses by labour only subcontractors and, where the Government allows the use of subcontractors, protecting them and their employees by controlling the possibility of contractors unduly delaying payments to subcontractors.

Fifthly, ensuring a fair share of the business for local building materials and plant hire supply companies.

Mr Speaker, such a Scheme was duly devised and has been in operation for several months. At Question Time, during this

meeting of the House, I told the Hon Mr Licudi that I would make a statement in this House about the Scheme, and I am now doing so.

This comprehensive Scheme temporarily, as I have suggested, modifies and simplifies the Government's contracting and procurement procedures and practices to enable the Government to fairly distribute the Government's construction work to eligible and registered scheme participants and to ensure reasonable access to commercial opportunities for local supply and plant hire companies, based on: firstly, their technical and staff capacity and financial profile; secondly, the use of local suppliers of building materials and plant; thirdly, the control and regulation of sub contracting; fourthly, ensuring value for money for the taxpayer; fifthly, a willingness to employ available local labour and to operate to compliant employment practices and sixthly, compliance with tax and social security obligations.

For contracts above £3.9 million in value, roughly Euros 4.845 million, EU law requires that a public tender process be carried out in accordance with specific EU Rules. Accordingly, in these cases the Government cannot modify the procedure. Such contracts will therefore continue to go out to tender in the normal way.

For contracts of a value less than £3.9 million, the Government will temporarily modify its procurement practices to allow for the allocation of contracts to eligible and registered contractors, at Government's option on a project by project basis, based on: firstly, either the direct allocation of contracts on a pre established and published sector wide schedule of rates; or on a simple market price testing basis between selected companies; or on a conventional or accelerated tender basis, depending on the complexity, size and financial value of the contract; or on any other price assessment basis that enables the Government to ensure that it is obtaining value for money.

This will enable the Government to ensure a wide distribution of work. Contracts will be awarded on the basis of a standard and uniform form of contract, incorporating the terms of this Scheme, but otherwise modified in each case to reflect the method used for its allocation and any circumstances or requirement relating to the particular project. Full, documented and verifiable cost transparency will be required. All contracts awarded under this Scheme will be announced publicly.

Eligibility to participate in the Scheme will require registration and compliance with the Scheme conditions set out in this document by the contractors, by all levels of subcontractors, by labour contractors and by supply and plant hire companies.

Construction companies will need to have sufficient in-house management, technical expertise, competent employees and financial resources to execute the contract works.

Construction companies and subcontractors, and all subcontractors beyond the initial subcontractor, may be categorised for the purpose of the Scheme by reference to technical competence, job size capacity and financial solidity.

Participants will have to commit to and the contracts will reflect the requirements set out below relating to employment, sub contracting, local suppliers and tax compliance dealing first with employment and use of labour contractors.

“Contract management operations” will not be allowed. Construction companies will need to have their own directly employed labour and management to itself directly carry out at least 40 per cent by value of their contractual obligations. The use of subcontractors and labour contractors is prohibited without the Government’s specific consent in respect of which I will say more in a moment.

All labour must be duly registered prior to commencing work and, throughout, on terms no less favourable in any respect than CATA terms. The use of Detached Workers is not permitted.

Participants will be required to employ a certain number of workers specifically identified to them by the Employment Service from their client base. Such specifically identified workers may not be dismissed during the currency of the construction contract without the Government’s approval.

In the case of construction and labour contractor companies, such persons, and indeed all other labour, will be engaged on terms that are at least as favourable to the employee as CATA terms on every issue covered by CATA terms. In the case of companies that participate in the Scheme, other than construction companies who enjoy higher rates, pay shall be at least in accordance with the Statutory Minimum Wage, and all others terms as per law.

The use of “labour hire” companies will not be allowed, except with Government consent in its absolute discretion. Without prejudice to such absolute discretion, the Government will not consent to the use of any labour contractor that is not registered to participate in this Scheme. Without prejudice to its absolute discretion and subject to the aforesaid proportion of the work by value that the Government’s contractor has to carry out using its own directly employed labour, the Government will permit the use of labour contractors that are registered to participate under this Scheme, but the Government’s contractor will remain fully liable and responsible for their performance and compliance.

Any contractor or subcontractor who is found with any employee in breach of the law, unregistered for tax or social insurance, or in breach of the terms of this Scheme, will be removed from the Scheme, and any outstanding, current contract may be terminated.

Any contractor whose subcontractor or any other subcontractor or labour contractor is found engaged on a construction project with any employee in breach of the law, unregistered for tax or social insurance or in breach of the terms of this Scheme, shall be removed from the Scheme and thus excluded from contracts. The onus is thus on the Government’s contractor to ensure that

all labour engaged on the project, whether employed directly by them, by a subcontractor, or by a labour contractor or anybody else, fully complies with all the aforementioned requirements.

Since their own principal contract is terminable for any breaches of these requirements, the onus is thus on the Government's contractor to ensure that, where the Government has permitted their use, any contract with a subcontractor or a labour contractor allows the Government's contractor to terminate such contracts for breach of these requirements.

Under no circumstance will labour hire contractors be permitted to sub contract.

In respect of sub contracting work. No sub contracting of work by the Government contractor will be permissible without the Government's consent. Government may freely decline such consent, and Government shall be entitled to sight of the proposed sub contract agreement and to approve its terms.

Sub contracting, when permitted, must be to a subcontractor on the Government's approved list of construction or specialist subcontractors.

Under no circumstances will sub contracting be allowed to "brass plate" sub contracting single purpose vehicles. Subcontractors must be substantial in their own right and be on the Government's approved list.

Without prejudice to the Government's absolute discretion to approve or not approve the use of subcontractors or a particular subcontractor, the Government hereby indicates that it will allow, subject to the minimum amount of work by value that the Government's direct contractor must carry out itself, the use of subcontractors who are registered to participate in this Scheme and whom the Government is satisfied is competent, resourced and otherwise capable of carrying out the relevant work in accordance with the Government's contract with its contractor.

Under no circumstances will sub contracting by a subcontractor be permissible.

Transport requirements, cranes and other plant and equipment requirements may, without the need to obtain the Government's consent, be sub contracted to any company licensed in that regard in Gibraltar, but may not be sub contracted by that subcontractor. Any sub contracting of such requirements to a company licensed in Gibraltar shall require the Government's consent.

No sub contracting or labour contracting will be permitted to a company that does not pay their Gibraltar staff weekly in Gibraltar, or whose staff are on employment terms which in any respect are inferior to CATA terms.

All subcontractors and labour contractors must be paid in money, in Gibraltar, within 40 days. Contracts that do not specify this provision will not be approved. Failure to comply with such requirement will constitute a breach of this Scheme by the Government's contractor.

The Government shall be entitled to direct a contractor to discontinue a sub contract, entirely at the contractors legal risk and cost, and with no liability to the Government, in every case where it appears to the Government that the terms of this Scheme are not being complied with.

The Government will also ensure that, subject to value for money, capacity and availability of expertise, GJBS will maximise its sub contracting locally.

In respect of procuring building supplies and the hire of plant, contractors must source at least 80 per cent of their builders material from eligible local suppliers, subject, with Government consent in each case, to quality, specification, availability, delivery date being as per contractor's need, and the pre Gibraltar import duty cost on a CIF Gibraltar site basis not being more than the best available alternative supplier on a CIF

Gibraltar site, excluding Gibraltar import duty, basis. In other words, a margin to make sure that local suppliers do not abuse in terms of price. Procurements in breach of this requirement will constitute a breach of this Scheme. The Government's consent will be needed for each procurement from a non Gibraltar supplier.

To be eligible, suppliers must register to participate in the Scheme and publish and maintain their tariff of prices for such range of materials and goods as the Government may specify.

Credit by suppliers to contractors or subcontractors shall not exceed 40 days. If the Government's contractor or its subcontractors, as the case may be, shall not pay every supplier invoice within 40 days of its issue, that shall constitute a breach of this Scheme by the contractor or subcontractor, as the case may be.

Contractors shall source their plant hire and transport requirements from local suppliers subject, with Government consent, to availability, suitability and operator expertise unless the cost thereof exceeds the best available alternative source. The provision of the next preceding bullet point relating to credit terms shall apply mutatis mutandis to plant, equipment and transport hire or contracting. Any procurement of transport or plant outside of Gibraltar shall require Government's consent.

The Government will harmonise with other relevant European countries the rules and administrative practices for the temporary importation of builders' plant and equipment.

In respect of tax and social insurance, the Government has strengthened the law to make companies and directors personally criminally and civilly liable for unpaid or delayed PAYE and Social Insurance Contributions.

All Scheme participants must either be up to date with their PAYE and Social Insurance Contributions, or, in respect of pre Scheme arrears, have in place an arrears agreement with the

Commissioner of Income Tax for the elimination of the full arrears in a period not greater than three years by equal monthly instalments, and must be and remain up to date with all payments under such agreement.

All Scheme participants must remain up to date on a monthly basis with all current payments PAYE and Social Insurance Contributions relating to their own employees.

The Government will use its best endeavours to synchronise PAYE and Social Insurance payment dates with the dates of payment by the Government to contractors, so as to assist company cash flows. However, this does not relieve, mitigate or defer the contractor's liability in this respect.

The Exemption Certificate system under the Income Tax Act will not apply. A sum of 25 per cent of the labour element of each payment made by the Government's contractor to a subcontractor or labour contractor, when permitted, plus the employer and employee Social Insurance Contribution in respect of the subcontractor staff must be deducted by the Government's contractor and forwarded to the Commissioner of Income Tax within two working days. In other words, a sort of PAYE scheme but in terms of deduction by contractors from payments to subcontractors. The Government's contractor will remain liable to the Government at all times for the PAYE and Social Insurance Contributions of a subcontractor or labour contractor.

Within three days of issue of every works certificate or invoice or other event that triggers payment to a contractor or labour contractor, both the employer and the subcontractor or labour contractor will forward a copy thereof to the Government and that is to facilitate audit and monitor compliance with the flow of payments in relation to the Scheme and deductions.

Mr Speaker, this Scheme will be administered by the Government through the office of the Chief Technical Officer and the Project Secretary who is Mr Carl Viagas. The Scheme

and its operation will be kept under constant review in the light of experience.

Mr Speaker, 41 companies have registered to participate in the Scheme and complied with the participation conditions to date. Six of these are categorised as “Main Contractors”, meaning that they have a workforce of at least 25 directly employed persons, and appropriate insurance, experience and management expertise. The remaining 35 include specialist trade contractors, transport and demolition contractors, labour hire companies, plant hire companies and builders merchants and suppliers.

A total of nine projects have been allocated under this Scheme to date, and a further six are in the process of allocation. I just want to emphasise that that was certainly true at the time that this statement was prepared. The six that are said to be in the process of allocation may well have been allocated during the last few days. The six that had been allocated already, before this statement was drafted, are the following: The Harbour Views Promenade was allocated to Profield Limited in the sum of £1,504,807. The refurbishment of Kent House was allocated to Profield Limited in the sum of £180,000. The refurbishment of the Laguna Estate Playground was allocated to AMCO Limited in the sum of £347,989. Various playground refurbishments were allocated to CIAP Limited in the sum of £103,945. The construction of Laguna Estate new sheds, phases 1 and 2, was allocated to Koala Limited in the sum of £630,000. The relocation of Mother Goose Nursery was allocated to Koala Limited in the sum of £498,506. The demolition of the Buildings and Works Ragged Staff Depot was allocated to Monteverde & Sons in the sum of £346,711. The demolition of the Sunflower Shop at Europa Point has been allocated to Monteverde & Sons in the sum of £62,268. The clearance of rocks from beaches was also allocated to Monteverde & Sons in the sum of £142,038. The Castle Street Beautification Project has been allocated to AMCO Limited in the sum of £813,014. The construction of new premises for the Sea Scouts and the Duke of Edinburgh Award Scheme has been allocated to Wilkie

Limited in the sum of £1,100,000. New premises for St John's Ambulance has been allocated to Koala Limited in the sum of £537,404. The refurbishment of Governor's Meadow House has been allocated to Profield Limited in the sum of £980,000. The refurbishment of Churchill House has been allocated to Wilkie Limited in the sum of £350,000. The refurbishment of Harrington Building has been allocated to Koala Limited in the sum of £494,000.

Mr Speaker, a total of 11 persons have been placed in jobs from the Employment Service's local long- term unemployed list to date under the Scheme in respect of the original six contracts. A further 30 are expected to be placed pursuant to contracts currently, or in the just few days, awarded and, or in the pipeline. These are young local persons who, but for this Scheme, would never have been taken on by construction companies and given that work opportunity.

## **SUSPENSION OF STANDING ORDERS**

### **HON CHIEF MINISTER**

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

Question put.                      Agreed to.

## **DOCUMENTS LAID**

### **HON CHIEF MINISTER**

I have the honour to lay on the Table:

1. The Draft Estimates of Revenue and Expenditure for 2011/2012;

2. The Gibraltar Annual Policing Plan for 2011/2012.

Ordered to lie.

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

I have the honour to lay on the Table the Tourist Survey Report 2010.

Ordered to lie.

**HON E J REYES:**

I have the honour to lay on the Table the Report and Audited Accounts of the Gibraltar Heritage Trust for the year ended 31<sup>st</sup> March 2010.

Ordered to lie.

**MR SPEAKER:**

I have the honour to report that in accordance with Standing Order 12(3) the Ombudsman's Annual Report for the year ended 31<sup>st</sup> December 2010 has been submitted to Parliament and I now rule that it has been laid on the Table.

**BILLS**

**FIRST AND SECOND READINGS**

**THE PUBLIC HEALTH (AMENDMENT) ACT 2011**

**HON CHIEF MINISTER:**

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

Question put.                      Agreed to.

**SECOND READING:**

**HON CHIEF MINISTER:**

I have the honour to move that the Bill be now read a second time. Mr Speaker, most of the changes to the Act are commensurate with either the new constitutional position following the new Constitution or simply get the terms of the Public Health Act to reflect what in any case has been long standing practice, including before the new Constitution, and other amendments are simply to modernise relics of the very, very distant past, this being a very old piece of legislation that has not undergone much review over the decades.

There are amendments to the current definition of public highways, public sewer, reserved ways, street and United Kingdom Government premises. All of these amendments are intended to reflect what is in effect the current reality. Powers which the statute will now reflect, vest in the Government of Gibraltar, include the following: sections 44, 45 and 52 powers relating to the construction of buildings in Gibraltar, as well as the section 47 power to relax such requirements in particular cases. The section 48 power to set fees in relation to plans that under that section, which in any case such plans already

needed to be considered by the Government and not by the Governor, and the final removal of the requirement for separate Governor's consent to building being required under section 54. The making of rules under section 56 in relation to the removal of house refuse, cleansing of ash pits, et cetera, again, areas where the Government already had the responsibility. The increasing of the Governments discretionary powers under section 62 and section 63 in relation to the sweeping and watering of streets and the cleaning of buildings so as not to exempt [*inaudible*] certain premises that may be vested in the Governor. The making of rules under section 70 dealing with nuisances and also under section 93 regulating the emission of smoke. The making of rules in relation to public conveniences provided by the Government under section 76. Removing the Governor's exemption in section 85 in relation to expenses reasonably incurred by the Government in abating or preventing the recurrence of a statutory nuisance. The power to declare a trade under section 94 to be an offensive trade and under section 95 to make rules to prevent or diminish any noxious or injurious effects of certain trades. In section 98C, making the Government the competent authority to transit in relation to Council Regulation No. 259/93 on the supervision and control of shipments of waste within Gibraltar and to ensure that that is communicated to the European Community. The power to make rules under section 140 to prevent waste, undue consumption, misuse, contamination of water supplied by the Government and the making of rules under section 143 on the importation of water. The power to declare a disease to be notifiable under section 146 and the power to prohibit home work in premises where notifiable diseases exist under section 152. The power to make regulations as to the disposal of dead bodies under section 161. The power under section 174 to appoint places for the treatment of infectious diseases. The power to make rules regarding the treatment of persons affected with epidemic, endemic or infectious disease under section 180. The power under section 192J to make rules relating to the control of installations designated under section 192J(1) and in the processes by which hazardous waste may be disposed of at such installations. The power to make rules encouraging the

reduction of the production of certain waste. The power to make rules in order to comply with any Community obligation or enabling a right to be enjoyed in relation to measures relating to the prevention, reduction and elimination of pollution caused by waste and the recycling, regeneration and reuse of waste. The making of rules in relation to public baths, public bathing and the quality of sea water. The use of the seashore and the use of pleasure boats. The making of rules in relation to common lodging houses, dwelling houses, tents, vans, caravans, sheds and similar structures used for human habitation. The power to declare what street is a public highway and the removal of the power of the Governor to alienate the public highway and the transfer of the power to purchase or acquire land to be used as public highway to reflect the new constitutional provision that the Governor in respect of Crown Lands acts on the advice of the Government. The removal of the proviso of the Government's power requiring Governor's consent in relation to raising or lowering of ground rent. The making of rules relating to the quarrying of stones. The setting aside of parts of streets as places of public recreation and the making of rules in connection therewith. The power to make a declaration relating to the use that may be made of the Alameda Gardens. The power to appoint a valuation officer. The power to prescribe the form of any notice, advertisement, certificate or other document to be used for any of the purposes of the Act. The power to set the maximum rate of interest payable where expenses are incurred by the Government under the Act are being recovered and the general rule making power. Further amendments to modernise the Act include the removal of a proviso relating to the military use of cellars. The modernisation of the wording of section 238 and the deletion of section 239 dealing with the duty of the Government to maintain the public highway, in the light of the current constitutional position. The removal of the proviso in section 245 relating to the erection of street lighting by the Governor. The approval of exemption from assessment in relation to rates for such premises as are occupied by clubs, associations or societies not established or conducted for profit, which moves from the Chief Secretary to the Financial Secretary, as it is felt that this is where the function is more



properly exercised. The removal of the power of the Governor to make certain rules in relation to the power of entry of valuation officers. Under section 319, changing a reference to the Deputy Governor to the Chief Secretary in relation to the certification of copies of orders made by the Government under the Principal Act. Removing subsection 327 relating to access by authorised officers, in other words, health inspectors, in relation to military premises and deletion of the general proviso under section 336 relating to a very old provision that was there for the safety, order, protection, care and good Government of Her Majesty's Forces.

Mr Speaker, subject to one amendment that I will be moving, just to make clear that one of the regulation making powers is limited to the purposes of the Act which I think is a legal obviety but which I have been advised to make clearer. Subject to that amendment that I will be bringing, I commend the Bill to the House.

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

Question put.                      Agreed to.

The Bill was read a second time.

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

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

Question put.                      Agreed to.

## **THE INCOME TAX (AMENDMENT) ACT 2011**

### **HON CHIEF MINISTER:**

I have the honour to move that a Bill for an Act to amend the Income Tax Act 2010, the Rates of Tax Rules, 1989, the Income Tax (Pay As You Earn) Regulations 1989, the Income Tax (Allowances, Deductions and Exemptions) Rules 1992, 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 should now be read a second time. The practical effects of this Bill, Mr Speaker, is that it amends the Income Tax Act and a further three items of subsidiary legislation as I shall be explaining.

The amendments to the Income Tax Act. Clause 3 of the Bill amends section 27 of the Income Tax Act 2010. Section 27 under the Income Tax Act 2010 which is the new one that we introduced in respect of the new tax scheme. Section 27 permits the retrospective application of rules concerning reliefs, allowances, et cetera, which are made under section 25 but, by omission, the new Act, the new Income Tax Act of 2010, did not extend this power to rules for rates of tax made under section 24. The amendment to section 27, now proposed, will therefore restore the position to that which existed under the previous Act. In other words, the Income Tax Act has always allowed retrospective applications in section 24 and 25 in respect of both things. By omission, the draftsman excluded one of the two things from the new Act and the position is just being restored to what it always had been.

The Rates of Tax Rules 1989. Mr Speaker, the amendments to the Rates of Tax Rules 1989 are set out in clause 4 of the Bill and are required to give effect to the measures announced in last year's budget. For the reasons explained in relation to clause 3 of the Bill, that the new tax Act had not migrated the power to make rates of tax rules retrospectively, it has therefore become necessary to make the amendment via primary legislation in this instance. In other words, the new Act had not carried forward from the old Act the ability to change tax rules by regulation. Under the Interpretation and General Clauses Act, retrospective taxation measures cannot be done by subsidiary legislation unless specifically authorised. There has not been that and therefore, on this occasion, last year's budget amendments of rates are being done by this principal primary legislation because, until this House votes on this Bill, the power to do so by regulation will not have been restored to our law.

Clause 5 of the Bill amends the PAYE Regulations. Sub clause (2) substitutes regulation 10 of the PAYE Regulations so that the obligation in applicable cases to file summary statement forms, known as P8s, is made clearer. Sub clause (3) inserts a new provision in regulation 17 that allows the Commissioner of Income Tax to serve a notice upon an employer thereby requiring him to submit a deduction card or summary statement as appropriate for the purpose of the PAYE Regulations. Sub clause (4) amends regulation 19 and creates offences in relation to the failure by an employer to submit deduction cards or summary statements as required by the Commissioner of Income Tax by notice issued under regulation 17 or as required by notice published in the Gazette.

Finally, Mr Speaker, it amends the Income Tax (Allowances, Deductions and Exemptions) Rules 1992. This House will note that clauses 6 and 7 make amendments to the Allowances, Deductions and Exemption Rules. In the first instance, I should explain that the reason why there are two distinct clauses is that they have separate commencement dates. Clause 6 will be deemed to have applied as from the 1<sup>st</sup> July 2010 whereas clause 7 will be deemed to have come into operation on the 1<sup>st</sup>

January 2011, that is, when the new Income Tax Act itself came into operation. In clause 6 of the Bill, the amendments that are made to the rules are those which give effect to last year's budget announcements and concern, in the main, the revision of figures; rates of allowances, rates of tax and things of that sort. Clause 7 of the Bill makes further amendments to the Allowances, Deductions and Exemption Rules. The sub rules being revoked is clause 7(3) as a result of the demise of the exempt company generally and therefore now being redundant. In clause 7(4), rules 5, 5A, 5B, 5C, 5D and 5E are being revoked and those provisions are now contained, with modification, in Schedule 3 of the Income Tax Act itself. Rule 25 of the Allowances, Deductions and Exemptions Rules is being revoked as under the new Act a husband and a wife are now taxable as separate persons and therefore references in the rules which discriminate on the basis of sex are removed. Notwithstanding, that the departmental practice has been to treat it as a gender neutral provision. Rules 26 and 28 are now contained in section 37, that is the provisions relating to relief for tax paid abroad, and that is in section 37 of the new Act. So, equivalent provisions in rules 26 and 28 are being removed. The remainder of subclauses are required in order to make those rules, which are being amended, consistent with the provisions of the new Income Tax Act 2010. I commend the Bill to the House.

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

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

I am grateful to the hon Gentleman for having assisted us in understanding what it is that is being reinstated and what it was that was left out in the draft. Can he just clarify for us in respect of clause 2(4) which he has not spoken to but is referred to in the Explanatory Memorandum where we are told that this is to make clear and for the avoidance of doubt that the Interpretation and General Clauses section referred to there which is section

24 does not restrict this power? Can he tell us why it is that he feels it is necessary to make that section part of our law and how it might have restricted the exercise of the power before when it was in the old Act and now reinstated in the new Act. If he could just give us an indication of that I would be grateful. Finally, obviously this Bill will implement a lot of the Government's budget measures. We would not necessarily have made the budget that the hon Gentleman presented to the House last time but we of course support his right to see it implemented through legislation. We will be supporting the Bill for that purpose.

**HON CHIEF MINISTER:**

Yes. Well, Mr Speaker, simply to assist the hon Member in understanding why the Government have included clause 2(4) in the Bill. Just for the benefit of the other members of the House, clause 2(4) says, "For the avoidance of doubt, section 24 of the Interpretation and General Clauses Act restricting the retrospective commencement of subsidiary legislation shall not apply to subsidiary legislation made under sections 4 to 7". I have already explained to the House that the historical, by all past Governments, interpretation of the Interpretation and General Clauses Act was that, correctly and unquestionably, you could not have retrospective taxation by regulation, but that you could have it, if the retrospective element was specifically authorised by the enabling power in a piece of primary legislation. So, if a piece of primary legislation said that the Government can pass retrospective tax changes by regulation, then that was okay. The effect of this is simply to make that interpretation, which is not new and which has existed for ever I am advised, to make that interpretation itself statutory rather than just rely on practice convention. But it does not change anything at all as against what has been the practice for many decades.

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 are content.

Question put.                      Agreed to.

**THE FINANCIAL SERVICES (CONSUMER CREDIT) ACT 2011**

**HON CHIEF MINISTER:**

Mr Speaker, before moving the First Reading of this Bill, I would just like to mention to the House that this is a Bill that was drafted to give effect to a new Directive that was on the steps of the Court, in terms of its infraction, and that, at the time that the Bill was published, I therefore issued a certificate under the Constitution to abridge the time to avoid the possibility of fines being incurred. Since we did that, the matter became more pressing and therefore the subject matter of this Bill has already been transposed by regulations which would be repealed and replaced by this Bill, hopefully when the House passes it. In those circumstances, the consideration by this House of this Bill is no longer exceptionally urgent in the context on which I did the original certification because the urgency has been saved by the interim passing of subsidiary regulation. In those circumstances, whilst I am content to proceed with the Bill today, if the House were not happy to dispose of the business, I would be happy to withdraw the certificate. Hon Members, hope they are listening, I will be happy to withdraw the certificate and then the Bill would not be taken today. So, it is really up to the hon Members whether they are happy to proceed with this or whether they would rather I withdrew the certificate, but I make clear that the grounds upon which the certificate was issued are no longer extant.

**HON F R PICARDO:**

Mr Speaker, I am grateful to the hon Gentleman for giving us that explanation. We are ready to deal with the matter today and are happy to proceed today if it is in everybody's interest to deal with this and to repeal the regulation and replace it with a primary and properly debated piece of legislation by this House.

**HON CHIEF MINISTER:**

Mr Speaker, I should just add to that, that of course the Government was always free to proceed to have done this by regulation in the first place. We chose originally to do it by primary legislation because of the relative importance of the subject matter. Not that it is controversial necessarily, but I think one of Gibraltar's first pieces of financial services, consumer protection legislation ought not to be sneaked through by subsidiary legislation which is why we have not withdrawn the Bill and propose that it should continue to be a piece of primary legislation if the House will agree it.

Well, in those circumstances, for which I am grateful, because it helps us to clear one more piece of business, I have the honour to move that a Bill for an Act to make provision for the regulation of consumer credit; and matters connected thereto, be read a first time.

Question put.                      Agreed to.

**SECOND READING**

**HON CHIEF MINISTER:**

I have the honour to move that the Bill be now read a second time. Mr Speaker, this Bill transposes into the law of Gibraltar Directive 2008/48/EC of the European Parliament and of the Council of the 23<sup>rd</sup> April 2008 on credit agreements for

consumers and repealing Council Directive 87/102 dealing with the same subject matter.

This Directive has the following fundamental policy aims. Firstly, to regulate the current credit market landscape, albeit excluding certain specific forms of credit. For example, excluded from the Directive are lending secured on land, sureties and guarantees and hire purchase and leasing agreements and also restricting others to a light touch regime, for example, overdrafts. The Directive also seeks to harmonise throughout the EU the requirements for advertising consumer credit products and the pre contractual and contractual information requirements in order to make them more comparable for consumers. It seeks also to improve access by lenders to data on a borrower to permit a more accurate assessment of risk and ability to pay and it seeks to improve consumer protection measures including introducing a duty to provide adequate explanations about credit products and to check creditworthiness along with the universal fourteen day right of withdrawal by the consumer from a credit agreement. It seeks further to standardise the calculation of the annual percentage rate of charge by clarifying costs which must be included and assumptions used in the calculation. It seeks to introduce throughout Europe a right for a consumer to settle or part settle credit early and entitle them to an equitable reduction in the cost of credit and it seeks to introduce new provisions on linked credit agreements while maintaining existing provisions on joint and several liability. The following then is a review of the salient points of this Bill.

Clause 4 of the Bill provides that it applies to credit agreements. A "credit agreement" is defined in clause 3 as an agreement whereby a creditor grants or promises to grant a consumer credit in the form of a deferred payment, loan or other similar financial accommodation, except for agreements for the provision on a continuing basis of services or for the supply of goods of the same kind, where the consumer pays for such services or goods for the duration of their provision by means of instalments. What we would normally call a leasing arrangement. Mr Speaker, "consumer" is defined in clause 3 as

a natural person who, in transactions covered by this Bill, is acting for purposes which are outside his trade, business or profession.

Clause 4 has a dual purpose. Firstly, it sets out the various agreements to which the Bill does not apply. Secondly, provision is made for a light touch treatment in respect of overdrafts and overrunning agreements and in respect of credit agreements which provide for arrangements to be agreed by the creditor and the consumer in respect of deferred payments or repayment methods where the consumer is already in default on the initial credit agreement. In essence, the following kinds of agreements are not within the scope of the Bill. Not within the scope of the Bill. Lending to small businesses, partnerships and unincorporated bodies; loans below 200 Euros, loans above 75,000 Euros; mortgages, hire purchase agreements, credit with no interest or other charges and credit repayable within three months with no interest and only insignificant charges, pawn broking and consumer hire agreements.

Clause 5(3) imposes three requirements on credit intermediaries. They must disclose in advertising and other documentation intended for consumers, the extent of their powers and, in particular, whether they work exclusively with one or more creditor or whether they work as an independent credit intermediary. They must disclose any fee charged to the consumer by the credit intermediary for his services and these must be agreed with the consumer and disclosed on paper or a durable medium before the conclusion of the credit agreement and they must communicate to the consumer the fee, if any, payable by the consumer to the intermediary to use in calculating the APR.

Clauses 6 and 7 set out pre-contractual information requirements for consumers who are considering entering into credit agreement. In other words, what information must the giver of credit ensure that the borrower, the consumer must have, before they enter into the commitment. It is one of the most, if not the most, prescriptive parts of the Bill as the

information has to be provided in the exact format set out in the Standard European Consumer Credit Information sheet known as SECCI which is contained in Schedule 1 and Schedule 2 in the Bill. These clauses set out a list of what the information in question must specify. Creditors may voluntarily provide additional information to the consumer but any such voluntary information must be given in a separate document which may be annexed to the SECCI but may not contaminate, may not be included, in the SECCI. Pursuant to these clauses are creditors deemed to have fulfilled the information requirements if he has supplied the SECCI, in other words, to have deemed to have complied with the Financial Services (Distance Marketing) Act 2006. Hence, the SECCI includes a section covering information required for distance marketing of financial services. These clauses elaborate in respect of voice telephony communications information which must be communicated to the borrower in these circumstances which are; the total amount of credit and the conditions governing the drawdown; the duration of the credit agreement; in the case of a credit in the form of deferred payments for a specific good or service or linked credit agreements, a description of those goods or services and its cash price; the borrowing rate, the conditions governing the application of the borrowing rate and, where available, any index or reference rate applicable to the initial borrowing rate; the amount, number and frequency of payments to be made by the consumer and, where appropriate, the order in which payments will be allocated to different outstanding balances; the annual percentage rate of charge illustrated by means of a representative example; and the total amount payable by the consumer. Pursuant to these clauses, the consumer must be provided free of charge with a copy of the draft agreement on request.

Clause 5 confirms that the provisions of clauses 6 to 9 do not apply to suppliers of goods and services who act as a credit intermediary only in an ancillary capacity.

Clause 10 provides that before the conclusion of the credit agreement, the creditor must assess the consumers

creditworthiness on the basis of sufficient information, where appropriate, obtained from the consumer and where necessary on the basis of consultation of relevant databases. Creditors must update the financial information at their disposal concerning the consumer and assess the consumer's creditworthiness before any significant increase in the total amount of credit.

Pursuant to clause 20, creditors from other Member States must have access to databases used for assessing the creditworthiness of consumers on a non discriminatory basis.

Clauses 11 and 12 specify the information that must be provided to the consumer at the contractual stage. This is very similar to that listed in clauses 6 and 7 with respect to pre-contractual information. Credit agreements are to be drawn up on paper or on another durable medium and all parties to the agreement must receive a copy of it and a request for an amortisation table can be made at any time during the lifetime of the agreement. Where a credit agreement under which payments made by the consumer do not give rise to an immediate corresponding amortisation of the total amount of credit, endowment type loans in other words, the agreement must include a clear and concise statement that such credit arrangements do not provide for a guarantee of repayment to the total amount of credit drawn down under the credit agreement unless such a guarantee is given. Clause 12 provides for the information to be given to the borrower relating to changes to the borrowing rate.

Clause 13 sets out the consumer's right to terminate an open-end credit agreement. The consumer is entitled to terminate at any time unless the parties have agreed that a period of notice should be given. The lender cannot require more than one month's notice. This clause makes provision for the creditor's ability to effect standard termination of an open-end credit agreement.

Clause 14 gives consumers the right to withdraw from a credit agreement within fourteen days from the conclusion of the

agreement or from when the consumer receives the terms and conditions, if that be later, without giving any reason. This is a right to withdraw from the credit agreement. It is not a right to withdraw from an agreement for the provision of goods and services.

Clause 15 deals with two completely different aspects of linked credit agreements. Linked credit agreement is defined in clause 3. This clause provides protection for consumers where a transaction to purchase goods or services is financed by a linked credit agreement. If the supply agreement is not fulfilled, is fulfilled only in part, or is not fulfilled as agreed, the consumer can pursue the creditor for a remedy if he has failed to obtain satisfaction from the supplier.

Clause 16 gives the consumer the right to discharge his obligations under a credit agreement, fully or partly, at any time and the right to a reduction in the total cost of credit corresponding to the interests and costs applicable to the remaining duration of the contract.

The aim of clause 17 is to ensure that the consumer is not placed in a less favourable position following an assignment. Thus, where a creditor's rights under a credit agreement or the agreement itself are assigned to a third party, the consumer can plead against the assignee any defence which was available to him, against the original creditor including set-off.

Clause 18 refers to overrunning current accounts, meaning a tacitly accepted overdraft whereby a creditor makes available to a consumer funds which exceed the current balance in the consumer's current account or the agreed overdraft facility. Thus, where at the time of opening a current account, there is the possibility of overrunning being allowed, the Bill requires that the consumer be advised of the borrowing rate, charges and conditions, under which the borrowing rate or charges may change. In the event of a significant overrunning exceeding a period of one month, the creditor shall inform the consumer without delay, on paper or on any other durable medium, of a

whole series of things including, the amount of the overrunning, the amount involved, of the fact of the overrunning, of the amount involved, of the borrowing rate, of the penalties et cetera.

Clause 19 deals with the standard information to be included in advertising. It requires that prescribed information is to be given where an indication of an interest rate or any figure relating to the cost of the credit are included in the advertising. Whilst there is no specific definition of the term cost of credit in the Directive, our understanding is that this rate covers an indication in the credit advert of the total cost of the credit to the consumer or an indication in the advert of one or more of the elements of the total cost of the credit to the consumer. The items to be included as part of the standard information makes for a relatively short list. Four items will always be required. The borrowing rate, whether fixed or variable or both, charges included in the total cost of credit, total amount of credit, annual percentage rates of charge. Clause 19 also provides that where the conclusion of a credit agreement is dependent upon an ancillary service, in particular, insurance and the cost of the ancillary service cannot be determined in advance, the advertisement must make clear this obligation.

Clause 21 and Schedule 3 set out the requirement on how the annual percentage rate of charge, known as the APR, must be calculated, including the assumptions to be used when the terms of the agreement have not been finalised.

Clause 25 sets the duty to have a regulatory regime. The licensing arrangements in the Financial Services (Moneylenders) Act are therefore retained. Thus, where there is a conflict between the provisions of this Act and the Financial Services (Moneylenders) Act in respect of a credit agreement to which this Bill will apply by virtue of clause 4, the provisions of this Bill will prevail.

Under clause 28 the Minister may cause to be published, in the form of codes of practice, statements setting out the criteria and

any variation in the criteria from time to time, by reference to which the competent authority proposes to exercise its functions under the Bill. This responds to the requirements of the financial services for our regulatory framework to remain as flexible as possible.

Clause 29 transposes Article 24 of the Directive which creates the requirement for a dispute resolution procedure to be put in place. Under this clause, any dispute between the parties to an agreement, to which this Bill applies, may be put to the Director for resolution. The Director is defined in clause 3 as such person as the Minister shall appoint. In order to comply with Article 2 and give the Director enforcement powers, clause 29 allows the Director to deal with the dispute as if an arbitration agreement between the parties to the dispute to which the Arbitration Act applies subsisted appointing him sole Director.

Finally, Schedule 1 sets out the Standard European Credit Information, the SECCI that I referred to before. Schedule 2 sets out the European Consumer Credit Information requirements for overdrafts, consumer credits offered by certain credit organisations, debt conversion. Schedule 3 sets out the basic equation expressing the equivalence of drawdowns on the one hand and repayments and charges on the other and additional assumptions to the calculation of the annual percentage rate of charge. I commend the Bill to the House.

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

#### **HON G H LICUDI:**

Mr Speaker, this Bill will enjoy the support of the Opposition. It concerns the regulation of credit agreements which we consider to be long overdue. It is being brought as a result of an EU Directive and it is unfortunate to hear the hon Member earlier saying that there were infraction proceedings or they were on the steps of the Court and that appears to be the reason why

this is being brought and perhaps we can have an explanation by the Government as to why it has taken them this time, given that the Directive was issued in April 2008. It has taken three years to bring this legislation to the House. Again, particularly given that, as I understood the hon Member, he describes this as an important piece of legislation or something as important as consumer protection, yet it has taken three years.

Having said that, Mr Speaker, as I said we will be supporting this but there are a number of comments that I wish to make or a number of clarifications which I wish to seek from the Government. We have heard that the substance of this has already been passed in the form of regulations. I have not looked at those regulations and I assume that they are on exactly the same terms and, therefore, whatever I say in relation to this equally applies to the regulations, although I note that the intention is to repeal the regulations by the introduction of this and, presumably, at Committee Stage we will have a clause added at the end which refers specifically to the regulations and which repeals the relevant regulations. I am not sure that that, given that this was drafted before the regulations were introduced, that is obviously the reason why it is not included, but there must be provision for that which we can deal with at Committee Stage.

Mr Speaker, in the definition section the Director is defined as "such person as the Minister shall appoint" and the Minister is the Minister with responsibility for financial services, the Chief Minister. The Director clearly has an important role to play in relation to this legislation. By clause 22, the responsibility of the Director shall be the monitoring, the working and the effectiveness of the Act and supervising the creditors and credit intermediaries in order to ensure compliance by them with the Act. We would ask the hon Member simply to clarify whether those arrangements have already been put in place in terms of the appointment of the Director. One assumes that that is the case, given that regulations have already been introduced, or whether that mechanism is already in place and what measures are going to be taken. Whether in terms of enforcement

facilities, resources to ensure that the person nominated as Director has the necessary facilities to comply with his statutory obligations and make sure that supervision of creditors and credit intermediaries, to ensure full compliance with this Act, can happen.

Mr Speaker, in relation to clause 4(2). Clause 4(2) sets out the areas where the Act shall not apply to credit agreements and as the hon Member has already indicated, there are monetary limits which are set out there. The Act does not apply, for example, to credit agreements involving a total amount of credit less than 200 Euros or more than 75,000 Euros. There are two points to make in relation to that. Firstly, why specifically those limits? The answer is obvious. They are taken from the Directive. Those are the specific amounts that are mentioned in the Directive but, perhaps, the hon Member can explain why it is considered that those specific limits are the appropriate limits for Gibraltar and one can certainly understand why there should be a lower limit. Two hundred Euros is set as the lower limit. It is not going to involve credit agreements of £10 or £15, clearly, but the upper limit of 75,000 Euros is something that is mentioned in the Directive. Why is that considered appropriate for Gibraltar? Why should this not apply, in fact, to all credit agreements regardless of the amount? The hon Member will, hopefully, agree with me that what the Directive does is set out minimum criteria and, in fact, it does say that the Directive itself does not apply to credit agreements of less than 200 Euros or more than 75,000 Euros. There is no reason in Gibraltar why the legislation should not encompass credit agreements of over 75,000 Euros. The second point in relation to those limits is simply, why are those limits set out in Euros and not in pounds sterling, which is the currency, presumably, in which most, if not all, of the credit agreements which will be governed by this legislation will relate, and the reason I say that is two fold. Firstly, there is a provision in the Directive itself which allows that. Article 28 of the Directive provides, specifically, that, in any amounts expressed in Euros, Member States may use in the conversion the exchange rate prevailing on the date of adoption of the Directive. So it appears that the Directive, specifically,



allows Member States to convert the necessary amount in Euros to whatever national currency may be appropriate, in this case pounds, and I say that, not only because the Directive allows it, but for practical reasons. Let us consider, for example, this hypothetical scenario. Someone is envisaging entering into a credit agreement, a consumer with a credit institution of, say £80,000, and on the date ... Firstly, we have the problem of which exchange rates do we use on that particular date. Is it the exchange rate on that particular date in the high street in Gibraltar or the Barclays Bank base rate or the mid rate by the banks? Which exchange rate is used? If, for example, whatever rate is used one comes to an amount of 78,000 Euros, assuming these amounts stay as they are, that is not a credit agreement that is covered by this Act and, therefore, one important aspect of the Act, which the hon Member has clearly set out, is the requirement to provide pre-contractual information. That pre-contractual information under clause 6 is to be provided in good time before a credit agreement is concluded. In good time could be several weeks before the conclusion. At that time, it might be thought that this is a credit agreement that does not fall within this Act and, therefore, no pre-contractual information need be provided. What if the exchange rate changes when they come to conclude the credit agreement and then, at that time, at the exchange rate at the time, the agreement is worth 74,000 Euros, instead of 78,000 Euros? At that point, the Act will apply but all the pre-contractual requirements provided by the Act will not have been complied with. That practical difficulty can be removed, quite simply, by doing what the Directive allows and by setting the amount which is set in Euros as the amount which can be converted to pounds at the exchange rate prevailing on the date of adoption of the Directive. That removes the uncertainty where there are credit agreements which are close to the limits which are set out in the Act itself.

Mr Speaker, simply for clarification to make sure that we understand what this says. In relation to clause 8, the heading, it says "Pre-contractual information relating to an overdraft facility where credit has to be repaid within three months".

However, clause 8(1) talks of a credit agreement which takes the form of an overdraft facility and where the credit has to be repaid on demand or within three months. My reading of that is that clause 8 will apply to all credit agreements which are stated, which have a provision whereby the credit is repayable on demand, regardless of duration. In fact, it is curious that the words "on demand" or "within three months" are to be found in the Directive itself, whereas the heading gives the impression that the intention is for this clause to apply only to credit agreements which are repayable within three months and I know from provision of statutory interpretation that headings are not what govern the interpretation of the statute, it is the clause itself. But there appears to be an inconsistency there which perhaps can be clarified and, perhaps, the hon Member can confirm his understanding is the same as ours, that the requirements of clause 8 are not limited to three months credit agreements but any credit agreement, regardless of duration, which has a provision which states that it is repayable on demand.

Clause 10 of the Bill deals with creditworthiness and it is something again which the Chief Minister touched upon in his presentation of the Bill. His words, as I took them down, were that creditworthiness has to be assessed on the basis of sufficient information. What the Chief Minister was reading was, in fact, the specific wording in the Directive. Those are the words which are to be found in the Directive itself, "on the basis of sufficient information", but that is not the wording of clause 10(1). Clause 10(1) says, "shall assess the creditworthiness of the consumer by obtaining information from the consumer". It does not say how much information. It does not say whether it should be sufficient. Any information at all would appear to satisfy the statutory obligation of the creditor under clause 10(1), whereas in the Directive the creditworthiness has to be assessed on the basis of sufficient information. The use of the word "sufficient" is, I would suggest, important given that, under clause 22, the Director will have responsibility to supervise creditors and ensure compliance. Therefore, an element of objectivity brought in by the use of the word "sufficient",

suggests that the Director himself can assess whether sufficient information has been obtained and whether this statutory provision has been complied with. It may be, simply, that in transposing this, there has been an incorrect use of wording but the wording used by the Chief Minister in his address actually reflected what is contained in the Directive itself which I would suggest and commend to the House is, in fact, a better wording than what has actually found its way into the draft Bill.

Turning to clause 21. Clause 21 deals with the calculation of the Annual Percentage Rate of charge and under clause 21(2), this "shall be calculated", it is mandatory, "shall be calculated in accordance with the mathematical formula set out in Part I of Schedule 3". If you were to turn to Part I of Schedule 3, certainly, the copy that I have has the formula in blank. There should be two parts where the formula is given, where it says, "the basic equation which establishes" et cetera, and it says, "i.e." that should set out the equation because it then continues "where x is the APR, m is the number of the last drawdown, k is the number of the drawdown", but there is, in fact, in the Bill itself, no equation which sets out those terms. The equation is, in fact, to be found in Annex 1 of the Directive and it is, in fact, it is simply an error in the printing, presumably, but simply to point it out that there is a need to include the equation which is to be found in Annex 1 of the Directive.

Mr Speaker, those are, I believe, the extent of our comments on the Bill. I trust that they will be accepted in the spirit in which they are given. We are trying to be helpful and, as I said, we will be supporting this legislation.

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

Yes, well, I am grateful to the hon Member for what, obviously, is a thorough consideration of the Bill by him. He opened by expressing regret at the delay. Well, Mr Speaker, two things to say on that. Firstly, that although there has been some delay, in fact, because most of the credit institutions in Gibraltar are

international banks, they have been complying with these rules because these are head office driven. Indeed, I do not know who the hon Member banks with but he will have been bombarded over the last few months or twelve months with a whole stack of bumph which is the result of these regulations. In fact, in respect of most of the credit suppliers in Gibraltar, there has, in fact, been effective compliance, notwithstanding the absence of domestic legislation requiring it. Secondly, the question of this alleged or supposed delay, well not supposed delay, the delay, because transposition comes after the transposition deadline. So there is, by definition, delay. It has to be seen in the context of the huge backlog that there were in respect of Directives, and the hon Members will have seen, from time to time, when we have been asked questions, the infraction table. I am happy to say that the new European Union and International Department is now at the stage where Gibraltar has never been, since it joined the European Community, within a week or two of having transposed, not just all the Directives which are the subject matter of infractions, but indeed all the Directives in respect of which the transposition deadline has passed, even though it is not yet become the subject of an infraction. So, for the first time since 1973, Gibraltar will be ahead of the transposition deadline and expects to stay ahead of the transposition deadline and that is not even a position in which the United Kingdom or any other Member State actually is. It does not give an explanation or comfort to the hon Member about whatever might be his concerns of the delay in respect of this Bill, but it gives me the opportunity to report to the House the very happy and good position in which Gibraltar will be very shortly, I think we are within two or three weeks of being in the position which I have just described to the hon Member.

The hon Member has asked who the Director will be. We have not yet made that determination but it will follow very quickly the passing of this Bill. I think the hon Member slightly, if I could say so, overstates the extent of the ... but not the importance of the role of the Director. It is really limited to dispute resolution, is his principal function but, anyway, a Director there must be and a Director there will be.

Well, the hon Member asks, why stick to the limits and it is true? I suppose, technically, Gibraltar can have more onerous or more consumer protective legislation of this sort than is required by the Directive which is, I suppose, a lowest common denominator, but I think that we would have to be careful given that most multinational credit institutions deal with issues of compliance of this sort in some central head office and push out Europe wide the literature and the material. We would have to be very careful, if the House were ever tempted to increase the levels up to which protection is given, that we were not obliging banks, multinational banks, that may not be willing to do so, to create very Gibraltar specific compliance monitoring regimes and literature production regimes and product compliance and monitoring regimes. It would be open to this House to do it but I think we would have to think very carefully and consult very carefully with the industry as to whether it would increase or decrease even, rather, increase the burdens and therefore decrease credit availability, but in any case the Government have not sought to address that possibility in this Bill and has limited itself, not least in the circumstances that I described at the outset of my intervention, to doing only what it was required to do to comply with the European Directive and thus the Pan European harmonisation regime in this respect.

I cannot help thinking that the hon Member is misreading the effects of Article 28 when he made his point about the currency in which the limits are set. I think all the possible pitfalls that the hon Member listed, I think would apply equally, whichever currency you express it in, because the effect of Article 28 is not that if you set it in sterling then that figure remains cast in stone. Article 28 says “for the purposes of this Directive, those Member States” which could include this Parliament “who convert the amounts expressed in Euros into their national currency shall, initially, use in the conversion the exchange rate prevailing at the date of the adoption of this Directive”, which is not to say that if we picked today’s sterling equivalent that that would be the limit. That would be implemented and policed because the Directive still requires that the protection be delivered in the

context of the limits, the minimum limits required by the Directive. So, if every time, whether we set it in Euros. If we set it in Euros, then the limit expressed is a fixed amount, as stated in legislation, and there has to be a conversion at the time of every mooted credit transaction to see whether it is or is not within the limits of the Bill. If we set it in sterling, you still have to do that calculation because you still have to ensure that you are not depriving any consumer of the protection of the Directive if the exchange rate as between sterling and the Euro has fluctuated to make whatever figure we put here today in sterling, a lower sum than the maximum, or a higher sum than the minimum of the Euro equivalent. Because of the use of the word “initially”, this conversion into sterling at current rates, if we were to choose that route, does not obviate the need to, on a transaction by transaction basis, to ... I am very happy to give way if he would like me to.

#### **HON G H LICUDI:**

Yes. I am very grateful to the hon Member. Would the hon Member not agree with me that ... and I agree with that analysis and the use of the word “initially” to this extent. Does that not impose an obligation on Member States from time to time to consider whatever has been set out in legislation rather than an obligation on creditors and consumers on a transaction by transaction basis? The reason I say that, quite simply, is that once we have legislation, Gibraltar legislation, then the requirement of consumers and the requirement of credit institutions will be governed by whatever Gibraltar legislation says. From time to time, it may be necessary for this legislature to review that but on a transaction by transaction basis that will be determined by the state of the Gibraltar legislation which will be whatever we set out if it is in sterling.

## HON CHIEF MINISTER:

No, I cannot agree with that and in a sense the hon Member is reinforcing and making my point. Is he suggesting that we should come back to this House every time the exchange rate changes to alter the sterling figure? It would be completely impractical and if I can just allude to a parallel scenario which I mentioned before in my statement in relation to the Construction Industry Scheme. There are, for example, EU Directives which quote in Euros the value of a construction contract above which an EU form of tendering process is compulsory and below which an EU form of procurement process is not compulsory or required and the Government of Gibraltar Procurement Office is constantly checking the exchange rates to see that, at prevailing rates of exchange, we do not fail to go out to tender on a construction project where the European law requires us to, by virtue of a figure stated in Euros. So we contract, perhaps, in sterling but we still have to make sure that on that day of that contract the Euro equivalent of that sterling denominated contract is not above the European Union threshold because if it is, we have to go to procurement under EU rules and if it is not, we do not. That is exactly the equivalent to the position that I am saying applies to credit institutions. You cannot deprive consumers of the protection of this Directive simply because you choose to express your national law in a currency, ignoring the subsequent fluctuations in that currency with the Euro, and that way deprive the consumer of protection which if we had set it in Euros he would enjoy by applying the exchange rate equivalence at that time. So, Mr Speaker, the issue is not so much whether we put it in one currency or in another in this. It is that in both cases there has to be a reconciliation of the exchange rate between Euros because the legal obligation in the Directive is expressed in Euros. So, if the European Community says that if something costs more than a hundred Euros, then this or that has to happen and in Gibraltar we price it at eighty pounds and the Euro is one pound something, the protection that the Directive gives cannot exist one day depending on whether the sterling Euro exchange rate delivers the figure of a hundred Euros and not exist, or rather exists

another day, when the sterling equivalent, the sterling exchange rate delivers a value of a hundred. In other words, the right of the consumer to protection cannot depend on whether exchange rate fluctuations take them above or below the level in their currency. It has got to be pitched at a hundred Euros. It does not matter what currency you express it in so long as it is the equivalent of a hundred Euros when converted and that requires a temporal assessment of the value of the limit. So, I do not think that the hon Member is right. Although I do and acknowledge his point that the effect of that is that, particularly transactions that take too long, it could move from one that does not require compliance of the Directive into one that does, or vice versa, from one that does but you are talking about transactions which are in an amount which the normal currency fluctuations are likely to take it over and above the limit and I think the industry knows well how to deal with situations of that sort.

Mr Speaker, I apologise to the House for the fact that the equation has not appeared in their printed version. Obviously, it did not in mine either but in my case somebody has gone to the helpful trouble of putting it in, in felt tip pen, which, presumably implicit in what the hon Member has said, they have not been equally helpful to him and I am sorry. In any case, the equation is entirely unintelligible to me and my arithmetical skills do not extend to deciphering this formula. So, if the hon Member is satisfied that the formula that goes into the Bill will be the one that he correctly says is in the Annex, I would be grateful, Mr Speaker, if the House could record that, so that the Government is able to print the Act in due course with that formula even though the House has not had the benefit of seeing it on this Green Paper and I suspect that the same applies on page 73, although I do not know if the hon Member made the point about that too.

Mr Speaker, the hon Member also made a point about the heading. Although I think he is right, I think he is right for the wrong reason. I think he articulated his point about assuming, unless I have misunderstood him which is possible, that the

heading related to overdrafts and credits to be repaid on demand or within three months and he was really complaining about the omission of the “on demand” bit. In fact, I think he is right in his view that the heading is wrong but this is not overdraft and credits that have to be repaid on demand or within three ... The whole heading relates only to overdrafts and the reference to credit is a reference to credit given in the context of the overdraft. So the correct reading would be “Pre-contractual information relating to an overdraft facility where the credit”, that is to say the credit given in the overdraft facility, not a separate credit given ... “where the credit given in the overdraft facility has to be repaid” and then he is right “on demand or within three months”. That is what the Article says. This is not what this says. This heading only refers to where the credit has to be repaid within three months and the point that he rightly makes is that it is on demand or within three months. Is that right?

**HON G H LICUDI:**

Yes.

**HON CHIEF MINISTER:**

Then there is a separate clause in the Bill, clause 9, with a separate heading dealing with pre-contractual information relating to an overdraft facility where credit has to be repaid within one month. So, Mr Speaker, we can take some of these detailed points at the Committee Stage, if the hon Member prefers, given that we are, sort of, supposed to be debating the principles. Yes. I will give way.

**HON G H LICUDI:**

There is one other point which I mentioned. I am not sure that the hon Member has dealt with it. That is in relation to creditworthiness and the language of clause 10(1) which seems

to be at odds with the language of the Directive which talks about sufficient information and that is not the language in clause 10(1).

**HON CHIEF MINISTER:**

Well, Mr Speaker. That is one of the points that I thought we would deal with at Committee Stage, where we could pour over, and in slower order, the language and compare the language in the two places.

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 are content.

Question put.                      Agreed to.

### **COMMITTEE STAGE**

**HON CHIEF MINISTER:**

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

1. The Public Health (Amendment) Bill 2011;
2. The Income Tax (Amendment) Bill 2011;
3. The Financial Services (Consumer Credit) Bill 2011.

## **THE PUBLIC HEALTH (AMENDMENT) BILL 2011**

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

### **Clause 2**

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

Mr Chairman, in clause 2, subclause, if that is what we call them, (58). Mr Chairman, just to clarify what I think is obvious to sensible lawyers that a rule making power in an Act can only be used for the purposes of the Act and cannot be used, otherwise it would be ultra vires and that I think is basic statutory interpretation, but for the sake of making it clear, even to those who are not familiar with these basic rules, if we could say without prejudice ... Little (d). Sorry I am talking about little (d). If I could say without prejudice to the generality of the foregoing delete “good rule and Government of Gibraltar” and say. Sorry. Leave “good rule and Government of Gibraltar” but add after the word “Gibraltar”, “in relation to matters provided for in this Act, or public health generally”. So, (58) little (d), add after the word “Gibraltar” remove the comma, rather, remove the full stop. I beg your pardon. Are we there?

#### **MR CHAIRMAN:**

No. (58) (d).

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

Sorry, what number have I said?

#### **MR CHAIRMAN:**

You said, (58) little (d).

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

Yes, Mr Speaker, I am proposing a new amendment. So you will not find it there. This is a new amendment to the Act which, obviously, ... I am not proposing an amendment to the Bill. I am proposing an additional amendment to the Act for inclusion in the Bill. So it is an amendment of the Bill by adding a further amendment to the Act and it would be in subclause (58) because it is (58) that deals with the amendment to section 337. So, in addition to (58), in addition to the substituting of “Government” for “Governor”, a further amendment in section 337 (d) by adding the words after “Gibraltar”, obviously removing the full stop after “Gibraltar”, but adding the words after “Gibraltar”, “in relation to matters provided for in this Act, or public health generally”, which I believe to be entirely unnecessary because rules for the good rule and Government of Gibraltar made under the Public Health Act can only relate to the Public Health Act and would be ultra vires if they be used for some purpose unconnected to the enabling Act.

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

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

## **THE INCOME TAX (AMENDMENT) BILL 2011**

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

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

## **THE FINANCIAL SERVICES (CONSUMER CREDIT) BILL 2011**

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

### **Clause 8**

**HON G H LICUDI:**

Mr Chairman, in the heading of clause 8, can I suggest the addition of the word “the” before “credit” so that it would read “relating to an overdraft facility where the credit has to be repaid” and after “repaid” the words “on demand or”. That would read “where the credit has to be repaid on demand or within three months”.

**HON CHIEF MINISTER:**

Yes, Mr Chairman, I would think so.

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

### **Clause 9**

**HON G H LICUDI:**

Mr Chairman, in clause 9, in the heading, could we simply add the word “the” before “credit” so that again it is clear that it is the credit relating to the overdraft facility and is consistent with the other one.

**HON CHIEF MINISTER:**

Yes.

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

### **Clause 10**

**HON G H LICUDI:**

Mr Chairman, in clause 10, if we could reflect the wording of Article 8 of the Directive so that it says “shall assess the creditworthiness of the consumer on the basis of sufficient information from the consumer”. So instead of the words “by obtaining information” we would substitute that with “on the basis of sufficient information” or rather instead of “by obtaining” we would have “on the basis of sufficient”. The Directive itself says “the creditor assesses the consumer’s creditworthiness on the basis of sufficient information where appropriate obtained from the consumer”.

**HON CHIEF MINISTER:**

Yes, Mr Chairman. I think we can agree to that. I do not think it makes as much practical difference as the hon Member may hope it makes because this is still a subjective issue for the lender and it is going to be up to the lender to decide what is sufficient but we can do no harm by using language in the Directive.

**HON G H LICUDI:**

So, Mr Chairman, the wording I would suggest would be, “shall assess the creditworthiness of the consumer on the basis of sufficient information obtained from the consumer”.

**HON CHIEF MINISTER:**

No, Mr Chairman. That would not be accurate. It would have to be slightly more complicated than that, the amendment, because the sufficiency of the information does not qualify just the information obtained from the consumer. The correct

reading of Article 8 is the creditor assessors the consumer's creditworthiness on the basis of sufficient information and then that sufficient information can be, either from the consumer, "where appropriate obtained from the consumer and where necessary on the basis of consultation". So, do you see, you cannot attach the sufficiency simply to the information obtained from the consumer. So, before the conclusion, "the creditor shall assess the creditworthiness by obtaining ..." If you wanted to put there "sufficient information". We could then use the whole language of the section by adding "sufficient information where appropriate obtained from the consumer and where necessary on the basis of a consultation of the relevant database". That is verbatim. What it says is ... I do not think we can demand sufficiency as requiring it to come exclusively from the consumer because that is not what the Directive says. I am not sure if the Clerk will have had an opportunity.

**MR CHAIRMAN:**

Yes. I have it.

**HON CHIEF MINISTER:**

Would the Clerk like me to read that back to you? So, clause 10 would read, "Before the conclusion of an agreement the creditor shall assess the creditworthiness of the consumer by obtaining sufficient information". So add the word "sufficient" in front of the word "information". Delete the words then "from the consumer" and add after the word "information" the following words "where appropriate obtained from the consumer and where necessary on the basis of a consultation of the relevant database".

**HON G H LICUDI:**

Mr Chairman, would there be, given the introduction of the language of the relevant database, the database is referred to in clause 20 and it talks about databases which are available in Gibraltar and, therefore, there is very specific reference to the sort of database that we are dealing with? I am simply asking whether the hon Member is satisfied that the words "relevant database" is sufficient to mean the database that is referred to in clause 20, or perhaps not, because clause 20 talks about databases available in Gibraltar which parties outside of Gibraltar can consult us.

**HON CHIEF MINISTER:**

No. I think he was right the first time. Clause 20 simply says that non-resident lenders shall not be discriminated against in respect of access to databases available in Gibraltar. What I am now thinking, given what he has suggested, is whether that is also the definition of database. In other words, whether the relevant database, therefore, necessarily has to be available in Gibraltar given that it is referred in clause 20 for different purposes in those terms, but if the hon Member will just bear with me for a second, I will try and assist him further with that. Mr Speaker, I would prefer to leave it in terms, rather than "the relevant database", "a relevant database" which is neutral as to whether it is ... relevant database is defined, rather than suggesting that there is one only. So, if in the ... Mr Clerk, in the amendment I have just ... instead of "the relevant database", "a relevant database".

**MR CHAIRMAN:**

I must confess there is a slight inelegance with clause 10 about the creditworthiness of the consumer being assessed by obtaining sufficient information where appropriate obtained. Two "obtains" in the same ...



**HON CHIEF MINISTER:**

Yes, but that is a mistake. “of the consumer by obtaining sufficient information where appropriate from the consumer”.

**MR CHAIRMAN:**

So we delete the second “obtain”.

**HON CHIEF MINISTER:**

Yes. We need the “obtain” that I ... leave the one that is in the Bill and delete the one that I have dictated. Clause 10(1), as amended, should read, “Before the conclusion of an agreement the creditor shall assess the creditworthiness of the consumer by obtaining sufficient information where appropriate from the consumer and where necessary on the basis of a consultation of a relevant database”.

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

**Clauses 11 to 29** – were agreed to and stood part of the Bill.

**New Clause 30**

**HON G H LICUDI:**

Mr Chairman, could I suggest perhaps after clause 29, a new clause 30 headed “Repeal” which would deal with the repeal of the regulations which have been made prior to the coming into force of this Bill.

**HON CHIEF MINISTER:**

Mr Chairman, I am just doubting because it would not be necessary if the repeal can be done by regulations, by the maker and what is leading me to that view. We could repeal here but then I would have to introduce in clause 1, where it says “Title”. It would have to be “Title and Commencement”. We would have to add “and commencement” and add after 2011 “and comes into operation on the day appointed by the Government by notice in the Gazette”. In other words, I would not want the granting of the Governor’s assent to immediately effect the repeal because the regulations have been notified to the Commission very recently as transposition of the Directive and we would just want to alert them to the fact that they are being repealed and replaced rather than just it happening. So, I am perfectly happy to add the clause repealing the regulations so long as we also add this ... We eliminate the automaticity of the commencement by making the commencement itself subject to notice in the Gazette. So what would then happen is we would inform the Commission, look these are going to be repealed and replaced and then we would commence the Act and the effect of commencement would be not just to commence the Act but also to repeal the regulations simultaneously. I think that would be the more elegant way to do it. So, the hon Member is suggesting a new clause 30, in what terms?

**HON G H LICUDI:**

Mr Chairman, it would be headed “The Repeal”.

**HON CHIEF MINISTER:**

The repeal of the ... let us see if I have got a copy of them here for ... to get their names. Yes. They are called the Financial Services (Moneylending) (Amendment) Regulations 2011.

**HON G H LICUDI:**

So, would the new clause, Mr Chairman, then say, would be clause 30, “The Financial Services (Moneylending) (Amendment) Regulations 2011 are repealed” or “revoked”.

**HON CHIEF MINISTER:**

“are revoked”. Yes.

**HON G H LICUDI:**

“are revoked”.

**HON CHIEF MINISTER:**

Yes.

**HON G H LICUDI:**

“are hereby”, do we need the word “hereby”?

**HON CHIEF MINISTER:**

No. You can do but it is not necessary. Mr Chairman, and then I would have to take the Committee back to clause 1 and the heading would be “Title and Commencement” and in clause 1, remove the full stop after 2011 and add the words “and comes into operation on the day appointed by the Government by notice in the Gazette.”

**CLERK:**

May I ask, in relation to new clause 30, what would be the heading? Simply “Repeal”?

**HON CHIEF MINISTER:**

Yes. “Repeals” or “Repeal”. Yes, “Repeal”. Usually it would be repeal or revocation but it does not matter. “Revocation”, I would have it. I would say “Revocation” rather than “Repeal”.

**MR CHAIRMAN:**

Okay, the new clause 30 with the heading “Revocation” stands part of the Bill and going back to clause 1 as amended now stands part of the Bill with the new heading to read “Title and commencement”.

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

**Schedule 3**

**HON G H LICUDI:**

Mr Chairman, just to clarify that in Schedule 3 there are two formulae to be inserted as set out in Annex 1 of the Directive. Two different formulas, yes, as follows:

$$\sum_{k=1}^m C_k(1+X)^{-t_k} = \sum_{l=1}^{m'} D_l(1+X)^{-s_l}$$

$$S = \sum_{k=1}^n A_k(1+X)^{-t_k},$$

**MR CHAIRMAN:**

Schedule 3, as amended as to the addition of the two formulae from the Annex to the Directive, stands part of the Bill.

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

**THIRD READING**

**HON CHIEF MINISTER:**

I have the honour to report that:

1. The Public Health (Amendment) Bill 2011;
2. The Income Tax (Amendment) Bill 2011;
3. The Financial Services (Consumer Credit) Bill 2011,

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

Question put.

The Public Health (Amendment) Bill 2011;

The Income Tax (Amendment) Bill 2011;

The Financial Services (Consumer Credit) Bill 2011,

were agreed to and read a third time and passed.

**ADJOURNMENT**

**HON CHIEF MINISTER:**

Mr Speaker, distraught as I am by the fact that the hon Member, the new Leader of the Opposition, does not consider me to be a distinguished Gibraltarian, I move that the House do now adjourn sine die.

Question put.                      Agreed to.

The adjournment of the House was taken at 4.50 p.m. on Wednesday 27<sup>th</sup> April 2011.

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

The Thirteenth Meeting of the Eleventh Parliament held in the Parliament Chamber on Thursday 23<sup>rd</sup> June 2011, at 10.00 a.m.

**PRESENT:**

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

**GOVERNMENT:**

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

**OPPOSITION:**

The Hon F R Picardo – Leader of the Opposition  
The Hon J J Bossano

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

**IN ATTENDANCE:**

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

**PRAYER**

Mr Speaker recited the prayer.

**CONFIRMATION OF MINUTES**

The Minutes of the Meeting of Parliament which commenced on 13<sup>th</sup> January 2011 were taken as read, approved and signed by Mr Speaker.

**COMMUNICATIONS FROM THE CHAIR**

**MR SPEAKER:**

Yes, if I may an informal one. The weather forecast promises a temperature of 30 degrees today. Even though we are sitting in an air conditioned Chamber, if anyone feels more comfortable removing their jackets please feel free to do so.

## **ORAL ANSWERS TO QUESTIONS**

The House recessed at 1.00 p.m.

The House resumed at 2.30 p.m.

Oral Answers to Questions continued.

The House recessed at 5.30 p.m.

The House resumed at 5.45 p.m.

Oral Answers to Questions continued.

## **ADJOURNMENT**

### **HON J J HOLLIDAY:**

I have the honour to move that the House do now adjourn to Friday 24<sup>th</sup> June 2011 at 9.30 a.m.

Question put.            Agreed to.

The adjournment of the House was taken at 7.00 p.m. on Thursday 23<sup>rd</sup> June 2011.

**FRIDAY 24<sup>TH</sup> JUNE 2011**

The House resumed at 9.30 a.m.

### **PRESENT:**

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

### **GOVERNMENT:**

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

### **OPPOSITION:**

The Hon F R Picardo – Leader of the Opposition  
The Hon J J Bossano  
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

## **BILLS**

### **FIRST AND SECOND READINGS**

#### **IN ATTENDANCE:**

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

#### **ORAL ANSWERS TO QUESTIONS (CONTINUED)**

The House recessed at 11.10 a.m.

The House resumed at 11.15 a.m.

Oral Answers to Questions continued.

The House recessed at 1.15 p.m.

The House resumed at 2.30 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 numbered W56/2011 to W107/2011.

#### **THE APPROPRIATION ACT 2011**

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

I have the honour to move that a Bill for an Act to appropriate sums of money to the service of the year ending on 31<sup>st</sup> March 2012, be read a first time.

Question put.                      Agreed to.

#### **ADJOURNMENT**

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

I have the honour to move that this House do now adjourn to Monday 4<sup>th</sup> July 2011 at 9.30 a.m.

Question put.                      Agreed to.

The adjournment of the House was taken at 7.50 p.m. on Friday 24<sup>th</sup> June 2011.

**MONDAY 4<sup>TH</sup> JULY 2011**

The House resumed at 9.30 a.m.

**PRESENT:**

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

**GOVERNMENT:**

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

**OPPOSITION:**

The Hon F R Picardo - Leader of the Opposition  
The Hon J J Bossano  
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 a report on the Table.

Question put.                      Agreed to.

**HON F R PICARDO:**

Mr Speaker, with the indulgence of the House, may I just thank the Hon the Chief Minister for having laid the Report on the Table this morning, before we debate the estimates.

**DOCUMENTS LAID**

**HON L MONTIEL:**

I have the honour to lay on the Table the Employment Survey Report October 2010.

Ordered to lie.

## **BILLS**

### **FIRST AND SECOND READINGS**

#### **THE APPROPRIATION ACT 2011**

#### **SECOND READING**

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

I have the honour to move that the Bill be now read a second time.

Mr Speaker, I have the honour to present my 16<sup>th</sup> budget of Government revenue and expenditure, and to report to the House on the state of public finances, the state of the economy and other issues of economic importance.

As the House knows, the global economic and financial crisis has continued to dictate economic performance in most countries of the world. Even where countries have technically broken out of recession, with few exceptions, it has not been enough to boost consumer demand, and thus production, jobs and government revenues.

We have all seen, and continue to see, the economic and social consequences of this in the newspapers and television news: falling government revenue, loss of jobs, rising taxes, freezing and, in some cases, cutting of public employees' pay and pensions, cut backs in public services – all leading to a significant degradation in standards of living, social unrest, protests, demonstration and industrial unrest.

None of this is the case in Gibraltar. Our economy continues to grow, jobs and employment have risen to a new record level, taxes have continued to fall, and pay and pensions have

continued to rise. The Government's budget remains in surplus at near record levels and public services continue to expand and improve. Standards of living in Gibraltar continue to rise. The modernisation, improvement and transformation of Gibraltar to position it for a successful future continues through the Government's extensive, ongoing capital projects investment programme.

As some of the figures that I will cite later show, some parts of our private sector economy have suffered from falling demand from abroad as a result of the effects of recession in other countries, and locally, mortgages and business loans remain difficult to obtain as a result of the international credit crunch, but otherwise, our successful economy continues to show impressive robustness and resilience. Gibraltar has never been so well. Our economic success continues to provide relief and support to the economy of the neighbouring Campo area as well.

This year, the economy crosses an important threshold. The new company tax system marks not only an important restructuring of public finances, but also completes the journey of our Finance Centre from offshore tax haven to onshore EU financial services centre.

2010 was yet another good year for our economy, and the economy is continuing to grow through 2011 as well.

Mr Speaker, this is the first time that the Budget Book is presented in its new format, following the changes to the Public Finance (Control and Audit) Act passed earlier this year. As a result of these changes, the House now has before it not just the revenue and expenditure of the Consolidated Fund, but the entirety of the Government's revenue and also the entirety of the Government's expenditure, all of which now requires the approval of this House and is thus subject to its greater scrutiny.



This has been achieved by the diversion of the revenue of all Government controlled statutory Authorities and Agencies to the Consolidated Fund from where it can only be passed to the relevant Authority and Agency by the Appropriation, that is, the authorisation mechanism of this House. Additionally, all expenditure by these Agencies and Authorities is itself subject to authorisation by this House through the Appropriation mechanism.

The Budget, and the control of this House therefore now extends to the Government's overall revenue and expenditure, and not just as before to the revenue and expenditure previously channelled through the Consolidated Fund.

Mr Speaker, these changes greatly increase the financial control and scrutiny of this House over all aspects of Government revenue and expenditure that are relevant to the overall fiscal position of the Government. In order to facilitate year on year comparison the figures related to previous years have been struck and presented on the same basis.

### **ECONOMIC GROWTH – GDP**

Mr Speaker, it is pleasing to be able to report to the House that despite the global recession and other financial difficulties affecting many other countries, our economy continued to grow significantly last year. The final GDP figure for the year ended March 2009 came in at £ 896 million.

In last year's budget I gave a preliminary estimate of last year's growth of just over 5 per cent estimating that it would grow to £914 million. In fact, our economy grew last year by 6.5 per cent to £954 million.

I maintain my conservative provisional estimate for the year ending March 2011 that the economy will have grown by at least another 5 per cent to over £1 billion.

Mr Speaker, the Government is proud of its economic record. Not just because our economy has very nearly trebled in size from £346 million in 1996 to around £1 billion, as I have just provisionally estimated in 2011, but because our economy has continued to prosper in recent years when so many others have floundered, and we have thus been able to avoid unpleasant economic and social consequences.

### **EMPLOYMENT**

The continuing growth of our economy has meant that jobs have continued to be created – indeed in record numbers! Mr Speaker, the total number of jobs in our economy increased last year by 525 to an all time record of 20,975.

The number of Gibraltarians in employment increased last year by 102 mainly as a result of an increase in the number of women taking part time jobs. The total number of Gibraltarians in employment was 10,706, the highest number ever recorded of Gibraltarians in employment. Mr Speaker, there has never before therefore been more Gibraltarians in work than there are now.

It is worth recalling the effect that the growth in the economy since this Government came to office in 1996 has had on job creation. In that time, that is to say, since 1996, the number of jobs in our economy has grown by 8,000 or 62 per cent from 12,975 to 20,975! And never have more jobs been created for Gibraltarians. There are now 1,316 more Gibraltarians in jobs than in 1996, an increase of 14 per cent!

Mr Speaker, of the extra 525 jobs created last year, the largest number were created in the Construction industry (165), in the Finance Centre (103), in the Gambling industry (98), in Transport and Communications (56) and in the wholesale and retail trade (46).

Employment in the private sector grew by 546 or 3.6 per cent, and in the public sector it fell by 41 per cent or just under 1 per cent mainly as a result of the shedding by some Government companies of some of the surplus staff inherited from the failed Haymills Construction companies.

Mr Speaker, employment in the MOD increased by 20 or 2.7 per cent. Accordingly, Mr Speaker, of the total 20,975 jobs in the economy:

15,759 or 75.1 per cent were in the private sector;  
4,460 or 21.3 per cent were in the Gibraltar public sector;  
756 or 3.6 per cent of the overall total were in the MOD.

By way of further breakdown Mr Speaker, 12,406 were males and 8,569 were females. 17,392 were full-time and 3,583 were part time. The vast majority of part time workers were in the private sector (2,987), Gibraltarian (2,239) and women (2,358).

Mr Speaker, the four largest sectors of activity by employment are:

Wholesale and retail trade – 2,989 jobs;  
Financial Centre – 2,977 jobs;  
Construction industry – 2,722 jobs;  
Gambling industry - 2,230 jobs.

The unemployment rate among Gibraltarians is very low by international standards at just under 2 per cent (1.8 per cent) of the overall work force. The monthly average last year was 415, lower than in 1998, but slightly higher than more recent figures. These figures include a variety of people, some of whom register to access social security and social assistance payments without being committed to seeking work.

But the figures do contain some people who do seek work. Some of those have problems of skills, others have social and other issues that render them unattractive to employers. Some

are looking for specific types of work and will not accept available jobs. Some cannot find work.

The Government therefore continues to focus its efforts on enabling the economy to continue to grow the number of jobs, both for school leavers and graduates, and also on creating schemes to assist into work those who are not attractive to employers and thus remain unemployed on a long term basis.

Mr Speaker, the great majority of school leavers and returning graduates do find employment in real productive jobs or further training and education opportunities. At present, there are six graduates registered as seeking employment. It is therefore important that returning graduates are not patronised by unnecessary and electorally motivated offers of employment by the Government in manufactured, nonexistent jobs at tax payers' expense, when the economy has shown that it remains entirely able to absorb them into real, proper jobs and into the real economy.

## **GOVERNMENT BUDGET SURPLUS 2010/2011**

Mr Speaker, in the financial year just ended on 31<sup>st</sup> March 2011 the Government produced an overall recurrent revenue and expenditure budget surplus of £28.3 million, which is just a shade below last year's record surplus of £29.4 million.

This surplus of £28.3 million is produced on the basis of overall recurrent revenue of £382 million and overall recurrent expenditure of £353.7 million.

## **Revenue 2010/2011**

Forecast outturn overall recurrent revenue of £382 million compares to a restated estimate for the year of £349.6 million, and a restated actual revenue for the previous year, 2009/2010, of £334.2 million. This represents an improvement over the

estimated figure of £32.4 million, and an increase in revenue over the previous year in actual terms of £47.8 million.

Mr Speaker, as against the previous year's revenue, the £47.8 million extra received in 2010/2011 represents an increase year on year of 14.3 per cent and was mainly due to increases in the following revenue items:

Income tax	£ 6.9 m
Company tax	£ 0.5 m
Import duties	£ 28.9 m
Stamp duties	£ 0.9 m
Rates	£ 1.2 m
Consolidated Fund interest	£ 3.9 m
Port Authority revenue	£ 1.1 m
Electricity Authority	£ 1.9 m
Health Authority revenue	£ 4.6 m
Savings Bank surplus	£ 0.9 m

supplemented by a few smaller items of increase and offset by a number of revenue decreases, the largest of which was in respect of exempt company tax in the sum of £1.5 million.

As against the year's estimate, revenue at £32.4 million higher represented an increase of 9.3 per cent and was mainly due to the following variances against what had been estimated:

Income tax	£ 1.5 m
Company tax	£11.0 m
Import duty	£17.3 m
Consolidated Fund interest	£ 1.2 m
Port Authority revenue	£ 0.9 m
Health Authority revenue	£ 2.4 m
Saving Bank surplus	£ 0.9 m

again, supplemented by a few items of increase and offset by a number of items where revenue fell short of the estimate, the largest items of which were company exempt tax (£0.8 million),

Gaming Tax (£0.5 million), rates (£0.7 million), coinage (£0.7 million) and Electricity Authority (£0.6 million).

Mr Speaker, revenue from company tax had been estimated at only £18 million to reflect the effect of the transition arrangements under the new tax legislation as they stood in draft at the time of the estimate. The outturn for the year was the more normal figure of £29 million because the draft transition arrangements were changed prior to the Bill coming to the House but after last year's estimate.

This figure of £29 million in company tax collected in the last financial year includes no contribution from the previously tax exempt companies. They do not make a contribution until August this year. The £29 million represents the effect of the transition arrangements on previously existing taxpaying companies only, namely, tax for half a year at 22 per cent and for half a year at 10 per cent.

Therefore, Mr Speaker, assuming no change in their profitability, these companies will only pay £18.1 million. That is to say, the companies that paid £29 million last year would only pay £18.1 million this current year when they pay on the basis of 10 per cent for the full 12 month period. The resulting revenue loss of £10.8 million is what needs to be replaced with tax, hopefully to be paid, by previously exempt companies. Since those newly tax paying companies have to pay half this year's tax on account in August of this year, we will know then whether we are likely to fill that hole fully or not, or perhaps exceed it.

### **Expenditure 2010/2011**

Turning to expenditure, Mr Speaker, for 2010/2011. The forecast outturn overall recurrent expenditure of £353.7 million represents a year on year growth in actual expenditure of £48.8 million, and £17.3 million more than had been estimated.

The £48.8 million increase in expenditure year on year is accounted for mainly by increases in the following:

Civil Service pensions	£ 3.3 m
Public debt charges	£ 5.9 m
Repayments of Revenue (tax refunds)	£ 5.0 m
Personal Emoluments (Civil Service salaries)	£ 1.9 m
Scholarships	£ 1.6 m
Sport and Leisure	£ 0.6 m
Street cleaning	£ 0.7 m
Care Agency	£ 1.7 m
Social Assistance Fund	£13.5 m
Electricity Authority	£ 4.3 m
Payment to AquaGib in lieu of tariff rise	£ 0.8 m
Health Authority	£ 5.6 m

Mr Speaker, as against the estimate the principal items of expenditure underestimated were:

Civil Service pensions	£ 2.6 m
Public debt charges	£ 2.0 m
Tax refunds	£ 5.0 m
Scholarships	£ 0.7 m
Street cleaning	£ 0.5 m
Social Assistance Fund	£ 1.5 m
Electricity Authority	£ 2.4 m
AquaGib in lieu of tariff increase	£ 1.1 m
Health Authority	£ 5.3 m
Legal fees	£ 0.5 m

all supplemented by smaller items of underestimated expenditure and offset by some items of overestimated expenditure and also the £6 million provided for in Pay Settlements and Supplementary Funding votes.

Mr Speaker, by way of summary of recurrent expenditure, the main areas of expenditure of the £353.7 million spent last year

were as follows (items on which annual expenditure exceeded £10 million):

Health £78.65 million, representing 22.24 per cent of total Government recurrent expenditure, of which £39.76 million were payroll costs;

Electricity £32.7 million, representing 9.25 per cent of total overall Government expenditure, of which £7.8 million were payroll costs;

Education £27.6 million, representing 7.8 per cent of the total, of which £18.5 million were payroll costs;

Civil Service pensions £26.95 million, representing 7.6 per cent of the total;

Social Assistance £19 million, representing 5.4 per cent of the total;

Public debt servicing £17.5 million, representing 4.9 per cent of the total;

Care services £16.5 million, representing 4.7 per cent of the total;

Environment £14.4 million, representing 4 per cent of the total;

Policing £10.5 million, representing 3 per cent of the total;

Housing £10.4 million, representing 2.9 per cent of the total;

Those are annual recurrent budgetary expenditure. The main items of.

Mr Speaker, overall recurrent expenditure last year amounted to 35.33 per cent of 2010/2011 GDP, assuming as I have done just a 5 per cent GDP growth in the year to March 2011. In the UK,

that figure of 35.33 per cent which is the relationship between recurrent expenditure and the size of our economy GDP, is 41.6 per cent. On the other hand, overall recurrent revenue in Gibraltar was 38.2 per cent of GDP compared to 35 per cent of GDP in the United Kingdom. Accordingly, as a proportion of the size of our economy our expenditure is lower and our revenue is higher than is the case in the United Kingdom.

Mr Speaker, I have excluded from all this analysis of recurrent revenue and expenditure two items of exceptional revenue, totalling £5.75 million, and four items of exceptional expenditure, totalling £3.12 million, which together all produce an additional exceptional surplus for the year of £2.64 million. The details, for those members of the House that are interested in them, are on page 2 of the Budget Book.

The overall surplus for the year therefore, including exceptional items, was £31 million, representing 3.1 per cent of GDP, 8.8 per cent of overall expenditure and 8 per cent of overall revenue.

## **BUDGET OF REVENUE AND EXPENDITURE FOR 2011/2012**

Mr Speaker, turning now to the budget of revenue and expenditure for the current financial year. For the current financial year which commenced on 1<sup>st</sup> April 2011, we are budgeting for a budget surplus of £21.5 million, based on estimated revenue of £393.7 million, up £11.7 million on last year, and estimated expenditure of £372.2 million, up £18.5 million or 5.2 per cent on last year.

The main items of revenue being estimated to rise are:

Rates	£6.5m
(reflecting the fact that Government starts paying rates this year)	
Company tax	£1.0m
Import duty	£1.2m

Health Authority	£1.9m
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The main items of expenditure being estimated to rise this year are:

Personal Emoluments	£2.0m
Consolidated Fund charges	£0.8m
Training courses	£0.8m
Social Assistance Fund	£0.9m
Care Agency	£0.7m
Rates on Government buildings	£5.0m
(which counterbalances the proposed increase in rates)	

Rent on Government offices	£2.0m
Supplementary Expenditure	£5.0m

## **CAPITAL PROJECTS INVESTMENT PROGRAMME**

Mr Speaker, turning now to the Government's capital investment programme. In the last financial year, the Government made significant progress with its capital investment programme.

A total of £158 million was spent during the year, £95m through the Improvement and Development Fund and £63 million through Government owned companies. This is very close to the figure of £150 million that I estimated in last year's budget address.

The £95 million spent through the Improvement and Development Fund excludes the £34 million of equity funding to Gibraltar Investment (Holdings) Limited, since otherwise there would be a double counting of the spend incurred through the companies.

The £95 million spent through the Improvement and Development Fund comprised mainly the following projects:

Orange Bastion, Fish Market Road and Market Place - £1.07m

Europa Point - £2.53m  
 Tunnels and Roads to North Front - £20.6m  
 Devil's Tower Road and others - £8.4m  
 MOD and other relocations - £9.6m  
 Air Terminal – £22.8m  
 Law Courts – £2.68m  
 Westside Revetment and Promenade repairs and rebuilding - £7.7m  
 Old Peoples' home and school works at Old St Bernard's Hospital site - £1.87m  
 Old Peoples' home, home for people with debilitating illnesses, elderly day care centre and new mental health hospital all on the site of the Old Naval Hospital on Europa Road - £2.24m.

Sundry items of expenditure on:

Playgrounds  
 New Women's hostel at Lopez's Ramp  
 New Prison  
 New Cancer Relief Centre  
 Bus Shelters  
 Public toilets

Departmental Expenditure - £10.72m

Mr Speaker, some of these projects have not yet received much publicity and thus deserve a special mention because they represent major quantitative and qualitative steps forward in elderly care and other social care service provision in Gibraltar, and form an important part of the Government's programme to upgrade our social and care services.

The John Mackintosh Wing at the old St Bernard's hospital is being converted into a 71 bed residence for old people with moderate independent living capacity.

The old BFBS building has been converted into a new Lady Williams Centre and centre for Cancer Relief including for the first time a hospice.

One block at the old Naval Hospital on Europa Road is being converted into a new mental health hospital.

The old administration building at the old Naval Hospital is being converted into a residential home for people with seriously debilitating illnesses that the state needs to take over long-term residential care responsibility for.

Another block at the old Naval Hospital is being converted into a specialist residential home for people suffering from Alzheimer's and dementia and this is expected to be ready in October.

An elderly peoples day hospital and day care centre is being built on land within the old Naval Hospital complex. This will allow carers of elderly people who themselves work to make arrangements for their elderly to be looked after during the day, and thus obtain respite themselves.

Each of these facilities at the old Naval Hospital will be, and will operate as totally separate and distinct care facilities.

The old colonial hospital buildings at the old St Bernard's Hospital are being converted into a combined First and Middle School to replace St Bernard's and Sacred Heart Schools. In addition, the historical façade of the building is being re exposed and restored into one of Gibraltar's most historically important and prominent buildings on the urban landscape of our city.

Mr Speaker, each of these facilities represents significant development in our care services. Together they represent the most significant development in our care service for several generations. They represent a massive step forward into the 21<sup>st</sup> Century and respite and relief for very many families struggling to care for their incapacitated elderly folk at home.

Mr Speaker, the £62.8 million spent through Government companies last year consisted mainly of:

Affordable homes: Cumberland, Bayview, Nelson's View - £10.1 m

Affordable homes: Waterport Terraces - £7.2 m

Affordable homes: Upper town, Calpe Barracks, Castle Street, Flat Bastion Road - £ 0.7 m

Rental homes: Mid-Harbour Estate - £33 m

Homes repairs: Brympton Estate - £0.1 m

Homes repairs: Montagu Gardens/ Montagu Crescent - £4.9 m

Car Parks - £1.7 m

Infrastructure - £1.5 m

New buses- £0.3 m

Mr Speaker, during the current financial year the Government estimates that it will spend around £110 million, £70 million of which will be through the Improvement and Development Fund, and £40 million through Government companies.

The £40 million through companies will comprise mainly Mid-Harbour Estate, completion costs (£18.5 million), Montagu Gardens/Crescent repairs, a further (£9 million) and infrastructure works totalling (£10 million).

The spend through the Improvement and Development Fund will be mainly on completing the projects that I have just mentioned. Departmental expenditure of £10.6 million, £4 million on new reclamation projects and just a handful of new projects, including a men's half way house, restoring the Old Guard in John Mackintosh Square and the Royal Gibraltar Regiment museum at Grand Battery.

## **GOVERNMENT DEBT AND RESERVES**

Mr Speaker, turning now to Government debt and reserves. Gross Government borrowing as at 31<sup>st</sup> March stood at £480 million. More than half of that sum, that is, £263.5 million is held

by the Government in cash. This produces a net public debt that is to say, borrowings minus cash held in reserves, of just under £217 million, £216.7 million. This represents 22.7 per cent of 2009/2010 GDP, and 21.7 per cent of 2010/2011 GDP, assuming just 5 per cent economic growth last year. Mr Speaker, in macroeconomic terms, this is a lower level of debt than existed in 1995, when net Government debt stood at 23 per cent of GDP.

Mr Speaker, as the House knows a Government owned company has also borrowed £20 million. This does not count legally as public debt, but if it did, public debt would represent just under 25 per cent of 2009/2010 GDP and 23.6 per cent of estimated 2010/2011 GDP.

Mr Speaker, may I remind this House that the majority of the £480 million has not been borrowed because Government needs it or wants it, or has spent it, but in order to give Gibraltar savers, especially pensioners, from whom we borrow through Government debentures, the opportunity to receive a higher rate of interest on their savings than the market will provide.

It may be, Mr Speaker, that it is not generally understood that when pensioners and other savers buy Government debentures that creates a debt or borrowing by the Government that is added to the Government's aggregate or gross debt. The majority of this money just sits in the Government's cash reserves.

In this way the Government subsidises, at considerable annual cost to the Government, the rate of interest that local pensioners and savers can get on their savings. It costs the Government nearly £9 million a year to do this, being the difference between the interest rate that the Government pays savers on debentures and the interest that the Government then earns when it places this same money on deposit in its cash reserve accounts!

The figure of £480 million borrowing has to be read and understood in this context. In the past, the value of these debentures did not inflate the gross Government debt figure because the debentures were issued by the Gibraltar Savings Bank, and legally that did not count as Government debt even though the Government was ultimately liable to the debenture holders. Now, because the debentures are issued directly by the Government they do count as Government debt and thus inflated the gross Government debt figure. Debentures account for £280 million of the £480 million gross debt as at 31<sup>st</sup> March. Mr Speaker, any sensible economic or political debate about the level of Government debt has to be on the basis of, as happens everywhere else, the net debt figure, namely £217 million and not the gross debt figure of £480 million.

Mr Speaker, the Government will continue to provide the benefit to pensioners and savers that it does through this means even if by doing so we expose ourselves to distorted political scaremongering about public debt levels. We will continue to issue debentures to savers and pensioners. Indeed, I can announce that the holding limit for the current issue of 5 per cent Fixed Monthly Income Debentures 31<sup>st</sup> December 2015 is being increased from the current £100,000 to £500,000.

Mr Speaker, in layman's terms the "real" Government debt at 31<sup>st</sup> March was £217 million, because the other £263 million which is the difference between the net debt and the gross debt amounting to £263m is held in cash by the Government. It is as if an individual owed the banks £1000, but had a savings account in the banks with £600 in them. His gross or aggregate debt is £1000, but his real or net indebtedness is £400 because he could pay off £600 of the bank loan whenever he wanted from the cash in his savings account.

Mr Speaker, in my budget address last year I expressed the view that net public debt would finish last year at 18.7 per cent of GDP and thereafter peak at around 23 per cent. We are running slightly ahead of this level, and the main reason for this

is delays in money coming in under the asset sales programme due to project delays and also delays in mortgage finance becoming available for purchasers due to the credit crunch.

Mr Speaker, our net debt thus remains low by normal economic measure and by reference to the levels in most other countries. Forty per cent is considered very prudent. In the UK it is 70 per cent and in much of Europe it exceeds 100 per cent. Indeed, as I have said, in macroeconomic terms it is at a lower level than it was in 1995.

Our net public debt also remains well within the ceiling permitted by our legislation which, as the House knows, places a ceiling on net public debt. Under this legal limit, public debt cannot be taken on if the effect of doing so would:

- increase net public debt to more than 40 per cent of GDP. That parameter would permit a net public debt of £400 million, compared to the current £217 million; or
- increases net public debt to more than 80 per cent of recurrent revenue. That would permit a net public debt of £305 million, compared to the current £216.7 million which is just under 57 per cent of revenue; or
- increase annual debt interest to more than 8 per cent of revenue. That would permit an annual interest bill of £30.5 million, compared to the current bill of £17.5 million, which is just under 5 per cent of revenue. It would permit a net public debt at current interest rates of £381 million, compared to the current net debt of £216.7 million.

Mr Speaker, since the law says that none of these three parameters can be exceeded, the statutory debt ceiling is effectively the one produced by the parameter that results in the lowest number. Therefore the statutory net public debt ceiling



currently stands at £305 million, compared to the current actual net debt figure of £216.7million.

## **15 YEARS OF GSD GOVERNMENT**

Mr Speaker, 16<sup>th</sup> May this year saw the 15<sup>th</sup> anniversary of the GSD's election into Government. The progress that Gibraltar has made in this period in every area of life, economic, social, urban environment, personal standards of living, quality and extent of public services and public amenities has been spectacular and evident for all to see.

- The economy has very nearly trebled in size.
- There are 8,000 more jobs (+62 per cent).
- There are 1,316 (+14 per cent) more Gibraltarians in jobs.
- More than £245 million has been generated in budget surpluses.
- Personal income tax burden has fallen by over 50 per cent.
- Nearly 7,000 people have been exempted from income tax altogether.
- Company tax has fallen from 35 per cent to 10 per cent, by 70 per cent.
- Take home pay has risen by 89 per cent, during a period that inflation has only been 38 per cent. Everybody, but especially the lowest paid workers, is therefore much much better off.
- Many taxes have been abolished altogether, such as death duties, tax on pension income, tax on savings and investment income, road tax, TV licence fees, stamp duty on affordable properties.
- Over £750 million has been invested in homes, hospitals, leisure facilities, in refurbishing and upgrading our roads, streets and squares and public buildings, in upgrading public amenities and infrastructure, in upgrading public services. In short, in modernising Gibraltar, in improving the quality of peoples' lives and in ensuring that our future generations can also enjoy success and prosperity.
- Our Health Service has been transformed. A new hospital, new health centre, new emergency ambulance services, annual spending on health has quadrupled, increased by a factor of four from £20 million a year to £80 million a year. Many new health services have been introduced. The number of health workers has more than doubled from 428 to 912. The number of nurses has increased by 114 or 40 per cent to 406, the number of Consultants, doctors and dentists has more than doubled from 33 to 70.
- Our Social or Care Services have undergone an even more radical transformation: in 1996 Government spending on social services was less than £1.5 million a year. That has risen to £16.5 million per annum, representing a tenfold (1000 per cent) increase in Care Services spending on the most vulnerable and needy in our community. The number of workers delivering Care Services has increased from 110 to 510, a fivefold increase and workers rights and protections have been greatly improved.

Mr Speaker, it is frankly difficult to overstate the huge progress that Gibraltar and its people have made economically and socially since 1996.

## THE PUBLIC SECTOR

Mr Speaker, the public service, meaning the Civil Service, GDC staff and the employees of Government controlled statutory Authorities and Agencies, and wholly owned Government Companies stood at 4,427 at the financial year end, a year on year fall of 63.

The breakdown between them stood as follows:

Civil Servants (permanent and pensionable)	2,940
Civil Servants (contract officers)	106
GDC Staff	160
Authorities, Agencies and Companies	1,221

Mr Speaker, during the last couple of years the Government and the three trade unions in Gibraltar, UNITE, GGCA and GTA/NASUWT have, as I had told this House in the past, been negotiating in relation to a number of strategic issues affecting the Civil Service and some other parts of the public sector. Earlier this year, the Government and the leaderships of the three unions came to a comprehensive and wide ranging agreement. This was subsequently rejected by the membership of the GGCA in a ballot, and the agreement will thus not proceed.

Some of the issues dealt with in the now jettisoned agreement are matters of Government manifesto commitments or policy, and I will now make announcements in respect of those. For the rest, as it is Government's very strong preference and longstanding policy and practice to proceed in such matters only

by agreement and consensus, those other issues will have to remain in abeyance pending a fresh negotiation with unions and staff side can take place.

Mr Speaker there were five issues that were included in the agreement which are the subject of manifesto commitments or policy:

### (i) Civil Service Occupational Pensions

Mr Speaker, the Civil Service final salary pension scheme is entirely unfunded. There is no pot of money to pay for it, and pensions are paid out of the Government's annual expenditure budget.

Civil Servants retire on a pension of two thirds of their final salary. The annual cost of the pensions therefore gets bigger and bigger as salaries rise and civil servants earning them retire. The cost of the Civil Service pension scheme has risen as follows:

- 1988 £3.8 million;
- 1996 £8.4 million;
- 2000 £11.2 million;
- 2005 £15.0 million;
- 2008 £20.0 million;
- 2011 £26.6 million. Up from £3.8 million in 1988.

Because it is unfunded, what it basically means is that we are leaving the pensions liability for current civil servants to our children and grandchildren, who will be the taxpayers in 33 years time when a civil servant recruited today reaches

retirement age. Just as we, today's taxpayers, are now paying the pensions of past civil servants who have retired and will pay the pensions of current civil servants when they retire.

So, the present system is that one generation employs civil servants, pays their wages and enjoys their services and a future generation pays the pensions liability of those same civil servants.

At present the economy is doing very well, and so this rising financial burden is not a problem at this time. But, if at some future time the economy were to do less well, this could become unaffordable and thus a serious problem for our children and grandchildren and for future generations in Gibraltar. We should eliminate that risk to them as soon as possible.

This can be done by establishing a new occupational pension system for future civil servants in which the Government and the employee both put aside each year a proportion of each employee's salary into a pension fund for that employee. When that employee retires, the accumulated account, that is, annual contributions plus accumulated investment profit and income over the whole career of that employee's pension fund, will be his or her occupational pension fund, which will thus no longer be linked to his or her final salary and will not be a financial burden on taxpayers at the time that he or she retires. This is called a Defined Contribution Provident Scheme.

What it means, Mr Speaker, is that when a civil servant retires in 33 years time, or whenever he retires, because he could then retire at any time, his pension fund will exist because it has been built up year by year through his working life, and therefore, the tax payers in 33 years time will not have to fund that pension out of their annual tax payments. The cost will have been spread over 33 years and paid annually by the taxpayers who employed and obtained the benefit of that civil servant.

Mr Speaker, this change in Civil Service occupational pension system will not affect existing employees who will continue to receive and enjoy their present pension arrangements. This is very different to what is happening in the United Kingdom and elsewhere where pension arrangements are being changed, even for existing employees, in order to save money. People in Gibraltar will have seen in the international press and media how Governments all over Europe and most large companies indeed are reforming their final salary pension schemes for the same reasons as I have just explained.

The changes that I have just announced are not to save money now. Indeed, the changes that I have just announced will cost the Government more money for many years because Government will have to continue to fund the pensions for existing civil servants and existing Civil Service pensioners and at the same time fund the annual contributions into the pension pot of each new, future civil servant under the new scheme and this latter liability under the old scheme we will all forget because it was a problem for some future generations.

So this is not about saving money now. It costs more money now. There is nothing in this for the Government today except extra cost. So this is about taking seriously our responsibility to our children and to our grandchildren and to future generations by relieving them of the need to pay later for the cost of things that we do, enjoy and decide today.

Mr Speaker, the leaderships of the unions have long ago accepted the need for such a change. UNITE and GGCA have already accepted this new pensions regime and the principles underpinning it for all new, future employees of the statutory Agencies and Authorities that have been created. So, it is already the case that all future recruits into the Health Authority, the Electricity Authority, the Care Agency, the Sports and Leisure Authority and the Port Authority will be employed, as many have already been employed, on these new pension terms.

Over 1,017 public sector workers are already employed on the basis of this new pension scheme. This represents nearly 25 per cent of existing public sector workers. Mr Speaker, this pension scheme that already applies to nearly 25 per cent of public sector workers and which already applies to new entrants into Authorities and Agencies that used to be Government departments, will now also be extended to new, future recruits into the Civil Service itself.

Accordingly, Mr Speaker, with effect from 1<sup>st</sup> January 2012, all new entrants into the Civil Service will be employed on Provident Scheme No. 2 terms, and not on the current final salary pension arrangements. During the next few months, the Government will put in place the necessary legislative amendments, and will enter into discussions with the relevant trade unions about the future pension status of a number of civil servants who are currently employed on contract, non pensionable terms.

However, Mr Speaker, the terms of the Provident No. 2 Pension Scheme will be improved both for new entrants into the Civil Service and indeed for existing staff of Government Agencies, Authorities and companies who are members of that scheme. This improvement will take the form of higher employer contributions.

## **(ii) Family Friendly Hours**

Mr Speaker, the second item that is a matter of Government policy is family friendly hours in the public sector. The Government wishes to encourage both family life and child raising, on the one hand, and home ownership on the other. Our society would also benefit from a better work/life balance.

The advent of greater home ownership means that there is a greater need for both husband and wife to work. In Gibraltar, grandparents help an awful lot, but, as they get older, this becomes more difficult and demanding; hence the

Government's policy commitment to family friendly working hours.

Accordingly, the Government will, during the next couple of weeks, introduce a voluntary special hours arrangement option for civil servants who have young children. Any officer wishing to avail themselves of this facility will be able to apply directly either to the Human Resources Manager or to the office of the Chief Secretary, as they prefer. Other officers will not be expected to take on extra workloads to cover for officers on reduced family friendly hours.

Mr Speaker, the Government proposes to extend the concept of family friendly hours and improved work/life balance to the standard working day in the Civil Service, and other appropriate parts of the public service. Accordingly, the Government will shortly conduct a survey of its staff to establish their views on the Government's proposal for new standard working hours.

## **(iii) Spouses and Children Scheme (WOPS)**

The third item was a pension provision for the spouses and children of public officers, civil servants. Civil servants, rather, what used to be known as WOPS. The Government has an unfulfilled manifesto commitment to make provision for the widows and dependent children of pensioners and employees. Participation will be entirely voluntary and the Government will therefore now make available to staff a scheme along the lines outlined to unions during the recent negotiations for the defunct global agreement. Unlike the old Widows and Orphans Pension Scheme, this new scheme will provide for spouses of both sexes and not just for widows.

## **(iv) GDC Employees inclusion in the Civil Service**

The fourth item was the status of GDC employees and their inclusion in the Civil Service. Mr Speaker, unlike Agencies and Authorities that have a functional responsibility or purpose, for

example, electricity or sport and leisure, port, health or care services, the GDC has no such statutory functional responsibility linked to the staff that it employs. It is simply an employment vehicle. Indeed, in many cases GDC staff work side by side with civil servants.

The principal reason for the growth in GDC staff since 1996 to the current number of around 160 has been the pensions issue, namely, so that staff recruited would go on to the Provident Scheme and not the Civil Service final salary scheme, thereby making a start on the reform agenda that I have described above. That reason for the GDC's existence will no longer exist once the pension arrangements are changed for new entrants into the Civil Service.

Accordingly, Mr Speaker, the Government will now proceed with the transfer of GDC staff into the Civil Service. This will be done in a way that does not affect in any way the present or future interests or promotion prospects of existing civil servants.

GDC employees who carry out duties for which there is not currently a corresponding grade in the Civil Service will transfer into the Civil Service into new grades established for them in the Civil Service with the same nomenclature of grade as they now use in the GDC. These new grades in the Civil Service will be ring fenced and officers will not have transfer or promotion rights into other grades or posts in the Civil Service.

GDC clerical and administrative staff will transfer into the equivalent grade in the Civil Service. However, they will be ring fenced and will not have the right to promotion or transfer outside of the function or activity in which they are presently engaged in the GDC. They will thus not compete with existing civil servants for present or future promotion opportunities in current Civil Service clerical or administrative posts. By the same token, current civil servants will not have the right to transfer or promote into service areas currently staffed by GDC employees.

Mr Speaker, this is a sensible rationalisation of the public sector that challenges or threatens no one.

#### **(v) Public Sector Pay**

Mr Speaker, the fifth item is public sector pay. I have said before in this House that the economic reasons why public sector pay has been frozen in the United Kingdom do not appertain to Gibraltar, that the Government was therefore minded to grant a public sector pay increase for 2011, even though one is not due under the parity principle and that the Government would engage in negotiations with the Unions on this matter. The Government has done so, and this was one of the matters covered by the rejected and thus now defunct global agreement.

Despite that rejection, the Government remains committed to granting a public sector pay rise, but as we said in the defunct agreement, without prejudice to the parity principle. Accordingly, unless the parity principle has delivered a higher pay rise for 2011, or a different agreement is in place in any area of the public service, public sector workers will receive a 2.5 per cent pay rise for 2011.

The Government remains committed to pay rises in such other future years in which the UK pay remains frozen due to economic conditions in the United Kingdom which do not prevail here.

#### **THE MINISTRY OF DEFENCE**

Mr Speaker, the Ministry of Defence remains important to Gibraltar. It remains an important employer, and its continued significant presence here is politically important to Gibraltar. Accordingly, the Government continues to negotiate and strike agreements with the Ministry of Defence in a number of areas which are mutually beneficial to Gibraltar and to the MOD, and which facilitate the MOD's continued significant presence here,

even in these times of severe budgetary pressure on the MOD and UK Government in general.

Mr Speaker, many hundreds of MOD and Serco employees enjoy job security and thus peace of mind, even in these times of job cuts elsewhere by the MOD, due to the Global Agreements negotiated by the Government with the MOD in 2007.

We have already signed agreements with the Ministry of Defence to transfer MOD laundry services to Government, and we will shortly be signing agreements for the provision by Government to MOD of electricity and certain health and education services. Other areas remain under discussion. In this way, the Government not only secures and stabilises local jobs, but also helps MOD to rationalise its local operations.

Another way in which this is being done, to mutual advantage and benefit, is lands transfer agreements. We have already had two, one in 2004 and another in 2007. These have already resulted in the MOD moving out of significant areas of Gibraltar and housing, which Government can then put to local use and include in the re zoning and general urban regeneration of Gibraltar. In turn, the Government pays for the relocation of the MOD into reduced areas of Gibraltar.

Mr Speaker, we are now negotiating, and hope shortly to conclude a further lands agreement which will be the largest to date and will see the Ministry of Defence transferring all land, buildings and housing, with the exception of a few remote operational facilities outside the reduced size Naval Base within the Dockyard area, the RAF Station at the airfield, the Four Corners Camp and the Devil's Tower Camp. So the MOD will focus on those four sites. This will provide many opportunities, including housing opportunities for Gibraltar.

## **NEW AIR TERMINAL**

Mr Speaker, Government expects that the splendid new air terminal will be ready in August and will be inaugurated in early September. As the Government has said on many occasions, the air terminal operations are exclusively under the control of the Gibraltar Government and other authorities and will be administered by the terminal's sole owner, that is Gibraltar Air Terminal Limited, a Company wholly owned and controlled by the Gibraltar Government.

Mr Speaker, the present air terminal is managed by Terminal Management Limited, a company that is privately owned by its directors. This arrangement will be discontinued and its working staff will be absorbed into Gibraltar Air Terminal Limited or other entity.

## **ESTABLISHMENT OF "BORDERS AND COASTGUARD AGENCY"**

Mr Speaker, immigration control at all of Gibraltar's entry points, including but not limited to the air terminal, and security at the various entry terminals is provided by security and immigration officers presently employed by a company called "Security and Immigration Limited" which is privately owned by its directors. This arrangement is also to be discontinued before the new air terminal becomes operational and the staff and the functions that they carry out will be transferred to a new Government agency to be called the Borders and Coastguard Agency. Legislation to establish the Borders and Coastguard Agency will be introduced in the House shortly.

The functions of the new Borders and Coastguard Agency will include the following:

- Immigration control at entry points;

- Passenger and baggage security and other security functions at the air terminal, cruise terminal, ferry terminal and other such places;
- Maritime search and rescue;
- General maritime response capability, including but not limited to pollution response;
- Patrolling of Gibraltar's territorial waters and maritime and terrestrial borders;
- Policing and enforcement of marine environmental protection laws;
- Policing and enforcement of maritime safety laws and port rules;
- Policing and enforcement of marine leisure laws;
- Policing and enforcement of bunkering rules and laws;
- Such other connected and related functions presently carried out by the Civil Service as Government may be able to agree with staff affected and their Unions.

Mr Speaker, these, and the RGP's own maritime duties which will continue, are the functions for which I said last year in the House that the Government would procure additional marine assets, and this is in hand. But I repeat, defending and upholding British sovereignty of Gibraltar's territorial waters against incursions by the armed forces of a foreign country is the function and duty of the British Government and not of the RGP or of the new Borders and Coastguard Agency, regardless of the number and size of boats that they may have.

## **GBC**

Mr Speaker, GBC, however much it may be part of our folklore to criticise it, is important to Gibraltar. It is important to our political and democratic process, to our cultural activities, to the reflection, projection and evolution of our identity, and in many other ways.

We may all sometimes criticise it, we may all have different views about the quality and nature of the programmes that it should broadcast or produce but, ultimately, we all support its continued existence. The time has come when that requires substantial investment in new premises and new studio equipment.

GBC's new studios will be provided in a refurbished and extended building in the Rooke Complex. This is expected to cost in the region of £5 million. In addition, the equipping of the new studios is expected to cost in the region of £7 million. The Government will make this £12 million investment available over a two or three-year period starting as soon as the Rooke building can be obtained from the Ministry of Defence which is expected to be some time soon during the current financial year. In addition, GBC's broadcasting infrastructure will need to be replaced to allow for digital broadcasting.

Mr Speaker, the Government is also committed to allow an expansion of GBC's annual operating budget to allow it to moderately increase its staffing levels and to address other outstanding staffing issues.

## **OLD AGE PENSIONS AND COMMUNITY CARE**

Mr Speaker, I have said before that the Government is committed to reforming pensions and Community Care, among other reasons, to avoid the threat of a future legal challenge for which we could no longer hold the UK responsible, and which may be a financial threat to future generations.

Gibraltar is past the stage where the financial support that is given to our elderly people needs to be in the form of charity. It would be much more compatible with the dignity and respect in which we hold our elderly in the modern Gibraltar that their financial support be a matter of legal, statutory right and not charity.

Accordingly, with effect from next year Community Care payments will become a statutory right and will be paid in conjunction with old age pensions. Everyone will continue to receive the same amount of money as they do now. There will be no losers. No one will lose out or receive less. But it will be a legal right and not a matter of charity.

## **BUSINESS SECTORS**

Mr Speaker, turning to the business sectors. Some business sectors in Gibraltar have done little better than mark time during the last year, reflecting the fact that due to economic recession elsewhere demand for Gibraltar's goods and services have at best flat lined, and in some sectors fallen a little, even though some other parts of the economy such as the Finance Centre have continued to grow.

The private sector of the economy has nevertheless achieved a creditable performance in difficult international and visitor market conditions. This assessment is borne out by some of the macro economic statistics for last year. The yield from company tax held up well. The private sector increased employment by 546 jobs. 165 were in the construction industry. 98 were in the Gaming industry, as I have said, but the rest were spread out in several sectors.

The construction industry is being sustained at this time by Government work, and the Government has implemented the Construction Industry Assistance Scheme to ensure that work is distributed in a way that ensures the survival of a well balanced local construction industry, while at the same time protecting the

interests of taxpayers. I recently made a lengthy statement in this House setting out details of the Scheme. Already, £12.4 million worth of works have been placed under the Scheme with six companies. A further £2 million is due to be placed soon.

The Gaming industry continues to contribute well to the local economy, and Gibraltar continues to consolidate its place as one of the world's premier locations of choice for reputable industry leaders. It is our firm intention to continue with our policy of selective licensing coupled with high standards of regulation, a formula that has led to Gibraltar's success in this area.

The Finance Centre has completed its journey from offshore tax haven to onshore European finance services centre and is now well placed to seize the opportunities offered by our status, reputation and new tax regime.

But there is work to do, and challenges ahead. These opportunities need to be seized and converted into real business opportunities, into real business delivered. They will not happen by themselves.

I remain concerned by the lack of supply of quality office space on a speculative basis. This is a real risk to our ability to attract businesses to Gibraltar. A Government owned company has funded itself to fill this gap if the private sector is unable to do this. We remain in negotiations that we are confident may avoid the need to do so. But no one should doubt the Government's firm determination to do so should real projects not begin to physically materialise soon. Gibraltar's macro economic interests require it.

Mr Speaker, I do not share the view recently expressed in the Chamber of Commerce Annual Report that the decision whether a scheme is viable should be market based and if the banks refused to lend or the developers do not have the cash to fund a viable development then that is for the market to determine and



that the Government should not intervene. That view appears to overlook the reality that banks are not lending due to property developers due to problems of their own and head office policies of their own, and not for reasons of any assessment of Gibraltar's economic position, needs or demands or even to do with the viability of the office development itself. It would be absurd for Gibraltar to miss out on economic developments for such reasons.

If there are no offices in Gibraltar then insurance companies, fund managers and gaming companies, much as they may want to so that demand would exist, cannot come here, create jobs here and help to grow our economy. Those companies would go elsewhere where they can find office space and our Finance Centre development would grind to a halt. The idea that the Government should stand by and allow that to happen because banks are making lending decisions for non-Gibraltar reasons or because property developers do not have the cash is not one that appeals to me or that the Government will genuflect to. But it is most certainly the Government's preference not to develop offices and to leave it to private developers – if they can! But if they cannot, inaction on the part of the Government would simply be irresponsible with Gibraltar's economic future and prosperity.

Mr Speaker, the Government and the Finance Centre industry have agreed the broad outlines of our joint approach to marketing and developing our Finance Centre so that it can move forward and upwards to its next level of achievement. This is important, and the Government will in the next few weeks issue advertisements for new positions within the Finance Centre Department that will significantly upgrade Government's resources and staff skills in this area.

As I have recently acknowledged publicly, Mr Speaker, there are a handful of issues relating to the new tax legislation or the way in which it is being applied that need to be reviewed. These include the tax treatment of entertainment and marketing

expenses, the allocation of expenses between taxable and non taxable income, the tax treatment of goods and services procured by head offices and the tax treatment of shared central, head office costs. These issues are in hand.

Mr Speaker, last year as part of its revenue rebalancing exercise in the context of the new 10 per cent company tax rate, the Government increased its revenue from the business sector through above inflation rate increases in social insurance contributions, which went up by 10 per cent, and in rates. Accordingly, I am not proposing any increase in social insurance contribution rate this year, to allow businesses a further year to absorb the effect of last year's increases on their business models. However, I should say that the Government remains committed to the principle of annual increases in line with inflation so as to avoid, as has happened in the past, the need for periodic sharp increases that may place undue pressure on businesses in the year in which they occur.

I agree with the view expressed by the Chamber of Commerce and the Gibraltar Federation of Small Businesses that the wholesale and retail trade remains a vitally important part of the economy. I am aware that many businesses in this sector are suffering the consequences of reduced spending by visitors and other cross border price competitive pressures.

Accordingly, Mr Speaker, to assist the wholesale and retail sectors, which also includes bars and restaurants, the rates early payment discount for that sector will now revert to 20 per cent.

Furthermore, in order to encourage bars and restaurants to adopt and maintain a "no smoking policy", any bar or restaurant that does so will be entitled to an additional refund of 10 per cent of rates paid. Bars and restaurants will have to register, commit and comply, and will forfeit this extra 10 per cent rebate if smoking is permitted in doors.

Furthermore, in order to assist retail trade by improving its capacity for price competitiveness the import duty on the following goods is reduced as of midnight last night from 12 per cent to 6 per cent:

- Televisions;
- HiFi and other electronic or electrical audio or visual equipment and accessories;
- Table ware and kitchen ware;
- Other household goods made of wood, plastic, china, glass, metal or natural materials;
- Sun glasses and spectacles;
- Lamps and lighting;
- Paints and varnishes;
- Tools;
- Toys;
- Porcelain goods, statues and ornamental pieces;
- Glassware objects and ornamental glassware, but not sheet glass.

## **TOBACCO**

In contrast, Mr Speaker, duty on cigarettes increases by 12 pence for a pack of 20, or £1.20 per carton of 200. Duty on Rolling Tobacco increases by £2.50 per 250 gram pouch.

## **PERSONAL TAXATION**

Moving now to personal taxation. Mr Speaker, this Government was first elected in May 1996 and since then it has reduced the effective rate of personal taxation each year and every year since it has been in office. Many people will not have taken stock of the huge reductions in the effective rates of income tax over that period.

Several thousand taxpayers have been saved tax altogether, that is to say, a 100 per cent tax cut, by raising the amount of income below which no tax is paid from £1,785 per annum, as it was in 1996, to £8,000 per annum as it is now, and by abolishing tax altogether on pensions and Community Care income and the introduction of the age allowance for people of pensionable age who work and have other income. Therefore, low earning workers and pensioners have been huge beneficiaries of our tax cutting policy.

For other taxpayers, the maximum effective rate of tax has fallen by between 43 per cent for individuals who earn £50,000, representing a tax saving of up to £9,028 a year, to 66 per cent reduction for individuals who earn £10,000, a tax saving of up to £1,575 a year. These have been very, very significant tax cuts, representing just one of the ways in which the Government has shared the fruits of our economic success amongst all in our community. And the biggest cuts in the effective rates of tax have been for the lowest paid workers and income earners.

Mr Speaker, this year will not be an exception, and the maximum effective rates of personal tax will therefore continue to fall. The rate of company tax has fallen to 10 per cent in order to keep our economy internationally attractive to businesses, and thus create jobs in Gibraltar. I have said that it is important to reduce the size of the gap between the company rate and the effective personal tax rate.

## Gross Income Based System

Mr Speaker the Gross Income Based System is currently very complicated. This system will thus be simplified and the tax rates and bands changed with effect from 1<sup>st</sup> July 2011 as follows:

- The top rate is reduced from 29 per cent to 28 per cent.
- The bottom rate is lowered from 8 per cent to 6 per cent.
- The income bands and tax rates for persons with incomes up to £25,000 will be as follows:

First	£10,000	at 6 per cent
Next	£7,000	at 20 per cent
	Balance	at 28 per cent

- The income bands and tax rates for persons with income above £25,000 will be as follows:

First	£17,000	at 16 per cent
Next	£8,000	at 19 per cent
	£15,000	at 25 per cent
	£65,000	at 28 per cent
	£395,000	at 25 per cent
	£200,000	at 18 per cent
	£300,000	at 10 per cent
	Balance	at 5 per cent.

Mr Speaker, for the 13,450 taxpayers who are already on the Gross Income Based System these changes are worth:

- Between £160 and £200 for people earning between £8000 and £10,000.
- Between £200 and £320 for people earning between £10,000 and £18,000.

- Between £320 and £1,162 for people earning between £18,000 and £40,000.
- Between £1,160 and £1,210 for people earning between £40,000 and £50,000.
- Between £1,210 and £1,260 for people earning between £50,000 and £60,000.
- Between £1,260 and £1,460 for people earning between £60,000 and £100,000.

Mr Speaker, these represent cuts ranging from 8 per cent up to 25 per cent of the current tax being paid by taxpayers on the Gross Income Based System.

A further 1,918 taxpayers presently on the Allowances Based System will now be better off under the Gross Income Based system and they will receive savings ranging between £200 or 2 per cent of their present tax bill, whichever is higher, and the above mentioned savings to be earned by people who are already on the Gross Income Based System, depending on their current income and allowances.

Mr Speaker, it is envisaged that after these measures the number of taxpayers that will be on the Gross Income Based System will be 15,368, or 86 per cent of the total number of people paying tax. The minimum effective tax rate on this system will thus now be 6 per cent and the maximum will be 24.99 per cent.

## Allowances Based System

Mr Speaker, all taxpayers on the Allowances Based System will receive a tax cut of £300 or 2 per cent of their tax bill, whichever is the greater, and that is the minimum increase that they will receive for 1,900 of them who are presently on the Allowance Based System that will receive actually a higher amount when

they have been migrated on to the Gross Income Based System. This will be delivered by means of a tax credit.

It is envisaged that after these measures there will be 2,486 tax payers, or 14 per cent of the total, still remaining on the Allowances Based System. In addition, there are 3,326 low income earners who pay no tax, and are therefore not tax payers, by virtue of the Allowances Based System.

Mr Speaker, the tax cutting measures that I have announced today will cost in the order of around £10 million a year.

### **Tax Cuts 1996 to 2011**

Mr Speaker, the effect of these tax cuts, when added to those between 1996 and 2010 is as follows:

- Everyone earning up to £15,000 will now pay tax at an effective rate lower than 11 per cent;
- Everyone that earns up to £20,000 will now pay tax at an effective rate lower than 15 per cent;
- Everyone earning up to £25,000 will now pay tax at an effective rate lower than 17 per cent;
- Everyone earning up to £40,000 will now pay tax at an effective rate lower than 20 per cent;
- 7,626 income earners, that is, 27.5 per cent of the total number of income earners, now pay zero tax thanks to the Government's abolition of tax on pensions, savings and the low paid. In 1,996 only 1,960 income earners, or 11 per cent of the total, paid no tax;
- 43 per cent of all income earners in Gibraltar will now pay tax at an effective rate of less than 15 per cent. So,

for 43 per cent of people that pay tax at all, they will be pay less than 15 per cent of their income in taxation;

- 85 per cent of all income earners will now pay tax at an effective rate of less than 20 per cent. That is to say, 85 per cent of all people that now pay tax, will pay less than 20 per cent of their income in taxation;
- Everyone will pay tax at an effective rate less than 25 per cent. In 1996/1997 this rate was up to nearly 50 per cent, that is to say, nearly double. So the highest possible rate of effective personal tax in Gibraltar is now 24.99 per cent, and that effective rate is not reached until income reaches £300,000 per annum, after which the effective rate begins to progressively fall again to 19 per cent at £1 million and the balance above £1 million is taxed at only 5 per cent, significantly lowering the effective rate for income above £1 million. So effectively, the maximum effective rate of tax in Gibraltar since 1996 on personal income has fallen from very nearly 50 per cent to 24.99 per cent. It has come down by half.

Mr Speaker, the following table shows the full magnitude of the personal tax cuts delivered by the GSD Government since 1996. It shows that the tax burden on a single person with personal allowance has fallen from a range of 16.29 per cent to 42.42 per cent, which is where somebody used to pay tax at that time, now, to a range that goes from 6 per cent, not 16.29 per cent, to 21.58 per cent, not 42.42 per cent. In other words, at least half, delivering tax savings of up to between £3,432 and £10,418 a year on incomes between £20,000 and £50,000 a year.

The savings have been even bigger for the lowest paid. Those on incomes of £10,000 to £15,000 have had effective tax cuts of between 62 per cent and 74 per cent, delivering savings of £1,775 to up to £2,561 a year. Those earning between £1,785 a year and £8,000 a year have had all of their tax cut, 100 per cent, delivering savings to the lowest paid of between £815 a

year and £1,715 a year. And, of course, Mr Speaker, in addition there are up to 3,400 pensioners who now pay no tax as a result of the abolition of tax on pensions and savings income.

So, Mr Speaker, in summary, after 15 years of relentless tax cutting by this Government, Gibraltar's personal tax system now delivers maximum effective taxation rates as follows:

Annual Income	Maximum Tax Payable & Effective Tax Rate: 1995/6	Maximum Tax Payable & Effective Tax Rate: 2011/12	Tax Saving in £ and as % of 1996 Tax
£5,000	£815 (16.29%)	Nil	£815 (100%)
£8,000	£1,715 (21.44%)	Nil	£1,715 (100%)
£10,000	£2,375 (23.75%)	£600 (6.00%)	£1,775 (74%)
£15,000	£4,161 (27.74%)	£1,600 (10.67%)	£2,561 (62%)
£20,000	£6,272 (31.36%)	£2,840 (14.20%)	£3,432 (55%)
£25,000	£8,708 (34.83%)	£4,240 (16.96%)	£4,468 (51%)
£30,000	£11,208 (37.36%)	£5,490 (18.30%)	£5,718 (51%)
£40,000	£16,208 (40.52%)	£7,990 (19.98%)	£8,218 (51%)
£50,000	£21,208 (42.42%)	£10,790 (21.58%)	£10,418 (49%)

### Summary of Gibraltar's new personal tax regime

In summary, Mr Speaker, after 15 years of relentless tax cutting by this Government Gibraltar's personal tax system now delivers maximum effective taxation rates as follows:

Total taxable Income	Effective tax Rate on taxable income
£0 to £8,000	0%
£ 8,000 to £15,000	less than 11%
£15,000 to £20,000	less than 15%
£20,000 to £25,000	less than 17%
£25,000 to £40,000	less than 20%
£40,000 and above	less than 25%

Around 2,500 taxpayers who will remain on the Allowances Based System will pay tax at effective rates lower than these.

### Traditional relationship between company and personal tax rates restored

Mr Speaker, the changes that I have announced today also achieve another important policy objective. Following the fall in the company tax rate from 35 per cent to 10 per cent, the traditional relationship between the company tax rate and the personal tax rates are restored. When the company tax rate was 35 per cent, the marginal rate of personal tax was 50 per cent, a difference between the two of 15 per cent in favour of the lower tax rate. Now, the company tax rate is 10 per cent and the maximum effective rate of personal tax is 25 per cent. So, the difference between the two is once again 15 per cent in favour of the company tax rate.

### OTHER BUDGET MEASURES

Mr Speaker, a series of other budget measures.

The Government will open another window of opportunity for married women to be able to pay the difference between the Married Women Contribution and the full Social Insurance Contribution for the purpose of enhancing their old age pension.

The Child Welfare Grant is a means tested social assistance presently not available for a first child. In future, those who are otherwise eligible for the assistance will also be eligible in respect of the first or only child at the rate of £25 per month.

Unemployment Benefit is increased by 10 per cent with effect from 1<sup>st</sup> July.

A Paternity Allowance Scheme is to be established similar to the Maternity Allowance Scheme. A weekly allowance of £87.64 will be paid for two weeks.

The UK Sponsored Patient maximum daily allowance is increased by just under 7 per cent to £61, and the allowance for

patients who choose to go to Spain and have to spend the night there is set at the same level. Following the last increase for the United Kingdom of 50 per cent, these increases will further financially assist patients and their escorts.

Last year university student maintenance grants increased by 10 per cent. For the next academic year beginning in September, they will increase by a further 6 per cent, worth an extra £261 to students outside the London area and an extra £358 to students in the London area. We also confirm our commitment to continue to pay tuition fees despite their near tripling in the United Kingdom.

Mr Speaker, I commend the Bill to the House.

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

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

This year it is my honour to rise to reply to the Hon Leader of the House in his presentation of the draft estimates of revenue and expenditure in respect of the Appropriation Bill for the financial year ending on 31<sup>st</sup> March 2012. That date is important, Mr Speaker. The 31<sup>st</sup> March is a date beyond the life of this Parliament. By the time this financial year is over, Gibraltar will have a new administration. The political colour of that administration is not a matter for us. It is a matter for the people. But in analysing these figures, we must be alive to the fact that they may represent the ideas of one administration that will bind a new administration after the coming general election.

It is a pleasure to rise to the reply to the hon Gentleman succeeding the hon Mr Bossano. He obviously leaves big shoes to fill, in this debate in particular. I am under no illusion that the Hon the Leader of the House will say anything to suggest that I may have acquitted myself well in the discharge of my function

as Mr Bossano's successor, perhaps unless I sit down now. No doubt this week in his reply, we will hear how good my predecessor was and how terrible I am and what an awful economist I would make. Well, Mr Speaker, as I am no economist, and neither is the Honourable the current Chief Minister, I will recall that he has consistently denigrated Mr Bossano who is an economist and then prosecuted him as the worst economist in the world. Never mind that everyone else in Gibraltar credits Mr Bossano with having turned our economy around and laid the building blocks for economic growth.

So, Mr Speaker, if Mr Bossano was a voodoo economist; I cannot begin to imagine to what depths my description will plunge when it comes. Never mind, we all know that the hon Gentleman is afflicted with the need to denigrate and we forgive his views as irrelevant anyway.

A completely different kettle of fish is the honourable and gallant Mr Britto, who I note has just stepped out, who has confirmed publicly that he will not be seeking re-election at the coming General Election. I have shadowed him in every portfolio I have held since I was elected in one way or another. He has always been gracious in his treatment of me and of this Parliament in the time that I have been here and I will miss his contributions. As the second longest serving member of this House bar Mr Bossano, I know we will all be the poorer for the absence of his contribution – although I was looking forward to him asking the questions after the election!

Mr Speaker, before I get into the substance of my address today, whilst I thank the Hon the Leader of the House for letting us have the amended pages of the estimates on Friday and not today, I must say that it is highly unsatisfactory for all Members that we should be having to see the numbers change so late in the day. We are supposed to have six weeks to analyse these figures. In fact, there have been changes notified as late as Friday and I think the unprecedented step taken of giving us a fresh book, given the extent of the changes that have had to be

notified. That is, of course, much more satisfactory than having to make changes in manuscript to the book when the hon Gentleman gets up on his feet and tells us that there are to be changes; but I know that he will join me in believing that there is a need to ensure that these problems do not occur again.

Mr Speaker, the debate on these estimates has long been a matter that has gone beyond simply analysing the numbers. This debate is now an enjoyable “state of the nation” debate which allows us all to review the past year and consider each others views on where the best interests of our nation will lie in the coming 12 months. Would that we could do that without having to watch the Hon the Leader of the House in his reply perform the spectacle of hurling insults to those of us assembled on these benches and not answering the substance of any of the points raised. Indeed, Mr Speaker, you will recall, no doubt, that last year I raised a number of issues during my intervention on this debate on which I asked for clarification from the Hon the Leader of House when he made his reply. A number of my colleagues also sought similar clarifications. But instead of getting any such clarifications, all we got was abuse. I must tell you, Mr Speaker, I was delighted with that. Delighted, Mr Speaker, because you will also no doubt recall that I told the House in my intervention that the hon Member, the current Chief Minister, reacts to difficult points of substance not with a detailed reply but with a barrage of insults and innuendos which avoids the issues raised. Imagine my delight when I was proved exactly right! This year, Mr Speaker, I expect nothing less from the hon Member. Being an election year, I would have thought that he will want to denigrate, insult and attempt to humiliate us even more. Judging by the reaction to last years diatribe, he should feel free to go ahead and do his worst; each insult and every poisonous remark helps us to show the rest of the electorate the serious problem that afflicts our community at the heart of Government! And in any event, I see in his treatment of his Ministers and those around him a touch of General Charles De Gaulle, who once said: “I respect only those who resist me; but I cannot tolerate them”. All of the spite and none of the

statesmanship for which that distinguished Frenchman was known.

Anyway, Mr Speaker, turning now to the estimates themselves. As I have said in previous years from this side of the House, there is absolutely no desire to see anything other than wealth and prosperity in our community – whoever may currently hold the purse strings. If hon Members of the Government benches think that we wish the opposite, as they sometimes say, they are wrong. As true patriots, we wish only to see a prosperous and socially just community where wealth is not to the preserve of the few but the status of all of those who aspire to it and work for it and a safety net is provided for those who cannot. Perhaps those principles are even common to most of us in this House whichever side we may presently sit on. Our political position is not that Gibraltar is not doing well. There are areas where things are not going as well as they could be and there are areas where things are actually going badly; trading conditions on Main Street are one issue for example. Our political position is that Gibraltar could be doing much better in terms of growth and that expenditure needs to be better calibrated. Things are not as rosy as we have been told today, Mr Speaker. There is another Gibraltar out there. No-one is starving; but there are long-term unemployed looking for promised jobs that never materialise and there are people who are finding it difficult to make ends meet as a result of year on year increases in the costs of utilities which have not been played out again this year, of course because of the looming election. There are many people who have to count the pennies to reach the end of the week. Some aspects of the measures announced by the hon Member today will help; but in our view they may not go far enough. If the economy is as buoyant as the Hon the current the Leader of the House suggests, then why has the top rate of tax gone down only 1 per cent and the lowest rate 2 per cent? Moreover, Mr Speaker, the increase of 7 per cent for sponsored patients up to £61 is precious little when people are out of Gibraltar having to make ends meet at the difficult time when they are ill or have ill relatives. And the discount reintroduced

only for the retail distributive trade in respect of rates. Mr Speaker, surely, if there are such reserves and there is such wealth and if we have successfully managed a reduction of corporation tax down to 10 per cent, should not the redistribution to workers, especially the very lowest paid, have been greater? Mr Speaker, in our manifesto for the last election we committed ourselves to a standard rate of tax of 18 per cent by this year based on a revenue of £400 million, which is not far from where we are today at £393 million, and a surplus of £40 million, although today the surplus is not even at £30 million. The surplus today is at £28 million below what we consider to have been an achievable target in these four years; but we are alive to the fact, Mr Speaker, of course, that the world wide credit crisis affecting businesses and the recession affecting the larger economies in the world really kicked off in 2008 after we made these predictions. Despite the repeated mantra that the world wide slowdown and recession has not affected Gibraltar, we all know that it has done in so many ways; in particular in the way it has affected the retail distributive trade in Main Street. At last, today, Mr Speaker, we have finally seen an admission of that from the Government. The budget does very little for traders, Mr Speaker, in particular those on Main Street – because reverting back to the discount position as it was last year – is in effect, Mr Speaker, an admission that it was wrong to have made the alteration last year. But based on the address by the hon Gentleman today, the growth rates we anticipated in our manifesto has clearly made it possible, in our view, to change the personal standard rates of tax – which would principally have favoured working people and would have been achievable. That would mean, Mr Speaker, that the standard rate of personal tax today would have been announced by a GSLP/Liberal Chief Minister to be 18 per cent as provided for in our manifesto. And what is more, Mr Speaker, as we also set out in our manifesto, all the existing allowances, the home owners, mortgage interest, life insurance et cetera, would have remained in place as deductions before arriving at the taxable income of individuals on that standard rate. And it was on the basis of those deductions that we anticipated the performance of

the economy and reserves set out in our manifesto. The rates of personal taxation announced today by the hon Member, although they are lower than last year and, therefore, will provide relief to taxpayers, are for the reasons I have set out, not the lower rates that we would have announced. In fact, Mr Speaker, for all of these reasons, the glowing report card that the Hon the Leader of the House gives himself will fool no-one. This cry of success that the Hon the current Chief Minister makes is simply the call of the smug self satisfaction of the boy who marks his own exam paper and tells the world that he has done so well.

The long and the short of it, Mr Speaker, is that after three long years of “take, take, take”, the public will not be fooled by one year of some “give”. After 15 long years of GSD Government, when people are told that our nation is more prosperous than ever but even the Hon Leader of the House has had to descend to accepting his failure to provide housing for our people earlier, there is as yet no appreciable decline in the housing waiting lists. Thousands of people are waiting for homes. Thousands of our people are waiting for work to be done in Government flats. And hundreds of thousands of pounds are paid to consultants without even having given a second thought to putting those contracts out to tender. Little wonder then, Mr Speaker, that the political fortunes of the Members opposite will, in our view, not be saved even by a give-away budget designed to reap its reward in votes for their party at the election and not designed to look forward a generation. Mr Speaker, there lies the inherent vice in the manner and action of this Government. For budget debates in these past four years have today been rendered just political theatre: putting up fees in post election and mid-term budgets and lowering rates the year before an election is called.

Mr Speaker, today this is not a Parliament, the Hon Gentleman has turned it into a veritable kasbah. A souk where he sells himself to the lowest bidder. Our people are not going to forget the three years of taking just because you have now arrived at



the one year of pre-election giving! Ask most politicians, Mr Speaker, what matters most to them at budget time and they will refer you to the substance of their portfolios. For some it might be Social Services, Employment, Culture, Health, Justice or the famous Education, Education, Education that Labour concentrated on in the United Kingdom in 1997. But not for the man at the centre of the parliamentary grouping opposite. For him it is not employment, employment, employment. It is not education, education, education. It is just plain and simple, plain and cynical: election, election, election. Using taxpayers money to buy taxpayers votes. This is not taking from Peter to pay Paul. This is Peter having taken from everyone last year to buy votes from all this year.

Mr Speaker, given how predictable the hon Member's tactics have become, what was always going to be evident and expected was that the rate of social insurance would not go up this year, given that it is an election year. The hon Gentleman in his reply to me last year more or less foreshadowed this, reminding me that social insurance had not been raised by the then Chief Minister in the budget of 1996 because that was an election year. Well, Mr Speaker, as I reminded the House last year, social insurance contributions were said by the Hon Leader of the House, when he was sitting on these benches, to be a tax. So despite the fact that social insurance for businesses has not gone up further this year, small businesses and employees across the board will continue to feel the effect of the massive year on year increases to which they have been subjected since 2008 and the hon Gentleman in my submission has said as much in accepting that they require a year in order to assimilate those earlier increases. In his manifesto for the 2000 election, the hon Gentleman boasted that he had only put up social insurance contributions once in four years. That is, between 1996 and 2000. How different his next manifesto will have to be, even though he has not increased social security this year. There can be no boasting now of only having put up social security once in the four year term. The real statistic is three consecutive yearly increases. In fact, the increases last

year alone rendered employees £73.84 worse off. As I reminded the House last year, in his budget address of 1995, the hon Gentleman said of social insurance that it "... is just hidden taxation, that is just a disguised increase in taxation." So, therefore, that which the Hon the Leader of the House described as a tax in 1995 has been increased in three of the past four years of this parliament, namely in 2008, 2009 and 2010. More recently, in his 2008 address to this House in the Budget the hon Gentleman said, "social insurance contributions were last increased in January 2005. That is, three and a half years ago. It is the policy of the Government and it is reflected in the fact that we have increased social insurance contributions usually at least once in every term, that the funding of the Social Insurance Scheme should at least keep up its inflation adjusted value. Accordingly, with effect from 1st July 2008, the maximum cap under the new Social Insurance System for both employers and employee contributions will increase by 10 per cent as follows: Employer by £2.62 a week from £26.20 to £28.82; Employee by £2.08 a week from £20.75 to £22.83 per week". That position, Mr Speaker, reflects that the GSD administration introduced a mechanism to create a minima and a maxima in respect of social insurance contributions. So in the first year of this analysis, in 2008, an employee's contribution increased by £2.08 a week or 10 per cent, that is to say, £108.16 a year. In 2009 an employee's contribution went up again, then by a further 4 per cent, or 91 pence a week. That is to say, a further £47.32 a year. In 2010, last year, Mr Speaker, a further increase to employees of 6 per cent, in other words, up by £1.42. That is to say, a further increase, just the increase of £73.84 a year. Well, Mr Speaker, as a result, these three consecutive years of rises in social insurance amount to having the employees' contribution alone increased by £229.32 over the past four financial years alone. An increase of £229 in the life of this Parliament! Social insurance employees contribution has gone up almost 20 per cent in the past four years! When looked at since 2005, the increases are even more remarkable. In 2005 the employee social insurance contributions were also increased by 10 per cent by £1.88 per week, working out to

£97.76 per employee per year. In total, therefore, when we look at the increases in the employees contribution on social insurance over the past six financial years the amount has gone up by £327.08. Mr Speaker, that amounts to increases in the employees social insurance contribution of approximately 30 per cent in the past six financial years. An above inflation average increase in social insurance contributions of 5 per cent per year on average. So much then, Mr Speaker, for only raising social insurance in line with inflation, as the hon Gentleman has also previously and today said. And remember Mr Speaker, that the hon Gentleman in his 1995 Budget address told the then House of Assembly that social security increases were just hidden taxation measures. "This is just a disguised increase in taxation" were the exact words he used Mr Speaker. Well, Mr Speaker, if that is the analysis he makes of social insurance contributions, then what we have seen in the past six years are above inflation "disguised increases in taxation" based on his analysis. For the employer's contribution the position is even worse. Last year the hon Gentleman delivered an increase to the employers' contribution of 10 per cent or almost £3.00 per week which is rounded up from £2.997. Mr Speaker, that produces an annual increase of £156 extra per employee per year. That is in addition to the 2008 increase in the employers contribution, which was also 10 per cent, up by £2.62 a week or £136.24 a year. And that also, of course, in addition to the increase in 2009 of 4 per cent or £1.15 a week namely £59.80 a year. In just those three years, the employers have been left £352.04 worse off per employee. Mr Speaker, what a way to increase the cost of doing business in Gibraltar! A massive increase in the life of this Parliament of what he used to call a tax when he was on these benches. One needs to add the figures for the increases in the Budget for 2005, when the social insurance contribution for employers also went up by 10 per cent, namely, £2.38 per week then, amounting to £123.76 a year. In that analysis we can see that the total increase in employer's contribution to social insurance has been £475.80 per employee in the five years since.

If there are more employees in the economy than ever before, as the Employment Survey tabled today shows; if we are running what are referred to continually as "record" surpluses, why is it that we have needed to dip our hands into the pockets of workers and employers for these increased social insurance contributions? Why have we had to suffer throughout this Parliament increases in the cost of doing business in Gibraltar by increases in electricity, rates discount deductions, et cetera? In fact, Mr Speaker, the reaction from the Chamber of Commerce last year was to say that the announcements by the hon Gentleman were "bad for business, bad for government revenues and bad for Gibraltar." Adding that "If the economy is so buoyant that the Government can announce a near £30 million surplus, why the need to have cost increases significantly ahead of inflation?" In fact, Mr Speaker, the House will recall that in 2009 the Government had made a concession to businesses in the retail, wholesale and leisure sectors by increasing the prepayment discount for prompt payment on rates from 10 per cent to 20 per cent. Last year, that measure was reversed although the Chamber insisted that "businesses in these sectors need this relief now more than ever." and I am delighted that the Hon the Leader of the House has heeded that call. The Chamber itself published an analysis of increases in business costs directly attributable to Government in the last five years which reflected the increase in social insurance payments I have alluded to, as well as highlighting that:

- electricity costs have increased by a record, another record Mr Speaker, a record 50 per cent; and
- water costs have risen a record, another record Mr Speaker, 39 per cent.

By the Chamber's own calculations, social insurance has gone up by 38 per cent in the same five year cycle. The equivalent rate of inflation over the period was just over 15 per cent. No other Government in the history of Gibraltar has ever increased utility costs as much – affecting businesses and workers alike.

Perhaps, the real reasoning why the Government has had to make these increases lies in the figures for gross and net debt which he has announced today. Mr Speaker, these are also records. They are record high levels of borrowing for our community, however they are calculated. Let us be very clear about what these estimates show. Gross aggregate public debt is now at £420 million. It has grown by over £90 million in one year. Last year it was at £388.7 million. If we look at the figure of net public debt, which does not reflect PFI arrangements, the latest figure we have is just shy of £220 million, a forecast outturn of £216.6 million as at 31<sup>st</sup> March 2011 and an estimate of over £221 million for next March. It is all there on page three of the estimates. Well, Mr Speaker, it is worth seeing where it is that the Hon the Leader of the House started his journey as Chief Minister from. Gross public debt in 1995 was £92 million, and he himself referred to it to being closer to £82 million in March 1996 in his Budget address of 2005. Net public debt in 1995 and in 1996 was zero. That is right, Mr Speaker. Zero. Applying the same method of calculation that is applied today in calculating these estimates of revenue and expenditure, the net public debt of Gibraltar in 1996 was zero. There was money in the various piggy banks, or the rainy day fund as it was also called, so that the gross debt of £92 million would have been extinguished by the piggy banks if all of them were included in the calculation as they are today. In fact, Mr Speaker, in his Budget address of 2005, the hon Gentleman said this: "Public debt is at £93 million, the level estimated at the start of the last financial year in the June 2004 budget. At £93 million it is only £10 million higher than net debt was in March 1995 when it stood at £83.1 million, when the economy was very much smaller. Despite increasing debt only modestly and increasing cash reserves, we have since 1995 invested more than £163 million in Gibraltar's infrastructure and capital projects." but, Mr Speaker, I emphasise, that the calculation of net debt on which I rely is the calculation of net debt in 1996 as calculated today. Now, I recall, Mr Speaker, from my position as a citizen at the time, when I was not a Member of this House, that the position of the GSD before the 1996 election was that the said gross

debt of £92 million should be expressed as being "a millstone round the neck of all Gibraltarians and of future generations." Apparently, then, the economically sensible thing was to talk about gross debt. Today, we are told that it is only economically sensible to talk about net debt. So be it, Mr Speaker. The calculation then made was of £3,000 due per man, woman and child or more than £6,000 per taxpayer and using the figure of £93 million rather than the lower figure of £83 million which the hon Gentleman told the House had been the position in 1995. If we were to use the figure of £83 million, the figure is closer to £2,700 per man, woman and child – but let us stick to the alarmist analysis they did then when they talked of £3,000 per man, woman and child on an assumed debt of £93 million. I know that this alarmist approach by the GSD raised the concerns of many in our community. Well, the alarmist approach of 1995 seems to have changed. It does not take a brilliant mathematician to work out that if the gross debt of 1995 at £92 million worked out at £3,000 per man, woman and child, the gross debt of today at £480 million works out to £16,000 per man, woman and child, more than five times, five times what it was when the GSD took over! It requires even less talent to work out that net debt per man, woman and child was zero in 1996 and that today, at a net debt of £216.5 million, net debt works out to £7,216 per man, woman and child! It does not take a brilliant mathematician either to work out that gross debt per voter in 1995 was £5,000 per voter based on 18,400 eligible voters. Today, Mr Speaker, gross debt at just under £500 million, £480 million, amounts to £23,762 per voter, more than four times what it was when the GSD took over. The same less than brilliant mathematician can easily work out that net debt per voter in 1996 was clearly zero and that today it has increased to a net debt per voter of £10,717. Mr Speaker, I have no doubt that in his reply the hon Gentleman is going to call me much less than a brilliant mathematician! But, Mr Speaker, the GSD view then was that a gross debt of £3,000 per man, woman and child was a "millstone" round the neck of future generations of Gibraltarians. The net debt then was in fact zero! Well, Mr Speaker, what has happened to the analysis of the party of the

hon the Leader of the House? How has he moved from thinking that zero net debt and £3,000 of gross debt per man, woman and child is a millstone to thinking that gross debt of £16,000 per voter, even greater per man, woman and child is acceptable? Even adjusting for inflation, even with the growth of the economy, these numbers have grown so exponentially that people are entitled to ask what happened to their concerns? Perhaps, he could descend to particulars and give us the answer in his reply? And, perhaps, he can tell us how the great economic guru that he paints himself as being, Mr Speaker, is going to lead us into reducing the debt? Mr Speaker, the analysis by man, woman and child was in my view an economically meaningless analysis then and it is a meaningless analysis now; but it is important to do it in order to understand how the analysis of the party opposite has changed. It is also important in order to understand the position the hon Gentleman inherited in the finances of Gibraltar, with a net debt of zero, as calculated today, and where he has brought us to. It has been a long journey, Mr Speaker, from a net debt of zero to a net debt of £220 million next March. It is an average growth of net debt of approximately £55 million per GSD term! In gross debt terms, the increase is in the order of £388 million in the past four terms. In other words, on average the GSD has cost the community almost £100 million in gross debt every one of their past four terms. Whilst we are being told by the hon Gentleman that the economic garden is green and fertile, the reality is that it is a little less lush. In fact, Mr Speaker, one is put in mind of the email that circulated last week of the spray painting of the grass at the Sundial Roundabout. Now it looks green and lush, but below, it is yellow with the spray paint the only thing turning it green. So Mr Speaker, when we are told that "Gibraltar has never been so well" the reality underlying that is that "Gibraltar has never been so in debt". Remember, Mr Speaker, that recurrent revenue is presently £382 million. That is almost £100 million less than gross debt and our net debt is approximately 55 per cent of our total recurring revenue. What security are we offering future generations? I do not believe in only saving for a rainy day. I do not believe in only having piggy banks. But I do

believe that there is room for less debt. So imagine, Mr Speaker, my surprise – and no doubt that of the rest of the community – when we find that, even in this state of debt, we can afford to hive down into companies a number of Government buildings to raise a mortgage for investment in the MidTown development! That is the wrong decision, Mr Speaker. We on this side of the House will not invest public money in that development. Hocking public buildings, to raise borrowing for this Midtown development, making the Government either financier or shareholder in this private development is the wrong decision.

And now, with the recurrent revenue at £382 million this year and estimated at £393 million for the next year, one of the main drivers of Government revenue is import duties; amounting to approximately one quarter of all recurrent revenue. Mr Speaker, the estimates do not reflect the breakdown in import duties by commodity; but it does not take a brilliant statistician to work out which one represents the largest of the duty collected, namely, tobacco. Certainly, something we need to consider carefully as a people is our attitude to tobacco and burning fossil fuels as those are changing the world over and they continue to be very large drivers of import duties in our community. In fact, only today, the hon Gentleman has encouraged, which I welcome, that establishments should be offering less smoking areas. As that happens around the world, the consumption of tobacco will obviously reduce.

I turn now Mr Speaker to deal with issues that relate to the media. Mr Speaker, the commitment to the future of GBC is shared across the floor of this House. Those of the problems identified in the review of GBC and which were published in the Government's announcement on the issues have still not been tackled. We were told at the last Question Time that we should expect an announcement shortly and we have now at last had it in the address from the Hon the Leader of the House. Nonetheless, one thing we are clearly committed to and which the members sitting opposite have already said they do not

agree with is the publication of the full “King Report” into the future of GBC should we form the next Government. Having said last year that, after Mr King’s appointment as CEO we would monitor how the proposed renewal of GBC progresses, there has been precious little change or progress to observe until today’s announcement. In its “position paper” on GBC, published on 2<sup>nd</sup> February 2010, that is, Mr Speaker, 18 months ago, we were told by the Hon the Minister for Broadcasting, that “GBC will be re-branded and re-launched as a ‘New’ GBC.” This is a direct quote, Mr Speaker. This will involve new programmes, focused on local productions, new sets and presentational style, new management, new logo et cetera. The re-launch will take place on a specific date, to be decided, during 2010.” Mr Speaker, that did not happen. There has been no shut down at midnight with a re-opening at 6am for the new, re-branded GBC we were promised and it has not been until today that we have seen any progress on this at all. The King Report cost us a small fortune and in great measure simply told us, at least in what was published of it, exactly what the professionals at GBC were already telling anyone who cared to listened what had to happen. Now, although one sees new computers at GBC and half hour Newswatch has been replaced by Newswatch for 15 minutes and News Plus for another 15 minutes, we are still waiting for something dramatic to happen to the output of the corporation – and that means investment in the human resources of GBC – the human capital and the professionals that will make it great. We are more than half way through 2011 and yet what we were promised would happen in 2010 has not yet materialised, although we are now told that GBC will move to Rooke. One thing is for sure: there was no new GBC in 2010, and all the great professionals that are ready to do a great job if they are allowed to get on with it, will now have at least the opportunity to start planning their move to Rooke.

But GBC is only one part of the media. In the print media, we have seen this year the re-emergence of Vox, but not as the hard copy, printed paper it once was. It has re-appeared

“online” without a printed version. We continue to see one particular publication receive thousands of pounds a month from the Government as its apparent sole source of income, namely, the 7 Days, which is the newspaper, assuming it is registered under the Newspapers Act, which is so transparently the scandal sheet of the party in Government that one hardly needs to spend time proving it to anyone with half a brain cell. Well, as I told the hon Gentleman last year, something has gone wrong and stayed wrong with his democratic compass to entice him to fund – using taxpayers’ money – a weekly publication that is transparently theirs – the GSD’s – in-house party organ. In this election year the decision to continue using taxpayers’ money to fund GSD propaganda is showing its much more dangerous side. The fact is that the Gibraltar Government controlled by the GSD is now using tax payers’ money to fund its publication of GSD propaganda in that newspaper. The use of tax payers’ money for this purpose is abhorrent to any democrat and may evidence that democracy in Gibraltar is not secure. Once those in power start to blatantly abuse the facilities which the state puts at their disposal for their own partisan ends, then democracy is threatened. The playing field for the election is not a level one if the party in power is using the tax payers’ resources to fund an advantage for itself in the printed media in this way. Mr Speaker, I cannot emphasise enough how out of hand the funding of 7 Days has got, how improper it clearly is and how contrary to established criteria for the proper application of public funds. We are talking about massive amounts of money, well over a hundred and fifty thousand pounds. In that context, Mr Speaker, I am sorry to have to say that the independence of the media, itself one of the instruments of democratic accountability, is now so threatened by the GSD Government’s funding of one particular publication with public money for its obvious partisan reasons that democracy is threatened, as tax payers’ money is being abused to unlevel the democratic playing field to an immeasurable extent. I cannot emphasise enough, Mr Speaker, how contrary to all established Westminster principles this is and how dramatically it affects the good Government of Gibraltar.

Last year, Mr Speaker, I had cause once again to refer also to the disgraceful way in which Clive Golt had suffered at the hon Gentleman's hands since 1996 for having had the temerity to stand for election against him then. I am delighted that at last the Leader of the House has recognised the serious error of his ways and taken Clive Golt into the Government's media office, and I very much look forward to working with him, Mr Speaker, should the electorate decide to entrust us with the future of our community's affairs after the next election.

Mr Speaker, the events of last week with a circular being issued to all the Civil Service by the current Chief Minister and his address today requires that I should make clear our position on the question of the integration of the staff of the Gibraltar Development Corporation into the Civil Service. Mr Speaker, I want to make it very clear that we do not support the position of the Government to proceed with the integration of GDC employees into the Civil Service thereby changing the status of this group of employees. The Government chose to make this conversion of employment status of GDC employees a matter for negotiation with the Civil Service Unions and accepted that the agreement reached was "ad referendum" to a process of consultation and approval by members of the GGCA. This much, Mr Speaker, was confirmed by the Chief Minister in answers to questions in this House. We do not agree that the way to proceed in industrial relations in this context, is to put a proposal to ballot which implies that those voting have a right to choose to say no, and prevent it from happening, and when the proposal is rejected to go ahead and impose it any way. It is of course entirely in tune with the Chief Minister's style of Government and we have seen "re-voting" happen before until people produce the "required" result. I have no doubt, Mr Speaker, that should the hon Member find that the result of the next General Election is not to his liking, we may all be asked to vote again and again and again until we get the result right! On the GGCA and GDC issues, I am making the policy of the Opposition clear today, because although it is not our role to intervene in employer and employee issues, today we are voting

the personal emoluments of all civil servants as part of these estimates, and that includes GDC employees who ceased to be GDC employees at the close of the last financial year and are being accorded Civil Service status backdated to the 1<sup>st</sup> April this year. Our vote for their salaries has to be interpreted as approval for the pay rise they have been granted, with whatever grades in the Civil Service structure the Government has allocated them into. This position is in accordance with the response of the GGCA to the Government proposal, which was that they should be given whatever pay scales the Government considered appropriate to their jobs but retain them as GDC employees. A position that we recommend the Government should accept; but after today I am sure there is no going back for him! The new pay increase we are voting in this Appropriation Bill for the former GDC employees is impossible to establish from the information that is available. We believe that the Parliament should have this information so that we know what we are voting. We will, therefore, be requesting this information in respect of the personal emoluments of each of the department heads of expenditure at the Committee Stage if it has not been provided before then. I would also like the mover when he exercises his right of reply to confirm that the termination of employment at the close of the last financial year with GDC and commencement as civil servants in the Government departments as from 1<sup>st</sup> April is a TUPE transfer, although it may be argued that it is an academic point since we understand that all those transferred are being placed at the point on the salary scales above their GDC salary and they will suffer no loss. We will also assume that since there is no funding in the estimates of expenditure since 1<sup>st</sup> April for the employees to be paid by the GDC, their new Civil Service salaries from the Consolidated Fund and retrospective to 1<sup>st</sup> April and they will be getting their salaries adjusted and backdated. I should like confirmation that this is indeed the case. And I note, Mr Speaker, the other announcements made by the hon Member in relation to the Civil Service.

Finally, Mr Speaker, I want to take this opportunity to thank all the public officers of Gibraltar, whether in the Civil Service or in the Gibraltar Development Corporation, in the Government Departments or in the Agencies that have sprung up in the past years, for the work they do in keeping our public administration going. From my conversations with the officers and shop stewards of UNITE and in the GGCA and in the Teachers Association, I have a very clear sense of the issues that they want to see us deal with going forward. Our criticisms in this debate and in this Parliament throughout the year and in press releases are, as ever, of the political Government and not of them. In addressing for ourselves the issues that arise in public sector reform, we hear the Gibraltar Federation of Small Businesses, the various Unions, namely, UNITE, the GGCA and the Teachers' Association, and the Chamber of Commerce. Their positions are not irreconcilable; with imagination and goodwill on all sides, which I know that for the good of our Community is there from all, I am sure that with the right investment, listening to the GGCA, UNITE and the GTA, we can produce a better public service both in terms of service to the public and to businesses and in terms of the type of employer that the Government is. And all of that, Mr Speaker, without having to go ahead unilaterally and impose anything on anyone. That is not my style.

Mr Speaker, before I sit down, the hon Gentleman has said that the MOD and Government will be entering into a new lands agreement. Can he in his reply please tell us how many homes are to be transferred to the Government under these arrangements.

I obviously want to add a special thank you, of course, to your staff here, Mr Speaker, to Melvyn, Frances and Kevin who assist all Members so diligently and graciously throughout the year. This year has again been a hard one for the Clerk to the Parliament and all the staff of the House as the new Register of Electors is being compiled. Mr Speaker, when they are not tolerating us, listening to our questions and our answers, and I

genuinely do not know which is worse for the casual observer, they are organising national elections, European elections or compiling one or other register for just that purpose. And then, of course, there is also Hansard to contend with. I know I speak for all sides of the House when I say that we do realise how much you get through and how much your help is essential to the workings of this place. Your kindness in the care and attention that you provide to all of us and your can-do attitude is the icing on the cake and it is right that both sides of the House should salute that position today because it is the last budget debate of this Parliament.

Mr Speaker, this year I think it is also fair to thank you personally for your kind attention on the changing of the guard on this side of the House when I took over the role of the Leader of the Opposition from the Hon Mr Bossano.

In his reply, among the insults, I ask the hon Gentleman to add something of substance and interest so that we might have the clarifications I have sought and that my honourable colleagues will be seeking too.

This is a state of the nation debate. So what is the state of the nation, Mr Speaker? The national gross debt is up to £480 million or almost £24,000 per voter. The national net debt is up at almost £220 million or almost £11,000 per voter. Social Insurance has risen 20 per cent in the past four years for workers.

Mr Speaker, the nation has had enough. Mr Speaker, the nation is let down by a Government that has not known how to resolve the plight of almost 400 unemployed. Mr Speaker, the nation is ready for a change of Government. The Government's ideas have petered out. Their energy has petered out. The public are saying that it is time for Peter to get out. Having said that, Mr Speaker, unfortunately, the Hon the Leader of the House looks like he is not going to call an election quite yet and is going to try to hang on and on; not availing himself quite yet of a better

“work/life” balance that those of us on this side of the House will be delighted to afford him.

Mr Speaker, Gibraltar cannot be without an Appropriation and we will, therefore, be supporting the expenditure proposed in the Bill and its Schedules with the observations that my fellow Opposition Members will be making in the coming hours and days and I am delighted to say, Mr Speaker, that this is not the most important speech I will be making this week.

### **HON J J NETTO:**

Mr Speaker, I am pleased and honoured to deliver my 16<sup>th</sup> Budget speech at this House. Our record shows that throughout all of this time an enormous effort has been done to reform and increase services to the people of Gibraltar and particularly so to vulnerable individuals and workers. Giving them better protection, developing existing services, creating new ones and raising standards throughout, but particularly more so, to those on the lower income group.

Once again, as I did last year, I wish to highlight that the budget of the Ministry for Family, Youth and Community Affairs, whilst it appears huge in comparison say with the other Ministries with a total estimate of £50,493,000, this can be explained primarily as a result of:

- (1) The payment to the Social Assistance Fund having increased from an estimate of £21,000,000 in the financial year 2010/2011, to an estimate of £23,400,000, this is as a result of the contribution that the Social Assistance Fund makes to Gibraltar Community Care Trust;
- (2) The contribution to the Care Agency from the Consolidated Fund of £17,177,000;

- (3) The contribution to the Statutory Benefits Fund of £7,500,000;
- (4) The recurrent expenditure in the Payroll and Other Charges in Head 5 A, Family and Community Affairs amounting to £2,009,000; and
- (5) The recurrent expenditure in the Payroll and Other Charges in Head 5 B Youth amounting to £407,000.

As hon Members are aware, my Ministry covers a wide spectrum of responsibilities from, Citizen’s Advice, Consumer, Civic Rights, Social Security, Drugs and Drugs Rehabilitation, Children’s Residential Services, Adult Social Services, People with Physical and Learning Disability, the Elderly and the Youth.

In providing this House with a panoramic view of my responsibilities, I will start with Consumer Affairs.

### **CONSUMER RIGHTS**

The department of Consumer Affairs continues to provide the public in general, inclusive of visiting tourists, an essential service when it comes to protecting their rights as consumers. Every year they deal with around 700 complaints by telephone, personally or through email. The nature of the complaints covers grievances against banks, insurances and against retailers. Due to this, they have opted to remain open at lunchtimes as consumers who are working need access to the Office in order to make a complaint or seek advice.

As always the local office continues to maintain close links with European and British networks in order to have early warning systems on faulty and dangerous products and services.

In addition, the Consumer Department do carry out inspections of petrol pumps at the various petrol stations in Gibraltar. The nature of the inspections is to ascertain that the pumps are



properly calibrated within the measurement of petrol being paid for.

Unfortunately, at my last Budget speech I did mention bringing in legislation with regard to Price Marking. However, this has taken more time than it should, nevertheless, the consultation period is over and we should publish the Bill shortly. Essentially, this will inform traders to indicate the price of supplies sold in any shop or premises in sterling.

### **CITIZEN'S ADVICE BUREAU**

For eight years now the Gibraltar Citizen's Advice Bureau has been providing essential services on a broad range of subjects to the local community.

Social policy is a very large part of the Bureau's work. Very often the clients they help are particularly vulnerable because of mental health problems, learning difficulties and are almost always reliant on Social Assistance benefits. They therefore provide social policy feedback to their Board and the Ministry describing the sort of problems that their clients face.

Their aim always at making life a little bit easier for vulnerable people, and to develop services within their remit.

The Bureau has felt that there is a need for a continuous professional development dealing with the emotional side of clients and for this reason they have set up a support network to share expertise and knowledge on handling delicate or difficult cases in various respective fields. The aim being to seek to improve the standards of their practice for the benefit of their clients.

Due to the role that the Bureau occupies within the Equal Opportunities Act 2006, a two day training course was organised last December, covering the topics of "Overview of Discrimination", "Grounds of Protection in Discrimination Cases",

"Discrimination in Context", "Evidence Gathering in Discrimination Cases" and "Remedies for Discrimination Problems".

In this course, 34 civil servants or officers in Government Departments, Authorities or Agencies, participated. Further opportunities in training are now being considered for employees in the private sector. In addition to the courses, awareness of employees' rights has been organised by distributing leaflets in the town centre last October under the heading "It is not okay for your rights to be ignored".

The Bureau, Mr Speaker, is always seeking ways to improve itself. This is why for nearly a year now they have had a UK Consultant for Citizen's Advice auditing and updating the Gibraltar's database.

In addition to this, they have written new documents about discrimination, unfair dismissal, complaints about public bodies, divorce and maternity rights at work. As the law in Gibraltar is not always the same as in Britain, it is important that the information is checked for accuracy.

Lastly, another area of great importance is the constant advice given to families and individuals with personal debt. Unfortunately, some clients do get, for a variety of reasons, into serious financial difficulties, and the Bureau is always there to give sensible and practical advice on how to manage repayments.

### **OFFICE OF THE OMBUDSMAN**

The Ombudsman in Gibraltar is committed to deliver the best possible service to those who seek his assistance. In order to achieve this, the Ombudsman continues with his policy of continued professional development in Ombudsman latest practices. Lately, two members of his staff have gained an

Award and Certificate in Ombudsman and Complaints Handling Practice from Queen Margaret's University in Edinburgh.

Later this year, the Ombudsman will launch a new website which will for the first time make available an Online Complaints form. Moreover, in an effort to heighten efficiency, reduce operating costs and help the environment, the Ombudsman has implemented a new procedure whereby, where possible, all correspondence with those under jurisdiction will be contacted via email rather than by conventional post.

Mr Speaker, after recording high numbers of complaints in their first few years, the numbers appear to have settled around the three to four hundred mark.

	<b>2008</b>	<b>2009</b>	<b>2010</b>
Complaints	305	356	399
Enquiries	136	127	132

During 2010 the top five entities against which they recorded complaints were:

Housing Department	91
Buildings and Works Department	80
Civil Status and Registration Office	28
Gibraltar Health Authority	22
Social Security Department	13

As part of his regular contact with Ombudsmen from other jurisdictions, under the auspices of the Public Sector Ombudsman Group, to which Gibraltar belongs, the Ombudsman recently visited Malta where the Maltese Ombudsman hosted the meeting of the Group which also marked the occasion of the Maltese Ombudsman's 15<sup>th</sup> anniversary. Those attending the meeting were the United Kingdom's Parliamentary and Health Service Ombudsman, the Public Sector Ombudsmen for England, Wales and Northern Ireland; and the Housing Ombudsman for England. To mark the

occasion, the Speaker of the Maltese Parliament, the Hon Michael Frendo MP, hosted a round-table debate on the relationship between Parliament and the Ombudsman. The Government Whip and an Elected Member of the Opposition also took part in the debate. The Maltese Ombudsman, Mr Joseph Said Pullicino, Chief Justice Emeritus, opened the debate highlighting the good relationship which he has with Parliament. He gave an account of his proposals for legislation in Malta whereby, based on the experiences that had been gained, the Ombudsman felt the need to propose institutional changes in the law aimed at achieving a measure of convergence between the Office of the Parliamentary Ombudsman and that of other autonomous institutions set up by the law, with a role analogous to that of the Parliamentary Ombudsman but only in respect of specific sectors. These institutions included the Audit Officer of the Malta Environment and the Planning Authority and the University Ombudsman. The Gibraltar Ombudsman spoke of the very high degree of independence that the Ombudsman enjoys in Gibraltar, the good working relationship with all those under his jurisdiction and explained how they relate to the media to create awareness of the Ombudsman. The following day the group held its usual meeting within the Parliament building by courtesy of the Speaker.

## **YOUTH SERVICES**

Young people continue to use the Youth Service facilities regularly and in steady numbers. The Youth Service has taken new areas of work whilst continuing to embrace tried and tested ways of reaching young people, addressing those issues of interest and concern to them.

In order to promote its work the Youth Service continues to improve its premises and facilities. Plater Youth Club and the Youth Centre have been extensively refurbished ensuring the quality and longevity of the facilities these premises provide.

The Youth Service delivers social education programmes in response to the preferences and needs identified with young people and in keeping with its Mission Statement. Youth club users and others who avail themselves of Youth Service programmes have been informed about drugs and alcohol, sex education and relationships, the dangers of smoking, life after school and looking for employment.

Life skills such as, having children, cooking, budgeting, personal appearance and healthy eating are part of the issues raised. Using fashion to gain in self confidence, learn about yourself and how best to get on with your friends, your parents, your family and adults generally are incorporated too.

Learning about the importance of information gathering and awareness highlighted with programmes that feature conservation and the environment, mental health and local natural history are important. Enjoying local facilities such as the Upper Rock, the beaches, the Botanical Gardens as well as the Leisure Centre and Sports Halls are excellent ways to develop a young person's potential.

Taking part in community initiatives to spread Christmas gifts to elderly citizens, fund raise for children's charity, organise and taking part in a treasure hunt to raise money for research in terminal illnesses. Take part in BBQ's, shopping days, and travel to the countryside and rivers in nearby Spain. Go bathing and wind-surfing in Tarifa. Visit the towns of Jimena de La Frontera and Sahara de Las Sierra as part of a residential or camping weekend. Have fun at Aqua Park, go jet skiing or take part in a group visit to Africa via a short ferry ride to Tangier and Asilah and witness a new culture and bustling communities provide opportunities to widen one's perspective of life and is of immense benefit to young people.

Via events and programmes such as these, the Youth Service provides opportunities for young people to learn about themselves, the world in which they live and that which is close

by and surrounds them. They get time to reflect upon their relationships with their parents and families, their friends, their responsibility and commitments, their sense of respect towards others as well as themselves. Young people are given the opportunity to listen to those around them and for others to do likewise with them. They learn from what they see and experience and then get to share their feelings and views with those accompanying them. They are encouraged to reach their own conclusions and to be true to their own decisions, often made difficult by the influences of peers and others.

The Youth Service has worked with many different agencies and individuals this past year. It has continued its support to the local Moroccan community with the "Wellington Front Project". Whilst attendance at all youth clubs is open to young people from all denominations, the Youth Service is responding to the wishes of the local Moroccan community to encourage their young people to identify with their parents' culture whilst being amenable to "social education" provision as are their peers. The Youth Services is addressing this by using premises under the auspices of the Moroccan Workers Association that are also used for the teaching and delivery of religious and Arabic instruction, as a meeting place cum youth club. These premises are frequented weekly by young people of Moroccan heritage and they get opportunities as their friends do in other youth clubs. These sessions are delivered on the same basis as any other youth club and will, in a due course, with the agreement of the Moroccan young people and their community, be moved to existing youth club premises for integration with main line provision.

Mr Speaker, during the past year, the Youth Service has also been working alongside both Comprehensive Schools and the College via PSHE. At these lessons, Youth Workers give young people information about the Youth Service and its work and open the opportunity for them to come forward with new hitherto untried ideas. Other sessions focusing on bullying, careers, bereavement and internet use delivered in conjunction with the

Royal Gibraltar Police and the Gibraltar Regulatory Authority, have also been included. Also, as part of the Youth Service commitment to young people still at school, Youth Workers have been quick to give students “personal support time” during school hours. Also, since September last year, Youth Workers have helped design and been assisting in the delivery of a “Vocational, functional skills programme”. This programme will enable more pupils to leave full-time education with a school certificate that focuses on life skills as well as academic achievement.

This past year has also seen the continuation of training for a crop of new Youth trainees. The course is totally youth club focused, ensuring that trainees get a full understanding of the requirements needed to fulfil these important and challenging posts. The programme also gives a clear picture of what can be expected should any trainee aspire to a voluntary or paid part time post in the future.

With the summer months now almost on us, evening sessions at youth clubs are sometimes substituted by other preferences. The changes are carried out because young people find other alternatives more appealing and hence other ways of engaging with them are identified and implemented. Outdoor events take a preference with day trips and outings being more popular than meetings in a club house.

The mainstay of any project or any facility is its workers. The people who have the ability to communicate, to respect and understand young people; to see beyond their expression of frustration, aggression and at times violence that obscure their real potential and value. It is the continued commitment and ability of Youth Workers to see beyond the obvious and continue to show young people that they are important, valued and respected that continue to attract them to the Youth Service facilities. The Youth Service's trump card is its staff. Their ability to understand the needs and preferences of its client group and their desire and commitment to work for their safety,

their development and their right to decide. It is hence as essential that as a Youth Service the needs of workers and their development is crucial, no less that they should feel valued and respected for their efforts and the quality of their work. These are the requirements that we expect them to stick to when working with young people. They deserve no less.

## **CARE AGENCY**

With the amalgamation of the Elderly Care Agency, the Social Services Agency and Bruce's Farm, the Care Agency has been progressing well over the past two years, going from strength to strength in the amount and quality of service(s) it provides and bringing in new ones.

The offices at Johnstone's Passage were inaugurated in March of this year following its total refurbishment and have brought together administration, personnel departments, finance and senior management from all of the old agencies, centralising them in one location. Now known as the Care Agency head office. The quality of the reconditioning is evident with modern, light, clean facilities for the staff employed there.

Mr Speaker, on children and family matters, I am pleased to be able to report that important changes to the provisions have been made. Firstly, the building passed on to the Agency by the Chief Minister, that is, Tangier View, for the provision of children in care is now fully operational. Six flats are being used as independent homes for two, three or four children, each flat having a staff group of approximately six Care Workers providing individualised and independent child centred care. Further to this, one flat is dedicated to preparing 16 to 18 year olds for leaving residence. Another flat is being used to offer respite care for children with a disability, plus another flat is used for mother and baby assessments. Secondly, with the appointment in October of a New Team Leader for Children and Families, Mrs Jackie Toft, and a Residential Homes Manager, Mrs Dolores Moreno, who is a Qualified Registered Nurse and

has a Diploma in Child Care, there is now a robust management team providing 24 hour supervision, support to the junior staff and the overseeing of practices. Thirdly, a comprehensive training programme for new and existing staff, together with new policies and procedures have been implemented. Furthermore, an educational support provision has been introduced whereby a Qualified Teacher will support the children and young people with their education in terms of help with homework and other activities, for example, sport/music/drama. Likewise, a qualified Cook has been employed to provide nutritional guidance to staff and meals to young people. It is my belief that the service provided to the children and young people in care has substantially improved.

Continuing with children and families matters, the Team Leader has commenced a permanent Duty Team, supplemented with a further Social Worker, dedicated to receiving referrals from any source including an e-mail referral system to report any concerns with regard to the safety of children.

Following the enactment of the Children Act in 2009, the Attorney General's Office provided a trainer to carry out training with regard to the interpretation of the legislation to Social Workers. There has been further in-depth Children Act training this year.

A new Fostering and Adoption Panel has been formed following review of the previous one. Training has been provided to all panel members and reserve members by experienced trainers from the British Adoption and Fostering Foundation in the UK. The Panel are now in operation and have already met as the newly formed Panel. This, in connection with my other Social Security measures that I will announce later, will go some way to assist the uptake for adoption.

Mr Speaker, Disability Services are progressing well. This year will see the third year of the Eastern Beach Mobility Service open during the summer season. The project will allow persons

with temporary or permanent disabilities, access to the beach with ease during the summer period. The service will allow individuals with disabilities a far greater integration into society and greater enjoyment for families and friends. Once again, the facilities will include a reception pergola which will be manned by staff from the Care Agency who are fully trained. The specialised equipment will include amphibious chairs, hoists and a wheelchair to assist with people wishing to access the services from their cars parked on the nearby car park. There will be three beach tents available which can be used by visitors to the service. I believe that all forward looking societies should do their utmost when removing physical and prejudiced attitudes that exclude some members of our society to the enjoyment they deserve. The Eastern Beach project is an important step in that direction.

Another step in that direction, is the re-opening of the Shopmobility Shop in April of this year. The Centre provides wheelchairs or mobility scooters to disabled persons. This facility will enhance the opportunity for locals and tourists alike to experience the town shopping or recreational facilities with friends or families.

Mr Speaker, the St Bernadette's' Resource Centre is now open all year round, with the exception of Bank Holidays. Hon Members will recall that the Adult Resource Centre at St Bernadette's Occupational Therapy Centre used to close during the summer, thereby causing much disruption to service users and families. The provision of these services, including a Sitting Service to enable Carers within the family to have a break, will enhance the lives of people with learning disabilities along with their families. St Bernadette's is undergoing refurbishment. The windows and doors to the whole Centre have been replaced. A new disabled bathroom has been created and the kitchen / dining facility has been totally refurbished. Several rooms such as the arts and crafts, service users' computer room, recreational room, living skills room, have been modernised and fitted with the appropriate equipment. The new computer room

has been installed with six computer units and computer tables and chairs and includes adjustable heights computer desks, specifically for the disabled. A terrace has been created within the outside garden so that service users can enjoy carrying out activities in the open air. A new manager for St. Bernadette's was appointed during the year, ensuring the smooth day to day running of the Resource Centre.

At Dr Giraldi Home, policies and procedures have been overhauled and at the same time we have employed six Qualified Nurses, whose skills encompass a wide range of different disciplines including Adult General, Mental health and Learning Disabilities. The Home has undergone a refurbishment to include bathrooms which have been installed with special baths and appropriate showering facilities for persons with disabilities. A new flat was created within this refurbishment and only one bedded flat remains to be completed within the next few months.

Mr Speaker, in Adult Services - in the last 12 months have been working on a vulnerable adults policy involving other Agencies, for example, GHA, RGP and voluntary services in order to update our procedures with regard to vulnerable adults in general.

The daycentres for the elderly people of Gibraltar continue to be very successful with them enjoying a day of different activities, a breakfast and a three course lunch at different locations within Gibraltar. Some clients have been to Spain for a lunch provided at a stunning location by the Mother Theresa Group. Other clients have enjoyed Easter lunches in Gibraltar. Again this year, we have been lucky to have the support of the Gibraltar Arts and Crafts Association at one of the five daycentres and the wide range of activities being undertaken at all the centres have been greatly appreciated by the people attending the centres. The daycentre that opens twice a week at Governor's Parade has been completely re-furbished and a new daycentre has been recently opened at Albert Risso House thanks to the kind

support of the Albert Risso Social Committee. This daycentre can cater for a larger number of people and it is hoped that we will be able to recruit more volunteers who will be able to assist the day care co-ordinator and her assistant and we can then increase the number of people who can attend.

The verbena held at the Police Social Club was attended by over 100 people who all thoroughly enjoyed the meal and live entertainment. The Christmas party was also well received by all who attended, especially the singing of Christmas carols by the children of St Paul's School singing Christmas carols that resulted in many a teary eye.

The Court Service team's work continues to increase with more requests being made for pre-sentencing reports. The request for family court welfare reports has also increased and, once all the new courts are opened, the work for the Court Service team will increase further. The number of people placed on Probation or Community Service Orders has also increased significantly with a number of juveniles being placed on attendance orders. The Community Service Officer has been very proactive in identifying a range of new placements across the city and are of great benefit to the people of Gibraltar. The placements range from work being undertaken for different organisations such as the Port Authority, Ministry of Culture, Heritage, Sports and Leisure, St John's Ambulance and various churches within the city to individual painting, cleaning and gardening jobs in the community. The work is closely monitored and of a high standard and whilst it gives the person on the Community Order the opportunity to pay back something to society, it is also greatly appreciated by all. There are currently over 50 people on Community Service Orders carrying out unpaid work in Gibraltar.

The Probation Officers continue to sit on the Parole Board and the Prison Board and their input continues to be of benefit to the different committees and their work will continue to increase with

the introduction of all the new legislation currently going through the House of Parliament.

## **ELDERLY SERVICES**

Turning to Elderly Services. The John Cochrane Unit which is part of Elderly Care Services situated within St. Bernard's Hospital, continues to thrive with providing care to elderly persons who cannot be discharged from hospital into the community. The young disabled person repatriated to Gibraltar from a UK hospital continues to be cared for by a dedicated staff on the ward. The Elderly Care Services continue to provide a high quality service evidenced by the continued thanks appreciation messages received by staff and management.

Domiciliary Care continues to be a valued service offered by the Agency since 2002. Last year the number of recipients was 87 but currently this Service is being received by 91 members of the community and is one of the more utilised areas of community care.

Mr Speaker, at the Royal Naval Hospital site, one of the large buildings has been given to the Care Agency in order to develop Elderly Care Services. Refurbishment is well underway and, in keeping with the age and heritage of the building itself, will contain 80 beds for people with Dementia. It is envisaged that those offered a place will be the medium to acute sufferers of Dementia and Alzheimer's. In addition to this, a further facility will provide a Day Hospital for therapies and activities to mild to medium sufferers. The completion date for the service is set for the latter part of this year.

A further building within the Royal Naval Hospital that used to be the administration block will be converted and refurbished in order to have a unit for young victims of debilitating diseases. This would therefore enhance the current support they and their families have. Most people without a medical background when trying to understand the definition of "Debilitating Diseases"

normally ask themselves what does this mean. Well, this could refer to a range of acute medical conditions but not exclusive as, Multiple Sclerosis, Huntington Chorea, Motor Neurone Disease, individuals who have suffered a major traffic accident with severe brain injury, et cetera, et cetera.

## **REHABILITATION SERVICES**

Mr Speaker, I am sure that few will disagree that Bruce's Farm Rehabilitation Centre has developed into a respected institution within our community. Since its establishment in September 1999 to December 2010 there have been 460 admissions and has played a crucial role in transforming the lives of many individuals and their families who suffer from the despair and destructiveness that is so much a part of addiction. From its charitable beginnings, the centre now continues to build on its successes and now operates as a fully integrated part of the Care Agency. As a result, Bruce's Farm enjoys close and professional relationships with other stakeholders in more effectively tackling the effects of alcohol and drugs at many levels.

Effective drug use prevention also occurs at various levels locally. This requires cooperation across the community. The voluntary sectors, schools, law enforcement, health providers, work together under the auspices of the Care Agency's Drug Rehabilitation Team on numerous initiatives. Within our Middle and Secondary Schools, continued investment in educational resources specific to drugs awareness, together with the input of the Care Agency's Drug Rehabilitation Team has enabled our educational establishments to deliver a clear and emphatic message on the risks of drugs and alcohol abuse.

The Drugs at Work Conference was one of the highlights of the past year in addressing the impact of drugs and alcohol. For the past few years, much of the work in the field of drugs awareness and prevention was targeted at young persons and high risk groups; this will continue. However, with the Drugs at Work

Conference the message was taken to a new level. At a very well attended event, with close to 200 delegates, a large cross section of Gibraltar's main employers were offered a series of presentations and advice on the implications of drug and alcohol misuse within the workplace. The interest generated by this conference has been such that plans for a second conference are well underway for this September.

The newly refurbished Gladys Perez Aftercare Centre is also being put to greater use in respect to the work of the Drug Rehabilitation Team. There is now increased support for families, those who have completed their residential treatment and those who may require any form of advice on any issue related to drug, alcohol and the impact of their misuse.

The enactment of the Crimes Bill which consolidates most of the legislation that creates criminal offences is much welcomed. I wish to particularly highlight the importance and value of section 502 which will now permit the fast tracking of the listing of new drugs/substances as controlled drugs. This will much assist in the eradication of drug/substance related issues which regrettably affect all of us in today's communities.

Mr Speaker, training remains an ongoing 'rolling' programme within the Care Agency with Generic Core Training and Induction Programmes being held three times a year, for a period of 15 days concurrently, based on the UK Common Induction Standards/Skills for Care to promote the health and safety for the benefit of service users and employees of the Agency. This provides a firm foundation for staff throughout the Agency to build and provide the opportunity for the recipient to keep up to date by attending refresher courses as well as continuing with mandatory areas of training. The training is provided by a variety of professionals both within and outside of the Agency and a wide range of subjects are covered including, Health and Safety in the work place, Manual Handling, Conflict Resolution, Food Hygiene, First Aid, Customer Care, Dealing with Challenging Behaviour and Brain Injury Awareness training.

Presentation Skills Courses are also being offered to encourage and support staff to participate in staff training. It is fair to say that nearly all of the Care Agency staff have received training in one or more areas of the topics on offer at this time. The Care Agency has extended invitations to other colleagues in Gibraltar, for example, the GHA, Sports and Leisure Authority, Youth Services and in one area of training a family member caring for a relative in the community.

The bi-annual Careers Fair took place in February this year and the Care Agency were also represented by a stand at the Victoria Stadium. Information booklets were printed along with small items with the Care Agency logo, to provide youngsters who visited the stand with information. The Careers Fair was the first to be represented by the services as 'The Care Agency'.

Links are continuing to be made and strengthened with the Care Agency and other charities/organisations et cetera, to enable working together for the benefit service users. The Alzheimer's and Dementia Support Group has a link with the Agency and when they organised a visit by a noted authority on Alzheimer's and Dementia, Dr. Nori Graham, the Group were keen to involve Elderly Care Services in the itinerary. Other links which have been encouraged are the Gibraltar Disability Society, the Down Syndrome Adult Support Group, the Clubhouse Project, Gibraltar Arts and Crafts, Women in Need, Alcoholics Anonymous and others.

## **SOCIAL SECURITY**

Turning, Mr Speaker, to social security. At my last year's Budget speech I provided the House with information regarding progress in relation to the computerisation programme within the DSS, and to a large extent this is on-going in order to keep apace with new technologies in order to continue to improve our services. That said, the priority for us now is work related to the connection with the Electronic Exchange of Social Security Information Systems, known as EESSI. Government itself has



now joined a Brussels programme for the exchange of European information, and will give priority for EESSI to advance as soon as possible.

Also last year, I said that the Government was modernising the pensions and benefits administration system to make it more user friendly and less bureaucratic. Following the introduction on 1<sup>st</sup> April 2010 of the new Personal Cash Account payment system, I am pleased to say that the transition from paying by means of the antiquated order book to a system of individual personalised electronic accounts has been a success. As a consequence, the service to the public has been vastly improved.

In terms of tidying-up legislation, there are two Bills we would like to bring up to Parliament in order to update existing practices and legislation.

The first refers to vocational trainees as a result of the 2006 agreement between Government and Unite the Union whereby trainees should be covered for Social Security Employment Injuries and other benefits. However, in the absence of consequential amendments to the 2006 agreement, in practice vocational trainees have been covered for all relevant benefits inclusive of injury at work.

And, the second Bill for ending discrimination against men on death of spouse. The current legislation since 1955 has only provided an allowance to ladies on death of husbands, but not vice-versa. Therefore, the Bill will tackle this historical anomaly. A new allowance will therefore be introduced retrospectively as from 1<sup>st</sup> July 2009 at the same rate of benefit as is now paid to widows.

Mr Speaker, with regard to Child Welfare Grant at the moment the benefit is paid to parents with two children on a means test basis, but not to parents with one child. As the Hon the Chief

Minister stated in his Budget address, the Child Welfare Grant for the first child will be paid at £25 per month.

In addition, Mr Speaker, as hon Members will be aware, we do not have in Gibraltar a complete scheme for paternity leave throughout the labour market. Members will be aware that in the public sector, as far as Government Departments are concerned, the Government acting as a good employer does provide for two weeks paid special leave for the father with the new born baby.

However, in the private sector this is not covered by legislation, so it falls on very few good employers to provide such benefit to their staff. The Government feels that fathers too provide a valuable and significant contribution to family life and that this is an area of social policy in which we would like to promote family friendly policies. Therefore, we will amend both the Social Security and the Employment legislation to guarantee throughout the private sector two weeks of Paternity Allowance at the weekly rate of £87.64 in line with the Maternity Allowance. And also in line with the Maternity Allowance, the payments will be made by the Government and not the private sector employers, thereby relieving them of extra financial costs to businesses. The Paternity Allowance will also be available to unmarried fathers and to adoptive fathers.

Mr Speaker, the existing Maternity Grant and Maternity Allowance are currently not paid to adoptive mothers. However, as from July 2011 Government will introduce new changes to the legislation allowing adoptive mothers to claim for Maternity Grant and Maternity Allowance.

Additionally, as the law stands, an unmarried mother can only claim Maternity Grant on her own insurance record. This means that if she has not worked or made sufficient contribution she cannot rely on her partner's insurance record to claim this benefit. As from July 2011, Government will rectify this anomaly and amend the legislation so that mothers in common-law

relationships can also claim on their partner's contribution record.

Mr Speaker, the House will recall that in 2007 this Government allowed, for a limited period, women who had been paying the reduced married women rate of contribution to make retrospective payment of the difference between this contribution and the standard rate to enable them to receive an old age pension or enhance their existing pension. Government will once again allow women, who did not avail themselves of this initiative, the opportunity to make retrospective payment to the higher rate of contribution.

Mr Speaker, at present, as the law currently stands, only social insurance contributions as from the age of twenty years count for benefit purposes. This Government has a manifesto commitment to take into account, for the purpose of calculating benefits, social insurance contributions paid by the contributor as from the age of eighteen. In relation to this, the Department of Social Security will soon be issuing a press release requesting pensioners who do not have a maximum state pension and who worked when aged 18 or 19 to complete a form in order to assist the department in identifying from their records those individuals affected by this change. This will therefore facilitate the department in its endeavour to ascertain the number of persons affected as a commencement of this process.

Mr Speaker, in placing my arguments in relation to vulnerable and working people in context and throughout our four terms in Government, it will be accurate to say that overwhelmingly they are much better now than when the GSLP was in Government. Certainly people like Alberto Risso and many others would be proud of the work done during our time in office.

But before hon Members opposite wish to belittle or misrepresent the facts, it would be appropriate to consider the following even if it means that Members opposite do not like to

hear the enormous advancements done in our period in Government.

Mr Speaker, as far as elderly persons are concerned we have:

- Increased the old age pension by 91.8 per cent since 1987;
- Tax on pension income abolished;
- Tax on other income up to £10,000 abolished;
- Tax on savings income and death duty abolished;
- Creation of a Minimum Income Guarantee of £512.75 per month for a single person and £684.35 per month for a married couple;
- Five opportunities to complete pension contribution record. Bringing a total of 820 pensioners helped;
- Issue of higher interest, tax free pension debentures;
- We have abolished the driving licence renewal fee, the driving licence medical test fee, the passport renewal fee, and the T.V. licence fee;
- We have provided a free bus service to everyone;
- No need to buy a pension annuity. Now pension capital may be taken tax free;
- We have built 86 flats at Bishop Canilla House for pensioners;
- Now we have built a further 140 flats at Albert Risso House for pensioners;

- We initiated and maintain a lift installation programme so that elderly people can get in and out of their flats;
- Mount Alvernia expanded from 62 beds in the GSLP period to 135 in ours;
- Provided for a new swimming pool and recreational area at Westside;
- Four day centres funded by Government;
- Establishment of a Care Agency;
- The employment of a Consultant Geriatrician and Therapists;
- Provided for a Domiciliary Care Service; where 91 elderly people are assisted in their homes;
- Provided for physical activities programme for the elderly;
- Provided computer courses for pensioners;
- A dedicated programme for cataract and knee operations;
- 72 divorced persons were allowed to claim an old age pension based on their former spouse's contribution during the period of the marriage; and
- 392 women were allowed to make payments of the difference between the reduced married women contribution and the standard rate, to enable them to receive an old age pension.

- Free medical prescription will be available to elderly persons as from age 60, irrespective of whether they work.

Mr Speaker, as far as Social Security Benefits rates are concerned:

- Injury Benefit increased by 54 per cent;
- Disablement Benefit increased by 54 per cent;
- Unemployment Benefit increased by 53 per cent;
- Maternity Grants increased by 1000 per cent;
- Social Assistance increased by 44 per cent;
- Maternity Allowance increased by 54 per cent;
- Industrial Allowance increased by 54 per cent;
- Death Grant increased by 455 per cent.

Mr Speaker, it is interesting to note that under the GSLP Government there was almost no increase of any of the benefits just mentioned in eight years.

Mr Speaker, on matters of drugs and substances abuse services we have:

- Established, staffed and funded Gibraltar's own drug, alcohol and other substances rehabilitation centre at Bruce's Farm;
- Established a rehabilitation after care centre in Main Street (Gladys Perez Centre);

- Implemented and developed a comprehensive drug strategy particularly focussing on: education, prevention, enforcement and rehabilitation;
- Appointment of a dedicated anti-drugs co-ordinator, now Team Leader;
- Production of a magazine in which young people can understand the negative significance of consuming such illicit substances; and
- Provided support and guidance at the Youth Service and throughout schools to the effects of drugs.

Mr Speaker, on matters to do with disabilities, we have:

- Designated a Minister with responsibility for disability issues for the first time;
- Dr Giraldi Home divided into separate flats, with a current major refurbishment almost completed;
- Huge increase in staffing levels with an adequate balance ratio of skill mix to provide care and medical support;
- Establishment of a structured respite and sitting service;
- Creation of a fund to provide free mobility aid;
- Funding of a Shopmobility Centre;
- Funding for home help;
- The provision of a purposely designed swimming pool for the disabled;

- On-going programme of refurbishment and reconstruction of thoroughfares and other public amenities in a disabled friendly way;
- Heavy investment in the public bus fleet which specifically caters for the disabled;
- The introduction of legislation to prohibit discrimination against disabled persons in the field of employment;
- An increase of 240 per cent for children and 222 per cent for adults in the Disability Allowance (which had remained frozen between 1988 – 1996 under the GSLP Government);
- Introduction of the Blue Badge Scheme;
- Substantial expansion in the range of services and staff at the St Bernadette's Occupational Therapy Centre;
- Occupational Resource Centre now open all year round;
- On-going major refurbishment;

Activities organised at St Bernadette's Occupational Therapy Centre include:

- Arts and crafts;
- Service users computer room;
- Recreational room;
- Living skills room;
- Water games;

- Sensory session outing;
- Community skills;
- Occupational work at the Botanic Gardens;
- Occupational work at the Bus Company;
- Voluntary work placements;
- Garden activities;
- Swimming;
- Physical exercise sessions at the Victoria Stadium, and many other activities inclusive of providing lunch at the Centre.

Mr Speaker, and in matters to do with children within the Care Agency, we have:

- Introduced the Children Act, thereby robustly promoting the interest of children;
- Increase in the numbers of Social Workers employed and dealing with children matters. In total we have gone from seven in the GSLP period in Government, to 22.5 in the GSD period;
- Introduction of a Duty and Assessment Team;
- Introduction of high quality residential homes at Tangier Views;
- Introduction of a Therapeutic Psychological Team, and

- Introduction of respite and support for disabled children.

Mr Speaker, whilst all the things I have mentioned and many more are impressive by any standard and goes to show how much this Government has done and cares for vulnerable people generally, I know that the previous Leader of the Opposition likes to quantify social services in pounds, shillings and pence. So for his benefit, I will do so.

Mr Speaker, in matters of social services, when the GSLP first entered Government in 1988 they inherited a budget from the AACR of £412,000. When they left Government in 1996 that budget was £1,000,000. This represents a percentage increase in money terms of 142.7 per cent, and a percentage increase in real terms after adjusting for deflation of 71.6 per cent. So, how does this compare against the GSD administration. In 1996 we inherited from the GSLP £1,000,000 and the actual expenditure for the financial year ended 31<sup>st</sup> March 2011 for Social Services is £5,814,309, this is a percentage increase in money terms of 481.4 per cent, and a percentage increase in real terms after adjusting for inflation of 321 per cent. Conclusion, in the field of social services, the GSD record in office is hugely, hugely better than the GSLP one.

So let us now consider the elderly care. In 1988 the GSLP administration inherited a budget from the AACR of £230,000, by the time they left office the budget was £870,000. This represents a percentage increase in money terms of 278.3 per cent, and a percentage increase in real terms of 167.5 per cent. So let us now see how this compares against the GSD administration. In 1996 we inherited a budget of £870,000 from the GSLP, and the actual expenditure for this financial year ended on 31<sup>st</sup> March 2011 for elderly care was £9,905,829, this is a percentage increase in money terms of 1038.6 per cent and a percentage increase in real terms of 724.5 per cent. Conclusion, in the field of elderly care, elderly people are hugely, hugely better off with the GSD administration.

So let us move to consider rehabilitation services. In 1988 the GSLP Government inherited no money for rehabilitation services from the AACR Government. By the time they left office in 1996, the GSLP Government provided no money for rehabilitation services. Presumably, the GSLP Government never thought that there were people who needed help with alcohol and drug addiction during their period in office. The truth is that there were people at the time that needed help and to the shame of the GSLP Government those individuals had no support in Gibraltar from the then Government, and therefore had to go to Spain either to a charity funded centre, or had to pay for this service privately. So how does this compare with the GSD Government? Well, Mr Speaker, originally in 1999 the GSD Government funded The New Hope Trust for its services in Bruce's Farm. Then with the arrival of the Care Agency these functions became part of our role. In terms of expenditure at the end of 31<sup>st</sup> March 2011, we had a budget of £540,799. Conclusion, the GSLP never cared in helping these unfortunate people with an addiction, at all, and with the GSD they do get the support and service they deserve.

Mr Speaker, in order not to spoil factual statistical history in terms of who cares more for vulnerable people, let us see now how the grand totals between the GSLP and the GSD compare.

In 1988 the GSLP Government inherited a combined total budget of £642,000 from the AACR and left that total budget in 1996 at £1,870,000. This represents a percentage increase in money terms of 191.3 per cent, and a percentage increase in real terms after adjusting for deflation of 106 per cent. So how does this compare with the GSD? Well, in 1996 we inherited a total budget of £1,870,000, and at the 31<sup>st</sup> March 2011 the total budget stood at £16,260,937. This is a percentage increase in money terms of 769.6 per cent, and a percentage increase in real terms after adjusting for deflation of 529.7 per cent.

So, Mr Speaker, the undeniable conclusion that should be drawn from the facts and not the fiction is that as far as

vulnerable people are concerned that they should never trust the GSLP in the future given their past record. They should look at the present because the GSD Government has enormously enhanced their quality of life in a continued and sustainable basis.

Mr Speaker, it is interesting ... and I see the Hon Member Mr Costa smiling, so he had better hold on ...

**HON N F COSTA:**

I am not smiling. I am laughing.

**HON J J NETTO:**

Well, you had better hold your nerves a bit. It is interesting to note that last February, when I pointed ...

**HON N F COSTA:**

*[Laughter]. [Inaudible].*

**MR SPEAKER:**

Order. Order.

**HON J J NETTO:**

Did you see? It is interesting to note that last February, when I pointed out the huge investment for funds for the benefit of vulnerable people, the Hon Mr Costa tried in a terrible and surreptitious way to explain such investment in expenditure during the GSD Government ...

**HON D A FEETHAM:**

Yes.

**MR SPEAKER:**

Order. Order.

**HON N F COSTA:**

Surreptitiously?

**MR SPEAKER:**

Order. Order.

**HON J J NETTO:**

He tried in a terrible and surreptitious way to explain such investment in expenditure during the GSD's period in Government due to people having now more expectations. So, according to such a remarkable and illustrious moment of inspiration by the hon Member in explaining the low level of investment by the GSLP Government during 1988 – 1996, vulnerable people in Gibraltar at the time had either no expectation, or very little expectation to live a better life, therefore no reason why to increase expenditure for vulnerable people.

Well, Mr Speaker, this really takes the biscuit in terms of rational thought. The truth is that all people, whether in the past or the present, have expectations. It is an intrinsic part of being human. It existed then when the Board of Governor's at Mount Alvernia asked for an increase in the GSLP grant in order to

open the floors that were closed at Mount Alvernia, and the then GSLP Chief Minister denied them the money thereby refusing to help elderly people more. Expectations also existed as well when the then "Handicapped Society" asked the GSLP Government to open the residential home at Dr Giraldi Home, for people with learning disabilities, that had been closed for over two years because according to the then GSLP Chief Minister employing professional people to run the Home was too expensive.

So we can see how then as in now, human expectations have always existed, but here in Gibraltar the GSLP Government did very little by way to address them. Vulnerable people had to wait for the GSD Government to arrive in order to transform for the better their quality of life. Thanks to the GSD Government, we have raised the threshold and the dignity of vulnerable people to new heights never experienced before. It is an investment we are particularly proud because vulnerable people deserve no less from a caring Government.

Mr Speaker, in conclusion, once again I would like to give my sincere thanks to my PA and my PS for their continued loyalty and hard work throughout this time. I would also like to give all of my staff under my Ministry my thanks for the hard work in making the lives of many individuals throughout Gibraltar much better. Thank you.

The House recessed at 1.00 p.m.

The House resumed at 2.30 p.m.

**HON MRS Y DEL AGUA:**

Mr Speaker, I proceed to report on my portfolio comprising Health and Civil Protection, beginning with the latter. Although it is a pity, Mr Speaker, that the Hon Mr Costa is not here to listen to my contribution, but so be it.

## CIVIL PROTECTION

Between the 1<sup>st</sup> June 2010 and 31<sup>st</sup> May 2011 the Brigade responded to a total of 1,655 calls. 420 fire calls, of which 144 were actual fires, 260 false alarms with good intent, and 16 attendances to malicious calls. The Brigade also attended to 1,000 special services, of which 565 were emergencies and 428 special services classified as requests. The CFB ambulance was dispatched on 235 occasions and the Brigade Control Room mobilised the GHA ambulances on 4,052 occasions.

During the past financial year, a number of Brigade officers have attended various courses held locally or abroad. The following courses were held at the Fire Service College in the UK: Incident Command Crew & Watch Manager Course, Hazardous Materials Command Course, Fire Safety Solutions in Higher Life Risk Premises, Fire Safety Sprinklers Course, Tactical Ship Fire Fighting Course, Fire Safety Building Regulations Guidance Course, and Road Traffic Collision Instructors Course. Members of the Brigade also attended a Dive Industry Technician's Instructors Course in Blackburn, UK.

Additionally, the Brigade organised courses that were delivered locally. These courses were fully endorsed by professional organisations, with qualified tutors. The courses were: Dreager Breathing Apparatus Care and Maintenance Course, and the Chartered Institute of Environmental Health Level 3 Award in Training Skills and Practice. The Brigade also attended the Confined Space Rescue Course organised by the Technical Services Department Sewers Section and delivered by Develop Training Solutions UK.

Looking forward to this financial year, the Brigade has already booked places for the following courses: Hazardous Materials Instructors Course, Recruit Training Course, Tactical Ship Firefighting Course, Incident Command Crew & Watch Manager Course, Fire Fighting Foundation Practical Course, Practical Fire Investigation Course, Fire Safety Alarms & Emergency

Lighting Systems Course and the Fire Safety Residential Sprinklers Course.

The Brigade has now become a registered centre for the delivery of Chartered Institute of Environmental Health courses. This will allow the CFB to provide its own in-house tutor to deliver the CIEH Level 2 Award in Principles of Risk Assessment. It is envisaged that the Brigade will also deliver the CIEH Level 3 Award in Principles and Practice of Risk Assessment in the near future.

Mr Speaker, in the Question and Answer session of Parliament two weeks ago, the Hon Mr Picardo chastised me for allegedly trying to make political capital out of the recent port incident. He pontificated about how we should not be taking advantage of such an important issue, to score party political points.

Mr Speaker, his unwarranted comment arose out of a reply which I gave to one of his supplementaries on the matter. The hon Member asked me whether I was aware that Serco were storing 7,500 litres of foam but that this information was not made available to the City Fire Brigade at the time. My response was that I was not aware, and that the only place where I had read some similar absurd proposition was in their party political organ.

The article which I referred to carried the headline, and I quote "absolutely outrageous: the foam that no-one knew we had", unquote.

The article accused the C3 Committee, which includes the heads of all our emergency services, of, and I quote again, Mr Speaker, "boasting of having been in control whilst not even knowing that the Capable had ten tons of foam", unquote.

By way of information, Mr Speaker, the Capable is a tug which was recently decommissioned by SERCO for being past its sell by date. The tone in which this incorrect allegation was made, Mr Speaker, in my opinion, ridiculed and detracted from the



credibility of all our emergency services who comprise the C3 committee.

But it is obvious, Mr Speaker, that the Hon Mr Picardo engaged his mouth before his brain, and in his haste to retort and to always have the last word, he forgot that it was the hon Members opposite who had cast the first stone. It is clear that the importance of not making political capital out of the port incident, for which he unjustifiably rapped me on the knuckles, was not uppermost in the Hon Mr Picardo's mind when, almost immediately after this tragic event, as a result of which a man is still fighting for his life, the Opposition publicly accused me, the Minister, of being responsible for the stress and pressure caused to the people of Gibraltar and the emergency services, for not ensuring that there was enough foam.

If this is not making political hay while the sun shines, Mr Speaker, I do not know what is. So you see, Mr Speaker, this is a prime example of the political insincerity and double standards which has become the hallmark of the Members opposite. They accused me of something which I had not done, that is, take advantage of this incident for partisan purposes, when they were already guilty of doing it themselves, Mr Speaker.

Mr Speaker, during the GSLP administration, Ministers considered themselves to be experts in every field, on many occasions arrogantly overruling decisions taken by professionals to the detriment of Gibraltar. This Minister, Mr Speaker, does not pretend to be an expert in the field of fire fighting. The Minister has not got the knowledge, the expertise, or the know-how to determine what amounts of foam or specialist equipment or resources are needed in every eventuality. The Minister's responsibility is to ensure that adequate funds are provided to the City Fire Brigade on a yearly basis, so that they can acquire whatever the Chief Fire Officer deems operationally essential. That is precisely what this Minister has done, Mr Speaker, and not meddle in decisions which are outside her competence.

And this is an opportune moment to remind the Leader of the Opposition, who is also, I note, absent from the House, of a very relevant statement which he recently made in one of his speeches, in which he directed himself at civil servants, and every other working sector in Gibraltar, for that matter, trying, of course, to be all things to all men. He told civil servants, obviously believing that it was what they wanted to hear, and I quote: "GSLP Ministers will not be heads of Department, they will be Ministers in charge of policy", unquote. What the Hon Mr Picardo says GSLP Ministers will do, is exactly what this Minister has done. So which of the two is it, Mr Speaker?

Mr Speaker, the amount of resources, fire appliances, fire fighting equipment and training courses, a long list of which I have just recited, available to the Brigade today, and allocated to Civil Contingency in general, is totally unprecedented, something which the hon Members opposite cannot boast of having done when the GSLP was in Government.

Yes, Mr Speaker, people have very long memories, and I have been fully informed of how the City Fire Brigade was severely under-resourced, under-equipped and deprived of training during the GSLP administration. The level of funding was so restricted that management felt obliged to even ration the carbolic soap and sweat rags issued to the men at one point, Mr Speaker.

Mr Speaker, the Chief Fire Officer, who advises me on these matters, has confirmed to me that no Brigade carries a limitless amount of foam, and Gibraltar is no exception. He assures me that Brigades rely on assistance from outside agencies when these types of incidents occur.

However, as a responsible Government which does not shirk away from its responsibilities, we have commissioned a full external enquiry to investigate every aspect of the incident. Any recommendations that arise will be taken on board, and any

lessons learnt from this incident will be put to good use in the future.

Mr Speaker, moving on to a different subject, I will now provide the House with an account of the performance and activity of our Health Service during the past financial year, including details of what we can expect this year. I will start with the Nursing Directorate.

## **NURSING SERVICES DIRECTORATE**

A crucial element in the delivery of high quality nursing care, is the selection, education and training of the individuals who provide that care and their continuing updating and development once they qualify. This is true for all elements in the nursing structure, from the entry grades to the most senior nursing post, which is the post of Director of Nursing.

Working with my colleague the Minister for Employment and Vocational Training, the GHA's School of Health Studies has embarked on a full programme of developmental opportunities which will allow young local students and indeed "mature students" to achieve the highest possible grade within the nursing profession. I will now outline the various components which validate that this Government is fully committed, not only to health service improvement, but to offer opportunities for Gibraltarians to achieve the highest possible grade in nursing.

In September 2009 the first NVQ in Health and Social Care was launched. This scheme is aimed at local people aged between 16 – 25 who do not have the required academic qualifications to enter nursing, and which allows them to achieve an NVQ qualification at Level 2. This programme also supports the cadets in achieving their numeracy and literacy qualifications which are both equivalent to GCSE.

Six external Nursing Cadets and 10 in-house Nursing Assistants were recruited to the scheme and are currently working towards

this qualification at Level 2. Seven qualified nurses are also currently working towards their A1 Assessors Course to mentor and support the cadets in this programme. A further 10 external Nursing Cadets commenced their training in February this year and are also working towards their NVQ qualification at Level 2.

Following successful completion of their NVQ Level 2 qualification, work is now underway to further develop the NVQ programme in order to offer this qualification at Level 3 in the future. Mr Speaker, this further education will offer another pathway for locals to enter the Nursing Degree programme which commences in 2012.

As a result, those students who did not meet the necessary requirements to enter university whilst they were in school, can now graduate with a university degree.

Mr Speaker, last year I spoke about Government's approval for a programme of rapid access to specialty nursing posts for Gibraltarians. Three of our local enrolled nurses took up this opportunity. One is due to qualify as a Registered Nurse in September this year, and the other two are training to become Mental Health Nurses. The latter two will complete their first year of training here in Gibraltar in August this year, and go on to Kingston and St George's University to complete their final two years, returning to Gibraltar in September 2013 as qualified Registered Mental Health Nurses.

Government also agreed to offer two places to Registered Nurses to undergo further training to become Sick Children Nurses or Midwives. To date, one local nurse is doing a one year Sick Children Nursing qualification in the UK, and another is undertaking her 18 month Midwifery training. Part of the incentive is that these five local nurses have retained their salaries whilst they train. Their current posts have been backfilled in order to avoid a depletion of resources in the interim period. This, Mr Speaker, represents another major step in the GHA's strategy to diminish its reliance on external contract staff.

I am also pleased to inform this House, that further to developing specialist expertise in Diabetes and Infection Control, the go ahead has been given for a GHA initiative to develop local expertise in Palliative Care. Government will continue this vital investment and believes that sustaining the health service requires a vibrant home-based development programme.

Through these initiatives that I have just described, I can confidently and proudly state, that Gibraltarians are being given every available opportunity to not only enter the nursing profession, but also to access many specialist posts which have historically been filled by external contract officers.

But, Mr Speaker, the scenario that I have just described has no comparison to that which existed under a GSLP administration. It is common knowledge within the healthcare profession that the GSLP literally closed down the nursing school for Staff Nurse training. They were of the view that no academic qualifications were needed to become a nurse. They, therefore, starved the nursing school of resources and personnel as part of their policy to restrict the avenue for more qualified nurses so they could promote unqualified nurses. They deprived Gibraltar of the possibility of training our nurses to that higher level of qualification which was necessary to improve the standards of care in our health service.

Mr Speaker, nurses now have available to them the tools necessary not only to be proficient at their practice, but they also now have the means to develop as nurse managers. Excellent nursing care requires a combination of highly skilled nurses who also possess expertise in management and leadership, such as performance management of staff, establishing appraisal systems, managing sickness, appropriate allocation of staff to meet patient need, teaching and supervisory skills, an understanding of clinical audit, disciplinary processes and team working. Through the Nursing Succession Plan Programme, our clinical nurse managers have been successful in acquiring the

necessary skills which will enable them to take up the most senior nursing post within the GHA.

As a result, Mr Speaker, the GHA recently opened the vacancy of Director of Nursing Services to our Clinical Nurse Managers. I am pleased to announce that Mr Freddie Pitto has been successful in his application, and has been appointed to the post of Director of Nursing Services. Freddie has been working in the nursing profession for the past 28 years, and has been a Clinical Nurse Manager for the past 11. During these 11 years, with the support of the GHA, as he himself admits, he has successfully undertaken several courses, culminating with a Masters Degree in Management. He has also been heavily involved in the GHA's Succession Planning Programme, which I mentioned earlier, and which has served him well in developing his skills and competence, thereby enabling him to apply and successfully obtain the highest grade in the nursing profession. I congratulate him on his achievement and wish him the best of luck in his new post.

Mr Speaker, I take this opportunity to publicly thank the outgoing Director of Nursing, Dr Karen Norman, who has been instrumental in assisting our Nurse Management Team to develop to such a high professional standard. The Nurse Management Team, comprised of the newly appointed Director of Nursing, Freddie Pitto, the Deputy Director of Nursing, Eddie Holmes, and Clinical Nurse Managers Wayne Barton, Frances Catania, Chris Chipolina, Sandie Gracia, Kevan Sercombe and Gizelle Tosso, have all wanted to join me in this public recognition of Dr Karen Norman's contribution to the professional development of nursing in Gibraltar.

## **AMBULANCE SERVICE**

Mr Speaker, I now turn to the Ambulance Service. During the integration of the Ambulance Service into the GHA, the Government gave a very strong commitment to ongoing training and development. Last year, I reported that the GHA had

commissioned an E-learning package with Kingston and St George's University to develop five EMT's to Paramedics over the next three years. Although there is still some way to go, the five students are progressing very well and are achieving very high marks in the process.

In another important development, a patient group directive will shortly be issued which will allow Emergency Medical Technicians to administer certain life-saving drugs in emergency situations, either on site or on route to the hospital. There are several key advantages to this:

- (a) these drugs can be used in many common emergency situations and can save lives in serious cases or improve the patient's condition and alleviate unnecessary distress in less serious patients;
- (b) they are simple to administer; and
- (c) they have very minimal or no contra-indications.

This new practice will ensure that pre-hospital care in Gibraltar is commensurate with that of UK Ambulance Trusts and that we meet the same standards as EMTs in the UK.

During the next year, Mr Speaker, the Ambulance Service will be undergoing replacement of some of its fleet and will be served by a new ambulance dispatch system which will be placed in the Emergency Call Centre operated by the City Fire Brigade, where staff are receiving the required training. This new system will improve the safety and efficiency of our ambulance services by allowing dispatchers to provide life saving advice over the telephone, enable ambulance calls to be prioritised in order of the sickest patient first, and will restrict the use of blue lights and sirens to emergency calls only.

## **THE MENTAL HEALTH SERVICE**

Moving on to Mental Health, Mr Speaker. Working with the Project Team, GHA staff members are in the process of completing the detailed furnishing and fitting requirements for the new facility. The facility promises to be a tremendous improvement over the current one and the programme plan incorporates many innovations and facilitates the modernisation of care that this Government is committed to provide.

But Mr Speaker, whilst I fully understand that a new building will certainly contribute towards the provision of good clinical care, and will provide a much better environment for both patients and staff alike, improving the quality of care to patients and adopting modern working practices is equally important, and work has been ongoing for some time in this area. In addition to the expansion in the nursing, OT, psychology and psychiatrists complement; the introduction of a practice development role, the further development of the Activities Centre and the provision of clinical pharmacist time dedicated to mental health services, have all served to improve the quality of clinical care to those challenged with serious mental illness.

And in meeting another of our manifesto commitments, Mr Speaker, I am pleased to announce the provision of an additional counselling psychologist for the Primary Care Centre.

## **DENTAL SERVICES**

I now turn to our dental services, Mr Speaker. The Dental Department has recently been the subject of criticism from the Members opposite, despite the fact that it is one of the departments which has made most progress under this Government's stewardship.

With your indulgence, Mr Speaker, I will spend a few minutes analysing our achievements in this department, and comparing it to the track record of the Opposition, when in Government, that

is, when they were in a position to do all the wonderful things that they now incorrectly accuse us of not doing, but which they did not do themselves.

Mr Speaker, during our first six years in office, this Government doubled the complement of dentists. One was added in 1998 and another in 2002. Subsequently, we have proceeded to add another two dentists in 2008, bringing the total complement to six. I am pleased to say that, as I speak, all the children on the dental waiting list have been given appointments and have had their dental check-up. There is no waiting list, Mr Speaker, and any additional dental care arising from the check-ups has now been scheduled. This Government's investment in this department has paid off, together with imaginative thinking in the re-allocation of resources and sessions on the part of the dental staff. Currently, the next available check up appointment is only two weeks away. The department's focus will now turn to improving the Orthodontic waiting list.

Mr Speaker, putting to good use a contribution from the League of Hospital Friends, the GHA has purchased specialised operating theatre equipment that allows dental cleaning and fillings to be performed under general anaesthetic. This new service is now in operation, with dentists, nurses and theatre staff trained in its use. The patients that most benefit from this initiative are those with special needs, who find it extremely challenging, and nigh on impossible, to have fillings performed in the dental clinic. All children attending St Martin's Special School and Early Birds Nursery have had their annual screening and eight patients have been listed for this service.

Mr Speaker, the historical practice until now has been that it is up to parents to seek the first dental appointment for their child, usually when the child is between five and six years of age. The Department has introduced a "Day at the Dentist" programme, which will allow all children of this age to visit the dental department, together with their classmates, for a dental examination. This is a preventative and awareness programme

and will involve the dentist looking for tooth decay, talking about healthy eating, showing them the proper way to brush their teeth, and overall, introducing children to the dentist in a welcoming and friendly environment. 29, year 1 children from St. Bernard's First School were the first to take part in the programme on the 17<sup>th</sup> June, with all other year 1 children being seen in the autumn and winter.

In comparison, Mr Speaker, during the eight years that the GSLP was in Government, they failed to increase the number of dentists at all. The complement of dentists in 1988, when they came into office, was two. The number of dentists when they left in 1996, was still two. To boot, when one of the dentists was medically boarded in 1991, he was not replaced until two years later. Considering that the population of school children has remained static, the demand on the dental service at the time was the same as it is today, Mr Speaker. As a result of the neglect that this department suffered during those eight years, through lack of investment and inability to provide new services, the majority of children went through their school lives without being able to access a dentist, even for a simple check-up.

And of course, as is to be expected, when I point this out to the Hon Mr Costa, he tries to airbrush history away and accuses me of bringing information into the debate which he claims is irrelevant. So, Mr Speaker, on that very relevant note, I move on to the Allied Health Professional Services, starting with the Nutrition and Dietetics Department.

## **NUTRITION AND DIETETICS**

The team in this department has eliminated their waiting lists and is now providing additional specialist services. They implemented their part of the Diabetes Strategy, leading the multi-disciplinary Morbid Obesity Team, managing an increasing number of patients on parenteral nutrition, managing the provision of specialised infant and paediatric feeding, and working with the Palliative Care Team. 4,345 consultations

were provided last year, an increase of 11 per cent over the previous year.

## **ORTHOPTICS**

Turning to the Eye Department, Mr Speaker, I am pleased to announce that the GHA will be setting up a new orthoptic service. In collaboration with the Gibraltar Dyslexia Support Group, the GHA will provide a colorimetry service in which the Orthoptist can assess someone with reading difficulties, such as dyslexia. This service will provide a drastic improvement in the quality of life of dyslexia sufferers and will avoid them having to travel to the UK for treatment.

Later this year, the Orthoptist will complete the necessary training to obtain the teaching qualifications to allow the department to be accredited as an Orthoptic Undergraduate Placement Centre, thus enhancing St. Bernard's international profile as a clinical teaching facility.

Mr Speaker, as I announced in my Budget speech last year, the Optical Appliance Policy came into effect in July 2010, providing funding for optical appliances for all 16 year olds and under. Again, Mr Speaker, in what is a clearcut case of sour grapes, the Opposition tried to rubbish this very positive development by claiming that I had misled the public and that spectacles were not free.

I have misled no-one, Mr Speaker, and the hon Members opposite know it. That is why when they had the opportunity to challenge me on this issue during the recent Question and Answer session, they failed to do it. If they really believed that I had lied, as they suggested in recent press releases, they would have had my guts for garters at Question Time, Mr Speaker, yet they did not ask even one single supplementary on the matter.

Mr Speaker, any parent can walk into all, bar one, private opticians, and walk away with a free pair of spectacles for their

child. Those parents who, by choice, want to obtain for their child a frame which is fancier than the basic one provided, or lenses which are not clinically required, will obviously have to pay the difference. Mr Costa's expectation that Government should provide a blank cheque to parents so that they can buy whatever spectacles their child fancies, irrespective of the cost, is unrealistic and naïve, and it is an expectation that is not shared by the majority of the 234 sets of parents who have benefitted from this initiative and who no longer need to dig into their pockets once a year to provide an essential pair of glasses for their children.

Parents know, by the way, that the Members opposite had no intention of providing anything of the sort had they won the last election, judging, Mr Speaker, by the fact that there was hardly or no mention of it in their manifesto. Could it have been an oversight on their part, Mr Speaker? I doubt it. More likely than not, they did not spot it in ours quickly enough to enable them to hastily insert a page in at the last minute, as they did with the new hospital.

Another innovation this year within the department of optometry, is the acquisition of an Optical Coherence Tomographer, which is capable of producing 3-D images of the anterior and posterior segments of the eye.

As a result, the GHA will be able to repatriate patients with Macular Degeneration, mostly elderly, from Moorfields to Gibraltar. This machine also enhances the ability to detect and monitor the progression of glaucoma, diabetic retinopathy, and other eye diseases. It can often be used without the need for pupil dilation, so patients may leave the department without the limitations of not being able to drive or read for several hours.

Mr Speaker, in keeping with another of our manifesto commitments, a new low vision service commenced in January 2011 with the help of a locum low vision specialist attending for a few days per month. This service provides low vision

assessments and rehabilitation support for visually impaired patients. The low vision clinic will be run on a full time basis as soon as the second Optometrist post is filled later on this year. We are hopeful that a new therapeutic contact lens service to minimise referrals to Moorfields Eye Hospital will also commence once the second Optometrist is in post.

## **OCCUPATIONAL THERAPY**

In the past year, Mr Speaker, the in-patient Occupational Therapy Section provided a 10 per cent increase in activity over the previous year. One of the highlights of the year was the development of an active rehab unit in Victoria Ward. This Unit is providing active rehabilitation to complex cases, mostly elderly people, with a view to enabling them to achieve greater independence, thereby allowing a speedier discharge into the community, and releasing more hospital beds for acute patients.

Mr Speaker, elderly people remaining in hospital after they have been medically discharged represents one of the greatest challenges to the GHA. Despite the doubling of beds in Mount Alvernia, the provision of 226 sheltered flats for the elderly, the introduction of domiciliary care and the opening of Cochrane Ward, the problem still persists.

Gibraltar is not alone in dealing with this problem, Mr Speaker, which has come about as a result of people living longer due to the improved quality of healthcare that is now provided in most civilised countries, together with an inability or unwillingness of some families to care for their elderly folk at home.

Mr Speaker, we are heavily criticised by the Hon Mr Costa for having to sometimes cancel surgery for this reason, although I note that he never comes up with any suggestion or alternative solution. In fact, I am convinced that the hon Member sets his alarm clock every three months, to remind himself that it is time to bring up the same old chestnut.

Ironically, Mr Speaker, whilst Mr Costa criticises the GHA for having to cancel operations due to the high occupancy of elderly people who have been medically discharged but continue to remain in hospital, his colleague, Mr Picardo, in his legal capacity, creates an almighty hullabaloo because the GHA sends home one of his clients who has no need to be in hospital, insisting on his client's retention in hospital, even after being told that the medical team do not consider that there is a medical need for the man to be hospitalised and that his bed was needed for acutely-ill patients and for patients requiring surgery. In a bid to defend himself, Mr Picardo proceeds to issue a statement in which he again insists that his client is in need of hospital and medical care, completely disregarding the opposite view of the professional medical team at St Bernard's Hospital. It seems to me, Mr Speaker, that the old GSLP guard, who used to rule the roost in days gone by and who thought they knew better than all the experts put together, have handed down the baton to Mr Picardo, who now also considers himself to be a medical expert.

Mr Speaker, I am acutely aware of the disruption and anxiety that is caused to patients when their operations are cancelled. I can assure this House that both Government and the GHA will continue to do everything we can to avoid this at all costs, and we are hopeful that the opening of the new dementia unit and the new residential facility for the elderly will provide a breakthrough in what has now become a perennial problem in many countries.

## **SPEECH AND LANGUAGE THERAPY**

Mr Speaker, moving on to speech and language. This service, which was also criticised last year by the Hon Mr Costa, who was insisting that more staff needed to be employed, have not only increased their throughput by 32 per cent, but have also developed additional methods to provide more services with the same resources. Parental feedback has been excellent. So you see, Mr Speaker, we did not have to slash the salary of the

Chief Executive in order to improve this service, as the hon Member was naively suggesting. As I said then, it is a question of managing and prioritising resources.

### **AUDIOLOGY SERVICES**

Mr Speaker, turning now to audiology, the number of appointments offered this year rose by 18 per cent compared to last year. Extra clinics were provided on Saturdays over a four months period to cope with extra demand. The GHA now has approximately 1,100 hearing aid users with 80 additional people being issued in the past year.

### **PHYSIOTHERAPY SERVICES**

Over the past year, Mr Speaker, there has been a consolidation of services within the Physiotherapy Department, with staff working hard to drive solo professional and multi-disciplinary services and clinical improvements.

Our Senior Paediatric Physiotherapist received a Masters in Executive Management with Distinction through Durham University, and four Gibraltarian Physiotherapists completed their training and qualified in 2010.

### **DIABETES SERVICES**

Mr Speaker, one of our manifesto commitments for this term was to provide a multi-disciplinary diabetes clinic, and delivering on this commitment has represented a major milestone in the care of people with this condition commonly referred to as the silent killer. There are 1,800 people diagnosed and registered with this condition in Gibraltar. Approximately 90 per cent of these suffer from Type 2 diabetes, 200 people have Type 1 diabetes, and of these, 20 are under the age of 18. Children therefore account for approximately 1 per cent of the diabetic population in Gibraltar.

Mr Speaker, diabetes can have serious health consequences, adversely affecting the circulatory system and causing damage to the heart, kidneys and eyes. The GHA's focus on diabetes management is to prevent these complications and reduce organ damage by early detection and treatment of the problems as they arise. I am therefore very pleased to report that our manifesto commitment in this area has now been delivered.

### **RADIOLOGY**

And turning to Radiology, Mr Speaker, last year the Department provided a wide spectrum of imaging services for patients ranging from neonates to the very elderly. Over 19,000 patient visits resulted in almost 25,000 investigations. Mr Speaker, this has continued to grow from 24,000 last year.

The major achievements in the past year have been the introduction of the Breast Screening Programme, the elimination of reporting delays, massive reduction in waiting lists and the modernisation of the management and administrative systems through the successful implementation of the RIS and PACS System. This new information and image storage system has greatly improved the management of the entire Radiology Department's process, from requisition to reporting. A doctor can now request an investigation electronically and the report provided with an electronic alert, sometimes within two hours of it being requested. Mr Speaker, this is part of the provision of our manifesto commitment to the electronic health record.

Fulfilling yet another manifesto commitment, Mr Speaker, the Radiology Department implemented the Breast Screening Programme in conjunction with Kings College Hospital Radiology Department using an innovative direct electronic connection for mammography images. To date, 1,370 women have been invited for screening, out of which 1,132 have attended and 180 or 13 per cent have failed to attend. 72 ladies were recalled for further assessment, and cancer was detected in seven women who had no symptoms.



Mr Speaker, the Department is now in a position to replace the Radiologist who was dismissed by the GHA, and we are hopeful of having our third permanent Radiologist by the end of next year, coinciding with a Gibraltarian obtaining his qualification and therefore being able to apply.

In the meantime, I can confirm that negotiations with a Radiologist who was interested in taking a sabbatical to come and work with the GHA, have been successful, and he will be commencing on the 1<sup>st</sup> October this year.

As this Department looks towards developing even further in the future, Mr Speaker there is another great opportunity on the horizon. I am pleased to announce that I have asked GHA management to examine the feasibility of bringing Magnetic Resonance Imaging (MRI) to St Bernard's, with the necessary engineering and cost analyses already underway.

### **DEPARTMENT OF PATHOLOGY**

Mr Speaker, in the Department of Pathology, many improvements and new services have been introduced. This Government's investment in modern equipment, its commitment to quality and continuous improvement, along with staff development and training, ensures the GHA will continue to provide a service that is aligned with best practice.

In an outstanding personal achievement, the Deputy Pathology Services Manager, Audrey Olivares Smith, has been appointed the first International Liaison of the prestigious American Society of Cytotechnologists.

### **PHARMACY**

Mr Speaker, I reported last year that a comprehensive review of the GHA's Pharmacy Services was undertaken at the end of 2009 and implementation of the recommendations in the subsequent report are now well underway. The innovations and

changes that are being introduced will expand and improve the current service very significantly, especially, by providing better clinical support to the doctors and nurses within St Bernard's and KGV Hospitals.

### **PRIMARY CARE CENTRE**

Mr Speaker, I now move on to Primary Care. Management's focus continues to be to improve the appointment and repeat prescription access for patients. The volume of clinical activity at the PCC is considerable. 31,647 registered patients made over 169,000 visits to the PCC over the past year. The PCC administration introduced an appointment reminder service, whereby members of staff telephone patients the day before to remind them of their appointment. This has resulted in a considerable decrease in the number of cancelled appointments due to non-attendance by patients. In addition, an electronic web-based and voicemail cancellation service is also available. Nevertheless, the public awareness campaign to re-enforce the need to cancel appointments when not attending, continues. Weekly statistics on lost appointment are published daily at the Primary Care Centre.

An answerphone service for clients to request appointments has been introduced and patients are now able to leave their requests, with a member of staff calling them back to give them an appointment over the phone. Up to 35 people are now using this service on a daily basis. In addition, PCC opening hours have been extended from 8am to 6pm.

Mr Speaker, The Medical Director and the GP leads are finalising a repeat prescription programme which is guided by patient safety, best clinical practice and financial probity, and which will optimise the use of the new electronic prescribing system. The medical team have been reluctant to introduce a post-box prescription system, which the Opposition have been urging us to do for some time now, and which seems a relatively simple thing to do, but which can compromise patient safety.

We are confident that this new service will most certainly enhance the current practice and facilitate repeat prescriptions to patients on standard medications. I will also be bringing a Bill to the House within this legislature which will allow nurse practitioners to prescribe for patients with chronic illnesses, thereby relieving pressure on GP appointments. The Bill was published in the Gazette on the 16<sup>th</sup> June. To further enhance the prescription service, a new post of Clinical Community Pharmacist has been created and will be added to the PCC complement. Separate from the PPAU, this Pharmacist will work directly with patients, GPs and Nurse Practitioners to educate patients and conduct medication reviews to ensure best practice in the prescribing, dispensing and taking of medication.

And talking about medication, Mr Speaker, the House is obviously now aware that the necessary adaptations to the law are being made to entitle all persons over 60, irrespective of whether they work or not, to free prescriptions.

I note from the latest statement on the matter from the hon Members opposite, that instead of welcoming the news, like for example the Senior Citizens Association has done, they accuse us of implementing vote catching measures, whilst at the same time, try to take credit for the fact that this issue was raised by them initially.

It is true, Mr Speaker, that the Hon Mr Costa did raise the issue initially, but he did so, Mr Speaker, based on incorrect facts, and his main concern was to try and discredit the Government by inaccurately claiming that all of a sudden pensioners had to pay for prescriptions which they had not paid for before, because the GSD had changed the policy. This is what caused confusion and anxiety amongst the elderly, Mr Speaker. It was this falsehood that I challenged primarily, and not whether we have taken a long time to do it or they did not do it at all.

Mr Speaker, the hon Member has spent the best part of this term demanding from Government a timeline for the delivery of

the Government's own manifesto commitments, which he obviously does not consider to be vote-catching measures or else he wouldn't be urging us to implement them. What is the difference between this particular measure which we have now announced, Mr Speaker, which he describes as vote-catching, and the many that we have already introduced and which he has tried to time manage for us? Mr Speaker, for the sake of his own credibility, I would urge the hon Member to exercise a bit more consistency in his political life.

#### **HON N F COSTA:**

Just wait.

#### **HON MRS Y DEL AGUA:**

Moving back to the PCC, Mr Speaker, another modification to the telephone appointment system will be launched shortly in a bid to improve patient access even further. There are currently two telephone lines open between 8.30am and 3pm, dealing with an average of 75 calls an hour, which sometimes peak to 100 during the first hour. The IT department is working on introducing extra lines during the peak hour, which will be manned as from 8.00am as opposed to 8.30am.

It is hoped that by providing more dedicated lines for booking appointments first thing in the morning, less patients will queue up outside the premises before the Centre opens.

#### **SUPPORT SERVICES**

Mr Speaker, I now turn to the GHA's Support Services. Last year saw the retirement of the Deputy Chief Executive, and Director of Operations, Joe Catania. Joe was instrumental in supervising and co-ordinating the design of the new hospital.

He dedicated many, many hours to this project, at the expense of his family and social life, and he received an MBE in recognition of his work. I am sure the House will join me in wishing him a well deserved retirement and in thanking him for over 40 years of exemplary service to our community.

Following Joe's departure, the GHA's management structure has been revised, with four of our senior managers assuming new responsibilities and directorates being renamed.

- Gerard Teuma has become the Director of Finance and Procurement;
- Joey Gabay, the Director of Information Management and Technology and Corporate Services;
- Derek Alman, the Director of Clinical Engineering and Estates; and
- Kevin Pizarro, the Chief Operating Officer and Medical Director.

Mr Speaker, whilst on the subject of management. I have noted with interest that since taking up his new role as Leader of the Opposition, the Hon Mr Picardo has already mentioned twice, in different forums, that the problem with the GHA is its management. He has said, and I quote "too often we hear from our members and those who seek our help, that the frontline staff in the GHA are superb. Yet all too often we also hear that the management of the Health Service is a hindrance to the service that our professionals can supply" unquote. Of course, Mr Speaker, the frontline staff which he considers to be so wonderful, and I agree that the vast majority of them are, make up the bulk of GHA employees. A lot of votes for the taking, Mr Speaker, or so he thinks. But I can tell the hon Member that there are also 39 managers in the GHA, the vast majority of whom are local, who are not very happy with his comments. I anticipate that he will try to extract himself from the difficult

situation that he has placed himself in by proclaiming that he was only referring to the three that we hired from abroad, the three that cannot vote and who his party have promised to sack should they win the next election, including one which staff members have today joined me in congratulating for her contribution to nursing.

Mr Speaker, you do not have to be a genius to see through his cowardly political game. If the Hon Mr Picardo really believes that managers are responsible for the alleged woes of the GHA, a view that I do not share, and if he really has the best interests of the health of this community at heart, he should have the political guts to identify those managers who he says are impeding the health professionals from doing their jobs. What he cannot do is make a generalised and uninformed statement, which tars them all with the same brush, in his indecent haste to win over the rest of the staff, who he assumes agree with his view, and which is where he thinks the majority of the votes that he is so desperately seeking can be found.

## **DIRECTORATE OF FINANCE AND PROCUREMENT**

Mr Speaker, I now move on to the Finance and Procurement Directorate, which has faced many challenges this year. One of the major ones has been the successful implementation of the new pay and grading system known as Agenda for Change. The payroll team have actively been involved in the massive changes to the payroll, prior to its implementation. The Directorate is in the process of developing and improving functions across the board to ensure that the Directorate continues to keep to its mission statement "to provide secure, sound financial management within the GHA"

## **ESTATES AND CLINICAL ENGINEERING DIRECTORATE**

Mr Speaker, during the past year, the Estates and Clinical Engineering Directorate attended to a total of 3,533 breakdown or repair requisitions. It is interesting to note the decrease of

approximately 17 per cent in the number of reactive attendances from 2009 to 2010 as a result of the success of the planned preventative maintenance schemes. The Directorate is constantly engaged in improving infrastructure services and reducing costs.

## **HUMAN RESOURCES**

The Human Resources Department drafted a GHA workforce plan during 2010. Mr Speaker, the plan covers the period 2011 to 2025 and it identifies when vacancies for qualified clinical staff will become available within the GHA, either as a result of fixed term contracts coming to an end or as a result of retirements. Using this information, we will be entering into dialogue with students, teachers and parents, in order to draw their attention to the timing of the availability of local healthcare career opportunities within the GHA.

Communication with local and Gibraltar overseas students is on-going, drawing their attention to the availability of vacancies within the healthcare workforce. In connection with this, a policy was drawn up between the GHA and the Department of Employment. This policy formalises the approach to the use of the Government sponsored Vocational Training Scheme and ensures that access to the VTS in the GHA is fair, consistent and equitable. It applies to clinical posts requiring a professional qualification and it is designed to provide post graduates with the necessary work experience to enable them to become competitive candidates for identified future clinical vacancies.

## **DIRECTORATE OF IM&T CORPORATE SERVICES**

The Directorate of Information Management and Technology is comprised of a multi-disciplinary group of services delivering a wide range of professional and technical support for the GHA. It is responsible for many support services in the following areas:

- Information Management and Technology;

- Patient Entertainment System;
- Front of House Reception and Call-Centre;
- Hospital Attendants and Messengers;
- Catering Facilities;
- External Stores and Premises;
- Maintenance and Minor Works;
- Medical Records and Out-Patient Appointments;
- Domestic Services;
- Out-patient Domiciliary Oxygen Supply, Security Services and Landscaping;
- Cafeteria Services.

Mr Speaker, on that note, I am pleased to announce that the GHA's hospital shop, which has historically been tendered out to profit-making businesses, will be offered to a charitable organisation, with the proviso that the chosen charity has to offer sheltered employment to persons with disabilities.

## **MEDICAL SERVICES**

I now move on to Medical Services, Mr Speaker.

### **Cancer Services**

With regard to cancer services, 118 patients had 547 treatment sessions at Clinica Radon in Algeciras this year, 111 more treatments than in the previous year. Consequently, over 500 air passages to the UK have been avoided and more

importantly, 20 per cent more Gibraltarians have had their treatment closer to family and friends. In view of the fact that this programme is working so well, a decision will be taken shortly as to the feasibility of providing chemotherapy locally.

### **Cardiac Services**

The GHA continues with its improved access to angiography, stenting and cardiac surgery in Spain. The current waiting time for a routine angiogram is less than 48 hours compared to three to five weeks in Cadiz or the UK. Urgent angiograms are carried out within hours of request, and the proximity of this centre provides significant benefits to both the patients and their relatives.

### **Clinical Governance**

Over the past few years, Mr Speaker, the GHA has continued laying the foundation for its clinical governance programme. Work is continuing in the Nursing and Allied Health Profession areas and especially in Medical Services. Supporting this major drive, a course on root cause analysis and investigator training was organised and delivered in Gibraltar to different professional groups by the National Patient Safety Agency. There was strong representation of the consultant group in this course.

### **Continuing Professional Development**

Mr Speaker, Government's manifesto commitment to invest in training and development continues in every area. Through various systems, including dedicated time to acquire new knowledge and skills along with support for attendance at courses and conferences, the GHA provides the opportunity for learning clinical skills and the acquisition and retention of medical knowledge. These investments, Mr Speaker, are essential, in the ever changing field of medicine.

So therefore, Government continues to invest in its medical staff. The paediatric and obstetric/gynaecological complement has been increased from two to three consultants in both these specialities. The single handed consultants, ENT and Ophthalmology have now been converted into double handed specialities and the GHA is currently recruiting into these posts.

### **Complaints Process**

In the past year, Mr Speaker, 323 letters of commendation were received by the GHA together with 165 complaints, four of which were referred to an Independent Review Panel. The goals of the department continue to be to provide a timely and efficient response to users who need advice or assistance, and to investigate complaints submitted by users of the GHA within the statutory timescales, as well as, very importantly, to learn lessons from the outcome of those complaints which are sustained.

### **PUBLIC HEALTH**

And turning to public health, Mr Speaker. The most significant infectious event this year was an outbreak of 81 cases of vomiting and diarrhoea affecting staff as well as patients in four wards of St. Bernard's Hospital. At its peak on the 10<sup>th</sup> February, 17 cases occurred in one day. However, all cases were of short duration and self-limiting. A clinical diagnosis of Norovirus was made, although not all the cases were considered to be Norovirus.

It is very likely that the disease would have affected many more sick and vulnerable people but for the professional attention of the Nursing, Laboratory and Cleaning staff to infection control procedures and environmental hygiene. The Infection Control Committee passed a resolution conveying its appreciation to the staff for their contribution towards the efficient control of the outbreak.

The first death, unfortunately, Mr Speaker, from Swine Flu occurred in March, of a 50 year old unvaccinated man, who developed severe respiratory and multi-organ complications of Swine Flu, but had had no other previous illness. At the same time another healthy man of similar age was admitted with severe complications of Swine Flu, but recovered fully, thankfully, Mr Speaker.

## **OUTSTANDING MANIFESTO COMMITMENTS**

I will now provide the House with a progress report on the implementation of our few outstanding manifesto commitments.

### **Electronic Health Technology**

Last year, Mr Speaker, I reported that the GHA had completed its preparatory work for the implementation of the electronic health technology, and that the GHA had provided options for consideration prior to approval of the capital funding for the project. The modular implementation has been approved and has already been implemented successfully in Radiology, Pathology, Registration, Drug Prescribing and Business Systems. I am very pleased at the improvements that have been brought about in these departments as a result.

### **Mental Health**

Regarding Mental Health, Mr Speaker, save for the awaited re-sitting of the CMHT, my earlier announcement of a Counselling Psychologist for Primary Care and the completion of the new mental health facility, along with the staffing increases already implemented, completes our commitments in this area. It gives me great personal pride to have made my own small contribution towards ensuring that Mental Health will no longer be regarded as the “Cinderella” of the Health Service.

### **Chiropody Services**

Mr Speaker, in keeping with another manifesto commitment, we will within this calendar year be contracting additional chiropody services so that all patients for whom it is medically required, will be able to access this service.

### **Follow-up Cancer Clinics**

Mr Speaker, oncology clinics are already provided in Gibraltar for ENT, gynaecology and bladder cancers. Our manifesto commitment for this term was to provide even more follow-up cancer clinics in Gibraltar. I am pleased to announce the initiation of a prostate cancer clinic service for Gibraltar. Working with our Consultant Surgeon, Mr Sene, this clinic will be designed to provide biopsy and drug treatment services and will include a UK visiting consultant service in prostate cancer treatment.

### **Other Cancer Screening**

Last year I promised that once the breast screening programme commenced and all its logistics were fully tested, the GHA would prepare an evaluation of screening programmes in lung, prostate and colon cancer, as contained in our manifesto. Mr Speaker, that evaluation has been completed and the Government has accepted the GHA's recommendation to commence a Colon Cancer Screening Programme. The advice of the Director of Public Health, which is supported by our own consultants in the relevant medical fields, is that there are no credible screening programmes in existence for lung cancer and prostate cancer. I have asked GHA management to complete the detailed design of the programme with a view to starting the colon cancer screening programme within this financial year.

## **Free Orthodontic Appliances**

Mr Speaker, in keeping with the second part of our manifesto commitment directed at children, effective 1<sup>st</sup> July, all school-aged children entitled to receive orthodontic care within the GHA will have their appliances fully funded by the GHA.

## **Sponsored Patients' Programme**

Mr Speaker, Government has listened very carefully over the years to the issues raised by the Gibraltar Community Association and others in regard to the Sponsored Patients Programme. In 2007, Government increased the allowances and improved the means-testing process. The following year, I entered into discussions with the Calpe House Trust which culminated in the Sponsored Patients' Department having a say in the decisions surrounding who is given access to Calpe House, based not only on the financial needs of the patient, but also the needs surrounding their clinical condition. Last year, Mr Speaker, I announced further improvements to the Sponsored Patients' Programme including the provision of a free taxi service to and from UK airports to the facility providing treatment. Also, Mr Speaker, I announced the doubling of the petrol allowance for those being treated in Spain. Last year's announcements concluded with the support of air passage for both parents accompanying children 16 years old and under to the UK.

The ethos of our manifesto commitment for this term is to further review and reform the financial support system to try and further reduce hardship to patients. It is the considered view of both the Sponsored Patients' Department and the Gibraltar Community Association, that the 2007 increase in allowances was generous and very warmly welcomed. The Chief Minister has announced further increases this year, including a very substantial one for patients travelling to Spain. Ironically, it is those who get the maximum allowance, due to their limited income, who still suffer the greatest hardship. That is why, Mr Speaker, I am totally

opposed to the abolition of means testing, as doing so would do nothing at all to alleviate the financial burden of this category of patients, who despite the substantial increase in allowances, and the fact that they get the maximum, or near enough, they still find it extremely hard to make ends meet when having to travel abroad.

In order to assist those in genuine need, Mr Speaker, I am pleased to announce an amendment to the sponsored patients' policy which will allow for the setting up of a Board with discretionary powers to consider such cases. The Board will be comprised of the Minister for Health, the Manager of the Sponsored Patients' Department and the Chairman of the Gibraltar Community Association, presently Mr Robert Balban. The Board will have powers to investigate the financial and other circumstances of each case together with the ability to assist financially within every possible scenario which currently falls outside the sponsored patient policy.

Mr Speaker, it gives me great pleasure to have presided over this wide-sweeping reform of our Sponsored Patients' Programme, as a result of which we have met yet another manifesto commitment. It is a great pity, Mr Speaker, that between 1988 to 1996, sponsored patients had to suffer the consequences of the GSLP's neglect of this very important area, and became the victims of a regime which did absolutely nothing to assist them in their hour of need. Not one single increase in allowances in the eight years that they were in office, Mr Speaker. And the Leader of the Opposition has today had the gall, without even blushing, to say that we have done very little, Mr Speaker.

Mr Speaker, may I add that our Sponsored Patients' Programme is now the most generous of its kind for patients travelling to the UK or Spain for treatment. Very few programmes in countries which have to refer abroad, like we do, for tertiary treatment, provide for travel costs and the level of subsistence for patients and escorts that we provide. I am pleased to say that the

Gibraltar programme outperforms by far those of Jersey, Guernsey and the Isle of Man.

Mr Speaker, I would also like to reiterate that as part of the GHA's responsibility to provide accountability for spending, the Sponsored Patients' Programme will continue to be closely monitored and will be audited by the GHA to ensure that all travel abroad is medically necessary, that is, that the services or treatment offered in the UK cannot be provided in Gibraltar, and that all possible transfers back to Gibraltar are appropriately made by UK hospitals in a timely manner.

In conclusion Mr Speaker, it gives me great satisfaction to be able to report, that barring the relocation of the Community Mental Health Team, which we will continue to make every attempt to re-site, each and every one of our health manifesto commitments will have been implemented during this term of office.

Mr Speaker, I have stood before you today giving an account of a healthcare system, which despite its faults, is miles ahead of the system we inherited, in every respect. To be able to fund the innumerable improvements that have taken place, impossible to mention today but I am sure I will have plenty of opportunity later on in the year, health spending has gone up annually from £20 million in 1996, when we took office, to £80 million this year. We have achieved this, Mr Speaker, in the midst of severe spending cuts and austerity measures across the rest of Europe.

I maintain and uphold, Mr Speaker, and I will not tire of repeating it, that Gibraltar has a healthcare system which is the envy of many communities of our size. That as with everything in life, there is always room for improvement, and that the GHA continually strives, through its complaints procedure and clinical incident reporting, to improve from within.

And that I am confident, that despite the constant attempts from Members opposite to denigrate the GHA, the vast majority of people in our community, do indeed value, appreciate and are grateful for the high standard of healthcare that we enjoy in Gibraltar today.

And on that positive note, Mr Speaker, I wrap up my contribution for today. My sincere gratitude, as always, to the GHA's Chief Executive, Dr David McCutcheon, the rest of my management team, my personal staff, and all the employees under my ministerial responsibility, for their unstinting loyalty and support, and for their proven and ongoing commitment to their work. Thank you, Mr Speaker.

#### **HON N F COSTA:**

Mr Speaker, I was delighted to hear the way that the Hon Mr Jaime Netto decided to conclude his speech and the way that the Hon Minister for Health has decided to continue as it was categorical proof, if any was indeed needed, that the only way that the GSD can justify their present political atrophy is by harking all the way back to 1998, 1999, 2000. People today, Mr Speaker, care very little, if at all, what were the circumstances in those days and they care very much ... They care very much and the fact that they have ... Of, course, they have the Hon Mr Beltran, the Minister for Education, from his sedentary position, to howl and chant like a puppet on a string in order to applaud his leader's contribution to the Budget debate today and at many times during his speech, of course, he has praised and banged on the table, lest he forget that he is there for the Hon Minister ...

#### **HON C G BELTRAN:**

Deservedly so. Deservedly so.



**HON N F COSTA:**

Yes, yes. The Hon the Minister for Education has to make sure that the Hon Leader does not forget that he is there beside him clapping every time he says anything. Whatever it may be. The Hon Mr Beltran will sometimes look ahead and is not quite sure even what the Hon Leader has said, but will clap anyway because he wants the Hon Leader to know that he is there to clap whatever the Hon Leader may say.

**HON C G BELTRAN:**

We are present here, Mr Speaker.

**HON N F COSTA:**

And I [*inaudible*] the hon Members, especially, the Hon Mr Beltran who never, ever, keeps quiet. He always goes on and on and claps because people have to remember that he is there, lest he should be forgotten. I have told that the Hon Mr Beltran and the hon Members opposite that this thing of going back to 1988 fools no one. It is a brazenly self-serving transparent political gimmick and they should give it up because people care what happens today. They care about what happens today and the fact, Mr Speaker, as I say, I am not even two seconds into my Budget speech they have to howl at me, just shows how much they do not want people at home to hear what I have to say. Mr Speaker, and in connection with the Hon Health Minister's remarks because I was slightly delayed by a couple of minutes, ironically, because somebody was complaining to me about some faults in her system, let me tell her that I would not for the world miss anything that she has to say, even when she is addressing the Hon My Learned Friend as to the Fire Brigade. I would not want to miss anything she says, especially when she has honoured me with continuous badges of honour saying to me that as a result of our criticisms, my personal criticisms, she

and the GHA has been spurred on to do exactly that which we had pointed out to her in various press releases. In respect of the various matters she has raised to criticise us for having had the temerity to say this and that I will, of course, spend some time in correcting her factually incorrect statement, I will also give examples to rebut Mr Netto's health, rather, statistical distortions to show that this Government has in some very crucial areas learnt very little in the past fifteen years and I will give those examples to him very shortly. This is the case even though today, on Budget day, during an election year, the GSD does accept that care and respite is needed by an increasing number of families in Gibraltar and today they set out new care services that will be completed in the future. Well, these are promises of things to be done in the future. Certainly, in the past four years, Mr Speaker, as I will show the GSD and Members opposite today, very little has been done to correct, what they call, perennial issues that keep cropping up, year after year, after year. We on this side of the House feel that fifteen years is a very long time to get on [*inaudible*] solving their problems. But they need not worry, Mr Speaker, and Mr Beltran can be sure that he will not be in a position to be clapping from that side because at some point this year, the Hon the Chief Minister will have to call a general election and we will sit where they sit and we will sort out the problems that they do not do at all, year after year, after year. Mr Speaker, I will take their hollow gasps and laughter as a badge of honour that they are ... let them try to judge me if they want ... We will, certainly, be pointing out in our own press releases which then they will complain about.

Mr Speaker, I make an apology in starting my fourth Budget address in the way that I have done and given that the Hon Mr Netto felt it necessary to mention me specifically by name because, I had the temerity to express a view in a press statement, I will show this House and those who may be listening today, about some shocking instances where the Hon Mr Netto himself has failed to grasp the nettle in some specific instances where he certainly did very little, if nothing at all, to

help desperately vulnerable people in Gibraltar, today, not in 1988, today, who were in need of his assistance and he was nowhere to provide it, except to say certain things, such as, well the Department did not have the resources to meet ... Well, if the Department did not have the resources to meet those issues today, then the problem is there today, not in 1988 and I will say more about the statistical percentage. Statistics that he pronounced almost fanatically at the end to somehow justify what he says are the improvements during his tenure.

Mr Speaker, we have to accept, of course, that there will be instances where the Government cannot assist. Surely, the Government cannot be there to do everything, but where the Government is responsible for any particular area of responsibility, be it health or be it social services, it is not good enough, Mr Speaker, and the electorate will not forgive the Hon Mr Jaime Netto for having said in specific instances, which I will refer to in a moment, that they simply lack the resources. If, as he said, fanatically and in a moment of feat and peak, that the contribution to the Department has gone up by 700 per cent and so on, well, Mr Speaker, if the contribution did raise so much, where were they when those vulnerable people needed the help. Clearly nowhere. Notwithstanding the statistically, and I will explain to him why later, incorrect way he has compared eight years in office with sixteen years in office, he knows that he is not comparing like with like. To follow on with the phraseology used by the Hon Mr Netto, it is them that today show very little concern for those who are truly vulnerable in our community. But, Mr Speaker, let us not forget that, come election year, all kinds of wonderful things that have not happened three years before or, let us say, fifteen years before, all of a sudden become possible.

Mr Speaker, come election year, there are sufficient funds to water play grounds and play parks that spring up like flowers in April. Pensioners are graciously promised free prescriptions, having noted, what the Hon Lady accepts, was our point that pensioners should not have to pay for prescriptions. The

Government provides free bus fares for all during an election year. Beaches are replenished with sand even though, of course, they lack the foresight to put in the proper structure to ensure that that same sand is not then reclaimed by the sea. Finally, some long suffering tenants in overcrowded Government flats are given their new rental homes. Rental homes, Mr Speaker, that were promised before the 2007 General Election. And, the best one yet, I almost fell off my chair and I say this literally, there was a press statement issued that the Government was alarmed about the abysmal record of some companies that do not employ local Gibraltarians. All of a sudden, in an election year, Mr Speaker, they accept what the Opposition has been saying all along and for many, many years, that some local companies are not giving Gibraltarians a fair shake. No longer is it the case, as the Hon the Chief Minister has said, that Gibraltarians do not want to work as cleaners, in construction sites. That Gibraltarians are too lazy, or are too choosy, or they are unemployable, or that they want the Hon the Chief Minister's job. All of these things were flippantly said by the Hon the Leader of this House when we had said time and time again that Gibraltarians were not getting a fair shake and all of those epithets were [*inaudible*] flippantly by the Hon the Leader of the House ... that what we were saying was not true. But, in an election year, Mr Speaker, of course, that is true and now, now in an election year they are going to do something about it. Good Lord, Mr Speaker, are they not embarrassed by such bored faced self-serving transparent electioneering? The fact that Mr Beltran continues to laugh, Mr Speaker, is certainly music to my ears. The more he laughs over everything that I have to say just shows how desperate he is that no one should find out or hear what I am saying, but let me tell him again, in case he did not hear it over his laughter. Does he actually think that Gibraltarian memory spans only last fifteen minutes as opposed to spanning the entire fifteen years of their office? Electoral bribes are what they are, Mr Speaker, and are what they are. But Gibraltarians, Mr Speaker, are far too wise. They are far too intelligent to see and to be taken in by this shameless propaganda and electoral gimmickry that the GSD has set out

during this election year in their increasingly frantic attempt to cling on to power because that is all that that they are concerned about, Mr Speaker. Power.

And, whereas they will never admit it, the GSD can never say or can never boast of having functioned as a team of individuals. Rather, it is clear, ... it is clear beyond peradventure for anyone who cares to read our press releases. For anyone who cares to see how long this Government takes to do anything. That the way that they function is that they wait and they sit for the edicts and the commands of one man alone. They are happy to sit there. In their Ministerial offices with their plush wages to wait and see what it is that their self-anointed prince will decide for them to do, because God forbid that they take any decision for themselves. How else then, Mr Speaker, can we explain that the Hon the Leader of the House chastises the Ministers every time that they say something which displeases him. Why is it that the Hon the Chief Minister feels the compulsion, indeed, almost the obsessive compulsion disorder, of having to add or to clarify anything that the hon Members opposite say. Is it, Mr Speaker, because he does not trust them? Why is it that the Hon the Chief Minister has to chair the Civil Defence Committee when the Hon Lady opposite is the Minister responsible for Civil Defence? How is it that it takes press statements from No. 6 Convent Place to have to explain, clarify or add what the hon Members may have said in a previous press statement. It is an over centralised, over controlling and over reaching centralised system that the people and Gibraltar are sick and tired of, because what the people of Gibraltar want is a team of committed individuals. A leader like Mr Picardo who will allow his Ministers to take responsibility for their own departments. Who, having agreed a policy ... Mr Beltran should have clapped there, but obviously you were talking on the wrong side of the benches.

Mr Speaker, the Hon the Leader of the Opposition will allow us to take political responsibility for our departments. He will allow us to take decisions in our departments because, otherwise,

what we have is a system of political atrophy, where instead of saying affordable housing, which they called affordable housing, should have started say within the second or third year or, indeed, the fourth, fifth, sixth, seventh or eighth year of office, it has to wait until the Hon the Chief Minister does, in fact, turn his attention to the matter in order to enable Government funded private housing to bloom. Mr Speaker, even a daily organ of record which is mostly loathe to criticise anything that this Government does, even said, in an editorial, that the decision and the pace of Government business was much too slow and the Hon the Chief Minister should welcome, therefore, a group of people who are willing to work together. Who are willing to take political responsibility for their decisions and who are going to put people first, and instead ... I am not surprised that the Hon the Leader of the House, and given that the Hon Lady did see fit to mention when the Hon the Leader of the Opposition was not here, or when I was delayed by two minutes, ... that the Hon the Leader of the House is not here and she wished he had been here to hear. Hopefully, he has listened to me over the radio and, as I said, surely it is no surprise to the Hon the Chief Minister, that it takes great exception to the fact that we, on this side of the House, have to raise the same old issues again and again and is not because we like to turn on the same tapes. In fact, nothing would please us more than to see the historic problems that we continue to see year in and year out and which we continue to call on the Government to fix, for them to go away. If that were to happen, what he calls the same old tapes would go away because there would be no need for us to mention them at all. Rather than waste their energies in complaining that we bring these issues out, that we issue press statements, that we have the gall to express our points of view in such statements, what the GSD should actually do is actually muster, well whatever energy they have left to muster, given their fifteen years in office, to actually get around to solving those problems and, should they do so, we will say, of course, no more about it.

Mr Speaker, it is very disheartening for us on this side of the House to see these historic problems arise. The Hon Lady has, in fact, agreed that some of these issues are perennial and that they have not been addressed. It is precisely because they are not addressed and it is precisely because I have gone over my three previous Budget speeches into some great detail as to what it is that those problems are. I will merely set those out in brief before going on into some new issues that arise.

The Hon Lady does mention in her address about the fact that we give her stick over the cancellation of operations due to bed shortages. Well, I have to tell the Hon Lady that, for as long as any operation is cancelled, we will continue to give her stick over that, because it is not acceptable that an operation be cancelled due to a bed shortage and I call it a bed shortage, even though during the last Budget session the Hon the Chief Minister chastised me and lectured me at length about the fact that it should really be called a bed blockage. By whatever name we call it, the underlying problem is still there and not only does it cause great inconvenience to the people that are affected by it, even though the Hon Lady accepts that she is aware of the anxiety that this causes, but in some cases when a person cannot be operated because there is a bed blockage or a bed shortage, it does in some cases allow the health of that person to deteriorate. And that is not at all acceptable. Given that measures have been introduced to alleviate the problem, and it is accepted that it is a problem, and given the percentage, a comparison that is once again made between the eight years in office with the GSLP and the fifteen years in office of the GSD ... all that money is going in. If so much more is going in, well, why is the problem not finally resolved? That is the question that they must ask themselves after having done the statistical percentage comparison.

Mr Speaker, the Hon Mr Jaime Netto spoke about being proud of the achievements in the Care Agency. Well, we have pointed out and, in fact, they gave us the answer in a recent Question and Answer session, that there still are a high number of elderly

people waiting for a place in Mount Alvernia and that some of those elderly citizens are occupying beds in John Cochrane Unit and St Bernard's Hospital. So, to borrow the expressions used today by the Hon the Leader of the House, where is the dignity and respect, and I quote him, that he said elderly people should expect as being compatible in a modern society. Mr Speaker, as I said at the beginning, the Hon Mr Netto does present a distorted percentage calculation because, as I say, it is not mathematically literate or accurate to compare, by way of percentage calculations, a period of eight years with a period of fifteen years. This just simply does not make sense. I am sure that the Hon Mr Netto, in fact, knows that but either he just does not care about it or has not realised. Either way, Mr Speaker, either scenario and either explanation is bad enough.

Mr Speaker, there has been some mention today of the half-way home for men who find themselves homeless. This is, unfortunately, as I have seen myself in part of my family practice, an increasing problem for some families after the breakdown of the relationship. Not necessarily marriage, but after the breakdown of a relationship. There are times when men find themselves out of a home and for that reason we have put questions before to this House about the progress of the half-way home for men, which has been stated in a manifesto commitment, and the reasons why that half-way home should be available, certainly immediately. There have been reported instances where men, after a relationship breakdown, have had no choice but to temporarily take accommodation in their own vehicles and then we have Mr Netto telling me that I should be proud. I should be proud of that? Of the fact that they are allowing a situation to arise with having been fifteen years in Government and being in the uniquely advantageous position of being able to plan ahead, as the Government should do. Not to react to events, as they always do, but to plan ahead. If they had planned properly ahead, there would not have been one single man, after the break up or a separation, having to sleep in his car. But they do and that is as damning an indictment as

ever there was one, on their proud policies that we should be apparently clapping.

And so, Mr Speaker, this is I believe, having stated some of the issues that have arisen in the past and which I have stated in previous Budget addresses, an opportune juncture to turn to the specific areas of responsibility, namely, health and social services, which the Hon Leader of the Opposition has entrusted me with.

Firstly, in respect of health, Mr Speaker. It is unquestionable that the Hon Lady once again presides over a very important state budget, with a total forecast outturn this financial year of £78,879,000. In respect of the last financial year 2010/2011, the forecast outturn is £78,999,000. Given that the estimate last year in respect of 2010/2011 was £73,327,000, in other words, almost five and a half million short, as the Hon the Leader of the House confirmed during his Budget address, we can safely estimate that this financial year will also exceed the estimate for 2011/2012.

Therefore, Mr Speaker, It is because there is this amount of money being spent in our health services that the electorate will, on having heard the perennial issue which they have accepted keep arising, ask themselves why they keep arising when this amount of money is being spent. I say every Budget speech, and I will repeat it again, Mr Speaker, that it is only right and proper that the state, that the Government should continue to fund our health services but it is also surely imperative that those that have the political responsibility of ensuring that that money is well spent, are indeed making sure that it is well spent and, in addition, are watching out and carefully planning to avoid any possible problems in the future. No one has one hundred per cent foresight. No one can predict everything that happens but, certainly, by examples that I will give in a moment, there were some instances where money has been certainly wasted and things which the Hon Lady opposite could have done, which she did not do.

Things which are perfectly reasonable to expect that the Hon Lady would have noticed at the time, and one instance of this, Mr Speaker, relates to the adequate planning of personnel in the GHA. I refer specifically to the Ear, Nose and Throat Department. As the Hon Lady pointed out in answers to one of my questions during the second last Question and Answer session, the provision of locum cover on the retirement of the ENT Specialist resulted in a bill based on a cost of over £7,000 a week and the cost of locum cover for the Radiology Department stood at over £300,000. The Consultant ENT Specialist at St Bernard's Hospital retired on 24<sup>th</sup> September of 2010. Parliament was told that the replacement Consultant started working in the week beginning 10<sup>th</sup> January 2011. The Government is on record as having said that the cost of the current coverage plan is dependent on the nature of the locum cover obtained. They said that this was expected to be about £46 per hour and therefore approximately £7,700 per week. Given that the post was not filled for about 15 weeks and using the information supplied by the Government, it means that the maximum potential liability for the taxpayer was in the region of £115,500. And I ask, Mr Speaker, is this not a shocking and remarkable state of affairs that provision was not made to fill this post earlier given that it must have been known to the GHA that the ENT Specialist was going to retire. Indeed, it would have made sense, indeed, it would have been helpful if the new incumbent to the post would have worked side by side with the outgoing one, even if for a short period of time, to ensure there was an element of continuity of service as one specialist passed on work from one to the other. The fact that the post was not advertised until June 2010, only three months before the ENT Specialist retired, shows that the matter was certainly not properly handled. Given the length of time that it takes to recruit staff which is a point that the Hon Lady has tried to beat me over the head with when I have clamoured for the third radiologist and she said, well the hon Member should know that we cannot hire people straight away. It takes time. Indeed, it does take time. So, if it does take time, why do they not advertise the post for the consultant well before so that they could have ensured

they would not have had to spend over £115,000 in throw away money for locum cover. The Minister herself, I go further, is on record as having said that she cannot say when the GHA realised that the post was going to become vacant and her excuse for the delay was that they wanted to recruit two instead of one. I am afraid this does not hold water because that surely did not prevent the Government from advertising the post whether they want to obtain one, two or a thousand. The number of people they want to recruit has no bearing and no impact on the fact that they could have advertised the position earlier especially in the light of previous answers that it takes time to recruit professional medical personnel.

Surely, Mr Speaker, it is highly regretted that these shortcomings are costing us the tax payer the amount of money that I have said which surely could have been spent on other areas of the health service.

Let me turn now, Mr Speaker, to an example that does not deal with what I say is the careless waste of tax payers' money, but rather, I say, perfectly illustrates an instance where the Government will say anything to get elected. The Hon Lady has not mentioned it, about the fact that we try to make hay while the sun shines, I believe she said, and it is about the so-called free spectacles programme. The point here, Mr Speaker, is not that we are chastising the GSD for having given a flat rate of subsidy. It is not that we are saying, Good Lord, you should never have given the flat rate of subsidy. It should have been free ... What we are simply saying is that if it is not free. If it is, in fact, a flat subsidised rate, just say that it is that. Do not have Gibraltar families coming to us saying, I read in the press that it was free. I heard that it was free. I heard on the radio that it was free but it is not free and yet the Government press release said that it was free. In fact it was entitled "Free spectacles for children" and included a comment from the Hon Lady where she declared how delighted she was to "announce the commencement of free spectacles for children". And further, in 2010, the Hon Lady said that she was pleased to announce that

Government would commit funds so that the GHA can provide one pair of spectacles per year, free of charge, the word free, the word free and free. You would be forgiven, Mr Speaker, when people came to us to complain that it was not free. As a result of these private representations, it was made clear that it was a subsidised programme. I take the point again, Mr Speaker, I am not saying to the Hon Lady opposite that she should have made it a free programme or that the rate of the flat subsidy is wrong. All I am saying is that, notwithstanding that an election is round the corner, do not tell people that something is free when it clearly is not. That is all we are saying. Be honest. Some plain speaking for the electorate to hear. And in [inaudible] these mothers that came to me to talk to me about this issue, advised me that there was a flat rate subsidy of £7.50 for frames and that the subsidy for the lens depended on the strength of the prescription and on the nature of any clinically required supplement. As they said, Mr Speaker, a subsidised service. Obviously, and the Hon Lady does in fact concede the point, and I quote "obviously, they will have to pay the difference." If you have to pay a difference, Mr Speaker, it does not take an English literature or a language genius to know it is not free and that is the point. It is not honest of them. Of course, instead of simply dealing with the policy issue that we had raised and the concerns raised by mothers who had come to see it, then came in the toxic bomb of personal insults. The first statement issued in reply to mine are ... just had the usual, personal invective, the usual insults about me, questioning my motivation. God forbid that I should say anything ever about what the Government should say in their press statement and try to call them to account.

Let me give, Mr Speaker, another example of this Government's now increasingly long string of measures that have been adopted purely for electoral purposes this year. I know that the Hon Lady said that I should have some credibility in this area and I will be very happy to say to her that my position has always been very consistent in all that I have said in Parliament. The Hon Lady opposite cannot be honestly telling me that when

there is a rush, when there is a plethora of all of these announcements during an election year, that they are not expedited and running at break neck speed to try to fulfil those commitments which clearly they have not. They know they should. They promised it and they are doing everything that they can, rushingly, rather than having done so, Mr Speaker, in the way that they should have done. Now they are worried. Now that their promises are not delivered. Now that there is word in the street that they are dissatisfied with the performance of the Government. Now that they may not be elected. Now, once again, the voice of the people of Gibraltar is to be heard. The voice of the people of Gibraltar is to be feared because they may kick them out of Government and now, Mr Speaker, let us rush everything that we can. I again had the temerity, I do not know why I criticise the Government so much, I must be bored in my practice. I had the temerity to point out that a member of the public had come to us to speak about a concern that he had about prescriptions. The Hon Lady has said that prescriptions will now be free for everyone over sixty, even if they work. As I said, it came to us as no surprise that the announcement should have come now. In March of this year, we drew attention to representations that had been received from a member of the public who, on going to renew his health card, was told that he had to pay for medical prescriptions. The person's spouse, who was over 60, also had to pay for the prescriptions even though she was not working. This was the position even though the spouse was legally a pensioner. And the question arose, well, if my spouse is legally a pensioner and does not work, why does she have to pay for prescriptions? That was the issue. The Opposition pointed out at the time that there was a clear unfairness in the situation and the Government had insisted that the law prescribed that all persons not in employment are entitled to free prescriptions. In the case of a married couple, if one of the partners is in employment and paying Social Insurance, under the law he or she is considered to be a registered contributor to the Group Practice Medical Scheme, and as such, neither the contributor or his/her dependent is entitled to exempt status. In other words, that the unemployed

spouse also had to pay. And Mr Speaker may recall this issue, because this became the subject of heated debate for a number of weeks earlier on the year. Yet, contrary to what the Hon Lady said, nobody had questioned the fact that the provision for people over 60 who work, and their spouses, to pay for prescriptions has been in the law since 1973. But given that the law is now going to be changed anyway to allow for free prescriptions for this category of people, it would make sense for the Government to apply the changes immediately in an administrative sense and then provide legal cover through retrospective legislation. It was not us, who tried to confuse the issue. The GSD accused the Opposition of making incorrect statements and causing unnecessary anxiety to pensioners, of playing politics and playing false statements. The Government went on to say that they wanted to reassure the public that all persons over the age of 60 who were not in employment and whose spouse was not in employment would continue to receive free prescriptions. Given that the issue was that the people in employment and not those who did not work, it was obvious that the Government's response was a complete red herring and that it was them, not us, who were confusing the public. Mr Speaker, why bother, as I have said before, with the truth and plain speaking to the electorate when there is a general election around the corner.

I have now mentioned very specific examples of areas in the provision of our health services where there is clear room for improvement. All of our concerns come from representations made to us from people who are dissatisfied in one way or another. The Government will be loathe that I remind them of the petition that was made public in the press of 30 people that had members of their family in hospital suffering from Alzheimer's. The petition made it abundantly clear that it praised the wonderful and humane working staff that could not do more than it was already doing given the resources available to them. In fairness to the Hon Lady, in answer to some of my questions on the care given to persons suffering from Alzheimer's, she had expressed at one point during a question

and answer session dissatisfaction with certain parts of the care in relation to physical exercise and mental physiotherapy. It was the petitioners in this press statement that were complaining that as a result of what they perceived to be a lack of exercise most of them were unable to stand up, walk or even move their heads.

Mr Speaker, we now know that a new building for patients with dementia is being built. We, contrary to what they like to tell people that we only want things to go badly, so that we can hit them over their head with them, that is not true ... We welcome the fact that that is happening but, it is as we say all the time, they have had fifteen years to get along with it. It is a bit too late. It is a good thing that they are doing what they say that they are doing given that they continually tell us how much more money they are pouring in. Given that there are so many patients, an increasing number of patients in Gibraltar suffering from Alzheimer's, had there been prudent and reasonable forward planning, had any Minister walking down the wards of St Bernard's Hospital and seen what there was to see, would have raised this issue well before and done something about it well before. It is about caring, Mr Speaker. It is about instances of caring and the rant of the Hon Mr Jaime Netto at the end of his speech [*inaudible*] and I stand by my accusation of the Hon Mr Jaime Netto that he personally has failed certain specific individuals who are certainly some of the most vulnerable members of our community and I put it to him that it is folly for him to say that he should be proud when I am about to remind him of those vulnerable people which he did nothing for, to take care for.

For us, on this side of the House, one of the most outrageous examples of the lack of proper provision of care was the one relating to the incarceration of a fourteen year old girl who was imprisoned because she had no other place to reside. As usual, once I raised the issue, all verbal hell broke loose and I was called everything under the sun. But, as always, one takes those insults with the light humour that they are and for the

badges of honour that they bestow. It was not only us on these benches that, in fact, criticised the Government publicly. It was not only us who expressed outrage about the fact that a fourteen year old had nowhere to go and she was incarcerated. There were different private members of the public who actually felt outraged enough to write in. But, of course, whereas the Hon Jaime Netto was perfectly happy to insult me personally, did not wish to criticise or reply to the various other people, including the lawyer concerned in this case as to the comments that were made. God forbid that they should lose any votes. Let us attack the Opposition member instead, and who am I, Mr Speaker. The way that this Government dealt with this particular case is representative and symptomatic ... that when it comes to the most vulnerable members of our community, despite what I have said are distorted statistical percentage comparisons, they fail. It is not as if this was a case that came out of the blue because we, again, on this side of the House, have raised a similar issue where a lady with Gibraltarian connections, because she had been kicked out of her matrimonial home, had nowhere to go. This was an offence for which you and I, Mr Speaker, because we have residence permits in Gibraltar, would have been given bail but because this person had nowhere to go, the Stipendiary Magistrate had no choice but to place her in jail.

Mr Speaker, that because people have nowhere to stay, they should be locked up in prison, says a lot about this Government's care of the most vulnerable in our community and it is shocking that anyone should be put in that position, let alone, Mr Speaker, lest they forget a fourteen year old minor. It is not for her or for those who want to speak out for her, to ask for help from the Hon Mr Netto. It is for Mr Netto to plan, to foresee and to make adequate provision for those people who fall through the cracks. Notwithstanding the fanatical, statistical percentage comparisons thrown at me in a fit of peak, those people were left abandoned by this Government. Purely and simply abandoned. And it is not us alone, Mr Speaker, as I have said, that were alarmed. There were many Gibraltarians



and Mr Speaker, when we raise the issue, the Hon Mr Netto ... I am sorry that I am picking on him this afternoon, but given that he [*inaudible*] had to pick on me earlier, I certainly make some colourful additions to my own contribution. The Hon Mr Jaime Netto, instead of addressing the very serious policy issue which was that no minor and no person should be put in jail because she or he has no place to go, decided to start placing information and particulars of the case, which were *sub judice*, in the public domain. He did this, Mr Speaker, in order to defend his own indefensible political position and that was nothing short of outrageous and unheard of. It was incredible to us because in our statements we were extremely careful not to mention any detail of this particular case, other than what had been made public, in order to avoid confidential personal information, that may, for example, identify the person in question, from becoming public. All that the Hon Minister had to do was to reply to the broad policy question but no, Mr Speaker, that was not what the Hon Minister did. The Hon Minister, in his interview, which I must admit certainly took me and many Gibraltarians by surprise, said the most remarkable things. One of the things that he said was that the Care Agency was only there to deal with normal cases. What on earth does dealing with a normal case mean? The whole point of the Care Agency, the whole point of buttressing and strengthening the safety net, which must be there, by the state, is to ensure that those safety nets are there for people who are not in normal circumstances.

If this fourteen year old girl had been in a normal circumstance, she would not have needed the help of the Hon Mr Jaime Netto, at all. She, obviously, would have been able to have gone to her aunt's house or a cousin's house or somebody else's house. It was precisely because she had nowhere to go that they should have stepped in and they failed miserably to do so. The Hon Mr Netto went as far as to try to justify that [*inaudible*] to do anything, by making a distinction between a minor who was abandoned and one who has voluntarily left home. Whether a minor voluntarily leaves home or whether a minor is abandoned, the fact of the matter remains that there has to be proper

provision of residential services to ensure that if she finds or he finds himself in circumstances where criminal charges are being preferred against that person, they do not seek jail until the case is heard and convicted and then only, if the presiding judge feels that incarceration is the appropriate sentence. Incarceration should not be there for people who find themselves, through no fault of their own, in such circumstances. On asking, Mr Speaker, how can this happen in Gibraltar? How can this happen in the Gibraltar the Hon Mr Jaime Netto says that we should be so very proud of. I was not proud by those circumstances at all, Mr Speaker. In fact, it caused me great embarrassment to have to see what happened. The spectacle that the hon Member made himself by giving the indefensible interview that he gave on GBC.

Then, of course, we have another situation. I am not going to go through all of the instances, not because they are not important but because, of course, we have to keep this to a time manageable occasion. The second most important instance, in my view, was the case of a mentally afflicted man who spent time, again in prison, because the KGV would not initially take him back. For Members on this side of this House, and I dare say for most Gibraltarians, this, once again, drew attention to the absence of that crucial and bottom line safety net which we say was absent. Then, of course, one again, we write the press statement and the reply comes again in the usual invective et cetera. I will not go into it but the Government, in addition to insult which is their initial knee jerk reaction and what they prefer to do most ... They insult you and somewhere in the middle of the press statement you actually see that they are, in fact, conceding a point but it is so couched in so much invective that they hope the point is lost. We on this side of this House, Mr Speaker, will not allow them to forget that points are conceded even if it is encircled in a diatribe of vitriol emanating from the hon Members opposite. There was a general perception surrounding the case at the time that if the issue had not been made public ... We did not start making the issue public, as much as they would want it to have said that it was

just a political game. We did not make this issue public initially. It came to the fore through other directions. It was our impression and it was the impression of some people closely connected to the case that, had the issue not been made public, the matter would have remained swept under the carpet. An impression was formed on the basis of the sequence of events and which I will very briefly remind the people about who may be listening. This was the case of the 54 year old man who had spent five months on remand, accused of wounding another patient at KGV where this man had, in fact, been over the past twenty five years. Initially, Mr Speaker, you may recall that the mental health service argued that the man's condition had improved over some time prior to the incident and that therefore, at the time of the alleged offence, there was no medical reason for him to return to the KGV. Subsequently, Mr Speaker, and with no explanation being provided, the matter was resolved when the KGV management agreed to take him back on a voluntary basis, even though they had made previously and had said that they had made a clinical decision, that he could no longer be sectioned there. And in this case, Mr Speaker, although the circumstances were very different to the circumstances of the fourteen year old girl, the central question was, once again, before the Magistrates Court, that if the man was released from custody pending trial, where was he to be sent if there was nowhere for him to go. It goes without saying, that this instance created a considerable amount of distress for people who became aware of this case. I, unfortunately, had to personally witness the fact that this gentleman, who clearly was in no fit state to be in prison because he was on remand in prison, because he had nowhere to go, had to be brought to the Magistrates' Court weekly in order for his lawyer to be able to make the usual weekly application that he be sent back to jail because he had nowhere else to go. Anyone just sitting in that court room and seeing what was happening, even before the facts became public, would have seen that it was not right, it was not proper that this gentleman should be in jail coming down every week to the court room because he had nowhere else to go.

Mr Speaker, the Hon Mr Jaime Netto failed, once again, in being able to deal with this matter urgently and in the manner that it required and unsurprisingly, Mr Speaker, in the usual Punch and Judy pantomime, comes the most extraordinarily insulting press release that I have seen.

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

[*Inaudible*] a tantrum [*inaudible*].

#### **HON N F COSTA:**

Well, a tantrum. Given that the Hon the Chief Minister is laughing in the background, let me tell him exactly what I venture to guess and I wager that he, in fact, mostly penned that press statement. But let me remind him in case he did not know what it was that we were accused of. The facts being what they were and speaking for themselves. They said that we were regurgitating false information. That we misrepresented the facts. That we distorted the truth. That we showed callous disregard. That our interests were to score cheap political points. That we were reduced to the level of malicious gossipers who were playing to the gallery. Good Lord, Mr Speaker, anyone reading that press statement would have thought that we had, instead of commenting on an area of public concern, set out in a press statement to catalogue personal insults of the hon Members opposite. This was a case of genuine concern where, once again, [*inaudible*] the issue to the fore. It was other people who brought it to the fore and which resulted in people in the community writing in to express their concern. So those things that they called us, regurgitating false information, misrepresenting the fact, showing a callous disregard. Most of the things which were echoed by ordinary members of the public should also apply to them according to their estimation. We cannot speak our minds in this Gibraltar. If you say anything that is critical of this Government, you are

everything under the sun and it is not right that the GSD should continue to perpetuate that sort of gutter politics.

**HON CHIEF MINISTER:**

[*Inaudible*].

**MR SPEAKER:**

Order. Order.

**HON N F COSTA:**

Mr Speaker, of course, because they do not like to be reminded of the fact that they perpetuate politics in a noxious, toxic, vile, personally insulting way, we have to remind them that that is no way to conduct politics and I have challenged the hon Members opposite in the past and will do so again for them to find the one statement where I have started [*inaudible*] personally insulting anyone. At every single time I have expressed a concern on a broad question of policy, on a question of public importance and nonetheless a rebuttal is one of personal invective. We are tired of such policies. Gibraltarians are tired of having their politicians savaged because the hon Members opposite are embarrassed by what they are doing and they have nothing better to do other than to insult us than to compare what happened in 1988 to 1996. I have said so at the beginning, Mr Speaker, people care what happens now, Mr Speaker, today. What the electorate of Gibraltar wants to hear is not what happened in 1988 or when the AACR was in Government. What this educated, reasonable, prudent and wise electorate want to know is what the Government is doing now to correct the problem.

To conclude, if Gibraltar is to develop to the next step of political development and maturity, which I know they desperately want,

what Gibraltar requires, as I have said, is a team of people who are not afraid. Who, in fact, want to work together so that decisions are made quickly and expeditiously in the public interest, taking into account all the relevant circumstances and not a team, Mr Speaker, that is atrophied in the centre because nothing happens without the proverbial leaf, Mr Speaker, being able to turn in any Government Department, Authority or Agency without the command of the Hon the Leader of the House.

**HON F J VINET:**

Mr Speaker, I am greatly privileged to address Parliament on my ministerial responsibilities of Housing and Communications. I start with Communications, an area that perhaps does not lend itself to capturing the imagination of the general public but one that plays an important role in Gibraltar's economic development.

## **COMMUNICATIONS**

As from the end of October 2010, I have responsibility for certain aspects of the work carried out by the Gibraltar Regulatory Authority under the provisions of the Communications Act 2006.

The GRA is an independent authority, which regulates the following areas for which I am responsible: electronic communications, which includes radiocommunications and licensing of the radio spectrum and the international co-ordination of satellite networks and licensing.

### **Telecommunications**

There are eight companies operating under the regime imposed by the Communications Act 2006, providing a variety of fixed and mobile networks and services. Last year a third mobile operator was licensed. Now known as Eazitel, this new operator

has since been taken over by new shareholders and is installing its network with the aim of starting to provide a service during the third quarter of 2011.

During the year, the GRA started its second round of market reviews. The market review process involves an analysis of the state of competition in the electronic communications markets to determine whether they are effectively competitive or not. In cases where markets are deemed uncompetitive, the Authority must impose significant market power obligations such as price controls, accounting separation and transparency.

Gibraltar is now in the final stages of introducing number portability between network and service providers for geographic, non-geographic and mobile telephone numbers. Number portability will enable landline and mobile customers to change their service provider whilst retaining their existing telephone number.

The EU formally adopted a Telecoms Reform package on 20<sup>th</sup> November 2009 which amended five different Directives (Framework Directive, Access Directive, Authorisation Directive, Universal Service Directive and the e-Privacy Directive). The package was implemented in Gibraltar by regulations which came into effect on 26<sup>th</sup> May this year. These new rules will have an important impact, amongst other things, on competition, consumer rights, data security and radio spectrum use across Europe.

### **Satellites**

Mr Speaker, the Satellite Division of the GRA is responsible for looking after the interests of the satellite industry, representing the Gibraltar satellite operator at meetings and ensuring it complies with the Radio Regulations of the International Telecommunication Union and other applicable international obligations. The Division also liaises with the UK's National Space Centre prior to the GRA granting satellite operators an

Outer Space Act licence to launch and operate satellites in space.

The issuing of a number of classes of radiocommunications licences, for example, Ship's Station Licence, Dealer's Licence, Private Mobile Radio Licence and Teleport Facility Licence, and the collection of fees is delegated to the GRA by me as Minister for Communications. This Division also collects Administrative Charges from providers of electronic communications services and networks. During the 2010/2011 financial year, the total collected was £1,644,685, which was paid into the Consolidated Fund. This compares to expenditure for all of the GRA's Divisions amounting to £1,172,334.98.

### **HOUSING**

I now turn to my responsibilities for Housing, Mr Speaker. As we near the end of this term of office and the final few weeks of my time as Housing Minister, I would like to draw attention to the divide that exists between the achievements, the ongoing progress and the reality of the GSD Government's policy, on the one hand, and the bleak, destructive and fictional portrayal by the Opposition, on the other. I have said in the past that while Housing has historically been regarded as a difficult and sensitive Ministry, in reality and once we put to one side the misinformation and the deception that seems to be ever-present out there, wherever they may derive from, there is a good story to tell. This last financial year, and the current one, that story is especially attractive. In fact, if there is one thing that we have perhaps been guilty of on this side of the House, Mr Speaker, it has been in not fully explaining the achievements, of not broadcasting the huge amount of progress that has been made, all the work that has been carried out and that we are still undertaking to sort out the mess this Government inherited on so many fronts, including Housing.

Mr Speaker, the Approved Estimates of recurrent expenditure for the Ministry for Housing, that is, Head 3, total £9,040,000 in

this financial year 2011/2012 and hon Members will note that recurrent expenditure has been introduced for new estates, namely Albert Risso House and the Mid-Harbour Estate. This Head embodies both the Housing Administration side of the Ministry and a contribution of £5,680,000 to the Housing Works Agency, now listed separately under Appendix C.

Mr Speaker, even a casual glance at the Draft Estimates will demonstrate that very significant financial resources will again be invested within this vital area of public service this year. But financial resources by themselves are not enough. It takes the political courage and vision of this Government and of this Chief Minister to leave behind the historical stigma and the old, out-dated practices. Nowhere is that more demonstrable than in the key reform of our housing maintenance services.

### **Housing Works Agency**

Parliament is aware of the agreement that was signed earlier this year between the Government and the Union Unite, thereafter approved by staff, which has delivered a new Housing Works Agency. This is certainly not the first of the steps taken by this Government to reform and modernise the public service, but I would argue it may well be the most important of all the steps taken so far. The Buildings and Works Department has for many, many years, certainly as far back as I can remember, carried with it the baggage of a negative image, of a poor quality of service, of inefficiency and lack of discipline. I have said in prior Budget addresses that there was no place for this in modern Gibraltar and that the solution was not to simply throw more and more money at what was already a well-resourced department, but rather to engage with affected parties and to engineer a cultural change that focuses on service and on greater efficiency.

The Housing Works Agency arrives not just with a new, well-resourced depot, a new and larger store and workshop with modern facilities in the Waterport area. It comes not just with a

forthcoming new fleet of vehicles and resources. Central to the improved service to tenants are new working practices. Under the Agency's new operating model, all Government housing will be divided into geographical zones, each zone having its dedicated workforce and management. Staff in a particular zone work force will only earn the bonus pay if at the end of each quarter no tenant in that zone has been waiting for more than three months for work to be done. There is therefore a direct link between the earnings of staff and the quality of service given to tenants. At the moment, the focus is on clearing the historical backlog of outstanding jobs. As Parliament was recently informed, significant headway is already being made in eliminating the backlog, but later this year tenants will be able to fully appreciate the before and after and enjoy the level of service they rightfully expect and deserve. The result will be a streamlined, more efficient and more productive service – still within the public sector - that will consign the old stigma to the past where it belongs.

### **Refurbishment Works and other Capital Projects**

Mr Speaker, a responsible Government must balance the provision of new housing with the refurbishment of existing housing stock. This Government's predecessors concentrated solely on new housing, necessary as that was but still costing us millions to put right, at the expense of everything else. As a result, we inherited entire estates and other buildings that – like the tenants living in them - had been neglected and forgotten. Many buildings had not even seen a lick of paint in decades, let alone any meaningful repairs or beautification. Indeed, even if we had simply opted to give the odd estate a coat of paint, planted a few trees or brought out the polyfilla, that in itself would already have been an improvement.

Instead, around £36 million have been invested over the past fifteen years on major remedial works and repairs to Government housing stock. Not that anyone naïve enough to believe the Opposition's shameful posturing would think we

have done anything at all. I quote directly from a recent statement by the Members opposite: "The Government... should have taken an interest in the living conditions of people as an ongoing concern and not just at election time when they want votes." The GSLP/Liberals simply cannot bring themselves to be honest with the people of Gibraltar, the very same people they want to convince they are responsible and trustworthy enough to have as their decision-makers. Well, this year, as we have consistently been doing, year after year after year, we are spending a further £2 million under the Improvement and Development Fund for that same purpose. That is real and consistent commitment by the GSD Government in looking after our public estates and our tenants. There is still more to be done. I know there remain one or two mainly pre-War properties that require major works, and these will start very soon, but tenants will not be fooled by those who now – ironically, when more embellishments and repairs are carried out than ever before – have suddenly converted to the cause and now belatedly have or at least claim to have an interest in our housing infrastructure. Better late than never, I suppose.

Mr Speaker, I said before that this Government has actually been guilty of not blowing its own trumpet enough. In the past, I have chosen not to list all the major works that have been carried out during the preceding year. That may have played into the hands of those who pretend – not out of ignorance but out of malice – that our housing estates and buildings are abandoned and are left to rot, as used to be the case before 1996. Perhaps, Mr Speaker, given how much the hon Members opposite enjoy requesting statistical information at Question Time, next time they can ask for a list of all the major repairs and embellishment programmes that have been carried out by this Government. I will be more than happy to hand over the information, but I forewarn Members opposite that it will have to be in the form of one of those lengthy, bulky schedules they say they are not that fond of, with page after page of details that will place into context the charges levelled against us. In the

meantime, Mr Speaker, just a few selected highlights of major works undertaken this last year alone, some of which are currently ongoing:

- Extensive remedial and refurbishment works at both Rosia House and Vineyard House, including rendering, waterproofing and painting;
- Kent House has been refurbished and its balconies have been replaced;
- The balconies at Bishop Canilla House are being repaired and this is currently ongoing;
- Major waterproofing works to roofs and the entire façade of Schomberg, also incorporating new electrical infrastructure;
- Churchill House major refurbishment of walls, windows, roofing, external rendering and painting;
- Remedial works to retaining walls at Flat Bastion Road, Keightley House and Tankerville House;
- Works to the façade of Wilson's Ramp;
- Refurbishment of lifts and new machinery at Alameda House and Kingsway House.

There are several more and I will not list them all, but some improvements do require particular mention.

Phase One of the major project to construct brand new stores throughout Laguna Estate is complete and one hundred of these were several weeks ago allocated to the tenants of Nelson, Devon and King's House. Phase Two is made up of another one hundred or so stores and will be finalised by the end of July

so that a few weeks from now they may be allocated to the tenants of Ark Royal, Fearless, Summerville and Firedrake House. Phase Three is literally about to start and will deliver over 90 sheds to the residents of Blackwatch House, Maidstone House, Faulkner House and Sheffield House. This project has involved the removal of derelict sheds, many of which were unsightly, and replacing these with modern, purpose-built, good quality sheds so that each and every resident of Laguna Estate will enjoy additional storage space near to their home.

Another manifesto commitment relates to the installation of lifts, something that has been at the forefront of the GSD Government's housing policy. It has proved to be immensely successful in Penney House, Varyl Begg, Alameda Estate and Glacis and we have already announced that the tender for the installation of lifts at Laguna Estate will soon be published. This will vastly enhance the quality of life of tenants, particularly the elderly and the infirm, who can continue to enjoy their own homes for longer than they may otherwise have been able to.

There are other projects lined up for the immediate future. Harrington Building will be refurbished and GJBS Ltd are about to start the major restoration of Bado's Building, while towards the end of this financial year we hope to make a start on works to North Pavilion. Meanwhile, £1 million is being spent this year on Governor's Meadow House, which – in the same way as Ross House before it, where we spent over £850,000 – will be very extensively refurbished. Other blocks at Alameda Estate will follow thereafter. So much for those who question our commitment and that is not all, Mr Speaker, existing playgrounds in housing estates are being vastly upgraded and brand new playgrounds introduced under the control of my friend and colleague the Hon Edwin Reyes and his team at the Sports and Leisure Authority. More are planned for the near future.

As has recently been announced, we will soon start on a scheme to completely landscape Varyl Begg Estate together

with internal decoration and painting work to blocks. The scheme will involve the complete repaving of the Estate, resurfacing of roads and parking areas and the installation of a new ball playing area, children's playground areas and adult exercise equipment, together with general beautification, new green areas and enhanced entrances to the Estate.

### **Tenants' Association and New Expanded Cleaning Arrangements**

Mr Speaker, I am glad that the Varyl Begg Estate Tenants' Association, which had been dormant for a number of years, has in the last few weeks resurfaced. I look forward to our first official meeting in the next few weeks, just as I recently met for the first time with the representatives of Albert Risso House. In due course and once all tenants move into the Mid-Harbour Estate, I hope formal representatives engage regularly with the Minister for Housing in the same way as the Tenants' Associations of Laguna Estate, Glacis, Alameda, Schomberg, Godley Mansions and others. As customary, I would like to thank all members of the various Tenants' Associations for voluntarily representing their fellow tenants and bringing to my attention matters that need addressing. Our meetings are always productive and we work in partnership to bring about more and more improvements. By way of example, I know tenants of all public estates, old and new, will be happy to learn that in the same way as we introduced better cleaning arrangements through our contract with Master Services, the Government is now happy to announce a new, expanded cleaning service for lifts and for all common areas, thereby ending the infamous "turno" system. This is something that has been suggested to me in the past by Tenants' Associations and I am very glad to be able to make this announcement here today.

## Waiting Lists

Mr Speaker, as always I look forward to listening to the contribution from the Opposition Spokesman on Housing, my friend the Hon Mr Bruzon. Partly because everyone likes a good fictional yarn, and partly because there is warm comfort to be gained from the recognisable, familiar, recurring approach. I suspect the same themes will return, for old times' sake. "The waiting lists are too long... It's all too little, too late... The Medical A+ list is nothing more than a gimmick..." and so on and so forth. I may be wrong, but I am merely relying on past contributions, which have time and again disregarded the truth as he and I know it to be.

Mr Speaker, housing waiting lists are nothing new and did not suddenly materialise in May 1996. Indeed, last year I explained in detail how the previous administration left a waiting list that, far from having been obliterated, was destined to more than double in less than two years, once people moved from the Pre-List into the Waiting List proper, yet with no plans to build any rental housing at all. That is a fact. The logical explanations for the more recent growth of the List have been given on several occasions – higher property prices, difficulties in obtaining mortgages, the lowering of the age of eligibility, the halving of the pre-list period, the increase in marital break-ups... Again, disregarded. Who needs a factual analysis when you hope sensationalism will do the trick?

On this side of the House, Mr Speaker, we prefer to stick to the facts and if the Hon Opposition spokesperson on Housing once again tries to score political points by waving the Waiting List, Medical List and Social List flags, he will have once again taken no notice of the statistics I have been making available across the floor of the House. The figures that he has are the same as mine. Figures that show how the normal Waiting List is shrinking. Figures that show that more homeless people are being rehoused. Figures that show the effects of a policy decision by me to give extra priority to those on the Medical and

Social Lists. The simple reality, as the Opposition know, is that there have never, ever been more allocations to those on the Medical or Social Lists than there are now or in the recent past. In the current term alone, Mr Speaker, we have so far allocated flats to an unprecedented 231 applicants on the Medical List. The Medical List, Mr Speaker, or "the gimmick" as they prefer to call it. Some gimmick and just in a little over a year, from April 2010 until today, there have been a truly record-breaking almost 70 allocations to applicants on the Social List.

The Hon the Leader of the Opposition, Mr Picardo, has this morning said there is, and I quote, "no appreciable reduction in the housing waiting list". Really? Or perhaps just appreciable to everyone else except himself? You do not even have to even look at the list to know that there are or soon will be almost 500 fewer applicants on it than there would have been had we not built the first rental estate in forty years. And the same applies to the several hundreds of purchasers at Waterport Terraces and the South District affordable housing schemes, almost 800 affordable homes in total, who used to be on the waiting list and are gladly no longer on it as a result of this Government making available to them hugely discounted properties. Saying there has been "no appreciable reduction" is not a value judgement, Mr Speaker, it is simply and manifestly not true and the Hon Mr Picardo must know it is not true. It was only a couple of weeks ago that I told one of his colleagues in answer to a parliamentary question and provided Mr Picardo himself with written confirmation, that there are today almost 150 fewer persons on the normal waiting list than there were this time last year, that in just the last five months the 4RKB list has gone down from 180 applicants to 119, that just in the last five months the 3RKB list has gone down from 272 to 173 and all of that, Mr Speaker, even before the 208 flats that make up Phase Two of the Mid-Harbour Estate have been allocated, and even before all the Government flats that will be vacated by many of the 492 new tenants of both Phase One and Phase Two of the new estate are re-allocated. So whatever the Hon Mr Picardo may have said this morning, there has already been a very appreciable



reduction in the size of the waiting list. But later this year, once the process I have just described a few moments ago is complete, the change will be dramatic and appreciable even to the Hon Leader of the Opposition.

Mr Speaker, at each and every session of Parliament for the past four years, the Hon Mr Bruzon has asked me to provide him with a detailed breakdown of the number of people on both the Medical and the Social Lists, when they first joined the list and how long they have been waiting for. He has been given that information, time and again. Mr Bruzon will have seen that despite the record number of allocations, there remain some individuals who appear to be going nowhere fast, who remain on the List for several years, despite others who joined later having been allocated flats before them. The Hon Mr Bruzon will have seen that information when it is first passed on to him in Parliament. He will have seen that information in even more detail when he looks at the figures more closely while drafting his damning press releases. Yet after four years and countless opportunities, how many times has the Hon Mr Bruzon asked me to explain to him why those individuals have been on the Medical and Social Lists for so long? Answer: None. Not once.

If the Hon the spokesperson on Housing had asked, whether by way of supplementary or as a fresh question at a subsequent Question Time, he would know that there are individuals at the very top of the Medical and Social Lists who have been detained at Her Majesty's pleasure for several years; that there are in-patients at the KGV Hospital who are unable to take possession of a flat; that there are those who four years ago received an offer for a flat at the Mid-Harbour Estate and who have specifically and voluntarily asked that we offer them nothing else because they prefer to wait; that there are those who despite being categorised as having a medical need to move have actually said they want to remain where they are for the time being and not even be offered an alternative until a future date. All he had to do was ask, Mr Speaker.

Instead, in November last year, three whole years after having been provided all the figures by me at each and every Question Time and three years after not seeking any explanation at all and despite me actually having volunteered some reasons, he issues a press release titled "Government is raising false expectations with A+ medical categorisation". Mr Speaker, that press release reads as follows and I quote: "At the last meeting of Parliament, Shadow Housing Minister Charles Bruzon was told that there were 3 people who had been on the A+ list since 2006, 2 since 2007 ... and it goes on to give a few more figures ... The Government, the press release continues, the Government have suggested in the past that some people have been offered accommodation and turned it down and chosen to remain on the list. However, this may say more about the state of the flat they had been offered than about anything else." End of quote. "It may say more about the state of the flats than about anything else". What flats might that have been? The flats that we are unable to even offer to these persons, let alone show? There was nothing wrong with the state of the flat, Mr Speaker, because for the purposes of these applicants, there could be no flats. So, the question that needs to be asked, Mr Speaker, is why, given his grave concern at people waiting on the Medical and Social lists for a long time, given his ability and his opportunity to find out, time and time again, the real reason for the apparent delay, does he instead prefer not to find out the truth and instead speculate as to an imaginary, non-existent, entirely false and fabricated reason? The answer, of course, is in the question itself. The Hon the Opposition spokesman on Housing is not genuinely interested in why some people have remained on the Medical and Social List for so long. I think the Opposition spokesman is more interested in being able to make political capital by speculating, something he would not be able to do if he actually bothered asking for the truth. Irresponsible political games masquerading as genuine concern, that is what it is.

## **Ministerial involvement**

Mr Speaker, and while on the subject, I note the Hon Leader of the Opposition, Mr Fabian Picardo's recent statement on television that Ministers should not involve themselves with the allocation of flats. Well, it is certainly far easier for a Minister to wash his hands and place all the responsibility exclusively on the Housing Allocation Committee, so I do see the appeal of that position, even though we take a different view. I am therefore not necessarily taking issue with the Leader of the Opposition on that particular policy. But I am afraid that message by the Hon Mr Picardo (that Ministers should not involve themselves in such matters) has not yet filtered through to his colleagues, because the Hon Mr Bruzon writes to me regularly precisely asking me to personally intervene and to override and overrule recommendations of the Housing Allocation Committee. So what is it, Mr Speaker? It simply is not credible to try to be all things to all men.

## **Rumours**

And on the topic of credibility, Mr Speaker, once again during this past year a range of malicious rumours have been doing the rounds, mainly in relation to the new Mid-Harbour rental estate. Incredibly, today, months after the completion and allocation of Phase One, they continue to sprout, via word of mouth, social network sites and publications controlled by the GSLP. The rents would be so high, nobody would be able to afford them. The materials used are of low quality, the rooms are too small, and the entire estate has been allocated to people known for anti-social behaviour or who have no intention of paying rent. Mr Speaker, wherever these rumours may have been devised, they are a clear, orchestrated attempt to mislead the general public and to cause political damage. They are the housing equivalent of our buses being too big or waiting room chairs in the hospital being too slippery. And just when we think we have heard it all, Mr Speaker, it just gets better and better. The Government is now being criticised in some quarters because

apparently the new rental estate is too good. How dare we inflict upon our tenants such magnificent, high quality, new homes? Naughty, naughty GSD Government.

## **Mid-Harbour Estate**

Mr Speaker, we are immensely proud of the new Mid-Harbour Estate, a total of 492 homes that will transform the lives of almost 500 families and at the same time have a very significant and positive effect, as it is already having, on the Housing Waiting Lists. The full impact on the waiting lists – which will end up as a fraction of the size they are now - will be felt in the coming months, once all the previous flats that many of the new tenants of Mid-Harbour lived in are returned to the housing stock, refurbished and re-allocated. But we make no apology in singing the praises of this development. The first new rental housing estate to be built by any Government since Varyl Begg Estate in the 1970s. These are attractive, high quality, modern homes, situated on a prime, seafront site, with each flat enjoying its own enclosed drying area/utility room, box room and covered parking spaces. Mid-Harbour boasts a range of amenities never before seen in a public rental estate. It has green areas, playgrounds for children and exercise equipment for the not so young. Phase One, consisting of four blocks with a total of 284 flats, was allocated in March this year, while the 208 apartments that make up Phase Two are scheduled for completion later this summer, as I said they would be. My congratulations to the team at GJBS Ltd for their achievements.

## **Albert Risso House**

The feedback from the new tenants at the Mid-Harbour Estate has been phenomenal. Equally encouraging and positive have been the comments from the new tenants of Albert Risso House, which was also allocated this last financial year. Building and improving upon the successful model of Bishop Canilla House, here we have 140 comfortable, safe, purpose-built homes for our senior citizens, enabling them to have still

independent, dignified living arrangements, but with the added security and comfort that comes with safety features and a level of assistance that is available to them if they so wish. Albert Risso House includes a spacious communal area with arm chairs, communal catering facilities, a plasma television screen plus a large open air terrace which is being put to good use by some very happy tenants. And long may they continue to enjoy those facilities.

### **Thanks and Conclusion**

At this point, Mr Speaker, and before my concluding remarks, may I thank the Chairman and Members of the Housing Allocation Committee for their hard work and commitment in advising Government fairly and on a voluntary basis. My appreciation also to the Chairman and members of the Housing Tribunal. Finally, I warmly and sincerely thank each and every staff member in the Housing Department and the new Housing Works Agency for their loyalty and support. It has been my pleasure to have worked with them all during the past four years.

Mr Speaker, I bring my contribution to a close by reminding this House that we are proud of how much progress has been made by this Government on the Housing front. "This thing of going back to 1988 fools no-one," says the Hon Mr Costa, not two hours after his leader in a live radio interview says the economic success of 2011 is all down to the work and policy of Mr Bossano twenty years ago! So much for not wanting to look back. It is, of course, a real pity that all relevant documents, paperwork and records relating to the years between 1988 to 1996 were – shall we say – "misplaced". When Peter Caruana and the GSD formed Government, they found that housing information relating to the GSLP era had disappeared. All of it lost, mislaid, gone - it had all vanished, nowhere to be found. It would have made for interesting reading and we could have made useful comparisons.

But we do know this much, Mr Speaker. In eight years in power, the GSLP – that is to say, the party that still accuses the GSD of not having done enough to provide rental homes – built or otherwise provided only 203 flats for rental. Or, given that as the Hon Mr Costa says, comparing eight years to sixteen years is not comparing like for like, what is the same, the equivalent of just 25 flats for each year in power. This Government, the GSD Government that has been in power for too long, the Government that does nothing for the working class, the one that we need to get rid of and replace with the worst possible change, has now, today, built 829 homes for rental. Eight hundred and twenty nine, Mr Speaker, over four times as many as they ever did. Or, to put it another way, on a like for like basis, for the benefit of the Hon Mr Costa, 52 flats for each and every year in Government. Fifty two compared to twenty five.

So Mr Speaker, while I agree with the Chief Minister's assessment that it gets harder and harder for a party in Government to keep winning elections, win the next election we will. Because the people of Gibraltar know that this Budget, as all the Budgets at which this party has been at the helm, delivers to them the safe, responsible, visionary and forward-looking Government they need and deserve. We are not perfect. We have made mistakes. And there is more work to be done. On the whole, the GSD Government's record on Housing is a very good one. We are proud that we have built many, many more flats for rental. We are proud that we have looked after the housing requirements of our elderly and those with medical and social needs. We have built better quality affordable homes – homes that will not cost millions of pounds to repair just a few years down the line, as we are still having to do with Montagu Crescent and Montagu Gardens. We invest much more in the repair and improvement of our housing stock. We have halved the Pre-List period to one year. We have lowered the eligibility age from 21 to 18. No Government has ever invested in public housing or genuinely looked after the housing needs of our people like the GSD.

I thank you, Mr Speaker, and all my parliamentary colleagues for your attention.

**HON D A FEETHAM:**

Mr Speaker, during my first Budget speech in June 2008 I outlined to the House my four year programme for my ministry. At the time, I announced that we would be conducting a root and branch review of the entire justice system and over the next three years we underpinned that review by unprecedented levels of public consultation, and participation and then reform. It has not been an easy task but it has been an enjoyable one and, as a lawyer, I am both proud and humbled by the opportunity that my colleagues have given me in leading the most wide-ranging, systematic and fundamental reform of our justice system in well over a century. It is, I also believe, a vindication of the Government's clear leadership and support of the new Constitution and the transfer of powers and the structures that were created as a consequence of its introduction in 2007.

It will be recalled that the hon Members opposite were not in favour of the creation of a dedicated ministry with responsibility for justice but perhaps by the time that we finish this Parliamentary term they will come round to understanding, if not to performing a u turn in relation to that particular policy, as to why it was necessary and right for the Government to have pursued an alternative policy because without it I doubt very much whether many of these reforms would have been undertaken, still less completed in this term.

On prison reform, Mr Speaker, I am glad to report to the House that we have already virtually completed all our work. These four years have seen the completion of a new prison at Windmill Hill with a substantial increase in prisoner capacity to ninety eight inmates with the latest modern facilities for the prison. In addition, we have more than doubled the number of prison

officers at the Prison Service and we have brought to Parliament a Bill to reform the legislation underpinning that service providing it with a modern legislative framework which amongst other things strengthens the roles and independence of the Prison Board and Parole Board, introduces mandatory drugs testing, modernises the rules governing parole so that we can properly balance the need to allow prisoners to continue their rehabilitation on licence in the community with the more important aim of the need to protect the public from the risk of re-offending. All that remains in this area, Mr Speaker, is the enactment of regulations pursuant to this Act which we have already drafted and which will be enacted very shortly.

Turning to the courts, I have said on many occasions that none of the reforms that we have introduced in the legal system would have been effective without the very substantial investment that the Government is making in its plans to build new courts and to restructure the back-office business and management systems of the court service.

In March of this year, we completed the first part of the law courts project. That has seen the doubling of the number of courts traditionally available to the Supreme Court with superb facilities for lawyers, witnesses and judges. One senior judge of the Court of Appeal commented that the facilities were far better than the facilities in courts in England and Wales, bar very few courts in London. By the end of August beginning of September, we will have finished the remainder of the project as it relates to the Supreme Court and it will mean an increase in the number of courts from two to four and the creation of sufficient modern office space for members of staff. By the end of October, we also hope to complete the Town Range side of the project which will mean an increase in the number of Magistrates' Courts from one to three. The scheme, as you all know, has been described by the President of the Courts and the Chief Justice as meeting and I quote "the needs of Gibraltar's judiciary and the public it serves for at least the next 20 to 30 years". It has been welcomed by the Heritage Trust as

one of the most exciting projects in Gibraltar balancing a social and civic need with protection and enhancement of our heritage, and also by the legal profession who at the end of the day are users of the service. In this regard, I would like to go on record in thanking the staff of the Gibraltar Court Service and lawyers for their patience over the last few years. I know it could not have been easy for them to continue to provide the very high levels of service in the midst of what has been a building site, but I believe that they will agree with me when I say that when the project is complete it will have been worth it.

In 2010 we also created the Gibraltar Court Service by combining the back-office elements of both the Magistrates' and the Supreme Court. We engaged a Chief Executive of the Gibraltar Law Courts, Mr Alan Davis, who has extensive experience in senior management of courts in the United Kingdom with a proven track record in managing strategic change and delivering performance in this area. We could not have not have hoped for a more qualified individual and he is already proving to be a major driving force in the improvement of our court service here in Gibraltar.

We have also employed a new legally qualified clerk at the Magistrates' Court in addition to the complement of staff traditionally employed in that department. That has allowed the Higher Executive Officer to concentrate on her management role rather than continue with the traditional situation which was that the Court Clerk was also the senior manager at the Magistrates' Court. It was simply not possible for an individual, however competent, to manage an entire department whilst at the same time spending most of his day as a Court Clerk. We have, therefore, effectively increased the complement at the courts by two members of staff.

We have also employed a new Family Judge and, as I have said in answer to Questions a couple of weeks ago, we have now given the go ahead for the selection process to commence for

the recruitment of a fourth Supreme Court Judge for a period of two years to assist with the backlog in criminal cases.

Only the most politically biased would criticise the Government's level of investment and resources that it has ploughed into this area and I make the point because it appears that the hon Member Mr Licudi was making that very same point during questions and answers two weeks ago. But, Mr Speaker, still less does it lie from the mouth of hon Members to criticise the Government's contribution in this area when they have remained at best ambivalent and at worst completely ignored their duty in this area by completely ignoring, not asking questions in relation to major reforms that we have introduced and confining their contributions on debate either to syntax or just simply one liners.

It is true that there are backlog in cases. The reasons for the backlog in the dealing of those cases are various. They do include the fact that there has been a lack of court space but also that there has been an increase in the number of cases over the last few years, but as the President of the Courts of Gibraltar said during the opening of the new Supreme Court facility in March of this year, after the substantial and unprecedented levels of investment that we have made, there cannot be any more excuses for the delay in cases. The Government cannot do more than it is doing to ensure that the courts are properly resourced and that justice takes its course as quickly as possible. Government can provide the tools. It is now for others to ensure that those tools are used, as they should be, in order to deal with cases within reasonable time limits.

We have also, of course, introduced extensive reforms of legislation across the board. Over the last couple of years we have brought an enormous amount of legislation to Parliament in the field of family law ranging from the protection of children, to substantial reforms of our divorce laws by, for instance, cutting the amount of time people have to wait for a divorce when relationships irretrievably break down and regulating the financial provision of partners in long-term relationships,

spouses and children of the family. We have made pre-nuptial and post-nuptial agreements binding which is not the position in the UK and, indeed, I was gratified last week when I attended a conference on family law that was organised by local barristers to hear the new Family Judge say that, in many respects or in some respects, we are well advanced of the United Kingdom in many of the reforms that we have introduced. We have introduced pension sharing orders to ensure that married women of many years do not lose out when they are divorced. We have introduced legislation protecting children from paedophiles, punishing child pornography with very severe sentences and on child abduction. We have introduced a comprehensive Children Act, substantial amendments to the Matrimonial Causes Act, the Maintenance Act, the Criminal Procedure Act in relation to juveniles and care proceedings and the Supreme Court Act and the Magistrates' Court Act. Anyone who goes through a divorce or a judicial separation in Gibraltar receives two excellent booklets "Parenting Plans: A Guide for Separating Parents" and "Model Parenting Contact and Residence Plans" which have been circulated throughout Gibraltar and are sent to divorcing or judicially separating parents by the Court Service.

We have also introduced a substantial amount of subsidiary legislation dealing with the rules of court for family cases. These are designed to make the whole process easier and fairer. The entire process will be completed within the next few months when we introduce the Maintenance Rules and rules on pension sharing orders.

This parliamentary session we shall in the area of criminal law be debating the Crimes Bill and the Criminal Procedure and Evidence Bill. Again, I do not exaggerate when I say that they will be the most significant reforms of our criminal laws, our evidence and our procedures for well over a century.

We have reformed the jury system both in substance and composition. It is now possible, hon Members will be glad to

hear that, for example, Members of Parliament and the legal profession are now able to serve on a jury and we hope that the larger pool of people for jury service will both lead to a fairer distribution of the burden of jury service but also will lead to a more balanced tribunal. In this regard, Mr Speaker, I am told, and I know that it is only anecdotal evidence, by practitioners who habitually practice in the Supreme Court that actually they have seen a difference in the attitude of the jury to cases because, as hon Members may recall from a survey that we published two years ago, the statistics show that there is a marked difference or there was a marked difference in how a jury would approach and convict defendants as to whether they are local Gibraltar or indeed foreigners. I am told by practitioners that actually that difference does not seem to matter that much any more and that juries are actually approaching cases in a fairer and more balanced way.

We have also introduced a Bill amending the laws relating to the consumption of alcohol and tobacco by young people. We have limited the type of alcohol that can be consumed by 16 and 17 year olds to beer, wine and cider, below a certain alcohol volume. We have narrowed down the defences available to licencees and greatly increased the penalties for those who flout the law to £20,000 fines and, indeed, revocation of their licences. I believe that these reforms have struck the right balance between total prohibition in relation to 16 and 17 year olds and greater responsibility on the part of young people, licenced establishments and parents in relation to their children.

CCTV cameras have also been introduced in specific areas around Gibraltar which I am glad to say has been welcomed by the vast majority of people.

The only areas of my ministry's four year plan, the four year plan that I outlined to this House in 2008, that are still to be completed are legal aid and legal assistance reform, reform of the Industrial Tribunal and reform of Personal and Corporate Insolvency Laws. Even in relation to these, Mr Speaker, there

are very advanced drafts which only need final discussion and approval of the Government as a whole.

In relation to the Industrial Tribunal reform, I hope that we will be in a position to advertise, before the end of this parliamentary term, for a permanent Chairman of the Industrial Tribunal and I hope that in the future we will be able to relocate the Industrial Tribunal away from the Job Centre to dedicated premises.

Mr Speaker, as hon Members can see, much has been achieved and I hope that these first four years of a dedicated Ministry of Justice will set the foundation for continued improvement in the future. Whether I hold this office or not. Whoever takes over this role can count on my support to continue any improvements.

I would also like to take this opportunity at this last Budget speech of this Parliament to thank all those who have worked with me over the last four years in particular my secretary Coral Schembri, my PA Caine Sanchez, my former PA Hazel Cumbo, the President of the Courts of Gibraltar Sir Murray Stuart Smith and the Chief Justice Anthony Dudley who have both been very supportive in the work that we have sought to undertake. The staff at the Court Service, the RGP and in particular the Commissioner Louis Wink, the Prison Service and its Superintendent Richard Aguilera, the former head of GCID Isaac Massias and its new head Chief Inspector Napoli and all those who have contributed in one way or another, and there have been many, either through our consultation exercises or through committees set up by my ministry to the reforms that we have undertaken during these last four years and the unprecedented progress that we have made.

Finally, on a personal note, this has been a very difficult year indeed for me personally. I would like to thank all those people, from across the political divide, who have extended their well wishes to me and my family but very particularly I would like to thank my family and my friends for their unstinting support, without which I would never have been able to have been

behind my desk after four weeks of last year's incident and I would not have been able to undertake the work that I have and endeavoured to complete the work the people elected me to do four years ago. Thank you very much.

#### **HON C A BRUZON:**

Mr Speaker, I would like to thank the Minister for Housing for what has been a candid exposition of his position and I generally appreciate the difficulties that he has as Minister for Housing when dealing with the hundreds and hundreds of people who go to him with problems. I can only say, when we talk about statistics, that even the great Saint Augustin said that the devil can quote scripture to suit his own purposes and neither Mr Fabian Vinet nor I are the devils here because we are both genuinely trying to help people with human problems.

In fact, talking about my portfolio, as Opposition Member of Parliament, I handle elderly care, the family and of course housing. I consider these to be very much interlinked because they are very human situations which we deal with and we are dealing with people at a very personal level. This is why I often remind myself that being a politician is much more than being involved, as we are, in defining rules and regulations however important I know this to be. This is why I also remind myself that when we deal with human problems, these problems, often enough, do not go away of their own accord. We have to address them. We have to listen to people and to their concerns and then address them to the best of our abilities. Similarly, just a short comment on my religion, because, having been a priest, I have understood that for many people religion is a difficult experience or it is no experience at all. But the religion that large peoples profess should never be a superficial exercise of gestures, rites and external observances but rather the knowledge and profound understanding, as far as is humanly possible, of a divine and practical doctrine which illuminates and guides the civilisation of which we form part.

I think we would all agree that a lot of the work we do in familiarising ourselves with people's concerns and problems often enough takes place out there in the street, certainly in our offices, in some cases even in sporting venues, in peoples' places of work, yes, and in their homes which we sometimes visit. At least I certainly do and I find that it is extremely a clear eye opener when I visit people in their homes. I sit with them and I can at least begin to understand their concerns even if I cannot offer them solutions.

One thing, above all others, must be at the forefront of all our activities as politicians and it is this: How can we ensure that there is true and lasting justice for the people that we serve. Our promises and commitments must be made with a level of realism that will enable our people to believe what we say and expect us to fulfill what we promise, to deliver what we promise. This is our philosophy, this is what we believe in and this is how we will behave hopefully when in Government if the people of Gibraltar give us the opportunity when the time comes. Our promises and commitments must be made with this level of realism that I have just referred to because without that then people will lose all trust in the political process that we are involved in. After all, if what we promise cannot realistically be achieved within the time framework we indicate and if we keep on failing our people time and time again we should not be at all surprised if they begin to lose trust in the political process that we are involved in. It is my view that the GSD, however, have allowed this to happen and this is why there are many people out there who have lost trust in them.

Let me say in general, Mr Speaker, that restoring trust to the political process will only be achieved when all politicians and not just in Gibraltar but all over the world are true to those universal standards of ethical behaviour that make them servants and not masters of those who elected them and put them in the positions of responsibility that they hold. The GSD administration, in my opinion, has now passed their sell by date,

and if I said last year that they already then had one foot in the grave, I am quite convinced that their demise will soon be complete. Word about town is that provided the current Opposition Members, formerly under the excellent leadership of Joe Bossano and now under the equal excellent leadership of Fabian Picardo, as long as they continue to act responsibly as they have been doing over the years in challenging the Government on a whole range of issues both on the domestic front and at an international level, the people of Gibraltar will have little appetite to give the Hon Mr Caruana yet another chance to squander peoples money on his many visionary projects.

When I refer to visionary projects a few come to mind straight away but I will not dwell on them because they have been mentioned many times by my colleagues and myself. Mr Speaker, the costly air terminal of course is one of them that I have not mentioned before. I am going to mention that one. Regrettably, the tunnel at the east side of the runway, by the time it is completed, is going to cost the tax payer much, much more than was originally planned. But for me, Mr Speaker, and I say this slightly on a light hearted note but also with some seriousness, the crowning vision of the luxury toilets that have very recently appeared in different parts of town for the delight and benefit mainly of our tourists but may be also in some cases, for locals alike. The problem, Mr Speaker, is that in some cases it is not always clear to our visitors in some cases what these quaint buildings actually are. When they make their way round these little buildings to find out what actually goes on inside, they see on the door the traditional and well known sign for toilets, that is, the diagram of a man and a woman. But there is no proper sign by which they can be clearly identified. The Government have been extremely 'generous' in not counting the pennies, so that people can spend a penny if they need to at the cost of 50p. Well done, Mr Caruana. How wonderful it all is. Is it true, Mr Speaker, that these toilets have each cost in the region of £250,000. They even have the royal emblem with the



unicorn and the lion in three dimensions. How wonderful it all is, Mr Speaker, and how expensive.

The new rental estate and the Housing Tribunal have been the subject of many meetings that I have had recently with a number of people who have come to see me. Also, the length of time it is still taking for problems affecting many Government tenants to be properly addressed. Let me start with the new rental estate.

In previous Budget speeches, I have often been very critical of the present administration for the time it is taking them to provide adequate homes for the people on the various Government housing waiting lists. There has, indeed, been progress and I think the people of Gibraltar are grateful for that but I think they still have some way to go. The Chief Minister very recently, in an attempt maybe, I say maybe because I give him the benefit of the doubt, in an attempt to gain favour with the electorate, admitted that this has been his worst failure, namely, "not having made an earlier start on building new homes" and then went on to say, "we have now corrected that and have built not just the best quality affordable homes that Gibraltar has ever had, but indeed the Government new rental estate". No, Mr Speaker, the Chief Minister has not corrected that. Indeed, he has made a start in correcting that.

No doubt many people are thrilled and excited at the prospect of moving into their new homes which the GSD have provided for them after fifteen years in Government. Some have already moved in and I am genuinely happy for them and wish them well. Equally, Mr Speaker, a number of people have approached us to say that, because there have been changes to their family composition and to their personal circumstances, the flat that was allocated for them four or five years ago is now no longer suitable either because it is too big or too small and, of course, they are reminded that there are housing allocation rules to be considered. Let the records show that the confusion and stress that these people are now experiencing is down to the GSD lack of sensitivity or, should I say, to a political opportunism of the

worst kind in allocating 490 non-existent flats to people on the housing waiting lists, just months before the 2007 general election, not from existing Government stocks as is usually the case when Government flats are allocated, but from a theoretical stock that only become a reality five years later. When I challenged the Hon the Chief Minister in Parliament that he must have known that the new rental estate would not consist of 700 hundred flats, as he had indicated before the elections, all he could do was to tell me that if he was guilty of anything, he was only guilty of being a politician. If that is how Mr Caruana, the Hon Chief Minister, wants to be judged and if the yardstick that he wishes people to use to measure his performance as a politician in terms of whether he is guilty or not guilty, then I would suggest that that is how he should judge his political opponent, in terms of political guilty only, if such guilt exists, and on nothing else.

I have also condemned the Government on many occasions for taking far too long in finding solutions in terms of housing for the many people on the various medical and social category lists. As with the housing waiting lists proper, there is still a long way to go but I do accept what the Hon Mr Fabian Vinet said about some people who do not accept the flats that are offered to them. I accept that there are very difficult human problems that do not have an easy solution and that sometimes our own worst enemy is our own human nature. The fact that we do not seem to realise are the difficult positions we are in and we do not accept what is being offered but my main criticism of the Government has always been that they have taken far too long in building proper homes for our people. In fact, the Chief Minister himself acknowledged in Parliament a few years ago when he told me that having these different medical, social lists was meaningless for as long as there was not enough housing stock. That has been my main criticism, Mr Speaker. Not to be critical of the Minister for not being able to solve all these problems because it is not his fault. It is the Government policy that is, in my view, to blame.

Let me spend a few minutes now, Mr Speaker, talking about the Housing Tribunal. Let me stress that many people who come to me, who decide to go and appeal to the Housing Tribunal, do so obviously in good faith because they are pretty desperate and do not know what the next step is. They appeal in good faith because they hope to receive a fair and just hearing from an independent tribunal which has the power, I believe, to instruct the Housing Authority, if the complainant or the claimant wins the case, that an injustice has been committed and that things have to be put right for the benefit of the Government tenant who appealed. It would be interesting to know how many times the complainants actually win their appeals when their case is considered by the Housing Tribunal. It would also be interesting to know why it takes so long for some of these cases to be processed. If the answer is that the Tribunal has to wait for the data to be sent over by the Housing Authority, then of course the question has to be, why does the Housing Department take so long in submitting the relevant information to the Tribunal? I know of a specific case where an individual has been waiting for nearly a year for the appeal to be considered and for the outcome of such an appeal and, who knows, the person in question may still be waiting as we speak. This is unacceptable, Mr Speaker, and I ask, where is the justice in all this? There are cases when the complainant receives a letter from the secretary saying that the Tribunal was, in fact, satisfied that the Housing Authority had acted correctly and its decision could not be found to be "wrong in law" or "in excess of jurisdiction", and that, in accordance with the provisions of section 6(3)(b)(i) of the Housing Appeals Regulations 2010, the Tribunal confirms the decision of the Housing Authority. Mr Speaker, people who, do not have the legal knowledge or the legal expertise, receive a letter like this and they feel so deflated and so unhappy because they do not think, in fact, they know they have not had a chance to go in front of the Tribunal. Let the Tribunal see their body language and explain the problem that has led to the appeal. This to me, Mr Speaker, seems a rather insensitive way of doing things, if I may say so. People have been waiting for months for their case to be considered by the Tribunal and in some cases

all they get is a letter. Some kind of explanation in person, face to face, in my view, would be a much more sensitive way of dealing with this. Others, whose cases are still pending, if they happen to telephone the Housing Department because they are desperate and need help, are told that because they have appealed they now have to wait, and find themselves caught in a kind of trap. So the waiting continues and, as the weeks and the months go by, there are far too many families finding themselves living under increasing pressure every day. And these pressures are largely there because the GSD Government have failed to provide adequate homes for our people sooner.

Mr Speaker, I have shared these thoughts before and I will share them again because I believe they are important. We may well ask what the concept of good citizenship and moral behaviour has to do with the proper administration of Government finances. The reality is that economics has a lot to do with how people live and work and Budget decisions can and do affect peoples lives. Keeping people living in cramped and overcrowded conditions can and does give rise to all sorts of pressures between family members, gives rise in many cases to alcohol and drug abuse and, in some cases, to domestic violence and we have all encountered an increasing number of cases of anti-social behaviour.

So I say again what I have said in the past, all the beautification and external refurbishing of Government estates, the installation of lifts, yes, this is good and the Government is right in having done this. But why has the GSD administration taken so long in making this start to which the Chief Minister referred to a few weeks ago in order to resolve the acute shortage of rental accommodation that our people have experienced for so long? Families young and old, mums and dads with little children have been adversely affected on account of the failure of this Government in not providing rental accommodation sooner. What about the very difficult living conditions within many Government rental homes? All we are talking about are things like conditions of dampness and water penetration, loose tiles

on roofs, shutters that are likely to fall at any time. Thousands of repair jobs that our tenants are waiting to be carried out now by the new Housing Works Agency in their homes. I take on board the comments made by the Hon Fabian Vinet and what the plan is to ensure that progress is made in this, and I appreciate that. What the Government has done in the last year or so is to construct a lot of scaffolding, Mr Speaker, around Government buildings, but what we need is for the work to be carried out and for the problems to be solved. Changing the name from Buildings and Works to the Housing Works Agency, converting a Government Department into an Agency, obviously will not of itself produce the desired results but only time will tell if things are really going to get better.

As we come to the end of the life of this Parliament, Gibraltar and its people find themselves at the crossroads once again, the crossroads that will determine what way we shall go. Will it be along a GSD path or will it be along a fresh path under the leadership of Fabian Picardo and influenced by the socialist philosophy of the party that we both belong to. My personal journey as a politician has enabled me to blend without any difficulty my Christian faith and my socialist philosophy. Giving to Caesar what belongs to Caesar and to God what belongs to God is what I try to do and what many Christians try do. My parents were my first teachers and others have followed and to all I owe an enormous debt of gratitude. In the meantime, Mr Speaker, I will do my utmost to ensure that there is true and lasting justice for all our people and to carry on working hard and tirelessly with my colleagues for a change in Government so that we can implement our policies for a better Gibraltar.

I would like to conclude by giving the people of Gibraltar and specifically now to Fabian Picardo my personal assurance of loyalty and commitment, and to work hard for Gibraltar as a member of the Gibraltar Socialist Labour Party for as long as I can and for as long as my services are required. Thank you, Mr Speaker.

The House recessed at 5.42 p.m.

The House resumed at 6.05 p.m.

## **SUSPENSION OF STANDING ORDERS**

### **HON CHIEF MINISTER:**

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

Question put.

Agreed to.

## **DOCUMENTS LAID**

### **HON CHIEF MINISTER:**

I have the honour to lay on the Table the Annual Report of the Gibraltar Regulatory Authority for the year ended 31<sup>st</sup> March 2011.

Ordered to lie.

## **THE APPROPRIATION ACT 2011 (continued)**

### **HON C G BELTRAN:**

Mr Speaker, I will be reporting to this Parliament on my ministerial responsibilities for Education and Training, giving an account of progress during the past financial year and pointing to future developments planned by the Government, many of which are either totally or partly budgeted for the forthcoming financial year.

## **PRE-SCHOOL EDUCATION**

Mr Speaker, the Government continues to view nursery education provision with the importance that it deserves. This year we have increased the number of nursery places available by 60, thus making it a total of 375 places available which is an overall increase of 240 since we came into office in 1996 and more than doubles the 135 places available when the GSLP were in Government. Compared to the two Government nurseries that the GSLP had at the time, we now have a nursery attached to every First School, plus one in Varyl Begg and one in St Martin's School.

We continue to offer every applicant either a morning or afternoon placement. This is good educational practice in accordance with studies at leading research centres where it has been found that very young children do not necessarily benefit from overly long Nursery or Pre-School sessions.

## **SPECIAL NEEDS**

I go on to Special Needs education, Mr Speaker. Our policy continues to be one of equal opportunities and inclusive practices. All children need to have access to an appropriate education that affords them the opportunity to achieve their personal potential. Children with Special Educational Needs will continue to be educated in mainstream schools, as far as possible, alongside their peers, always bearing in mind what is realistic, affordable and in the best interest of the children.

As has been the case in previous years, specialist provision will continue to be available at St. Martin's for those pupils for whom mainstream school is not appropriate, with suitable Outreach Programmes implemented, based on the needs of the individual. Additionally, Learning Support Facilities (LSFs) in mainstream schools will continue to operate for those children whose needs cannot be met at St Martin's or in mainstream classes.

As well as providing support for pupils with learning, sensory and physical difficulties, the Department of Education and Training also supports pupils with emotional and behaviour difficulties. This support continues to be provided by the Behaviour Education Support Team (BEST). The team provides support at First School, Middle School and Secondary School level aiming at helping pupils overcome their emotional and behavioural difficulties with a view to facilitating their learning.

Mr Speaker, when the Opposition now show some vague interest in the education of children with less academic ability or learning difficulties, they conveniently forget that when the GSLP was in government they had all of three teachers in the service qualified in Special Needs education compared to 48 today; and that they had 11 classroom aides to assist these teachers then, whereas today we have 55 classroom aides. And, over and above the specialist teachers, there is also a Special Needs Adviser employed in the Advisory Service especially to update teachers and provide them with direction, advice and in-service training on the needs of the less academic pupils and those with learning difficulties. This specialist adviser also liaises with organisations such as the Down's Syndrome Support Group with whom joint in-service courses for their members and our teachers are often held and with whom we have a very good relationship. Mr Speaker, the Opposition's sudden interest now in an election year in children who are not academic can easily be interpreted as a hollow, worthless gimmick.

## **PUPIL-TEACHER RATIOS**

The total complement of teaching staff on a permanent and pensionable status in our schools is currently 333, as opposed to 288 when we came into office in 1996. The average teacher/pupil ratios in our schools fare well compared to schools in UK and, indeed, other European countries. Although ratios in individual classes in all sectors may vary from time to time for a variety of reasons, in First Schools the average ratio continues to fall within the agreed median with the Union. Class sizes at

this level is 1 to 20; in Middle Schools the average again falls within the agreement with the Union for class sizes which is 1 to 25; in Secondary Schools the average varies somewhat depending on option subjects and the choices made by students at AS and A level.

#### **14-19 DEVELOPMENTS**

Great strides have been made over a number of years now in the provision of vocational courses in Schools and College for students who are less academically orientated with a view to increasing their chances of employment. What I have said about Special Needs education a moment ago and what follows, Mr Speaker, gives the lie to the Hon Mr Picardo's recent statement that the Government "neglect children who are not academic" and it would have been preferable for the Hon the Leader of the Opposition to have been present this afternoon as I will be referring to his recent comments on education and I would have frankly wanted him to hear what I have to say here in person.

September, these are examples of what I am referring to. September 2010, for example, saw the beginning of the Bayside School Vocational Skills courses that are now firmly established for 14 to 16 year olds. This alternative pathway has been carefully designed by the teachers themselves with the support of the Advisory Service to provide yet another route into further education, training or the world of work for students preferring a more practical and functional curriculum as opposed to the more rigidly academic one. It is important to note, Mr Speaker, that all these courses whilst not leading directly to 'A' levels and University are, nevertheless, accredited by the relevant Examinations Awarding Bodies in the UK and aim to provide students with a well-developed and recognised qualification that will make them more employable and will also serve as a route to apprenticeships or indeed Further Education.

The new courses include subjects such as:

- English Functional Skills;
- Maths Functional Skills;
- Applied Science;
- An IT Award in Digital Applications;
- A "Level 1" Certificate in Engineering and Technology or Business Enterprise; and
- Accredited Diploma courses in Sport Leadership, Food Hygiene and First Aid.

This is, of course, in addition to normal provision of Spanish, Religious Education, PSHE and participation in the school's Physical Education and Games programme.

A similar offering to that existing in Bayside School will be in place by September for girls studying at Westside School. This particular scheme at Westside enhances a previously existing vocational course and provides opportunities other than the core subjects and the normal academic optional subjects and will include an entry level certificate in Home Economics complemented by Food Hygiene and First Aid modules, entry level certificate in Home Economics and child development, ICT at entry level, plus a 'preparation for employment' entry level certificate. Again, all of these courses accredited by the relevant Awarding Bodies in the UK and designed for students who are less academically inclined.

Yet another significant development has been the introduction of Financial Courses for school pupils firmly grounded on Gibraltar's Financial Services. The principal focus being to introduce students to the services that Gibraltar provides

through its financial institutions. The course was sponsored by the Gibraltar Association of Compliance Officers (GACO) and the Department of Education and Training and included practical useful modules for the students such as and I will mention two or three of them:

- Introduction to Gibraltar's Financial and Legal Environment;
- Positions of responsibility (who are the key players both in public and private positions, for example, Regulators, Finance Centre, Ombudsman, Courts, Directors and Senior Managers, Reporting and Compliance Officers);
- The Regulatory Framework;
- Financial Crime;
- Aspects of Banking;
- Basic principles of International Tax Planning;
- Aspects of Accounting and Bookkeeping;
- Aspects of Insurance and Pensions;
- Investment and Financial Instruments.

Students over the age of 15 who do not necessarily aspire to a University education are also well provided for by way of a raft of vocational courses offered by the Gibraltar College. These include things like Computer Literacy and IT, Health and Social Care, Visual Communication and Design, Business, Leisure and Tourism, Construction and Digital Applications, all of them designed to provide pupils with skills that prepare them for employment.

## THE YOUNG ENTERPRISE SCHEME

Mr Speaker, to the misinformed doubting Thomas's on the benches opposite I say, take good note of yet another example of the Government's commitment to prepare young people of all abilities not only for the world of work as employees, but also as potential leaders in private enterprise. Young Enterprise Gibraltar has celebrated the end of a very successful third year. The Gibraltar Young Enterprise Companies Programme is now well established and firmly rooted at the College and is starting to grow at Bayside School with Westside School students beginning to participate as well. The company teams participating in the Gibraltar Young Enterprise company teams programme at the College and at Bayside School presented their companies to the judges at the final selection session in May. It is public knowledge but I am pleased to report to the House that the Bayside Company called "Two Point Zero" won the competition at local level and travelled to York in England where they won the regional finals. This is the second time that Gibraltarian students win these regional finals. This year's winning company will later this month be returning to compete in the UK National Championships that will take place in the Savoy Hotel in London. Young Enterprise offers a range of programmes, based on the principle of 'Learning by Doing', which brings experienced business advisers from trade and industry into the classroom to work alongside teachers and students. This has enabled our more senior students in schools and the college to go through the whole process of setting up and running their own companies and the junior ones to learn more about business, enterprise and the world of work. I take this opportunity once more to congratulate the students, teachers and business advisers for the huge amount of work and dedication that they have put in and which has led to their success so far and I wish them every success in the forthcoming national finals.

## HIGHER EDUCATION

Mr Speaker, once more I am proud to report that over 40 per cent of our annual intake gain access to higher education. This is proof, Mr Speaker, acknowledged publicly even by a usually extremely reticent Opposition, of the success of teachers, schools and the Education Department in preparing our pupils throughout their school career for public examinations and entry to Higher Education. This percentage that we have already achieved, Mr Speaker, is one that UK education authorities have set as a target for their own schools to achieve. The statistics speak for themselves: The GCSE pass rate for last year (A\* to C Grades) was 67 per cent. The 'A' level pass rate was 97 per cent.

The number of students from Gibraltar in UK universities and colleges this academic year as at the end of April is 583. One hundred and eighty seven students secured a mandatory award to start this current academic year. Mr Speaker, apart from the customary, annual cost of living increase to students' maintenance grant, this grant last year saw a 10 per cent rise, equating to £276,000 of extra funding. Additionally, a further six per cent increase as from this new financial year was announced by the Chief Minister in his Budget address this morning.

Mr Speaker, referring now to the longstanding Gibraltar Scholarship Award, this past year saw Government's addition of a new upper level of Gibraltar Scholar known as "Gibraltar Scholarship (Distinction Award)" for students who obtain three "A star" grades at 'A' level in one sitting. These students are presented with a cash award of £500 each. Students obtaining three grade 'A's are awarded a Gibraltar Scholarship (Merit Award) and the cash award to these students has been increased from £100 to £300 each.

Mr Speaker, apart from the students in our schools, a substantial number of people from our community at large

continue taking advantage of our discretionary awards and distance learning opportunities introduced by the GSD post 1996. My Department continues to support applications for courses both academic and vocational, as well as ongoing professional training. In the last two years, Mr Speaker, the Government has more than doubled the funding available for discretionary and distance learning awards in a wide range of courses. Eighty discretionary awards over and above the 187 mandatory scholarships were awarded this present academic year making it a record total of 267 scholarships awarded by the Government in furtherance of higher education for Gibraltar students.

As is always the case, Mr Speaker, my Department has also worked hard this year to offer students support and guidance in making the right choices and in promoting the concept of careers in education. A series of presentations to sixth form students by participating universities were once again held in the autumn term. A group of prestigious universities gave a series of talks to our students on life at university and, furthermore, gave presentations of cutting-edge research projects currently being undertaken by these institutions by way of wetting the appetite of our students. Over and above these high-powered presentations that offer our prospective university students an excellent overview of what universities can offer them in terms of higher education and career opportunities, our Middle and Secondary Schools as well as the College are constantly reviewing the state of career and job opportunities in Gibraltar and informing and advising students on realistic pathways that they can follow. This is carried out through a longstanding, on-going course called "Personal, Social, Health and Citizenship" education that starts in Middle School and continues right up to the 6<sup>th</sup> Form ending with the more focused Liberal Studies Course that the younger members of this House will remember. In this respect, the now customary careers fair once again proved a very successful addition to the PSHE course with countless young people receiving advice and guidance on the jobs available in the community and on the choices to make.

Furthermore, the four visiting universities (Oxford, Imperial College London, York and St Mary's University College) also set up stall at the fair and gave workshops to help and assist young people with the realities of university admissions and also life in the UK.

## **ENVIRONMENTAL EDUCATION**

Schools continue to participate in the annual World Environment Day activities and also form an essential part of the Clean Up the World campaign. Apart from the normal environmental education content inherent in the day-to-day curriculum, the work carried out by schools together with Environmental Officers and the cross-curricular activities undertaken in our schools, there are a number of these institutions looking to engage with a locally based 'Eco-Schools' project. This project will be developed and piloted with the help of teachers, pupils and officers from the Ministry of the Environment. Participating in schools will follow a process which will help young people become more aware of positive action they can take locally in an attempt to address a variety of environmental themes, ranging from waste, energy, healthy eating and recycling to biodiversity.

## **EXTRA-CURRICULAR ACTIVITIES**

As has been the case for many years now, our schools provide outreach programmes to create awareness in pupils of issues and opportunities in the wider community outside the confines of the school. This awareness is an important part of their education. It is also a well-known fact that nowadays universities and employers, when assessing applicants for entry and employment, look for evidence of experience and commitment in activities beyond the strict framework of the school curriculum and examination passes.

All our schools, therefore, continue to organise a large and varied number of extra-curricular activities for their pupils. This includes fund-raising for over twenty five different local and

international charities, aid agencies such as Christian Aid, Mother Theresa's House in Tangiers, Childline, Breast Cancer Support, Jeans for Genes, Action Aid and many others. During the current academic year, the remarkable total sum of well over £64,000 has been collected by our schools.

This on-going dedication to help others reflects the continuing commitment of all schools to the spiritual and moral development of our children and is the direct result of a sense of moral duty towards those who are less fortunate that is embraced and practised by the vast majority of our school children and young people in Gibraltar.

Mr Speaker, I am sure that all of us in the House wish to put on record and express our appreciation to the children and the teachers in all our schools for this magnificent effort and sense of civic duty.

Educational trips, both in Gibraltar and abroad, are also organised and these include visits to archaeological sites in Spain, visits to our museum and other places of local interest. Secondary and Middle Schools, in particular, continue to organise trips to the UK for a variety of academic, sporting and cultural activities. Both First and Middle Schools also involve their pupils in cultural and educational trips to Spain.

Bayside School is organising trips to London for its Year 12 and 13 students which includes guided visits to the Houses of Parliament, visits to historical sites as well as theatre and museum visits. Both Westside and Bayside continue to support the Cheshire Home charity in Morocco with yearly visits from our students and teachers. This is yet another example of the selflessness of our young people and their willingness to give up their own free time to help those less fortunate than themselves.

A large number of clubs and activities are also organised by the schools themselves in their premises and these include activities such as chess, guitar, line-dancing, ICT, art, religion, sports



activities, all sorts of club activities organised within school premises.

Schools, of course, continue to participate in things like Christmas carol concerts, art exhibitions, the annual flower show, tree-planting, short-story and poetry competitions, the 'Clean Up the World' campaign, music festivals, chess competitions, their annual sports and fun days, heritage events, the now well established World Environment Day, the Young Enterprise plus a host of other competitions and events organised by a range of entities, private and public, such as the Straits Games that involve the participation of school children from Gibraltar, Spain and on occasions Morocco as well.

Under the heading of extra-curricular activities, I also want to inform the House about the work experience project carried out by the Secondary Schools and the College as part of their wider careers programme. Once again this academic year over four hundred students were placed for a week in areas of employment, ranging from a number of Government departments to garages and workshops, banks, hotels, medical establishments, legal firms, retail outlets, and many others. In the light of the educational developments which I have already explained, work experience is of significant importance in our students' preparation for future careers and in obtaining places at university.

Yet another extra-curricular activity and one that has grown and increased in significance over the last few years is the biennial Careers Fair that I mentioned earlier.

In today's fast-changing world of work with continually expanding technological and other requirements, there is a clear need to keep future employees who are still in school fully abreast of what will be required of them. In bringing public and private sector employers as well as other service providers together in one venue in partnership with schools and the College, the Careers Fair provides a practical, face-to-face

dimension and opportunity for students and parents and enhances what is covered in the Personal, Social and Health Education programmes undertaken by students in schools and the College.

## **PROFESSIONAL DEVELOPMENT OPPORTUNITIES FOR TEACHERS**

The opportunities for professional development remains a priority of the Department of Education and Training. I am happy to report that the Management and Leadership course for teachers accredited by Durham University still remains well subscribed. The flexible design of the course means that teachers are able to opt out at Certificate or Diploma level or indeed continue onto the Master's stage. This approach offers maximum opportunity for younger teachers whose family commitments may not allow them to embark on the full scale Master's course straight away. The Department of Education and Training continues to endorse the quality and content of this type of programme, not just for teachers but for civil servants in general.

One whole module will be designed around topical issues identified by the Department of Education and Training. It is envisaged that this year, those opting to continue onto the Diploma stage, will delve into the world of educational technology and IT, again, from a leadership and management perspective. This is particularly relevant, especially for Secondary teachers, given the development of IT based Schools Management Systems (SIMS) implemented in both Bayside and Westside.

Mr Speaker, I should reiterate that this is an example of the focused and targeted professional development enjoyed by the teaching profession today. It goes without saying that the Department of Education and Training will always respond positively to any other relevant professional development for teachers and school leaders requested by the profession so as to ensure that the excellent educational outcomes that Gibraltar

enjoys at all levels and for all students and that, needless to say, includes the more academically able as well as the less academically able are maintained.

## **IN SERVICE TRAINING AND PROFESSIONAL DEVELOPMENT**

Apart from the lengthier, university accredited courses I have already referred to, this financial year the Advisory Service has provided and arranged a variety of short courses aimed at supporting teachers not only in the teaching and assessment of subjects such as English and Mathematics, for example, to the more academically gifted and talented students but also, importantly, other courses that help facilitate pupils' learning in a special needs context, such as "Understanding the Needs of the Visually Impaired". These have also been courses prepared specifically to assist teachers in those wider aspects of their work that require them to safeguard and promote the welfare and good behaviour of children and to work together with parents.

Mr Speaker, this substantial level of support to schools keeps our Education Service up to date with developments and best practice in the UK, principally, but also in other countries. The specific needs of the Service are identified by the team of advisors or are prepared at the behest of headteachers who collate requests from teachers in their schools.

## **THE USE OF INFORMATION TECHNOLOGY IN EDUCATION**

As I have mentioned previously and quite apart from investments in educational technology for use by children in all our schools, at the rate of £100,000 per annum, both Secondary Schools have benefitted from major investments in computerised Schools' Information Systems that I mentioned a moment ago, (SIMS) as it is known, allowing for more efficient tracking of pupil data such as examination results and option choices, as well as enhancing complex administrative

procedures such as, for example, time-tabling. This is but one example of the creative use of technology within our schools that contributes to their being efficient and effective organisations.

We have also invested in a top of the range, computer controlled, laser cutter for Bayside School, I think with the Department of Technology. The use of laser cutters has revolutionised the teaching of Computer Aided Design in the Design and Technology curriculum and has opened up new and exciting developments in Design and Technology, especially when it comes to precision cutting of a diverse range of materials, safely and accurately.

## **ENGLISH AS A FOREIGN LANGUAGE (EFL) CLASSES**

The Department of Education and Training is well experienced in the design and delivery of this type of English Language course, having done so for many years in the past and is looking forward to continuing to develop these in the autumn as part of a Government initiative. The Gibraltar College runs these courses and is thus planning to expand its current English as a Foreign Language provision. Initially, it is looking to extend the present evening class provision to meet demand. Classes will be set by ability and will cover beginners through to the more advanced learner. The Department of Education and Training is also studying the possibility of offering summer Courses as from 2012 aimed at those students mainly from abroad opting for a more intensive type of experience. All our English as a Foreign Language courses, summer and evening classes, will continue to be managed by the Gibraltar College and will be carefully tailored to suit student needs.

## **REFURBISHMENT WORKS IN SCHOOLS – 2010/2011**

An important part of Government policy in education is to ensure that children are taught in a pleasant and safe environment. To this end this item of expenditure was last year increased by

almost 50 per cent from £800,000 to £1.5 million. The following are some examples of works that were carried out in schools during 2010/2011 and I will skip through them Mr Speaker. It is quite a lengthy list. I do not want to go into all the details but:

**Bayside School (£38,696)**

- Canopies (for shade) have been installed in the top playground. The cost was £14,780.
- The ex-kitchen was refurbished into an ICT Suite. The cost was £10,011.60.
- Floor tiles replaced in 2 Year 8 classes. The cost was £3,904.40.

**Westside School (£729,975)**

- Work continued on a much needed extension to house two large kitchens on the ground floor and a drama/dance hall on the 1<sup>st</sup> floor. (Work to be staggered). The cost to date is £688,060.08.
- Part of the fence around the open area has been replaced. The works will be staggered. The cost was £27,935.
- Air conditioning has been installed in the Exam Hall. The cost was £13,980.

**Gibraltar College (£18,746)**

- An extension which houses technology equipment has been built in the annexe at John Mackintosh Hall. The cost was £18,746.

**Bishop Fitzgerald Middle School (£30,900)**

- External repairs to I block. The cost was £30,900.

**St Anne's Middle School (£96,305)**

- Half of the windows on the north facade were replaced. These works are being staggered. The cost was £94,760.
- The entrance hall was painted. The cost was £1,545.

**St Joseph's Middle School (£9,785)**

- The ground floor corridor was painted. The cost was £9,785.

**Sacred Heart Middle School (£5,747)**

- One class was painted. The cost was £2,904.60
- Three windows had their shutters replaced. The cost was £2,843.

**St Mary's First School (£25,750)**

- The playground was refurbished. The cost was £25,750.

**Governor's Meadow First School (£47,063)**

- Internal repairs were carried out to Blocks A and C. The cost was £26,780.
- External painting of one block. The cost was £20,283.80.

**St Bernard's First School (£14,336)**

- Upper playground was refurbished. The cost was £4,759.
- Intruder alarms were installed. The cost was £5,972.
- Two classes had arches closed. The cost was £3,605.

**St Paul's First School (£19,002)**

- Repairs to the roof were carried out. The cost was £19,002.

**St Joseph's First School (£23,415)**

- The storm water drains were upgraded. The cost was £8,207.79.
- Two new stores have been built. The cost was £11,124.
- One store has been repaired. The cost was £4,084.

**Notre Dame First School (£97,345)**

- External painting of the school. The cost was £61,800.
- The entrance patio was refurbished. The cost was £5,305.
- Rain water ingress repairs were carried out in the Dining hall. The cost was £1,400.

**St Martin's Special School (£9,579)**

- A canopy has been installed by the entrance and ramp of the nursery. The cost was £8,240.

- Air vents have been installed in the three bathrooms. The cost was £1,339.

**Hebrew School (£19,114)**

- Lino has been replaced. The cost was £8,497.50.
- The Social Club has been refurbished and is doubling up as a class. The cost was £7,117.
- Re-fitting works to the Headteacher's office. The cost was £3,500.

**Bleak House (£23,123)**

- Lecture rooms were refurbished. The cost was £12,772.
- Administration/reception area was refurbished. The cost was £10,351.50

Mr Speaker, what I have just read out are but a few examples of works carried out in schools last year. All told, a total of £1.5 million was spent during this last financial year in maintaining and improving our school buildings including the purchasing of new furniture used by staff and pupils.

**PROJECTED WORKS FOR 2011/2012**

A variety of further works are planned for a possible start during this new financial year as part of our rolling maintenance programme.

**Westside School**

- Continue with extension works (completion of the dance hall).

- Completion of the works re fence (open area).

#### **Bayside School**

- Year 8 classroom floor tiles to be replaced (2 classes).
- Works to the Music area.
- Painting of corridors.

#### **Gibraltar College**

- Waterproofing repairs to a classroom.
- Refurbish library in order to create a new classroom.

#### **Sacred Heart**

- Waterproofing part of the roof.
- Refurbish 2 classrooms affected by rain water ingress.
- Replace timber shutters.

#### **St Anne's Middle School**

- Continue replacing windows on east façade.
- Waterproofing part of the roof.

#### **Bishop Fitzgerald Middle School**

- External repairs/refurbishing to Block 7.

#### **St Joseph's Middle School**

- Painting of all classrooms on the ground floor.

#### **St Mary's First School**

- Replace damaged lino on the ground floor corridor.

#### **Governor's Meadow First School**

- External repairs/refurbishing to Block C.
- Waterproofing repairs to roof of Block F.
- Install a fire escape staircase to Block J.

#### **St Joseph's First School**

- Partition Headteacher's office for privacy reasons.
- Painting of all classrooms and corridor on the ground floor.

#### **St Paul's First School**

- Waterproofing repairs to classrooms 31/33.
- Waterproofing repairs to the entrance of the extension.
- Rendering facing brick walls to Year 1 corridor.

#### **St Bernard's First School**

- Replacing dry-lining in lunch hall.
- Waterproofing repairs to part of the roof and perimeter parapet.

### **Notre Dame First School**

- Painting of interior of school.
- Replacing louvered windows in reception and Year 1 areas.
- Replacing taps.

### **St Martin's School**

- Replacing doors and windows on façade leading onto playground.
- Refurbishing bathroom.

### **Bleak House**

- Refurbishing teaching/meeting areas, kitchen, stores and toilets on ground floor.

### **Hebrew Primary School**

- Internal refurbishing of the school.

Still on school buildings, Mr Speaker, a new floor incorporating classrooms at the Hebrew School will be completed by this coming September and also the demolition works have now been completed, I think it was mentioned by the Chief Minister this morning, to convert the old St Bernard's Hospital into two educational institutions. Works on these will commence soon and I can also report that a further site has been identified in the mid-town area, I believe HMS Rooke, to house schooling provision.

## **TRAINING**

### **Public Sector Training and other Activities**

Mr Speaker, I now continue with public sector training and other related activities such as the facilities offered to members of our community who wish to sit examinations privately. Government has always been aware of the continued importance attached to professional development and the concept of life-long learning in society today and so the Department of Education and Training continues, as it has been doing for 15 years, to develop and increase its already large and varied suite of training programmes. Mr Speaker, I ask for the House's patience and indulgence as I go through a rather lengthy list of courses. I believe it is important for this House to understand the extent of quality training provision that has been available to all sectors of our community including the Civil Service for a number of years now and which, in the case of the Civil Service, has succeeded in restoring their sense of self worth and professional standing, attributes that were trodden on relentlessly by the GSLP when in Government, the same GSLP that are now sending out meek messages of reconciliation with the Civil Service that frankly do not ring true.

#### **(i) Short Courses**

Government Departments carry out short course training specific to their function at our facilities at the Bleak House Training Institute as follows:

A further programme of I.T. courses for the Civil Service commenced in February 2011 and offered training at different levels in Microsoft Word, Excel and Access. By the end of the scheduled programme, there will be 140 entries that will have completed these courses successfully.

The Care Agency has also carried out extensive staff training during the year. The following courses were delivered:-

- Induction Courses
- Effective Communication
- Safeguarding Vulnerable Services Users
- Health & Safety
- Infection Control
- Food Safety (CIEH-Level 1&2)
- Conflict Resolution (Dignified Care & Responsibility Training – at different levels)
- Train the Trainer Course (DCRT)
- Values, Attitudes & Beliefs
- Professional Boundaries
- Importance of Care Working & Caring
- Drug & Alcohol Awareness
- Customer Care
- Medications Training
- Emergency First Aid
- Paediatric First Aid
- Responding to Challenging Behaviour
- Understanding Brain Injury
- Minute Taking & Meeting Course
- Presentation Skills
- Safeguarding Vulnerable Adults
- Safeguarding Children Course
- Children's Act Training
- Court Training
- Fostering & Adoption Panel Training
- Supervision Workshop
- Eastern Beach Mobility Scheme
- NVQ in Care – Assessors' Training
- NVQ in Care – (continued)

#### Technical Services Department

- Basic Office Safety Course
- Display Screen Equipment

- Environment (Control of Dust Regulations)
- Highways Inspector Training
- CITB site Management Training Scheme
- Autocad Course
- COSHH/IOSH Understanding Vibration
- Noise Management
- Working at Heights
- Rescue & Casualties Recovery from confined Spaces Training
- IOSH Managing Safely Course

#### Electrical Authority

- IT Training in Microsoft – Excel, Access

#### Gibraltar Health Authority

- Conflict Resolution (Dignified Care & Responsibility Training)
- Disciplinary Skills workshops
- Leadership and Improvisation Workshop
- Therapeutic Skills Training
- Learning Set

#### Government of Gibraltar's Essential Services

- AAIB – Air Accident Investigation Course

#### Royal Gibraltar Police

- Recruits Training
- Pre-Retirement Seminar
- IT Course
- Promotion Exams
- Entrance Exams

#### Ministry of Defence

- Safeguarding Children Course
- Child Assessment Framework

#### Audit Office

- Public Sector Audit Course

#### City Fire Brigade

- Breathing Apparatus Care & Maintenance Training
- Train the Trainer Course

#### HM Customs

- Managing Health & Safety in the Workplace
- Health & Safety at Work

#### Treasury Department

- Internal Audit Course

#### Gibraltar Tourist Board

- Licensed Guides Examinations
- Staff Training

#### AquaGib

- Roadworks, Signing & Guarding Courses

#### Gibraltar Car Parks Ltd

- Highways Enforcement Officers Training

#### Citizens' Advice Bureau

- Equal Opportunities Course
- IT Fun Days for Senior Citizens

#### **Vocational Training Scheme Academic Support**

Courses in Literacy, Numeracy and CLAIT (Computer Literacy and Information Technology), Levels 1 and 2 are held at Bleak House for trainees on the VTS Scheme to offer them the chance of gaining recognised qualifications during their training period that will help them to gain employment.

#### **Public Sector Management Courses**

Opportunities have once again been offered to public sector employees to follow management courses delivered by Durham University's Business School and accredited by the Chartered Management Institute. We had 59 civil servants completing the Certificate stage of the Professional Development Programme in July 2010.

#### **Public Sector Specialised Training for Individual Departments**

Funds have also been put to very good use by individual Government departments for Public Sector specialised training as follows:

- Youth Officers Training Courses (Sexual Health) – Youth Office;
- Updates on AAT/Professional Development courses on EU Funding – Education & Training;
- Accountancy Training – Treasury, Income Tax & Education Departments;



- Employment - Visit to North Lindsey College re Vocational Training Courses & Training Unit – Education & Training;
- Customer Services Training, IPSL & Bar Code Training – Post Office Department;
- Software Package for Careers Advice Training unit – Education & Training;
- Various maritime related courses for the surveyors of the Maritime Administrative Department such as Lead Auditors Course and offshore Medical Certificates;
- Financial Investigation Courses, ibase user, Anacap Sciences Analysis Course and designer courses – GCID;
- Extensive training, various courses on health & safety, first-aid, construction contracts, confined space, to mention but a few – Technical Services Department;
- Crown Agents attachment course – Treasury Department and IT courses with Learning Tree International UK;
- Building Control Studies & Royal Town Planning School Course and Historical Towns Forum - Enterprise & Development Dept;
- First Aid courses – Technical Services, & Education & Training Dept, Ship Registry, Housing Department, Court Services;
- Funding distance learning courses for officers from the Customs, Environment, Statistics & Treasury Departments;

- Government courses on Procurement qualifications – Procurement Department;
- Criminal, Evidence Bill and Crimes Bill Course –Ministry of Justice.

### **Civil Service**

Once this year's Estimates of Revenue and Expenditure are approved, the Department of Education and Training will be in a position to carry out, once again, a comprehensive funding exercise which will enable the various Government Departments to embark upon further specialised professional training for their own staff. Mr Speaker, it has always been and still continues to be this Government's intention to ensure that civil servants remain well trained and fully up-dated in their respective specialisations by following accredited courses both in Gibraltar and in the United Kingdom.

Mr Speaker, compared to the professional and institutional development and support offered to the Civil Service by GSD Governments since 1996, the period that the members opposite, particularly the Hon Mr Costa, wish everybody would forget, that is, between 1988 and 1996, can at best be described as an era of extreme austerity and decline in the Civil Service, orchestrated by the GSLP government as a matter of policy and principle. Mr Speaker, the Hon Mr Picardo in a recent policy statement has stated that "The GSLP is not going to change its principles". Well, if this is true and bearing in mind the history of GSLP policy towards the Civil Service then how reliable is the Hon Mr Picardo's promise on the eve of an election that the GSLP now will provide all sorts of wonderful training for the Civil Service? Mr Speaker, if the GSLP are now interested in providing training that will enhance the service given by civil servants, why did they, when in Government, reduce the Civil Service to mere extinction, presumably in accordance with their principles? Why did they not provide some measure of professional development to those who survived? Why did the

GSLP close down the School of Nursing, the Construction Training Centre and all other training centres and now they want to provide training for everybody, Mr Speaker? It just does not ring true. Why did the GSLP not start vocational courses in schools? Why did the GSLP ... So you see laughter seems to rebound from one side of the House to the other. This morning Mr Costa was not happy with laughter and he is engaging in laughter himself now, there you are. Why did the GSLP ...

**HON N F COSTA:**

On a Point of Order, Mr Speaker.

**MR SPEAKER:**

Order. Order.

**HON N F COSTA:**

It was this afternoon. Not this morning. He should get his facts straight.

**MR SPEAKER:**

Well. That is not a Point of Order. The hon Member knows that that is not a Point of Order. Carry on.

**HON C G BELTRAN:**

Thank you, Mr Speaker. Why did the GSLP not start vocational courses in schools when they were able to do so when in Government, like the GSD has done, to help students who are not academically minded? Mr Speaker, they now promise to do

something about the education of students who are not academically strong, according to Mr Picardo. Well, Mr Speaker, as is the case with a myriad of other things including the Civil Service, they are just too late, they have missed the boat. We, the GSD Government, have been doing it successfully for fifteen years and the results are there for all to see. All, of course, except those like the Hon Mr Costa who as a matter of policy and principle are in perpetual denial. Not only of all that the GSD Government has achieved since 1996 but even more so all that the GSLP failed to do between 1988 and 1996.

### **Private Sector Training and Other Activities**

Local private sector companies continue to make use of our facilities for their in-house staff development programmes as follows:

1. Private training companies continue to use our facilities on a regular basis to deliver courses marketed locally. These have included:

- Customer Care Excellence;
- First Aid;
- Health & Safety in the Workplace (Levels 1,2,3);
- Food Safety (Supervisory + Level 1);
- IT Services Management;
- Project Management;
- Negotiating Skills;
- Supervisory Skills;
- Communication Skills.

2. Campbell's College runs at Bleak House Training Institute a continuing programme of training leading to examination in the ICSA Certificate and Diploma in Offshore Finance and Administration. Certificate units include: The Offshore Business Environment, Investment, Trust and Company Principles, Accounting Fundamentals. Diploma units

include: Offshore Trusts and Companies Administration, Business Management in Practice, Governance and Reporting, Portfolio Management. They also run a Distance Learning LLB Course with regular classes held at Bleak House.

3. The GSCCAB (Gibraltar Society of Chartered and Certified Accountancy Bodies) continues running accounting courses as well as the ACCA qualifications which are partly funded by the Gibraltar Government.

4. Selhurst Consulting runs courses in Human Resources leading to the CIPD (Chartered Institute of Personnel and Development) Certificate in Personnel Practice.

5. The Environmental Agency runs courses in Food Safety, Air Pollution Data Presentation and Principles & Best Practice.

6. Heartstarterz run courses in First Aid (First Aid at Work, Paediatric and School appointed person First Aid).

7. The Hire U Shop run a training course in Working at Heights (International Powered Access Federation).

8. Keyway Ltd run a training course in Project Management.

9. Power of Words run courses in Management Training.

10. Lloyds Register run an Inspectors course.

11. S & T Training Solutions run a course on Health & Safety in the Workplace (Chartered Institute of Environmental Health).

12. Wastage Products Ltd run a course on Confined Spaces.

13 Security Express followed in-house training courses for Security Officers and Sea Port.

14. STM Fidecs also followed in house training course on database.

### **Facilities for Examinations**

Mr Speaker, the Government considers it of the utmost importance to maintain the highest possible standards of excellence in our financial services industry. Government, therefore, is fully committed to and supports the continuing professional development of employees in that sector of our economy. In this respect, it is important to note that Bleak House Training Institute continues to be validated as an examination centre for a variety of educational and professional institutions such as the Open University, the Institute of Financial Services School of Finance, OCR, Pearson Vue, the Chartered Insurance Institute and the Institute of Chartered Secretaries and Administrators. Bleak House also hosts examinations on behalf of other UK institutions and universities and this allows local residents to sit certain examinations in Gibraltar as opposed to having to travel to the UK.

Also worthy of note, is the fact that Bleak House recently acquired registered examination centre status for the Chartered Institute of Bankers in Scotland and the Chartered Institute for Securities and Investments. This action was taken in response to requests from local finance companies. Significantly, the former, the Chartered Institute of Bankers in Scotland is the only institute in the world that can award "Chartered Banker" designation. The CISI, the Chartered Institute for Securities and investment, is the largest and most widely respected professional body for those who work in the securities and investment industry. Since the launch of the CISI in Gibraltar on the 7<sup>th</sup> February of this year we have already had six practitioners undertaking its professional exams at Bleak House. Thirteen others have also undertaken the Chartered institute of Bankers in Scotland exams.

## **ICT for Senior Citizens**

Mr Speaker, the Government have always seen the value of education as a life-long process; and so, the ICT courses Government has been running free of charge for senior citizens for some years now at Bleak House Training Institute, continue to attract a huge amount of interest from that sector of our Community. We have, therefore, organised a new series of these courses which ran from November 2010 to February 2011. A total of 45 participants undertook basic and intermediate level training in word-processing, e-mailing and the use of the internet. A similar course for senior citizens will again be offered this new financial year.

Mr Speaker, I speak to these senior students at the end of each course and I am very pleased to note that they are all, without exception, delighted not only with this service that my department offers them, but also with the many other advantages that senior citizens in general have acquired over the last fifteen years. The skills they learn through these IT Courses widen their network of friends and makes it possible for them to communicate easily with relatives living abroad. These skills also greatly enhance their quality of life as they allow them to access all sorts of information via the internet.

## **Maritime Sector**

In partnership with local shipping companies and in collaboration with the Port Authority, it is envisaged that four further scholarships will be offered this year to enable young people to undergo training leading towards Officer of the Watch qualification. We currently have three trainees undertaking this course, one of whom will finish this July.

Standard of Training Certification and Watchkeeping (STCW'95) basic courses to be run by Warsash Maritime Centre in the UK have also been offered during this past year.

## **Accountancy Training**

Mr Speaker, the demand for accountancy training subsidies is on the increase and so Government doubled the funding available for ACCA examinations taken locally for the financial year 2010/2011. The Department has offered evening classes in preparation for respective examinations, and employees from both the public and private sectors have benefited from these classes.

## **ISO Training**

As has been the norm for some years now, a subsidy continues to be made available to the Federation of Small Businesses for training leading to the ISO 9001 accreditation by local companies. A number of companies are currently involved in this kind of training for quality. Over and above this, the Department of Education and Training also contributes towards other training initiatives by the GFSB such as courses on Business Improvement and Self Development involving customer service, selling skills, management skills, health and safety and environmental issues amongst others. All of this is part of the effort to improve Gibraltar's retail business product.

## **Investors in People**

Gibraltar, Mr Speaker, continues to be an "Investors in People" accredited country. The Government of Gibraltar, through the Department of Education and Training, hold the necessary Licence to offer accreditation for 'Investors in People'. This was achieved through a programme of training sessions for companies delivered in Gibraltar in conjunction with the University of Durham and a subsequent pilot project run by Durham University that had a very successful conclusion.

## CONCLUSION

Mr Speaker, and so to my conclusion. I wish to end my contribution by thanking all members of the teaching, clerical and ancillary staff in our schools, the College and Bleak House Training Institute as well as those at the Department of Education and Training Main Office for their hard work and dedication throughout this year. It is their joint effort, perseverance and conscientiousness, working in a well-resourced, safe environment, that ensures that we have in Gibraltar an education service in academic, vocational and pastoral terms that could well be the envy of any community of our size anywhere else. The same can be said, Mr Speaker, of the other area of responsibility my Department is proud to lead on, and that is, professional training. Training and personal development of Gibraltar's large work force engaged in a variety of professions, businesses and trades, all vital to our economic and social progress, is encouraged, supported and developed in the various ways that I have already expounded on.

Mr Speaker, we now have in the House a different member shadowing Education and Training. It is to be hoped that he will turn out to be rather more objective than his predecessor Mr Linares and acknowledge the many resounding successes in education and training that are there for all to see. It is to be hoped that he will not emulate his predecessor's systematic, some might be forgiven to think pathological inclination, year in year out, to rubbish this Government's continuing, increasing and effective investment in schools, in nurseries and in life-long learning and vocational training. That he will show, hopefully, more objectivity and clearer thinking in his analyses of the many advances made in education and training. This should be the case particularly, Mr Speaker, when he compares what there is now to what there was or perhaps, to be more precise, what was not there when his colleagues in the GSLP governed Gibraltar for eight years and then Mr Speaker there is the Hon Mr Picardo. I would have liked to have told him personally but he is not here. He congratulates teachers for their successes in

getting academic pupils brilliantly through examinations and then he accuses Government of "neglecting the children who are not academic". Mr Speaker, it can only be one of two things. Either he is being fed information that is not true, but those who feed him do so in the belief that that is what Mr Picardo wants to hear and use as propaganda the veracity of which in any case he won't check out. Or, Mr Speaker, what is worse and I hope that this is not the case, Mr Picardo knows very well that there is, in fact, a lot being done for children who are not academically inclined, but chooses to hurl buckets of mud at the Government and by implication at the Education Department in the hope that some will stick. Mr Speaker, the extent of Mr Picardo's apparent lack of understanding of the education process would be laughable if it was not, in fact, alarming coming from someone who aspires to be Gibraltar's Chief Minister at some point. Of course, at what point, no-one knows. With Mr Bossano signalling that he will be around until he is ninety two and people not really knowing who will be the GSLP Chief Minister the day they win an election, the mind boggles as to when, if ever, Mr Picardo may become Chief Minister. But be that as it may, Mr Speaker, and returning to the remarks on education made by the Hon Mr Picardo. Does not Mr Picardo know that many of those teachers that he congratulated for the fantastic GCSE and 'A' level results obtained are in many instances the very same teachers who also successfully teach the vocational courses that they, the teachers themselves, have devised for non-academic pupils. Is Mr Picardo saying that these courses are failing the pupils? Because if he is, then he is pointing an accusatorial finger at those same teachers he was praising earlier on. What is he saying, Mr Speaker, when he speaks of neglect? Surely, he cannot run with the hare and hunt with the hounds! The truth is that most if not all our teachers and ancillary staff do a fantastic job in educating children of all abilities including those with learning difficulties and other special educational needs. Mr Speaker, in his haste to score cheap party political points, Mr Picardo comes across, certainly in education, as incoherent and someone who has once again, this time in the field of education, not done his homework.

Alas, Mr Speaker, in spite of the change of leadership and reshuffle, the Opposition led by Mr Picardo seems to be no different to that led by Mr Bossano. Therefore, Mr Speaker, I venture to suggest that their contribution on education and training in this Bill will pay scant attention to what I have said and the evidence I have provided and they will do their best to rubbish this Government's ever-increasing and effective investment in schools, in nurseries and in life-long education for our community. They will do their best to remove from sight our annual expenditure in educational equipment and materials of £837,000 for pupils of all abilities and which is over four times as much as when the GSLP were in Government, Mr Costa. They will probably try to deflect attention from the GSD Government's investment in scholarships that currently runs at £5.3 million compared to £1.5 million pre 1996, Mr Costa.

Mr Speaker, the Government will continue to invest in and support in many other ways the specialised attention given to children with a range of special needs. We will continue to invest in the wide and growing provision in professional and vocational training in schools and the workplace. Furthermore, we would remind those in the Opposition who today, on the eve of an election can only offer demagogic rhetoric in favour of the less academically able, that it is in fact the GSD Government that has been working assiduously and taking decisive action in support of these as well as all other children, over the last fifteen years. We would remind the historical revisionists and prophets of doom opposite that frankly they are not well placed to criticise this or indeed any other area of education in Gibraltar because people will not forget that it was the GSLP in Government who closed down all training centres in Gibraltar without batting an eyelid, leaving destitute those less academic pupils who would have profited the most from these centres; that it was the GSLP who did not lift a finger to support nursery education, they who failed the less academically able in schools and the College and now they offer everyone in education the moon and six pence. It is just not credible, Mr Speaker.

Mr Speaker, the Opposition led by the Hon Mr Picardo now also turn to scaremongering regarding the extent to which our schools are safe and secure places, making a direct comparison between Gibraltar and much larger and more complex societies and giving the erroneous impression that teachers and pupils in our schools are unprotected, systematically exposed to danger, and thus capable of being physically or emotionally hurt. Mr Speaker, whilst no school environment can be perfect, that is accepted, the GSD Government can hold its head up high when it comes to our record in the protection of our teachers and children and the same can be said of the lengths that classroom teachers and schools' senior managers, as well as ancillary staff and community constables, for example, go to in order to ensure a healthy and safe school environment in every sense of the word. Mr Picardo has noted that the environment in our schools is changing. Well, I have got news for Mr Picardo. The school environment, as a microcosm of the wider society that it serves, has been and always will be changing as society changes. But I will tell him something else in case he has forgotten: never was that environment in our schools in greater, real danger of turning ugly and affecting the physical integrity and moral fibre of our children than when the GSLP were the government of the day and they did a Pontius Pilate act on an activity that most certainly had its nefarious consequences on teachers and children and the Hon Mr Picardo must remember that because he was a senior student at Bayside School at the time questioning that activity. It was then that teachers had to deal with serious problems of bullying, violence and other pernicious activities unlike anything that we have seen before or after their years in power. Mr Speaker, in those days as a teacher myself and today as Minister for Education, I worry when the GSLP say that their principles will not change and I continue to be unimpressed by their lack of remorse vis-à-vis the fast launch activity. I shudder to think of the effect that a GSLP government would have on education and our young people.

The truth is that Mr Picardo plays fast and loose with the facts, and the jaundiced picture he wishes to paint of schools today is

a self-serving exaggeration and part of the blame game that the GSLP call politics. The pretty picture that he wishes to paint of himself is, frankly, too good to be true and like Narcissus, he is probably the only one who believes it.

For these reasons, Mr Speaker, let me say that when I think of the leadership change in the GSLP and their style of politics I cannot help but be reminded of the old saying in American politics where the old politician says to the young politician:-

“Listen son, the most important thing in politics is sincerity once you can fake that you are well away!”

Thank you very much, Mr Speaker.

#### **HON G H LICUDI:**

Mr Speaker, in trying to live up to the billing and the expectation of the Hon the Minister for Education of being more positive and constructive, let me start by joining the Minister in congratulating the participants in the Young Enterprise Scheme and all the professionals in the education system for the successes that our students enjoy. It is true, Mr Speaker, that every year when exam results come out, both the Government and the Opposition express their congratulations to those who achieve success and we expect to do so again this year, hopefully, with the Government, in just over a month's time but that is not the end of the story as far as education in Gibraltar is concerned.

The hon Member has made much of our comments in relation to the less academically minded students and our commitment to redress issues which affect them because it is a fact that there are those who do not achieve as much academic success as they might wish. There are those who start their schooling with everyone else but do not form part of the statistics that come out every August of exam success and it is also a fact that much more needs to be done in respect of those less academically

able students. It is no use, Mr Speaker, to throw recriminations across each side of the House as to who is right and who is wrong. This is a matter that has to be done for the benefit of our children and for the hon Member to today simply describe this, our hopes and our expectations for our children, even those who are less academically able, to describe this as hollow, worthless gimmick, Mr Speaker, that is not conducive to good debate. That is not conducive to a Government which is open about the issues that will arise in our education system because, in fact, nothing could be further from the truth. The hon Member has made a recitation of history which we consider to be wholly distorted and not reflective of reality and what the hon Member is sadly displaying is a sign of complacency and head in the sand approach. Not wanting to accept criticism. Not wanting to open his eyes to the issues that affect our students, particularly those who are less academically able, and we make no apology for coming out and having said that the system fails some of our students. It is our view, Mr Speaker, that that is not just one of the failings of the system and there are many good things clearly in the educational system in Gibraltar. But what I have discovered, in the very short time that I have been shadow Minister, in my discussions with professionals, students and others in the field, is that what is really required in Gibraltar is a root and branch review of the whole of the system. A review which covers both academic and vocational roots and remedies any issues and problems that there might be. A review that covers issues of maintenance, of school and staffing, for maintenance, caretaking. The facilities available in school. The teaching resources which are available. The secretarial support to each school with some schools having very, very little support indeed. The administrative support also in schools with a lot of the administration being done needlessly by teachers including heads and deputy heads when their experience could be better utilised in the classroom. There is also a need to review grievance procedures in so far as it affects teachers. The issue of class sizes which the Minister has spoken about and accountability issues. All these matters, Mr Speaker, need to be looked at and there is no point in the Government pretending

that there are no underlying issues. Underlying issues there are and they need to be addressed and a Government that ignores this reality is a Government that shirks its responsibility.

To end my short address on education, Mr Speaker, let me look back at the answer given recently to Question Nos. 952 to 954 of 2011. The Hon the Chief Minister said, “the current proposal is for the intended new school to be located within the school complex, the transfer of which to the Gibraltar Government is currently under negotiation. It is not possible to say yet when building works might begin”. That was in answer to a question as to when the new school in the mid-harbour development and that arises, Mr Speaker, because it is, in fact, in the manifesto. The 2007 manifesto under “Our commitments. We will build new First Middle Schools in the mid town and the old St Bernard’s Hospital”. Now, what we have is a complete change of plan with a school still being planned, not having been done in the last four years and something which will no doubt appear again as a brand new commitment in the next manifesto. It is an old commitment and it is an old commitment that this Government have not met.

As regards the other commitment in the manifesto of the school at the old St Bernard’s Hospital, we are told that works continue on the gutting out and refurbishment of the building and it is envisaged that the First School will have nine classes and the Middle School is envisaged to have twelve classes. Just on that, Mr Speaker, perhaps I could ask the hon Members opposite to clarify whether it is still the intention of the Government to proceed to make that building a school because the information that we had received is that the plans may have changed and I would simply ask the Government for clarification of that.

Mr Speaker, I move on to Financial Services and will limit the points to two small matters. Firstly, Mr Speaker, the Income Tax Act has come into effect and there is, unfortunately, still much confusion amongst businesses and professionals about the

effect of the Act. Indeed, Mr Speaker, the Gibraltar Federation of Small Businesses recently published a leaflet called “Business Agenda” where under ‘Taxation’ they say the issue ... there is a general lack of understanding of the implications of the Income Tax Act. This needs to be addressed. There is a need for clarity and support for businesses in understanding the implications of the Act and I would urge the Government to help businesses understand those implications.

There is also much concern, Mr Speaker, amongst the business community about proposed changes in the treatment of business expenses and thus, expanses which were previously considered to be allowable for tax purposes may no longer be allowable. That, Mr Speaker, has caused a great deal of disquiet as I know that the Hon the Chief Minister is aware as I was present in one of the dinners where that issue was raised in his presence. It is, again, an issue that needs to be addressed by this Government so that there should be absolute clarity as to what is and what is not allowable.

Mr Speaker, the area of responsibility that I have continued with, after the shadow cabinet reshuffle, is traffic and transport and let me start by remarking, as I did last year, that in 2009 the Hon the Chief Minister said that it would be a priority during this term of office to remedy the historical traffic and parking problems. It was not until April 2010, fifteen months later, that the Integrated Traffic and Parking Plan was produced and this was hailed as a blue print to resolve the traffic and parking problem. So much for the sense of priority. Two and a half years into the term of office when they said they were going to resolve or remedy the historical problem. The blue print for resolution of that issue was only published in April 2010 but despite that, the reality, as the hon Members will well know, is that traffic and parking problems persist. Traffic tailbacks continue to be a daily reality of life in Gibraltar. Problems with parkings persist, specially in the residential areas. People returning home at night to residential areas continue to have great difficulties and spend a large amount of time finding a parking. The priority was to remedy the



problem. Alas, that is something on which the Government has failed abysmally. What is it, in fact, that the Government have done since 2009 when this was stated to be a priority and since the publication of the Integrated Traffic and Parking Plan to remedy the parking problem in residential areas. Page 4 of the Integrated Traffic and Parking Plan lists a number of parking projects which the Government is to carry out. Grand Parade, two hundred and thirty spaces as part of an expansion. Engineer Lane, two hundred and seven spaces. Old Naval Hospital Road, eighty spaces. Arengo's Palace, two hundred and fifteen spaces. South Barrack Road, one hundred and twenty eight spaces. Mid Town, park with parking underneath, one hundred spaces. Mid Town, for public use, one hundred and twenty spaces. South Pavilion, one hundred and forty one spaces. Flat Bastion Road, one hundred and four spaces.

We are now barely a few months away from an election at the end of a term where this Government said it was a priority to remedy the historical parking problem. Not a single one of the projects that the Government have listed, have, in fact, been started. There have been announcements about the award of the tender. I understand it is Engineer Lane and Arengo's Palace and there has been an announcement that works on that are going to start imminently. But more than two years after the Chief Minister made the announcement of priority, more than one year after the publication of this blue print, not one single parking project listed in this plan has actually been started. That, Mr Speaker, is hardly evidence of priority being given by this Government to this issue.

When the plan was published last year, I stated that what appeared to be happening was that there would be a mad rush to complete all these projects before the elections and to do in eighteen months what this Government had failed to do in fifteen years. I could not have been more mistaken. There has not been a mad rush at all. There has not even been a walking pace towards the resolution of this problem, let alone a mad rush. Not a single parking scheme has been started and what is

worse, Mr Speaker, apart from the two that have been awarded, no indication at all has been given by the Government as to when residents will have the benefit of these extra parking spaces.

Residents in the area of Grand Parade, where there is going to be an expansion, have no idea. Residents in the area of Old Naval Hospital Road, have no idea. Residents in the area of South Pavilion, Flat Bastion Road, have no idea and it has not been through lack of trying on our part because we have repeatedly asked the Government when each of these projects will start. We have repeatedly asked the Government when each of these projects will be completed. We have repeatedly asked the Government how much each of these projects will cost and on each occasion the Government have refused to answer. So if residents of these areas, for example, South Pavilion, have been told that they will get a car park with one hundred and forty one spaces, because that is what the Government have said, are they not entitled to know when they are likely to get the benefit of these parking spaces? And the same for residents in Flat Bastion Road and the other areas where the parking schemes have been promised. What this Government have done is dangled a carrot in front of the faces of all these motorists and left the carrot dangling until the Government decide that it is time for the carrot to be eaten.

Is that, Mr Speaker, the position that this Government will take to an election later on this year? When they go round the estates and they are asked, when are we going to find our parking spaces that you promised? Are they going to simply reply in the same way that they have replied to us, we will not tell you. Mr Speaker, I dare say that there will be a very different answer with very clear commitments and very clear dates given, come election time. What it means is that all this has been done for party political and electoral purposes and the moral of the story is that the Government are more interested in political and electoral success than the interest of the motorists that it has failed for the past fifteen years.

These commitments, Mr Speaker, do not just arise from the Integrated Traffic and Parking Plan. A lot of these commitments are actually to be found in the 2007 manifesto. Thus the manifesto under the heading "Our Commitments" says "a new car park at Engineer's Lane". Not started, Mr Speaker. The new car park at Arengo's, not started, Mr Speaker. A car park at South Barrack Road, not started. An underground car park at Grand Parade, not started. An underground car park at Commonwealth Parade, not started and it appears abandoned. A ground level car park at Old Naval Hospital Road, not started, Mr Speaker. No doubt, all of these commitments will again appear under "Our Commitments" in the next manifesto this year. In fact, I have a suggestion for the hon Members opposite. Given that they have not started even one of these, why do they not simply change the date of this manifesto, instead of 2007 they can simply put 2011, and then we will have an idea of what they want to achieve in the next four years knowing that they have no intention, for the large part, of achieving any of that or even starting any of that.

Mr Speaker, another aspect of the plan on which the Government have been found wanting, not just the plan but also a manifesto commitment, is the new road linking Rosia to Queensway via the Dockyard. Again, it is also listed under "Our Commitments" with a plan in the manifesto as to what the route will be. We are now told, ten days ago, that the Government are reconsidering this and it may be that this will not proceed at all. We are also told that the Government has spent over £400,000 on this project and, no, Mr Speaker, we are not saying that the Government should continue to spend money on a project that is not needed but what we are saying is that this is a clear sign of improper and incompetent planning by this Government. The result, if it does not proceed, as the Government has indicated that it will not, is the possibility of over £400,000 down the drain. Four hundred thousand pounds of tax payers' money down the drain.

This is a Government, Mr Speaker, that changes as it goes along. An example of this, is the park and ride facility at Devil's Tower Road. Again, it is a commitment in the Integrated Traffic and Parking Plan. Government were again asked recently when the park and ride scheme would start and the response is that, in effect, it has already started as a result of the free bus passes. However, what the commitment was, was the introduction of a shuttle service into town from a park and ride facility. That has not been introduced and what seems even stranger, if this is intended, and the Government believe that it now operates as a park and ride facility, is that there is not even one sign for visitors coming through the border to the roundabout on Winston Churchill Avenue, not one sign that there is a car park on Devil's Tower Road with a park and ride facility. Not even a sign that there is a car park. One needs to turn part of the roundabout towards Devil's Tower Road to be confronted with a sign that says car park and even then it does not even say park and ride facility.

Mr Speaker, this brings me to another aspect of the plan that I have been asking for some time which is the roundabout in Glacis Road. Again, this is a project that is stated to be a road project in the Integrated Traffic and Parking Plan. In November 2011 a letter was written by the management company of one of the buildings in the area, in the Marina area, and it was written to the Department of Transport. It says "Re Access to Bayside Road from Glacis Road" and I will read what it says, "We are writing with regards to the above to establish whether or not there are any plans to install a small roundabout or junction that will provide the ability to turn left from Glacis Road into Bayside Road. Currently, residents of Trade Winds and Marina Bay and any visitors to Victoria Stadium are required to drive to the main roundabout on Winston Churchill Avenue in order to access these areas. Given the high levels of traffic congestion in this area, including for the border, we feel that it would be extremely beneficial if a junction or small roundabout could be installed there. We would be grateful to hear your opinions for this area, particularly given the expected increase in traffic for Bayside

Road with the new car parks and World Trade Centre that are going to be built in the area. We look forward to hearing from you shortly.” This was the 18<sup>th</sup> November. On the 17<sup>th</sup> November, there must be something wrong with the dates, came the response and the initial response was, “I acknowledge receipt of your letter.” This was in fact from the Secretary of the Transport Commission. “I acknowledge receipt of your letter dated 18<sup>th</sup> November 2010 and would like to inform you that the matter will be tabled at the next Traffic Commission meeting”. Then came another letter, Mr Speaker. This time on the 9<sup>th</sup> February 2011. Very recently. Three or four months ago. Again from the Secretary of the Transport Commission. “Re access to Bayside Road from Glacis Road”. “I have been instructed by the Traffic Commission to inform you there are no plans for this at the moment. An application was rejected as it was deemed unsafe. Therefore, it does not form part of traffic planning”. That is what the letter says, Mr Speaker. No plans for this roundabout at the moment. Application rejected. Deemed unsafe. Does not form part of the traffic planning. It is part of their blue print. It is in the Integrated Traffic and Parking Plan. It is there and I have repeatedly asked in this House when that will be implemented. At no stage have the Government said there was an application put to the Traffic Commission and it was deemed unsafe and therefore we cannot proceed. There are no plans to do this at the moment.

Mr Speaker, very recently I asked the Government Question No. 992 of 2011, “can Government now state when the roundabout in Glacis Road will be built and what the expected cost will be?” The same issue that is raised in this letter and the answer came with a number of other questions answered in the same way. “The position remains ...” This was the Hon the Chief Minister. “The position remains as previously explained in this House in answer to Question No. 1010 of 2010” and the answer to Question No. 1010 of 2010, it was a long answer, the nub of it is in the last paragraph. “The Government’s position is that measures will be announced as and when they are embarked upon and the Government may or may not, depending on the

nature of each measure, give an estimated duration of implementation of each measure as and when it announces that it is embarking upon that measure.” So in answer, specifically ten days ago, to the issue of the roundabout in Glacis Road, when is the Government going to build the roundabout and what the expected cost will be, the answer was, as previously stated, it will be announced when the Government feels that it is ready to announce it. What the Government did not tell me or this House was that there had been correspondence in relation to this issue and that the Traffic Commission has already said that there are no plans for this, that the application has been rejected. That it is deemed unsafe and it does not form part of traffic planning. All in all, Mr Speaker, a shambles. We seem to have a Government that simply cannot get its house in order. A Government that does not appear to know where it is going and what the needs of Gibraltar are and, in the meantime, the long suffering motorist continues to suffer needlessly in Gibraltar. The sense of priority that I have described and which were echoes of the words of the Chief Minister simply have not materialised. The motoring public has been let down by this Government. We will have an election this year. The motorists will no doubt have their say at the ballot box. Thank you, Mr Speaker.

#### **HON L MONTIEL:**

Mr Speaker, in spite of the international financial crisis facing the world economies, our economy continues to perform well under the stewardship of this GSD Government. Year after year employee jobs and average annual earnings in the economy have increased to record levels. In the October 2010 Employment Survey there were recorded 20,975 jobs, an increase of 2.6 per cent over the last year, and average earnings increased by 2.8 per cent to £23,575.59. There are 10,706 Gibraltarians in employment which is almost 100 per cent of the active population. Latest unemployment figures as at May 2011 are 380 or 1.7 per cent of jobs available in the market.

Mr Speaker, most economists would agree that 1.7 per cent unemployment would constitute full employment, not least, by the International Labour Office (ILO). Nevertheless, Gibraltar, as other developed countries, also has structural and other aspects of unemployment relevant to the profile of non working people that generally contribute to registered unemployment numbers, even when many of these persons are not genuinely seeking work and the number of vacancies are greater than the number of registered unemployed.

Mr Speaker, any person seeking work and not finding a suitable job when he or she wants it or needs it, is not just a problem for the person but also for his or her family in a small community such as ours. That is why my Ministry is continuously devising policies to assist the unemployed.

Mr Speaker, much has been said in the media and exaggerated for political effect that there is abuse in Government training schemes and that there is high unemployment because foreigners are taking over our jobs and the Government are doing nothing about it. The answer to all these, and many more uninformed and wild accusations, is quite simple - far more than what the GSLP did when they were last in power, on every front.

To take unemployment comparisons, for example, and I know our hon Members do not like to compare with the previous administration, but we have to be realistic when we talk about employment and we cannot pretend that we can solve problems overnight, without any problems. I would have to remind Parliament of unemployment levels. In 1993 Gibraltarian registered unemployed was 5.9 per cent, 3 per cent in 1994 and 2.7 per cent in 1995. In contrast, under a GSD Government, in 2007 it was 1.4 per cent, in 2008 1.7 per cent and in 2009 1.5 per cent.

Mr Speaker we have excellent training schemes and we continuously strive to improve on them year after year. During the GSLP years in power, there could be very little abuse of

trainees as there was very little training going on. Or have we already forgotten that they closed all training centres?

Mr Speaker, the average unemployment for Europe is 9.9 per cent and 7.7 per cent in the United Kingdom. In the most successful economy in Europe, Germany, the rate is 6.3 per cent. Gibraltar's lower unemployment rate is in spite of the fact that we live close to a neighbour which has 20 per cent unemployment and we have an obligation to comply with our membership of the European Union where employers enjoy a legal right to freely employ from any country within the EU. The reality is that, no matter how successful our economy, there will always be a level of unemployment for many obvious reasons. That is why Employment Centres and Training Establishments, that the previous GSLP administration did not believe in, are there to provide the skills that local residents need and to assist people into employment.

Mr Speaker, sometimes opportunistic political comments have gone unchallenged because they are propagated by a letter signing fraternity of GSLP commissars who truly represent the old guard and not necessarily the official Opposition, whose responsibility it is to explain what they would do. This demagoguery has also been exploited to undermine Government policies designed to assist the long term unemployed and others who, for a variety of reasons, are unable to find jobs by themselves or sustain permanent employment with local employers. These people often conveniently forget that it is the employer who employs and not the job centre.

Mr Speaker, what everyone in Gibraltar also knows, except our political opponents, of course, is that there are many areas of employment within the private sector that are not attractive enough to the local unemployed. As I have stated in the past, few, if any, are clamouring to replace foreign labour in the private construction market, catering, hotels, shops, bars or restaurants. Indeed, many of the long-term unemployed offered the opportunity of a job under the construction or other

supported employment schemes, have either rejected employment or have simply been unable to sustain work on permanent employment.

Notwithstanding, as it is obvious to everyone in Gibraltar, there are a number of employers, yes, there are a number of employers who, for reasons better known to themselves, prefer to take on frontier workers rather than give a locally registered unemployed person, a job or training opportunity. On the other hand, it must also be said that since I criticised employers in my 2009 Budget speech, some have responded by offering to co-operate with the Employment Service to provide training for the skills that they require and employ from the local resident workforce.

The reality is that in a free market economy under EU Directives transposed into local employment law, employers exercise their right to employ a workforce that in their wisdom meets their interests and not necessarily that of the community. Employers seek labour that is skilled, productive, and flexible and has a good record of work experience.

This may explain why some school leavers, students with academic qualifications and returning graduates, including others with limited work experience or vocational skills, seem to be the most affected in finding immediate permanent employment in our highly competitive job market

In response to this reality, the Opposition gives birth to the graduate scheme gimmick, with the offer of a three year contract as a research assistant; condemning the graduate not to test the market and maximise his or her full potential – and why only graduates and then what happens next? The reality is that the vast majority of graduates find employment. Those who do not immediately find employment do not register unemployed because they seek specific professional jobs for which there are few openings at a given time. Most teachers, for example, seek and get supply work in the career that they have chosen until

they eventually get permanent work. Other graduates that register for employment constitute only a very limited number every year. Over time they themselves find employment or are assisted by the Employment Service in a number of ways. Currently, there is only a handful of returning graduates registered unemployed.

It is most important that when we refer to unemployment or to the unemployment statistics, and indeed not least to the unemployed person, that there is no oversimplification of the subject by way, for example, and so typically too, to view vacancies as openings that anyone on the unemployment list can fill. The match has to be the correct one, and do justice to all parties involved, the employer as much as the employee and the Employment Service as “broker”. Unemployed persons naturally have different individual profiles, by way of aptitude, work experience, work preference, skills, qualifications, et cetera. Still, the unemployment register at the Employment Service may be broken down into three main profile groups that I will attempt here to elaborate.

Mr Speaker, in essence we are faced with structural unemployment; basically a mismatch between job openings and the skills profile of job seekers. In Gibraltar, this can affect 50 per cent of the registered unemployed seeking work. For some, improvement is only possible in the long run. For others, it is a matter of gaining work experience and/or vocational training through Government apprenticeships and other employability schemes in partnership with “good” employers.

However, experience has shown that for some of the more demanding or job specific training schemes, such as, for example, in the electrical engineering/telecommunication trades, health and social care openings or some employment opportunities in the gaming industry, there are often not enough suitable candidates from within the registered unemployed. Consequently, in order to maximise such training and employment opportunities, it has been necessary to advertise

openly – conscious of the fact that even if not directly assisting the registered unemployed, we are nevertheless investing in building up a skills pool to the locally resident workforce and addressing structural unemployment imbalances; much as this undoubtedly not only stretches available funds but indeed requiring extra funding support.

Mr Speaker, as will be appreciated, much planning and employer awareness has been made by this Ministry to maximise training opportunities for this identified profile group relating to structural unemployment. As I have stated in the past, our goal has been to unlock the potential of our workforce by offering more diverse job opportunities and training. When this is done in partnership with employers, we ensure that local quality jobs are retained for suitably qualified resident labour. For this reason, every effort is made by training monitors, with the necessary collaboration of employers, to increase employment prospects at the end of vocational training placement.

The training policy, Mr Speaker, is designed to put in place a strategy and resources that provide the skills our economy requires and encourages local employers to employ from the resident pool, and not unrealistically to achieve zero unemployment overnight.

Last year a pilot scheme was introduced at schools with a view to implementing a wide range of vocational skills packages designed to assist and prepare students opting to follow the vocational training route. This will better prepare and enhance the prospects of many students to undertake basic entry examinations into the many schemes and apprenticeships being provided by the Ministry of Employment.

Hence, vocational training has developed in recent times in a way that challenges training providers and training centres to support and develop skills in partnership with industry groups, be it in construction, mechanical or electrical engineering,

telecommunications, business administration, gaming, health and social care and whatever other skills may be required by the different industry groups. Mr Speaker, this was the policy objective set in 2008 and further explained when I informed Parliament last year, that it was my vocational training strategy to engage as many employers as possible in the development of training and apprenticeship schemes in partnership with various industry groups. This, I reiterate, constitutes the most effective way of securing quality skilled employment for our resident workforce. As a direct consequence of this policy, therefore, we now have in training, throughout the economy resident labour to take over quality jobs in growing demand areas such as social and health care, telecommunications, gaming industry skills, et cetera, that will in time reduce the need for employers to recruit from abroad.

Mr Speaker, the second biggest profile group are the long-term registered unemployed. These are, generally, persons with no vocational or academic qualifications with little, if any, work experience, individuals with low self esteem or confidence and cases of social disadvantage. These individuals find it difficult to find jobs by themselves or sustain unskilled jobs in the open labour market. This category of people may include a number of ex-offenders, individuals in rehabilitation from substance abuse, trainees who prematurely leave the Training Centre to seek work and a number of single parents unable to find suitable jobs

There are approximately 150 registered long-term unemployed for 6 months and over, with a number of them receiving social benefits. Mr Speaker, as most people will be aware, assisting this category of persons into employment requires an ongoing and often difficult process. For this reason, Mr Speaker, Government have taken on the challenge of developing strategies to support those who are genuinely seeking work by way of a variety of employability and supported schemes, relevant to their capabilities.

Towards this objective, Mr Speaker, in addition to the Vocational Training Scheme, mainly directed towards school leavers and other young people, we have developed other employability schemes with a more structured training programme and a higher prospect of employment at the end of the placement. These are being pursued throughout the private sector. Already, a number of successful placements have been introduced into the gaming sector and similarly other employment sectors are being targeted with a view to increase employment opportunities for many local unemployed residents, including graduates.

Furthermore, the Government, through the temporary suspension of the traditional tender system, have supported approved construction companies with a fair distribution of work. Most of these companies almost totally rely on Government contracts. This has ensured that jobs are available to those persons on our long-term unemployment list, willing to work in this particular important sector of industry. Participation in this scheme by employers, therefore, has been made conditional on co-operating with the Employment Service in securing jobs for its clients

May I once again remind Parliament, Mr Speaker, that the Wage Subsidy Scheme remains a valuable tool at the disposal of the Employment Service in assisting the registered long-term unemployed back into the labour market. As I have stated in the past, this scheme affords the greatest possible opportunity of not just a job but a sustainable one which will provide longer term employment, beyond the period of wage subsidy. Consequently, we have taken care, under the take-up rules, to ensure that the unemployed are given a genuine opportunity of permanent employment and thus prevent the employee and the scheme being abused.

Mr Speaker, other employability schemes have been developed in connection with the cleaning contract of Government offices and buildings. This scheme, which is run on the same principles

as the construction industry scheme, is also designed to assist the long-term unemployed back to work. As is the practice under the construction scheme, participation is also conditional upon co-operation with the Employment Service with a view to securing jobs for the registered unemployed. These are real jobs in protected employment that assists the long-term unemployed integrate into the labour market.

Mr Speaker, there is a third profile group of registered unemployed who are often not genuinely seeking employment but unemployment related benefits. Such a group can exist in Gibraltar as much as in other welfare states. These may include seasonal, casual and retired or voluntary redundant workers and a number of people on benefits. These numbers range from 60 to 100 during the year and, during the summer period, can inflate numbers by as many as 230 registered unemployed persons.

On a more general note, it is worth reminding Parliament about the significant cuts in jobs and budget spending taking place throughout the Ministry of Defence in the UK. As the Chief Minister pointed out last December, although Gibraltar cannot escape from these budget cuts, it was Government foresight and the unprecedented and historical decision to negotiate the Global Agreements with MOD in 2007 which has protected the living standard of hundreds of our citizens and retained quality jobs. Thus, Mr Speaker, in Gibraltar, in the Ministry of Defence, employment levels have since been sustained. No doubt that this is a direct result of the Agreements which impose on MOD that reductions cannot be made below agreed manning levels and only by voluntary redundancy means.

Mr Speaker, this is a good example of the many successful agreements that have been achieved when Government and the Trade Unions have worked together in the interest of working people. But as we see daily in the politics of GSLP activists and their controlling masters, what are good agreements for the Unions and Government, in the culture of politics of the old

guard, it represents bad agreements for them. Hence, Mr Speaker, the reason why there is underhand and biased press campaigning to destabilise the Unions and discredit their leadership. It is, therefore, not surprising to see open and anonymous letters circulated criticising Union leaders and claiming ignorance, for example, on transfer terms and conditions at Serco. This is intended to undermine Unite which has negotiating rights and ill service the members by urging them to join the Prospect Union, itself being undermined by activists in other sectors. This has been as blatant as misguided an attempt engineered to send a message to Ministry of Defence workers and others that they are the ones who really protect the interests of workers and not the Government or the Unions for that matter. I am glad that the Leader of the Opposition now seems to be having a very good relationship with Union leaders. I hope that what he has done at the front bench of the party is also done by the people who are behind the scenes.

Mr Speaker, it has taken a number of years of awareness and representations at every level for our training and employment support policies to be recognised as a coherent, short and long-term strategy, designed to mitigate genuine unemployment and be embraced by the most forward looking employers in the private and public sectors as beneficial to their business interests, school leavers and the unemployed persons we are trying to assist.

As a consequence, increasingly, more employers are approaching the Ministry of Employment offering to co-operate and, in partnership, to set up apprenticeships and other types of employability schemes in partnership with the Employment Service. Mr Speaker, putting in place such wide ranging training initiatives and employment schemes has involved the collaboration and commitment of Employment Service staff, including our Gibraltar College NVQ Training advisor who always responds enthusiastically when presented with the

challenge to widen diversification into other apprenticeships in response to industry needs.

Mr Speaker, special mention must also be made of the increased administrative work that this policy has generated. I, therefore, wish to thank the Training Officer (Acting) and her staff for the support provided. Within this context, our Vocational Training Monitors must also be acknowledged for rising to the challenge of the extra effort demanded from them in impressing upon and negotiating with employers to enhance the prospects of employment of trainees, at the end of the agreed period of training programme or work experience at termination of placement.

Training Centre Managers and Instructors are also important when we set upon to diversify into new apprenticeship pathways in partnership with employers. For this reason, we acknowledge their co-operation in confronting the challenge of maximising and extending NVQ quality training throughout the public and the private sectors.

Mr Speaker, special mention must also be made of the laborious and sometimes difficult work undertaken by Employment Officers in collaboration with the Job Club team. They regularly interview unemployed persons to establish how they can be assisted and, on a more general basis, help in identifying profile groups so as to better understand the reasons and nature of their unemployment, so important in developing the training and employability schemes that most appropriately can secure stable employment for them.

Finally, Mr Speaker, I am compelled once again to record my most sincere gratitude to my senior officers who, in addition to their other Ministerial responsibilities, have always been supportive and proactive in the co-ordination and implementation of employment and vocational training policies. Thank you, Mr Speaker.



**HON J J BOSSANO:**

Mr Speaker, in every budget since I was first elected to the House in 1972 my main contribution to the debate on the annual Appropriation Bill has been to provide an assessment of Government finances and, generally, of the economy. This I will not be doing this year. I know that one member, who has already made clear that my past contributions in this respect counted for little or perhaps even for nothing, is the mover of the Bill, the Chief Minister, who said as much in his speech in 2009 when I was not present and had been unable to participate due to my wife's illness.

I shall have to wait until he exercises his right of reply to see if he thinks my views on employment and related matters are worthy of any higher consideration by him than my previous contributions, but I suspect they will not, since the element in previous years dealing with employment have invariably been rubbished by him.

In recent months we have seen a miraculous change on his part, what I believe he likes to describe as "a conversion on the road to Damascus", following his state of shock when he discovered that a local company, engaged in providing cleaning services to the Government, did not employ even a single Gibraltarian. I know, Mr Speaker, that if I had made such a statement it would have been the worst form of jingoistic, pseudo nationalistic nonsense of the worst kind and a reflection of the fact that I only know how to appeal politically to the voters of Gibraltar on the basis of racism. He tells me this regularly when I defend the concept of jobs for Gibraltarians.

I also know that none of this applies to his reaction on being appalled at finding out that there could be Gibraltarian ladies denied the opportunity of being employed as office cleaners and that such jobs have been going to outsiders.

You see, Mr Speaker, the hon Member is incapable of being a jingoistic, pseudo nationalistic racist that talks nonsense. In his

case, his dismay at the discovery is due to his adorable character, the effect of which is that he cannot go to sleep at night with a clear conscience knowing that some foreigners may be taking away all the jobs of our home grown cleaning ladies. I note that he is appalled at this discovery and need to point out that it does not say very much for his Minister for Employment whose job it is to monitor these things and who has a complete breakdown of every single employer in Gibraltar and who, at the click of a mouse, can produce a printout of all those others with an equally abysmal record in not employing Gibraltar resident workers in general and Gibraltarians in particular. Still, I am glad, for the sake of those whose prospects of employment will now be enhanced, that this particular company landed on the hon Member's desk and has triggered the reaction that it has and which we were told about last week.

Equally, it is good news that the Government are finally doing something to require construction companies that get public contracts to provide employment opportunities to those residents, Gibraltarians and others, seeking employment through the Employment Service. I have to remind the hon Member on how many occasions I have pointed out that the statistics produced by the Government showed a declining Gibraltarian participation in the construction sector over the years, even though the size of the sector was increasing and I remind the House that, instead of addressing the issue, for my pains, all I received were insults, being accused of everything from being racist to manipulating the statistics.

Be that as it may, as I have said, something is now going to be done and better late than never. The reality is that if GJBS had not been there in the first place and if the Government had not provided it with a steady flow of work over the years, there would be precious little left of the pool of residual construction industry skills which I believe is important to maintain within the resident workforce.

In his right of reply, the mover last year said there were many

more Gibraltarians in the construction industry then, than in 1996. He also said that there was a Gibraltarian psychosis that a construction industry job was not one where the Gibraltarians will want to work.

At the same time, the Minister responsible for Employment made the remarkable observation that there was a skills shortage among unemployed Gibraltarians in 2010, because 21 years earlier, in 1989, the Construction Centre at Landport, which gave school leavers a 12 month basic induction course in a variety of labouring tasks for the industry and paid them a daily allowance, a pocket money, of a couple of pounds, was closed by agreement with those involved. The trainees, on completion of that induction course, prior to 1989, used to be employed as boy labourers. So the closure could not have deprived Gibraltar 21 years later of skills because the skills were not there in the first place.

We have heard today from the hon Member that there was a whole mushroom of training centres apparently in 1989, not just this one that I can recall, and we have also heard from him an explanation of what is going to be done and what he intends to do and, in fact, it sounded as if we had already had the election and as if he had just been elected. He seems to forget that he has been at the job for four years and that his record in those four years is that the unemployment levels have been higher in his time than in any of his predecessors in the Government of the party that he belongs to. Of course, it is always good to try new things if other things fail but they have had fifteen years of it and, Mr Speaker, as the figures will show, when I go on to quote them, the reality is that the results are not what he makes them out to be.

The New Harbours Construction Industry Training Centre opened at a later stage funded by the EU and was set up to provide craft training as opposed to labourers training. It has continued to date to produce craftsmen, who in many instances have not been able to compete effectively in the private sector

for the jobs available against the inflow of frontier workers linked to the construction companies already there. He also said last year that this was now being put right, that is, as from last year. Well, what appears to have been done for this industry since last year is the recent introduction of the requirement on Government contracts, which will not increase the pool of resident skilled workers in the industry but which we hope will be reflected in future in a higher proportion of Gibraltarians working in the industry than has been the case in the last 12 months. The fact remains that, on the basis of the figures available, the number of Gibraltarians in employment in construction jobs has not grown and what has happened is that at the very most those retiring or moving to other jobs have been replaced. The Centre must by now have had something like 16 or 17 intakes of trainees and has created over the years a few hundred craftsmen. Its role should be expanded and its output increased, if we want to see a bigger home-grown construction crafts pool of resident workers and I believe this can be done.

Is it not strange then, that the Government should have put a scheme this year to put pressure on employers to provide employment for Gibraltarians if the blame lies with the unemployed and not with the employers? But, of course, the views that the Government puts one year in one Budget are no guidance necessarily to what it is going to do or tell us in the next. What we were told last year is not true. When this Government was elected in May 1996 there were 758 Gibraltar construction workers out of a workforce of 1,261. Based on the 2009 Report, last year there were 751 after 14 years and the total construction workforce was up by 1,120 to 2,381. So the total was up by 1,120 and the Gibraltarians were down compared to the position in 1996, even though the decline was seven. This year, meaning the October 2010 Report tabled today, Gibraltarians again down by four to 747 and the total again up by 63.

The information that we are getting on employee jobs in the construction sector for October 2010 are a reflection of what

was happening in the filling of vacancies at the time. According to the Minister, in September of last year 238 employee jobs were filled for construction workers out of which a mere six were Gibraltarians. At this rate, their share of the jobs can only go in one direction, down. It is to be hoped that the requirements introduced in Government contracts recently will have an effect in reversing this trend. Now, the hon Member may argue that a loss of seven jobs or four jobs is not significant, but the whole point is not that, it is that it should be growing and he claimed that it was growing since we have had a construction training centre since 1996, which was set up with EU funding precisely to increase the supply of construction tradesmen. There is no excuse for the figures that we are seeing over the last two years. In 2009 he boasted that there were 946 Spaniards employed in the construction sector alone and that the Government was delighted to be providing increasing numbers of frontier workers from the Spanish hinterland with job opportunities and that the total was actually much higher than 3,341, the official figure when the illegal unregistered labour was taken into account. Delighted, that this was going on. Well, we cannot and do not agree with this approach but I have to say, Mr Speaker, what we have heard today from the Minister is that he wants encouraging employers to increase their reliance on local labour and less on imported or cross border labour. Well, presumably he knows the risk involved in not delighting the Chief Minister and I would have thought he ought to think very carefully of the consequences of upsetting him. In fact, the number of Gibraltarians out of work and registered with the Employment Service at the end of September 2009 was 450, having been as high as 525 in July, and at the end of September 2010 it was 415. The level of unemployment in May 1996, which is his point of reference, was 331, a figure he attacked as too high before the election of that year and then declared to be almost full employment after the election.

Clearly, in an economy of our size there can never be a permanent construction industry workforce able to deal with all the large construction projects which require a surge in the

supply of labour at short notice and for limited periods, the demand for which disappears when the project is over. This is not in dispute. This has happened in the past with large construction investment projects, the kind of private investment that used to be described by the Members opposite as an optical illusion because the impact of the investment on the economy would only last during the construction phase.

Well, Mr Speaker, the same could be said of the impact of the construction industry's activity of the last two or three years, except that the optical illusion, if illusion it is, is nowadays funded by public spending using borrowed money. As I have made clear on many occasions, we have not opposed increased borrowing for capital spending, as they used to. We have only questioned the wisdom of a judgment in the choice of the costs of some of the areas of their spending.

According to the previous Survey, it was the highest ever recorded number of employed jobs that was shown in October 2008 when it reached 20,509. It is clear that this is not a figure of the total number of people in employment. The surveys make that clear since, for example, it includes Community Officers on the social wage provided by Community Care Limited which according to a recent tribunal are not employees of the Charity and are not covered by the provisions of the Employment Act. The Charity has been filling the questionnaire for the Employment Survey as if they were an employer and as if the persons concerned were their employees. In previous debates in this House, both sides have referred to Community Officers as employees of Community Care and the Government Employment Survey treats them as such. Obviously, this anomaly can only be put right by correcting the Employment Survey Reports and ensuring that the Charity does not provide false returns, or else requiring the Charity to ensure that the provisions of the Employment Act apply to those occupying these positions in the Charity, which they include as employees in their returns. It is a fact that, until recently, the issue was not very relevant since, in the past, Community Officers were only

recruited from persons aged over 60, who were registered as unemployed and their inclusion was therefore on the basis that the persons concerned were unemployed, able to work and seeking employment and that they ceased to be registered with the Employment Service at the end of the thirteen week of benefit on engagement as Community Officers. The system no longer operates like this. The numbers originally affected did not therefore change very much from year to year and consequently it had no impact in the analysis and comparison of the size of the labour force between one year and the next. However, the change introduced in 2009 by which persons already in full-time employment or in part-time employment could then take a second job with Community Care, if their existing earnings from employment was below £20,000, has led to a huge increase in those engaged in this capacity. This has led the Charity to argue at the tribunal that, since it has a problem in finding work for those engaged given the numbers involved, frequently they are required to do not more than one or two hours a week if at all, hence the view taken that since no work is demanded in exchange for the payment they are not really employees at all. It was primarily on this basis that the tribunal concluded it had no jurisdiction under the Employment Act. The relevance of this is twofold, one is that the Employment Survey for 2009 shows that 196 of the supposed increase in the number of employees which was accounted for by the engagement of Community Officers in a manner that did not result in the filling of vacant employee jobs at all. Therefore, the decline in the total workforce in that year was not from 20,509 to 20,450, which included 196 Community Officers, but to 20,254 excluding the latter. A decline of 59 thus converts into a real decline of real jobs of 255. Full-time Gibraltar jobs in 2009 were 8,479 and in 2008, 8,569, a drop of 90. This did not prevent the hon Member telling Gibraltar, in his New Year message in January 2010, that there were significantly more Gibraltarians in employment than ever before.

That there were more Gibraltarians in employment every year is what should be happening, not least because our population

increases every year. This is one of the favourite tricks employed by the Government. Every year the price of things go up. Every year we are a year older and every year more children leave our schools than workers retire. None of this is a great achievement attributable to the GSD Government. To say that there are more Gibraltarians seeking employment or more Gibraltarians getting jobs means nothing even if it were true, which it frequently is not. The issue is how many of the jobs that come up go to local residents, Gibraltarians and others and how many go to outsiders. The answer to the question is to be found in the statistics published by the Government which confirms the complaints that people in the streets voice as being correct and a true reflection of what is happening in the labour market.

I can inform the House, Mr Speaker, that the number of Community Officers in October 2010 had almost reached 700 and my understanding is that these continue to be included as employee jobs even though they are not employee jobs. It also means that the payment to those concerned is also treated as earnings from employment in the computation of the GDP, when it is not. The effect will not be large but the more accurate the information the better equipped we are in this House to make an assessment of the state of the economy of which the most important element is the workforce. If we look at the earnings from employment in the national income calculation for 2008/2009 and 2009/2010, the increase between the two years derived from the entire workforce of over 20,000 was £15 million and about 20 per cent of this figure, about £3 million, would have been attributable to Community Officers receipts if there were 700 then. This puts the matter in context.

In fact, when we are looking at numbers of jobs, in the economy it is better to concentrate on the figure for full-time jobs since, as the report makes clear, the total is not the number of employees but the number of jobs, meaning that as well as the case of Community Officers, even where the jobs are real, part-time employment is often in addition to full-time employment by the same individual already included once.

The 2009 Survey showed that the number of full-time jobs fell from 17,437 in 2008 to 17,049 in 2009, a drop of 388, 98 of which were jobs previously held by Gibraltarians. These figures are the latest available to the House published before today's meeting. The 2010 Employment Survey results, both as regards employment levels and as regards the impact of employment earnings on the national income, is applicable in the consideration of the 2010/2011 GDP calculation of which, at this stage, there is only a preliminary estimate and, as we have seen from the estimate given a year ago, the new method of calculation in respect of company profit means that the figures can change quite a lot. The estimated GDP for 2009/2010 was originally put at £914 million and we have this week seen the figure revised to £954 million with the largest contribution to the increase coming from the gross trading profits of companies currently put at £230 million but which could increase further.

The Employment Survey tabled today, of which I was given a copy in advance on Friday, for which I am grateful, shows the position as at October 2010 which will be reflected as regards earnings from employment as I have said in the GDP calculation for the last financial year. The Survey shows an increase of some 5.5 per cent in earnings. Given the very high level of Government spending in construction work in the last financial year and in the current year, the multiplier effect of such expenditure, it follows that much of the growth continues to be generated, as it has been in 2008/2009 and 2009/2010, by the effect of this expenditure. How much of the activity is due to the Government input will only be really known when the projects under construction are complete.

As was made clear during Question Time, the Government is now practically the only customer of the construction industry and is putting out work to ensure that a number of local companies survive this period, when there is apparently no private sector development in progress or ready to start. We saw this from the 2008/2009 expenditure side of the GDP calculation when the gross domestic fixed capital formation

figure by the private sector was primarily imported equipment with very little construction work.

The Government for the last three years has only been able to undertake this level of construction projects by increasing the public debt. How high the public debt is or whether it is too high or too low is not a subject with which we have taken issue in Parliament but, of course, if the Government considers that it needs to justify their debt level by comparing it with the past, then it has to be said for the record that the comparison needs to be on a like for like basis. The gross debt of Gibraltar peaked at £99 million in 1995 but there was a dedicated sinking fund to amortise the loan. By April 1996, loan repayment had reduced the gross debt to £65 million and then to £60 million by December. Until then, net debt meant the amount borrowed less the amount available in the sinking fund to repay the loan. However, there were cash holdings in all sorts of other funds, what the hon Member likes to describe as piggy banks and, as the hon Member from time to time mentions, it was clear that the policy at the time was not to offset against the public debt any of that cash holding other than the amount that was, in fact, in the sinking fund, solely for that purpose, ring fenced and which could be used for nothing else. If we had taken the same methodology that we have today and looked at all the other funds that had cash surpluses and put them all in the Consolidated Fund and offset against that the debt, the debt would have been zero. There would have been a net debt of zero because there was more than £60 million stashed up everywhere and there was £60 million as gross debt. So the figure was gross debt of £60 million.

The hon Member describes, as the economically more accurate measure of the level of our indebtedness, the debt expressed as a percentage of GDP. I am sure he knows that many economies are of the view that the more relevant ratio is the debt to revenue for small open economies like ours where the level of the GDP could change dramatically because of external events or may be as a result of an increasing part of the national

income leaking out of the economy as has happening now with ours.

The ratio in the 2009 legislation placed this limit at 80 per cent of revenue and the debt has been much, much closer to this limit of 80 per cent of revenue than to the GDP ratio in the last couple of years.

One interesting effect in portraying how modest our debt level is by concentrating on the net figure is the effect that has been brought about in the last couple of years by closing piggy banks and shifting the cash to the Consolidated Fund. A good example to illustrate this, is the decision circulated last Friday. Altering some of the figures in the Estimates book to transfer £930,000 in respect of the financial year 2010/2011 and £530,000 in respect of the current year 2011/2012, from the Savings Bank to the Consolidated Fund reflected in the page 10 amendments. The effect of this is to immediately reduce our debt by £1.5 million. At the same time, it enables a lower ratio of net debt to GDP to be published so that we can claim that it is even lower than predicted. The £216.7 million used by the mover of the Bill today is the result of this change on Friday. The day before, on Thursday, before the money had moved from the Post Office to the Haven, the net debt was £217.6 million. Now, that does not mean that Gibraltar as a result of that short journey became a million pounds better off when the figure appeared in another place.

Incidentally, the decision in respect of the current financial year to transfer £530,000, which may or may not materialise between now and March 2012, is a reversal of the policy that the decision on the transfer of the surplus of the Savings Bank would only be made at the close of the financial year, which was announced a few years ago, when the extent of the surplus, if any, was finally known. Hence, Mr Speaker, if Members look at last year's Estimates book, they will find that the Savings Bank provides zero surplus for transfer at the beginning of the financial year, as shown on page 157 of last year's Estimates.

As regards the increase in employee jobs between 2009 and 2010, given the short time that the Report has been available, there are a few items only that I would like to draw the attention of the House to, subject to a more thorough analysis of the Report which I have not been able to undertake so soon and whether I am able to make use or not depends clearly on the date of the election. Of the headline figure of 525 more jobs, 182 are part-time jobs and 35 of those are in the MOD, as shown in table 1. If we now look at the balance of 343 extra full-time jobs, we find that the increase in male held jobs is also 343. So there was no increase in female employment in full-time employment and the number of full-time jobs held by Gibraltarians is down by 12.

In the past, when we have compared one year's Report with the preceding year, the Government has been quick to point to the footnote that says the distinction between Gibraltar and UK British has a problem of accuracy. They never think there is a problem of accuracy when there is an increase in Gibraltar jobs, only when there is a fall. Since there is no way of knowing if the problem is overstatement of one or the other, I have always argued that the only way to deal with the data is to accept the breakdown as given. However, I feel the need on this occasion, that UK British job losses at 55 are even bigger than the Gibraltarian ones, to point out that misclassification is hardly the answer. There was also a drop of 47 Moroccans. So in comparing full-time jobs between October 2009 and October 2010 what we see is an increase of 392 Spanish nationals, 35 other EU nationals, and 30 non-EU nationals, a total increase of 457 which, when we deduct the decline in Gibraltarians, British and Moroccans, leaves us with a net gain of 343. I would have thought that was a worrying figure for the Minister of Employment assuming that he reads the Report that he presents here.

This would indicate that the change in the employment situation, as far as full-time employment is concerned, has been a drop of resident workers and an increase in frontier workers. This trend

was welcomed by the Government in the past on the false premise that our economy could not grow with lesser frontier workers, which kept on increasing every year and the premise that they were not taking jobs from our people because our people did not want the jobs they took, or were not skilled enough or flexible enough or for whatever other reason not suitable. I am not sure that this is still the view. I think, on this point, hon Members opposite have blown hot and cold. Sometimes they seem to be suggesting it is serious and sometimes they are suggesting that it is not. I hope it is not and I hope that it is changing but if it is not because of the cleaning company experience which has changed their mind, then it is good news for the resident workers. Of course, the Government can turn around and argue that Table 1 does not provide a breakdown of frontier and resident workers and so the analysis is pure speculation on my part. Well, I am afraid the figures are worse than suggested by the above analysis. I invite hon Members to look at Table 5 on page 3 of the Survey Report. This puts the year to year increase of frontier workers at 742. The mover of the Bill, when I have referred to this Table in previous Budgets, has accused me of trying to mislead the House by not mentioning that some of the frontier workers are Gibraltarians. Well, as far as the impact on the economy is concerned, as he should know from the input output study to which he attached so much importance when it was commissioned, the reduction in the multiplier effect on account of frontier workers is not determined by their nationality. But if it makes him happier or maybe it makes him less happy, as he would not be able to accuse me of manipulating the figure, I can tell him that the increase in Gibraltarian workers who became frontier workers was 32 out of 742, leaving a total increase of 710 non-British frontier workers filling jobs in October 2010 more than in October 2009, even though the total number of available employee jobs was only up by 525.

The Government know that we believe more should have been done to reverse this trend which has led to an increase of frontier workers as recorded by Employment Surveys of some

5,000 between October 1996 and October 2010. Another record they can boast of.

Community Care's future is another bone of contention, Mr Speaker. The ticking time bomb under Community Care has been the way the Government has chosen to describe the situation, not mine. If anything can be said to be designed to make pensioners worry about the future of the support they get from Community Care, surely is to tell them that there is a ticking time bomb, not to say, as we have done, that our policy is to continue with the system. Here we have a classical example of the irresponsible and politically self-serving arguments put forward by the hon Member opposite. If the Government says it is a ticking time bomb in the Budget of 2009 and has done nothing about it two years later, either it is not such a grave risk, as he chose to portray by his choice of words, or he is failing to put in place a better system with a lower risk which he claims to have up his sleeve, having been preparing for this by deliberately running down the reserves of Community Care for fourteen years. The crime that I am accused of is, that having seen no evidence of what he says, and having seen a number of changes introduced which, in my judgement, if anything, increased rather than reduced the exposure to risk and which I do not think is in anybody's interests for me to spell out, when I say I do not agree with him and that I will hold back my judgement on the alternative when I know what that alternative is, I am accused of scaring our pensioners. This Parliament is being asked by the Government to vote money for Community Care again this year with no attempt being made to deal with the exposure to the risk which he says exists, which he says he knows how to cure at no cost to either existing beneficiaries or future beneficiaries and which he chooses not to put in place just yet. Why, if there is this huge risk, which he only has discovered after Community Care run out of money in 2009, does he not give it priority? As usual with the hon Member, he gave different reasons on different occasions. In January 2010 he said he would introduce it during the year. Towards the end of 2010 he said there was slippage and that it would happen in

2011. Well, I do not see what priority he has given to the Legislation Unit to produce what is required in 2009 if after 18 months the legislation he says he needs to produce was simply not ready. Now it is two years and we still do not know exactly when this legislation will see the light of day or whether the legislation will be published before the general election. We were told in the Budget last year that the danger of the ticking time bomb blowing up was not imminent. Well, I can only say that if someone knows there is a ticking time bomb, knows how to disable the bomb and knows when it is going to blow up, the not unreasonable conclusion is that the person who knows all this is the person that put the time bomb there, in the first place. I cannot for the life of me understand why he has chosen to make such statements which can only serve to encourage others to do something we would all want not to happen without being ready to immediately close the risk. Because I press him to come clean and present his alternative on Community Care, because although we do not agree that there is a need for change, we say we will judge his alternative when we see it and decide if we can support it when we know what it is, because our position is to reserve our judgement when we know what he is up to, he claimed last year that this meant that I poo pood his idea. Mr Speaker, I can assure the hon Member that poo pooing was not something that I was ever taught how to do, in the area of our city where I was born and bred, near Devil's Gap. It may be polite public school terminology, but in my environment we always used more, shall we say, robust language, to decry or oppose something. He said last year that his Government sees a real danger for future generations and was going to do it because it was the responsible thing to do to protect future generations without affecting their pensions. Our reply is we do not see the danger, but if you do, get on with it and do not waste any more time. He claims that this reply makes us unfit to win an election. He insists it will be done but the ticking time that only he sees is not going to explode just yet. Well, there is another ticking time bomb, the one he will have to face in the coming general election, and that has a definite date by which it will go off! Though I accept he is the only one that

can decide, for a while longer, when the ticking stops. Perhaps, he has chosen not to protect future generations after all and use the risk he claims to see as an election platform, because the window of opportunity, if legislation is needed to deal with this issue, is fast closing and if the danger is real he should not delay it one more day. Today he has produced a new version of his motives for wanting to get rid of Community Care. I hope it is not that I started it. He says that the payments are charitable hand outs and that they should become a legal right. This is incredible, Mr Speaker. Nobody has ever suggested that the independent entity with charitable status that receives Government funding from the proceeds of import duty, has spent 22 years dispensing charitable welfare payments to those who are too poor to look after themselves. The status of the institution as a charity is because it is not a profit making organisation. To imply, for example, that the social wage extension in 2009, introduced at his instigation, to which I referred above which suggests that up to £5,000 per year can be given to persons with an occupational pension, irrespective of its size, as well as those in addition earning £15,000 from gainful employment and that this is an undignified and offensive handout, is simply unbelievable. The very risk that he has been hinting at for two years is the one that arises when a Government elsewhere pays out statutory amounts which are not means tested, not linked to any threshold and not linked to the payment of contributions. If he has an alternative that can preserve all the benefits of the present system that are provided by the Community Care entity and intends to stop funding the Trust after December and pay directly the beneficiaries as from January, together with their social insurance pension, that is not enough to say so in a couple of paragraphs in this Budget. If he is saying that the money we are voting this week is to allow the Trust to continue until December and that in January they will no longer have a role to play and that the social security department will be making the same payments to the same persons, then he needs to produce the alternative mechanism now and not after the general election. If when we see what it is, we agree that it works, we will support it. We will support any



system that is better than the one that is there. But he has got to go further than simply telling us that he thinks it because, in fact, the description today did not sound like a very safe system. I have to say that if payments to pensioners directly by the Government leaves the Government less exposed to challenge and makes it less risky than when a third party, a private charity is making the payments, then, Mr Speaker, everything the experts have been saying on this subject since 1989 has been complete nonsense.

The Government has now decided to proceed with the closure of the Civil Service pension scheme for new recruits. It does not seem to have been a big issue since it has not been opposed to any large extent by any of the Unions that represent the existing members of the final salary Civil Service pension scheme. However, I want to point out that the cost of pensions for civil servants is due to increase, according to the Estimates, this year by £400,000, from £19.6 million to £20 million. Last year we had an estimated increase of £1 million and the outturn is £1.6 million, so I would suggest that this figure which I know we do not have to vote is likely to be much higher. Obviously, the effect on the total pension cost of the replacement by a funded scheme will, I imagine, not start to show up until the number of existing pensioners stabilises and earlier in the House we have been told that the additional number of Civil Service pensions paid to new retirees was about 100 or so. I think the figure was 125.

As has been mentioned by the Government, there are actually over 1,000 public servants, which includes those employed through the GDC, already on the Provident Trust money purchase scheme. Their contributions are being shown in the departments to which they have been allocated and I assume that the new subheads, currently provided with a token £1,000, throughout the Estimate is to provide for any new Civil Service entrants once the final salary scheme is closed and contributions to the Provident Fund have to be made for the new entrants.

Mr Speaker, whilst the Government has decided that the Civil Service pension scheme could not be afforded any longer and that the potential pension liability for the future would be too great a burden for future generations and whilst they also believe that the future of Community Care, as it stands, is at risk and that major reforms are required to make it safe, it does not seem that they think that the statutory social insurance pension system represents any unsustainable burden for the future and although I have raised this regularly at Budgets the Government simply brushes the issue aside. So, whilst not expecting that they will agree that something needs to be done in this area I simply put it down for the record that in our view the statutory scheme which provides social insurance pensions is bound to face serious problems in the not too distant future as presently structured. The reply from the Government on this is, so what. It is the Government responsibility and the Government could choose to close down the fund altogether and pay it out of the Consolidated Fund. Well, of course, they could choose to do this or anything else they want. In 1997 he was saying the fund was too low at £36 million and that the Government was committed to making capital injections to increase its reserves. This was when he was incorrectly accusing me of allowing the reserves to fall when, in fact, the opposite was true, and they had gone up. Now we are told the very opposite. His defence for doing nothing last year was to say, "the statutory benefits fund is just a piggy bank"; the hon Member ought to have been a pig farmer, "a Government piggy bank which could be in the general reserves if the Government wanted it to. If the Government statutory fund had no money at all, zero pounds in it, then the Government would simply pay statutory benefit funds as it pays today Civil Service pensions". As he pays today the Civil Service pensions that he wants to stop paying because they are a liability and a millstone around the neck of future generations of Gibraltarians. "These are Government liabilities like any other".

The whole point, Mr Speaker, is that if one cannot raise an issue here without having it brushed aside and at the same time face

the accusation of wanting to scare our senior citizens, as if I was saying I wanted to stop their pensions or take away their Community Care, instead of trying to make them more secure by pointing to areas of concern, as I see them, which is what we are being invited to do by having a debate on Government expenditure, otherwise we might as well simply come here, vote the Appropriation Bill and be done with it.

The Government's approach to its reserve is that the public debt is correctly defined as if all the piggy banks, which are now almost entirely in the Consolidated Fund, were readily available to repay the public debt in order to establish the balance which is the net debt ceiling. In this respect, the contingent liability to meet the deficiencies in the social insurance pensions or the funding to continue the operation of Community Care, because its reserves have been exhausted, are treated as if it did not form part of the equation. The Government does not seem to accept that when Community Care had its own cash of £60 million in reserve and the Social Insurance Fund had its own reserve of £36 million cash at the very least one could say that there was a £96 million buffer before the contingent liability on the Government reserves could potentially be triggered. This is no longer the case and it makes a significant difference.

The number of people in receipt of social insurance pensions is growing by 500 a year. We believe that the 'Pay as you Go' system will only work for as long as the number of employees grows faster than the number of new pensioners and given the dependence of the construction sector on public spending and the fact that numerically this is the largest area of employee jobs in the economy, in a few years we could be facing a situation of declining contributors and increasing pensioner numbers.

I note that, just like the Civil Service pensions, there is another item which does not require a vote and cannot be raised at the Committee Stage, which is Head 7(1) of the Consolidated Fund charges, where the estimate for the repayment of revenue is £5 million this year and the revised forecast for last year is up from

£20,000 to £5 million. The footnote says that this is under section 14 of the Public Finance (Control and Audit) Act, which just tells us that it is the payment ... The hon Member has made an attempt to explain this but the [*inaudible*] tells us that it is the payment of refunds that are required to be made but gives no indication of what is the nature of this requirement and to whom it has to be paid. On the basis of what the hon Member said that these were just tax refunds, it raises the question, where were such tax refunds shown in the previous Estimates of the expenditure. In the same column in the previous year there was only £20,000 or is it that previous tax receipts were shown net of such refunds and now they are shown gross on the income side and the refund shown as an outgoing cost on the expenditure side. I would be grateful if this matter could be clarified, otherwise the interpretation of the revenue and expenditure of the Government is difficult to unravel.

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

Mr Speaker, if he will give way I will clarify it for him now. His second supposition is correct. It used to be a netting off before.

#### **HON J J BOSSANO:**

I am grateful, Mr Speaker. I was not very sure if it was because there was no indication.

Finally, Mr Speaker, I would be grateful if I could have a complete list of the number of employees, with a breakdown by company, at the end of March 2010 and 2011 in respect of Government companies, as requested in Oral Question Nos. 1135 and 1136, given that the answer provided, as the hon Member recognises, was incomplete. Thank you, Mr Speaker.

**ADJOURNMENT:****HON CHIEF MINISTER:**

I have the honour to move that the House do now adjourn to Tuesday 5<sup>th</sup> July 2011 at 10.00 a.m.

Question put.            Agreed to.

The adjournment of the House was taken at 4.37 p.m. on Monday 4<sup>th</sup> July 2011.

**TUESDAY 5<sup>TH</sup> JULY 2011**

The House resumed at 10.00 a.m.

**PRESENT:**

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

**GOVERNMENT:**

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

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

The Hon C G Beltran - Minister for Education and Training

The Hon E J Reyes - Minister for Culture, Heritage, Sport  
and Leisure

**OPPOSITION:**

The Hon F R Picardo - Leader of the Opposition

The Hon J J Bossano

The Hon Dr J J Garcia

The Hon C A Bruzon

The Hon N F Costa

The Hon S E Linares

**ABSENT:**

The Hon G H Licudi

**IN ATTENDANCE:**

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

**THE APPROPRIATION ACT 2011 (CONTINUED)****HON E J REYES:**

Mr Speaker, local cultural activities, many of which are supported by Cultural Grants, are now an integral part of our daily lives and we are committed to continue supporting these activities. The John Mackintosh Hall continues to be a central venue where meetings, exhibitions and performances take place throughout the year. As a result of its intense usage, there is a high amount of wear and tear on the building and Government

commissioned a condition report on the entire building. This report was completed very shortly and it will put us in a better position to focus upon the existing maintenance schedule and thereafter prepare a phased long-term plan. However, that is not to say that there has been a pause in the maintenance schedule of the building. Earlier this year, Mr Speaker, we completed extensive repairs to the Charles Hunt Meeting Room which now has a new wood laminate floor and this replaced the dated cork tiles. We have already started work on the refurbishment of the changing rooms in the theatre backstage area. I am sure this will be welcomed by the many performers who make use of the Inces Hall theatre facilities throughout a normal year. Repairs to the library ceiling have progressed and the lending library is once again open for business as usual. Furthermore, some 400 books have already been received this year - ranging from classics to biographies and popular novels. Regular users are enjoying use of the four computers which were kindly donated to the library by Gibtelecom and these replaced the existing ones which by some were considered to be now rather slow and outdated. The cafeteria at the Hall has once again opened to the public and it is fitted with a modern and friendly decor and proving to be very popular as an extra facility within the Hall's complex.

The Government remains fully committed to developing quality cultural activities in Gibraltar. In keeping with this commitment, we have allocated substantial amounts for the organisation of events and for the improvement of existing premises, as well as in providing assistance, by way of grants, to groups and individuals connected with culture.

Since my last Budget speech, I can report that the Autumn Festival in 2010 once again proved to be an illustration of what this Government has established to promote and encourage the arts in general and to provide live entertainment events that can be enjoyed by a wide spectrum of our community. The Festival programme included a poetry competition, an International Art

Competition, concerts, dance, theatre productions and even zarzuela performances.

The first event that the Culture Ministry organised during this calendar year was obviously the New Year's Celebration. This saw a fantastic concert and fireworks display at Casemates. The event was followed by the 2011 Spring Festival which has only very recently come to an end. Once again, we achieved almost four weeks worth of events, jam packed with diverse and entertaining programmes, where youngsters and the elderly, as well as those in between, were well catered for.

The Festival started with a Mind Reading Show and continued with performances by bands, choirs, dance groups and drama associations. There was also a photographic exhibition, a classic car rally, a fashion show, music recitals and, Mr Speaker, for the first time ever in Gibraltar, a book crossing day which I am glad to say proved very successful. This new event has been followed by the setting up of permanent Book Crossing Hotspots at several locations around Gibraltar.

The zarzuela, which is always so hugely popular with our older citizens, again proved a great success. On this occasion, the zarzuela stage was the well-liked "Canción del Olvido" and this production was prepared especially for Gibraltar.

As part of the Festival, we also held the Competitive Spring Art Exhibition. This competition attracted a large number of excellent works. A Young Artists' competitive exhibition was also held earlier on in the year. This was the third time it had been organised and I am personally glad to report that it continues to go from strength to strength. The Government places enormous importance in fostering the development of youngsters in all types of art.

Again this year, the Inces Hall Theatre became the venue for students from Westside School to perform their examination pieces. Apart from the adjudication of their examination pieces,

their productions were viewed and enjoyed by their extended families and even members of the general public.

We also continued to support creative writing with the Short Story competition, which this year received a record number of entries. It was 217 entries in total.

The Spring Festival ended with what has now become the legendary “Calentita” Food Festival where it seems as if all of Gibraltar troops down to Casemates to partake in an evening of fun, food and entertainment for all ages. The evening culminated with a magnificent fireworks and laser display, all set to music from our diverse cultural background.

Just ten days after the Festival ended, on the 21<sup>st</sup> of June, an exhibition was inaugurated to celebrate the life and legacy of Gibraltar’s most internationally renowned artist: the late Gustavo Bacarisas. Government has, for some time now, been keeping its ear to the ground for any artworks by Bacarisas that come into the international market. We have been successful in acquiring several of his works recently and these have been added to the always-expanding Ministry of Culture’s art collection. It has now been forty years since the artist’s passing and it was considered a good time to display his work for all Gibraltarians to admire and be duly proud of. It is the first Bacarisas retrospective exhibition that has been held in Gibraltar. A beautiful exhibition catalogue has been printed and this will remain for posterity. The exhibition is still running and I urge all Members of this House to visit it. Special lectures and guided tours are being offered twice weekly. Based on the abundant and extremely positive comments received from local art lovers and the public at large, the Ministry for Culture will endeavour to hold other major exhibitions of this calibre in the future.

The Miss Gibraltar Pageant once again proved to be the highlight of Gibraltar’s social calendar. It took place at the Alameda Open Air Theatre on Saturday 25<sup>th</sup> June. I take this

opportunity, with your leave, Mr Speaker, to publicly congratulate our beautiful Michelle Gillingwater Pedersen, our newly crowned Miss Gibraltar. I am sure we all look forward to seeing her promoting local events, as well as to promote Gibraltar on the international scene, over the next 12 months.

This year we have been fortunate in attracting the International Dance Organisation’s European Show Dance Championships and World Cup, and all this will take place between the 14<sup>th</sup> and 17<sup>th</sup> of July. Gibraltar can feel proud that the IDO has selected us to host this event, more so as it is their 30<sup>th</sup> anniversary and several other countries had also submitted bids to host this event. The championship will attract top class participants from no less than sixteen different countries. All this, Mr Speaker, has been achieved with the support, both logistical and financial, of the Ministry for Culture.

Preparations are now well underway for our next big event which is the ever-popular Summer Nights. This year we will be having five weeks worth of twice weekly entertainments, on Tuesdays and Thursdays, and it all commences on 19<sup>th</sup> July and runs up to 18<sup>th</sup> August with the dates being inclusive. We look forward to bringing many new and original acts and full details of these will be announced very, very shortly.

The end of the Summer Nights will bring us nicely to the beginning of the Gibraltar 2011 Fair. The fair, which is a substantial investment in itself, will incorporate the popular family and youth pavilions that provide entertainment throughout the whole week and entry to both pavilions is again free of charge. Full details of the respective programmes are being sent to the printers as we speak. We are also planning to hold the finals of the Battle of the Bands, a Rock Music Competition organised by Rock on the Rock Club. These will be held at the Youth Pavilion during Fair Week itself. The Fair, Mr Speaker, for the record, runs from Saturday 20<sup>th</sup> August to Sunday 28<sup>th</sup> August.

Also underway are the preparations for our National Week celebrations. Among the many events that will be organised, the now annual classical music concert at St. Michael's Cave promises to be quite spectacular. Popular and well known works by both Mozart and Beethoven will be performed. There will be a well known performing soloist this year and the concert date is now set for Wednesday 31<sup>st</sup> August.

National Day will see all of Gibraltar celebrating their day, as usual, and we hope they will do this together with their families and friends. Arrangements are also being made for a fabulous Rock Concert to take place the evening before, that is, on Friday 9<sup>th</sup> September and we want to hold it at Waterport Coach Park.

Mr Speaker, venues for cultural events will continue to be maintained and improved, as this Government remains committed to its ongoing refurbishment programmes.

The Casemates Exhibition Galleries have now had a new wooden laminate floor installed, as well as adding extra lights and an integrated sound system. We have also had the doors and windows repainted. The colour of the five main walls on the south side of each vault were painted in a bright different colour because we, together with the Gibraltar Fine Arts Committee, feel this enhances the artworks which are hang on display on them.

Ince's Hall has also seen all its backstage area and part of the changing room areas repainted. We also had new curtain pelmets installed in the auditorium and existing curtains were refurbished. Furthermore, a digital baby grand piano has been purchased for Ince's Hall and this has proved very popular in its use by many of the halls hirers. A "disability friendly caterpillar" was also acquired to enable wheelchair users to access the auditorium with greater ease.

The Central Hall, which is widely used through hire by the general public for their own private celebrations, as well as

being used by several dance clubs for their regular weekly meetings, has now had refurbished toilet facilities of high standards installed. Mr Speaker, I think these facilities are such as one would expect to find in a top class venue. New tables and chairs have also been purchased and this, therefore, now minimises the expenses that hirers have to incur as opposed to having to hire these from outside sources. This summer the kitchenette and the entrance lobby of Central Hall will also be repainted and tiled and the drinks serving area will be extensively refurbished.

Mr Speaker, cultural grants in the sum of £70,000 will be awarded this year to individuals and entities. These grants ensure that performers and culture lovers continue to be supported by this Government in their endeavour to improve and grow in their performing arts. The cultural grants have been increased by no less than 100 per cent this year.

I believe this House should recognise that this Government's continued commitment to encourage and cultivate the arts has been instrumental in delivering a much greater regularity of events that contribute to the cultural enrichment of all members of our community.

Mr Speaker, I take this opportunity to, once again, publicly express my appreciation to all those entities and individuals who give their time so generously to provide so many cultural events for our enjoyment. These individuals contribute to the development of our cultural identity and we, including the members of the staff at the Ministry of Culture, are rightly proud of our achievements. Our Government, Mr Speaker, continues to pledge to work closely with all lovers of art in the future.

## **HERITAGE BUDGET 2011**

Mr Speaker, I now wish to move on to heritage related matters. This year's heritage budget focus is on research and conservation of our rich historical record. Research provides the

basis for understanding and from the knowledge gained through this we are able to plan, conserve and manage rationally. We believe that planning and research must be carried out in a rational manner, as otherwise we risk ending up with subjective judgments and prioritisations that are not set within their appropriate frameworks.

The Gibraltar Museum is Gibraltar's main research institution. With Government funding and the untiring efforts of passionate professionals forming part of the Museum's team, it has become a major international Centre of Excellence in a range of historical fields. The Government will continue to invest in the Gibraltar Museum and will provide funding which will span from repairs and maintenance of the historic building at Bomb House Lane to research, including equipment as may be required to carry out planned tasks and the development of new displays. The Gibraltar Museum is the shop front of our own proud heritage.

Linked to the Museum's work are the Calpe Conferences and I am pleased to confirm that Government continues to fund these as in the past. This year's Conference will be on the history of the Strait of Gibraltar and, Mr Speaker, we are already having key speakers for the 2012 Conference being confirmed. The 2012 Conference will follow the tradition started in 1998 which is to have a major international conference on human prehistory every third year. I cannot stress enough the importance of putting Gibraltar's history, and its heritage also, in the forefront of research at all levels, from local to international fields. I trust that by now hon Members of this House are fully aware of the high regard in which we are held by the international academic and heritage conservation communities.

The inclusion of Gorham's Cave complex in the United Kingdom's tentative list for World Heritage Status is a prime example of this regard. We should not think of this initial success of nomination as one which was achieved lightly. It required great efforts and would not have been possible without

Government's long-term vision and investment in research at the site itself. I am pleased to say that the process of transfer of the land from the Ministry of Defence to the Gibraltar Government is in hand and, hopefully, we will soon be in a position to sort out the relatively recent problems of access to the site. Land access down to Gorham's Cave will be an important and essential step forward in the development of Gorham's Cave complex as a local major heritage site and, to boot, this complex is now classified as important enough as meriting World Heritage Status.

Another site that we have been waiting to develop, and that I am pleased to report we have started to work upon, is the Moorish Castle complex. I am pleased to confirm that preliminary surveys and works have started within the area of the former civil prison. This is all part of a first step that will lay the foundations for a major project, on the back of which will come significant urban renewal of the old town; a huge economic potential will be unleashed. This is the accepted scientific way forward in heritage conservation: we start with the research which tells us what we have and gives it meaning and then we develop a site sympathetically, conserving what is of value and giving it life. The end result is that the quality of life of people improves, they benefit in many ways including economically and we ensure that the conservation process is both rational and sustainable. King's Bastion showed how this is not just a dream but a reality that is tangible and there for all to see and enjoy. I look forward to the day when the Moorish Castle stands out as a wonderful jewel, with life and activity along many of our old streets and quarters, linking down to another heritage-leisure hub – Casemates Square.

During this year, Mr Speaker, we will also endeavour to act on the heritage priorities which we have agreed with the Gibraltar Heritage Trust. In preparing the heritage estimates for this year, I was keen that we should show that the joint prioritisation process would have value - so I earnestly hope that we will be able to make a start to some of the projects during the next few

months. Some, like the Moorish Castle and Gorham's Cave, have been covered already. Others, like the Mount, Northern Defences, Wellington Front or the facades of the old police station in Irish Town and the Convent will form part of major projects of urban renewal and conservation of our old historic city and for this we must plan well into the future. Mr Speaker, may I ask you to cast your eyes back only a few years and remember how Casemates Square, Orange Bastion, King's Bastion and the Retrenchment Block at Lathbury Barracks were and please compare your recollections to how they look today. Likewise, other important heritage assets will receive similar treatment and these few examples which I have just listed are living proof that we do take action.

Not all action has to await the process of renewal of an area. Among the priorities for this year, from the agreed list which we have compiled together with the Heritage Trust, I am pleased to say that we have already started to take action on two sensitive sites. Both Forbes' Quarry, the site of the discovery of the 1848 Neanderthal skull, and Stay Behind Tunnels, the site where British officers were going to brick themselves in should the Germans capture Gibraltar during World War II, are being protected. We have to invest on such protection because, sadly, Mr Speaker, vandals have been finding ways of destroying gates and have attempted to damage these extremely significant and important heritage sites. The protection of important sites is a major priority and we are already acting on these two which the joint list has identified as being of high importance. It is my desire to jointly look at other sites that we may want to gradually improve. We may want to protect and show off these and amongst them I highlight the lower part of Charles V Wall, Nuns' Well at Europa Point and Parson's Lodge. I believe they are deserving projects that must be catered for in the future.

Under the provisions made in the Improvement and Development Fund, £500,000 have been set aside for refurbishment works to be carried out at The Main Guard which

is now the Heritage Trust's Headquarters. I am certain that this building which in itself carries heritage importance will be well looked after by the Heritage Trust and I take this opportunity to wish all Board members of the Trust the very best for the future.

Our heritage is not constrained to structures and buildings, a good example of this is the provision made in this year's Estimates for the "History Alive" re-enactment group which moves from the previous year's Head 4C – Tourism, to now Head 2A-Culture and Heritage. Newly refurbished premises are being provided to our "History Alive" re-enactment group at Town Range. The facilities pertain to the Ministry for Heritage and will become a type of headquarters and changing rooms, with shower facilities and even personal lockers, for use by the impressive gentlemen who march down Main Street to Casemates Square and back again every Saturday morning. I am already in discussion with the group members to ensure that they have a cycle of period uniforms and that, through this and other resources, they may continue to be an attractive activity which both locals and visitors thoroughly enjoy.

## **SPORT AND LEISURE**

If I can now turn to Sport and Leisure, Mr Speaker I wish to report that during the 2010/2011 financial year the Gibraltar Sports and Leisure Authority continued its operations to build upon and improve the work carried out in previous years and since the Government created the Authority in 2003. We have done all this in the provision and management of:

- Sports facilities, including the community use of schools scheme;
- Technical support, assistance and advice to schools and sports associations;
- Training, support and sports projects through the Sports Development Unit;



- Financial assistance through the Gibraltar Sports Advisory Council;
- The provision of facilities for non-sports events;
- The promotion of health and fitness generally.

Teams from abroad have yet again visited Gibraltar to play and train on our impressive facilities and this is greatly assisting the development of local sports, as well as enhancing Gibraltar's profile overseas. The number of visits by netball and hockey teams, in particular, has seen the biggest increase during this last year.

The Bayside Sports Centre's facilities are being fully used by the local community and their popularity and frequency of use is increasing on a continuous basis. The multi-sports games area, situated between the Tercentenary Sports Hall and the hockey pitch, was specifically designed to double-up as a concert venue and has a capacity of over 3,000 and this, Mr Speaker, has again been very successfully used for non-sporting events, including the Beer Festival and the International Dog Shows held last September. This facility was also used to support the 24 hour Relay for Life, a recently held fund raising venture carried out by Cancer Research, a locally registered charity. Furthermore, it is now earmarked as the venue at which to hold a special function, within our Summer Nights programme of events, which will cater for Advanced Level students celebrating the arrival of their Public Examination Results on Thursday 18<sup>th</sup> August. Mr Speaker, more details about this event for "A" level students will follow shortly, because I believe I should first hold further co-ordinating meetings with the students' representatives.

The Sports and Leisure Authority continues to provide support, assistance and advice to schools and associations in the provision of facilities and equipment and in organising events, such as the Euro-Hockey Championships held from 10<sup>th</sup> to 13<sup>th</sup>

June and at which our local team "Grammarians" gained promotion in respect of Gibraltar's future participation. Their win enables local hockey players registered with Eagles Hockey Club to now participate in Division I at next year's Championships.

Other international sports federations like the International Association of Ultrarunners also chose Gibraltar to host the 100 kilometre World and European Ultramarathon Championships last November. This event was hailed as a huge success by the international governing body. This was the first international sports event held in Gibraltar that required anti-doping tests, as set by the international federation. In this connection, we finalised negotiations for Gibraltar to be included in the UNESCO Convention Against Drugs in Sport, in our own right. This has been a very important step to afford Gibraltar sports credibility and will enable all our local sports governing bodies, that are already members of their respective international federations, to fully comply with their obligations in respect of drugs in sport. The Gibraltar anti-doping policy has been approved and will now form the basis of Gibraltar's membership of the World Anti-Doping Agency (WADA) and of the standards that Gibraltar sports will need to comply with in the future.

The Gibraltar Sports and Leisure Authority now have responsibility for the full management of the King's Bastion Leisure Centre. The Authority additionally directly manages the Ice Skating Rink and the Fitness Gym Facilities at the Leisure Centre. These resources have proved to be extremely popular with over 1,000 different persons using these splendid facilities. I am very pleased to say that the Leisure Centre continues to be a hugely popular venue as a family orientated facility and many Gibraltarians and an ever-increasing number of visitors are enjoying its facilities. As an expansion of the service being provided, the Authority has arranged for Ice Skating classes to be part of its Summer Sports Programme and beyond. I must also add that free Wi-Fi facilities were made available during this

financial year and this, which is already quite popular with our younger generation, will continue to be provided.

The Sports Development Unit successfully extended its Summer Sports Programme for youngsters last year and included a wider variety of leisure and educational activities. This has truly been another success story and I can proudly say we will continue to expand upon it this year as even more activities will be available. Full details, Mr Speaker, have already been published, as from last Friday, through a detailed booklet which has been widely circulated including the issuing of a copy to every single school child in Gibraltar.

In addition to the areas I have already mentioned, the Sports Development Unit took over the running of the Summer Stay and Play Programme for children with disabilities. This had been previously run by Social Services. This proved to be a grand accomplishment and we have planned to expand the programme for this coming summer. One of the main objectives is to have a programme that will enable participants to also enjoy projects jointly with other children taking part in the Summer Sports Programme. This is an exemplary way of encouraging, within a safe structure, integration into as many of the activities as possible.

Another popular activity has been the Physical Activity Sessions, including swimming and aquaerobics for the over-50s, which we jointly organised with the Physical Activities for Mature Older Adults Association. The programme provides the young at heart with suitable sporting equipment, facilities and training in a safe and fun atmosphere. Indeed, the programme will continue to expand this coming year with other activities, including, Mr Speaker, armchair exercise classes for the less mobile, which we hope will be further developed.

The number of National Coaching Foundation courses, together with other generic coaching courses from the British Sports Trust, SAQ International and the Youth Sports Trust, run for

local coaches, continues to increase in order to meet demand. Assistance and support has also been provided to sports associations in the organisation of accredited coaching qualifications in athletics, basketball, cricket, football, shooting, squash, badminton, volleyball, swimming, netball, rowing, sailing, table-tennis, tennis, rhythmic gymnastics and climbing. The tutors delivering these courses have included, in appropriate cases, separate school in-service training days, thus ensuring that some teachers and coaches have been able to achieve some level of accredited qualifications which will assist in the development of sports in Gibraltar, through the excellent work done in our schools. Our objectives remain to eventually achieve as much self-sufficiency as possible in the delivery of coaching and training. The Sports Development Unit also introduced schemes for outdoor adventurous activities to incorporate the older age group, and this has been done in partnership with the Social Services Agency and the Cardiac Rehabilitation Group. Additionally, the Sports Development Officer continues to be a member of the Gibraltar Health Authority's "Health Promotions Committee".

A programme to train and qualify more local tutors to deliver UK accredited sports coaching courses has also been put in place in order to increase the level of support offered to local sports associations and schools.

The two members of the Sports Authority staff, who already hold accredited UK tutor status for the '100% ME' Drugs Free Sport programme have been delivering workshops and providing support to all sporting associations but, in particular, Mr Speaker, they did this in favour of those participating in the 2010 Commonwealth Games held in New Delhi, India, where notice had been received that anti-doping testing would be carried out. Likewise, support was provided to all sporting associations who participated this year in the Island Games which took place last week in Isle of Wight. Mr Speaker, I think this is an appropriate moment to congratulate all our participating athletes at the Island Games for their recent achievements. Above all, special

recognition should be recorded in respect of our sixteen medals achieved. That was six Gold, five Silver and five Bronze and, although some may say it is self praise, I must add that we managed to, once again, punch above our own weight against very worthy, tough and well prepared competitors.

In addition to the Island Games and Straits' Games, Gibraltar sports will again participate this year in many official international competitions, these include hockey, basketball, cricket, sea angling, darts, ten-pin bowling, netball, athletics, swimming, snooker, pool, rowing, shooting, squash and triathlon championships.

The Gibraltar Sports Advisory Council, and in particular its sub-committees, have been meeting on a regular basis. On the advice of this Council, financial assistance continues to be provided to sporting associations through the three funds available.

Gibraltar, with the support of the Sports and Leisure Authority, will again be hosting international competitions during this financial year, including other events even if not of full international status. These types of events provide our local sports men and women with very practical and functional competitions and also serve to expose Gibraltar and all its assets, sporting and otherwise, to visitors. Although previously mentioned, I must stress the most prominent international event held last year was the IAU's (International Association of Ultrarunners) 100-kilometre World and European Championships. The international event was held on Sunday 7<sup>th</sup> November, under the auspices of the IAAF (the International Athletics Federation). Preparations for this very complex event went very well and Gibraltar's sports lovers supported the athletes as they strove to become World and/or European Champions whilst running through our very own streets in Gibraltar.

Government will be providing the necessary funding, as recommended through the Sports Advisory Council, to enable participation by a large number of teams from over twenty different sports to compete both internationally and locally at different levels of officially recognised competitions.

Further funding will be provided by Government to finance Gibraltar's continued participation in multi-sport official competitions such as the forthcoming Straits' Games, which next year will be hosted by Algeciras and the Island Games which were held last week, as I mentioned, in the Isle of Wight and the Junior Commonwealth Games to be held in the Isle of Man later on this year. In other words, Government, on the advice of the Gibraltar Sports Advisory Council, will be maintaining the financial provision to enable our sports men and women to represent Gibraltar internationally.

But not only that, Mr Speaker, Sports Development Funding will again be provided which, together with the involvement of the Sports Development Unit and the efforts of our local sports associations, will enable a large number of sports' specific coaching courses and other developmental projects to be held in Gibraltar.

Sports facilities per se have been greatly enhanced with the excellent co-operation that has been built up between the Sports and Leisure Authority and the Education Department. Local schools can justly be deemed as positive in the promotion of sports through their continued development of the Community Use of the Schools' Sports Facilities Scheme.

Funding is once again being provided to refurbish premises for associations and clubs, although this is not restricted to sporting societies and is available for local entities in general. In connection with this funding provision, a study is continuing, in partnership with our Heritage Division, into the feasibility of refurbishing other areas on similar lines to North Jumper's Bastion. Government sees these projects as a means of

supporting the very valuable and active volunteer sector that Gibraltar can boast about. The scheme to refurbish Lathbury Barracks Retrenchment Block was completed during the last financial year and has provided extra premises which have been allocated to registered charities, clubs and associations. This facility, Mr Speaker, is now also managed by the Sports and Leisure Authority.

In partnership with the Care Agency, the swimming pool designed primarily for the elderly and disabled and for the teaching of non-swimmers, has been fully operational. Exclusive use of this facility for the elderly and disabled is made available over the summer period, with shared use by the Gibraltar Amateur Swimming Association (GASA), educational establishments and the community during the winter months. The outdoor area at this facility has been extended and refurbished to provide further additional and better amenities.

The Sports and Leisure Authority also has responsibility for what we call the 'old' 25-metre swimming pool. As a result, swim-joggers, sportspersons and all citizens wishing to use the pool do not need to pay a fee to do so. Both swimming pools have been extensively and successfully used and the numbers of users, in comparison with past years, continues to be in the increase. This means that the Gibraltar Amateur Swimming Association is able to continue with their work, as the local governing body for swimming, in the promotion and development of this sport without the financial pressure and responsibility they had been shouldering until recently. In other words, this is a move that has benefited everyone in the sports world.

In order to improve the amenities available in Gibraltar, funds have been provided to enable the Sports Authority to develop other recreational and leisure needs, which now includes playgrounds and for which the Authority has already assumed full responsibility. A thorough review of leisure facilities was carried out so as to not only verify the refurbishment

requirements of existing facilities but, also, to plan ahead for the provision of new playgrounds in other locations. This review has resulted in a full programme of new and refurbished facilities being made available for the benefit of our local community.

Mr Speaker, at present the following playground projects have already been completed:

- Harbour Views Promenade (playground, adult fitness equipment and a recreational area);
- Eastern Beach (playground, adult fitness equipment and ball playing area);
- Europa Point (playground and ball playing area);
- King's Bastion Boulevard (toddlers' playground);
- Line Wall Boulevard (playground and floor games area);
- Camp Bay (complete re-provision of playground facilities);
- Little Bay (complete re-provision of playground facilities);
- Lower Witham's Road (has a new playground);
- Cumberland Road (has a new playground);
- In consultation with my colleague at the Ministry for Housing, Mr Speaker, Laguna Estate has seen and now enjoys a complete re-provision of playground and ball playing area;
- Rosia Road (has seen the creation of an adult fitness area).

I continue to work, Mr Speaker, with my colleague the Hon Fabian Vinet and I am glad to say that work has now commenced and I hope to see completion of these projects by Autumn 2011 and that is within:

- Varyl Begg Estate where I want to provide fitness equipment, two playgrounds and a ball playing area;
- Edinburgh Estate with a complete refurbishment of the playground;
- Coaling Island, or as my colleague referred to it, the Mid-Harbour rental estate, should see new playground, adult fitness equipment and ball playing areas.

The Gibraltar Sports and Leisure Authority has also been involved, and will continue to do so, with events previously supported and resourced through the Ministry for Tourism such as the Blue Water Rally, the Gibraltar Regatta, the Harley Davidson Rally, Classic Car Rally, Tuna Fishing competitions and the very successful International Chess Festival - which grows from strength to strength and has become possibly the most important Open Chess Championship in the world attracting top level men and women players from around the world. This year an International Junior Chess Festival is being organised in August with the intention of eventually reaching the same levels of participation and recognition as the now established adult festival.

The Gibraltar Sports and Leisure Authority will be taking the lead in the control, regulation, support and enhancement of Gibraltar's marine leisure amenities. An extensive consultation document was published by Government during this past year and the responses are now under consideration with a view to preparing adequate legislation and a development plan for these marine activities.

During 2011/2012, the Sports and Leisure Authority Board will again meet to consider projects, as well as other recommendations and suggestions, in our constant efforts to improve the services being provided to the local community at large.

The human resources available to the Authority, due to all the areas now under its responsibility, have also been reviewed and a new staff structure was recently implemented, including a new post of Deputy Chief Executive Officer, which should ensure the continuation of the valuable and quality service provided by the Authority, through its staff, to the community.

Mr Speaker, this House will have recognised the important advances that have been made in sport and leisure locally during the last fifteen years of this wonderful GSD Government. I am pleased to say that advances will continue because we fully recognise that sport and leisure make very valuable contributions to Gibraltar's quality of life. We will, therefore, continue to improve our facilities and to support local sporting associations and others in their efforts. Government recognises and is very appreciative of the very significant work and commitment demonstrated by the large number of volunteers involved in the running of sporting associations, clubs, et cetera. Their help ensures that sport and recreation thrives and develops in Gibraltar for the enjoyment and benefit of all. It is my personal desire to continue building upon the excellent working relationships we have established with all sectors of our sporting fraternity. Especially, I hope to expand even further upon the already healthy relationships the Authority enjoys with over forty local sporting governing bodies in Gibraltar and we assure all sporting fraternities in Gibraltar that this Government will continue to offer them their unconditional support.

## **HON E M BRITTO:**

Mr Speaker, this year in the first section of my contribution in this Budget Session, I will consider matters affecting Technical Services Department which, during the past financial year, has been involved with the high profile delivery and development of various Government projects, covering a wide variety of areas such as highway related schemes, coastal works and rockfall protection works amongst others. I will follow this by my contribution on tourism and last, but certainly by no means least, by my contribution on the environment.

### **TECHNICAL SERVICES DEPARTMENT**

Mr Speaker, Technical Services Department has once again delivered important, high profile highways related projects. The Trafalgar Interchange was completed in July 2010 and has achieved all that the project had set out to do. The vast improvement to traffic circulation in this critical area is there for all to see. When combined with the works at the southern end of Main Street, the new configuration for traffic has eliminated this historical bottleneck in our road network and done away with the long traffic tailbacks we have all experienced over the past years. The design consideration of preserving the beautiful landscaping has also been successfully met and I dare say that the combination of existing and new planting has created a combination of nature's colours, supplemented at night by the imaginative lighting scheme, which is a joy to see and difficult to surpass in Gibraltar or elsewhere.

Following closely on the heels of the Trafalgar Interchange, the Department completed the Dudley Ward Way tunnel approach road project at the beginning of November 2010. The construction of the rockfall protection canopy and the new approach road, allowed full two-way traffic circulation to be restored along the eastside of Gibraltar. This is yet another completed element of the programme put into place by this Government to improve traffic fluidity as per our manifesto

commitments. Works were also undertaken inside the tunnel which involved rock scaling and stabilisation as well as the installation of a new lighting system. The scale and the importance of this project, Mr Speaker, and the engineering input that has gone into it is perhaps not fully apparent or even appreciated as we drive through this area. The House should note that this has been the largest civil engineering Government project, both in scale and in importance and I dare say cost, completed in recent years. In fact the project was nominated for the 2011 UK Ground Engineering Awards, which are very prestigious within the civil engineering community, and the project was rewarded with a Commendation Award. Mr Speaker, I am sure that the Parliament will join me in congratulating Hector Montado, the Chief Executive of Technical Services, and all members of that Department involved in these two projects and who were responsible for their successful completion.

The works to widen Devil's Tower Road into a dual carriageway have been steadily progressing and are due to be completed this summer. This will be the first stage of the dual carriageway that will eventually link the land frontier up to Winston Churchill Avenue via the new airport ring road and tunnel. Once again, the whole area will benefit from aesthetic improvements with new footpaths and street furniture. This project, once completed and seamlessly absorbed into the overall creation of the tunnel, the airport ring road and the new air terminal, will be another major achievement for this Government in the overall improvements that it continues to carry out to Gibraltar's infrastructure.

Mr Speaker, the highways maintenance programme of the Technical Services Department has proceeded with on-going repairs to footpaths, roads and retaining walls and will continue to do so during the current financial year. Resurfacing works have been carried out to various stretches along the southern end of Europa Road, as well as to Centre Pavilion Road and Castle Road. Transport Road had also been fully reconstructed

and resurfaced. The need to balance maintenance of the road network against allowing vehicles to circulate continues to be a key factor which the Government has to take into account for every project and works to critical areas are undertaken during weekends and public holidays in order to minimise inconvenience to the traffic. In line with this Government policy, road closures are avoided if at all possible but when these are unavoidable, disruption is kept to an absolute minimum through weekend or after hours working. The Department's Highways Section has also been heavily involved with the co-ordination and execution of works relating to the implementation of the new parking zone along the North District.

The Department's involvement with coastal protection and cliff stabilisation has also continued over the past year. The reconstruction of the revetments along Harbour Views Promenade, along the front of Europlaza and at North Mole have now been completed. The final section along the front of Europort and the Rowing Clubs will be finished this summer. In doing so, the sea defences along these areas will have been substantially upgraded to meet the new wave regimes now present in Gibraltar Bay. Sea defence works were also undertaken at Sandy Bay beach along the full length of the Both Worlds complex. This, together with the beach replenishment programme that has been carried out this year has gone a long way to restoring this popular beach to its former self.

The completion of the revetment works at Harbour Views allowed the Department to commence the project to reprovide the promenade that had been destroyed by the storms. The first phase of this was opened to the public in March this year and has been warmly welcomed by all, not least because of the excellent playground facilities provided within it. There has been full co-ordination at all times with the Ministry for Heritage, Culture, Sports and Leisure on this aspect of the project given that it formed part of this Government's extensive playground facilities programme. The second phase of the promenade is being completed as we speak and works will finish next week. It

will provide a focal point for leisure activities for the residents of the area and, indeed, for the whole community.

Turning now to cliff stabilisation and rockfall protection projects, and in addition to the works I have already mentioned at the northern approach to Dudley Ward Way tunnel, the Department completed the stabilisation of the cliffs above the tunnel's southern portal as well as the first phase of the works to provide protection to Green Lane which had experienced a major rockfall over the previous winter. During this coming year, other areas affected by rockfalls will be tackled as part of the Government's continuous cliff stabilization and rockfall protection programme.

Mr Speaker, in keeping with the Department's diverse portfolio of projects, the Technical Services Department has been instrumental in the delivery of the project to provide new bus shelters throughout Gibraltar. In addition, and continuing with works being undertaken for the Ministry for Enterprise, Development, Technology and Transport, the Department is also included in the project to install Smart bikes aimed at providing alternative carbon neutral forms of transport.

Mr Speaker, the Technical Services Department will this year continue to develop, manage and deliver various projects in Government's comprehensive programme. These include the multi-storey car park projects announced as part of this Government's Integrated Traffic, Parking and Transport Plan, two of which are starting on site at Engineer's Lane and at Arengo's Palace within the next few weeks. Mr Speaker, they are key pieces in this Government's parking solution for the old Town area as between them they will deliver a total of over four hundred parking spaces. When combined with the car parks already in operation at Willis's Road, Devil's Tower Road, Sandpits and New Harbours, they represent yet another major step in the Government's extensive programme to tackle Gibraltar's historical parking problems.

## TOURISM

Mr Speaker, I will now deal with Tourism matters and will start by asking Members opposite to note that in respect of the calendar year 2010, the United Nations World Tourism Organisation, the UNWTO, reported a modest increase of 3 per cent in tourism arrivals for Europe and a worldwide increase of only 6.7 per cent. In particular with Europe, Mr Speaker, the UNWTO highlights the effect of the eruption of the volcano in Iceland and the economic uncertainty affecting the euro zone, as contributors to the slow recovery.

Other factors that have affected Europe in 2010, and therefore Gibraltar, have been the several strikes by British Airways staff, the AENA air traffic controllers strike and the appalling weather in the UK in December of 2010.

Not forgetting that tourism arrivals for Europe were only 3 per cent and by direct comparison with this figure, Mr Speaker, and contrary to the European trend, I am delighted to report that total visitor arrivals in Gibraltar for 2010 increased by four times as much as in the rest of Europe, that is, by almost 13%, 12.96% to be exact, Mr Speaker. I have to stress, Mr Speaker, that this is a remarkable achievement as the global economic crisis continues and the key word, in what I have just said, is the word "Total" in the phrase "Total Visitor Arrivals" because, at the end of the day, it is not fluctuations of percentages in categories of tourists that matter. The vital important statistic for Gibraltar is the "Total Visitor Arrivals" because it is the total number of people who arrive in Gibraltar which determines the level of contribution to the economy.

Mr Speaker, there is no denying that there has been some decline in some categories of the tourism statistics. But there is also no denying that the reasons for the decline in some statistical categories, are very valid. I must add that knowledgeable members of the tourism industry agree that the reasons are very valid. This contrasts starkly with the constant

and ill-informed arguments put forward, in public, by the Opposition. Despite all the real external challenges that our tourism industry has had to face in the last few years, and more acutely in 2010, the Opposition continue to blind themselves to the facts and persist in implying that a decline in certain visitor categories can only be attributable to some sort of Government failure. Mr Speaker, the Opposition should have the political integrity to accept what the UNWTO accepts, what our international tourism partners accept and what knowledgeable members of the tourism industry in Gibraltar accept. The inescapable truth is that despite the economic uncertainty, despite the volcanic ash, despite the weather, despite the strikes, the UNWTO reports a growth of only 3 per cent in tourist arrivals in Europe whereas in Gibraltar our growth has been 13 per cent in the same period.

Mr Speaker, in the context of what I have just said, I ask the House to note that our growth this year has been in visitor arrivals by land. It is disappointing, but not catastrophic, to note that arrivals by air and by sea have fallen but there are good reasons for this, some of which I have already mentioned. There are others that my colleague the Minister for Transport will no doubt expand on.

Mr Speaker, last year, excluding non-Gibraltarian frontier workers, 9,532,545 visitors entered Gibraltar through the land frontier with Spain, representing an impressive increase of 14.6 per cent over the number of visitors for the previous year 2009. As I said last year, having at our disposal now the figures for three consecutive years of those arriving in Gibraltar by land purely as visitors, I feel it is more appropriate from now on to continue to use this figure in the analysis of visitor arrivals by land.

However, Mr Speaker, the hon Member opposite who shadows tourism has dismissed these visitors as "people buying cigarettes and petrol". Indeed, Mr Speaker, many of our visitors do come to buy these products. But what is the hon Member



opposite suggesting? That we should turn them away because, in his eyes, they are not visitors? Would he like us to deny the local retail industry the opportunity to sell these products to these visitors? In any case, whatever their statistical status, the relevant consideration in respect of these visitors is that they came in 2010, and that they came the year before that and that they came in all the years before that and they have been counted every year in the same way and, therefore, the increase of 14.6 per cent of land frontier visitors is statistically undisputable.

I wonder, Mr Speaker, if the Port of Calais in France, as an example, does not count those many visitors from the UK who visit every year to buy wines, spirits and tobacco products? What about any other ports in similar geographical circumstances, or more importantly, border towns all over Europe? By constantly repeating the same old tired and, more to the point, incorrect mantra, the Opposition is doing a disservice. Yes, Mr Speaker, the Opposition is doing a disservice to all the many hardworking and committed tourism industry professionals who work out there in Gibraltar. Not just for the Government but in the civilian sector and who strive day in and day out to deliver our tourism product.

The irony of it all, Mr Speaker, is that the real reason for the Opposition's criticism is the fact that under this Government total visitor arrivals have increased by 79 per cent. Yes, under this Government the total visitor arrivals have increased by 79 per cent. Mr Speaker, the Opposition's arguments on tourism matters lack credibility and I will not waste any more time dealing with such flawed reasoning.

But I would ask the House to note how important the contribution of tourism is to the economy. The total estimated tourism expenditure figure, according to the 2010 Tourist Survey Report, was £285.70 million. This is yet another record and, therefore, the highest figure ever recorded and represents an increase of 11 per cent on 2009. That is what really counts, Mr

Speaker, the monetary contribution to our economy by the many tourists who come to Gibraltar.

Contrary to previous trends, it is my pleasure to report that the number of coaches visiting Gibraltar has increased for the first time since 2001, albeit by a modest 1 per cent. On a similar note, I am pleased to record that the number of private vehicles entering Gibraltar has increased by 11 per cent over the last year.

Regrettably, arrivals at our hotels have suffered from the external influences of economic crisis, volcano eruptions, airline capacity cuts, the poor weather in the UK and airline or traffic controller strikes in 2010.

Total arrivals at Gibraltar's hotels in 2010 totalled 58,692, which represents a decrease of 9.27 per cent on 2009. The number of room nights offered increased marginally, room nights sold fell along with room occupancy, guest nights offered, guest nights sold and sleeper occupancy, but the average length of stay has remained constant at three nights.

Mr Speaker, I have no doubt that the Opposition spokesman for tourism will complain about the decline in occupancy levels at hotels. However, Mr Speaker, I should warn him or I should ask him to remember, before he complains, that during the period when Members opposite were in Government, visitor arrivals at hotels fell by 31 per cent. That is right, Mr Speaker. During the period that the GSLP was in Government the visitor arrivals at hotels fell by 31 per cent. So a temporary hitch this year in visitor arrivals should be taken in that context.

Mr Speaker, in this part of my report to Parliament on matters of tourism, I will take this opportunity to place on the record, once again, the details of this Government's success in tourism in order to remind everyone how successful this Government's tourism policies have been. The stark contrast in the following statistics that I will give clearly show that it was the party

opposite that was responsible for the catastrophic decline in nearly all categories of visitor statistics during the short period that they were in Government.

Let us compare the results obtained by the GSLP to the performance of the Government to date.

1. Visitor Arrivals by Air:  
Under this Government, increased by 98%.  
Under the GSLP they fell by 54%.
2. Visitor Arrivals by Sea:  
Under this Government, increased by a massive 188%.  
Under the GSLP, increased by a mere 20%.
3. Visitor Arrivals at Hotels:  
Under this Government, despite what I have just said about this past year, increased by 27%.  
Under the GSLP they fell by 31%.
4. Visitor Arrivals by Land:  
Under this Government, increased by 77%.  
Under the GSLP, I suppose they had to get something right especially as the frontier had just opened, increased by 51%.
5. Total Visitor Arrivals:  
Under this Government, increased by 79%.  
Under the GSLP, increased by only 46%.

Mr Speaker, the figures speak for themselves. This Government has achieved the most impressive and unprecedented growth in all sectors of tourism. This is a fact that no one can deny, much as some may try desperately to do.

I will now turn, Mr Speaker, to marketing matters. The Gibraltar Tourist Board marketing campaign in the UK and in Spain will

continue to strike a balance between the consumer, the power of the internet and the travel trade.

The GTB will continue to provide a show case for the local tourism industry at the most important tourism events overseas and will continue to provide value for money in all these events for the co-exhibitors that continue to work alongside the Board.

Mr Speaker, hon Members opposite may be interested to know that at a certain point every year the GTB asks all those in the tourism industry to tell us which events they think the Government should choose to attend and invite the tourism industry to come as co exhibitors. In addition, the matter is tabled for discussion at the UKGTA and the other bodies advising the Government. If in any instance the majority of feedback received is that the attendance would not be of value, then the event is not included in the activities for the year. So, Mr Speaker, the GTB holds a fully consultative process with the industry on this and on many other matters.

In parallel, works have continued to improve Gibraltar's tourist product. These have included improvements at Apes' Den which have provided new facilities for the animals as well as for visitors and the impressive refurbishment of the displays at the Great Siege Tunnels. The Tunnels now have excellent new interpretation panels that provide a wealth of information that covers the use of the Tunnels in great depth, from the time of the Great Siege to the Second World War. New audio points provide interpretation in six languages, in Spanish, French, German, Italian, Portuguese and, needless to say, in English.

Mr Speaker, I would like to encourage hon Members opposite and, in particular, the Opposition Member for tourism, to visit the sites and to see for themselves the sterling work that has been done by the GTB. In fact, I would extend an invitation to the whole of Gibraltar to visit the Nature Reserve and re-acquaint themselves with what our tourist product has to offer. After all, Mr Speaker, it belongs to all of us.

Let us look in some detail at what has been done for the tourism product and for the tourism industry over the past fourteen years and indeed what continues to be done: My apologies, Mr Speaker, for the length of the list.

1. The re-establishment of the Gibraltar Tourist Board.
2. There are now more public and private sector employees in tourism than ever before.
3. Expansion of Gibraltar's tourism information services.
4. Provisioning of the Cruise Liner Terminal.
5. Construction of the Coach Terminus.
6. Refurbishment of the Ferry Terminal.
7. Refurbishment of the frontier arrivals building.
8. Extensive beautification and creation of pedestrian areas in the city.
9. Creation of the King's Bastion Leisure complex.
10. Creation of the Europa Point Leisure Area.
11. New signs on the Upper Rock Nature Reserve.
12. New ape proof litter bins on the Upper Rock.
13. Refurbishment of Apes' Den.
14. Refurbishment of the Great Siege Tunnels.
15. Refurbishment of Moorish Castle.

16. New public toilets on the Nature Reserve.

17. Introduction of the hotel grading scheme.

18. Opening of the World War II Tunnels.

19. Opening of O'Hara's Battery complex.

20. New air terminal.

21. Road beautification and enhancement schemes such as the Trafalgar Interchange and the Dudley Ward Way Tunnel and I could carry on, Mr Speaker, but I will not do so.

All these, and this is the important point, Mr Speaker, whatever others may say, all these are part of Gibraltar's tourism product. The Government takes a wide comprehensive view of this because Gibraltar is a small destination and our tourists, when they come, want to visit all of our fascinating Rock. So it is not just a question of refurbishment of the sites themselves that anything that we do to Gibraltar as a whole, improves the product and that is the reality. That Gibraltar, as a whole, is our tourism product and it is undeniably true that this Government has made unprecedented efforts to develop it.

I now turn to the beaches, something that is very close to the heart of most Gibraltarians. Regrettably, Gibraltar's beaches have suffered two important setbacks. The first was the enforced closure of Western Beach due to concerns about bathing water quality due to high contamination levels originating from sources in Spain. As everyone is painfully aware, this situation is unfortunately out of the direct control of the Gibraltar Government. However, as it is a high priority issue, the Government has worked on all fronts to try and achieve a speedy resolution.

Since 1997, Western Beach has consistently been the beach which has had the best bacterial water quality of all our six beaches. It was, therefore, all the more surprising and worrying that the Ministry, my Ministry, towards the end of the 2010 bathing season, had to close the beach on public health grounds. This was as a consequence of the bacterial contamination introduced into the Western Beach basin by the new storm water overflow servicing part of La Linea across the border. Although the norm is that the bathing water monitoring programme ends on the 31<sup>st</sup> of October each year, last year we decided to continue to monitor and also to increase the number of samples taken at Western Beach. The monitoring results were and still are published online and can be found on the Environmental Agency's Website.

Mr Speaker, we became aware that the La Linea Administration were conducting some changes to their sewerage system, which they alleged would improve the situation, in that the sewage would not overflow into their storm drains. The overflow, which is through a manually operated valve situated in and operated in Spain, is heavily influenced by the effective control of the valve, the quantity and duration of any rainfall and, more crucially, by the timing of the decision to open or close the valve.

Mr Speaker, there started to be an improvement in water quality in May 2011 and, following the advice received by the Government from its Chief Technical Officer, the Department of the Environment and the Environmental Agency, the beach was reopened on 11<sup>th</sup> June 2011. The opening of the beach also saw the introduction of a notice board at Western Beach so that users of the beach could be made aware at the official point of entry to the beach of the quality of the bathing water. The water quality is displayed and updated as soon as more recent monitoring results become available. This is done via a simplified Bathing Water Quality Indicator which informs the public visually with the following signs: Green - bathing water quality passes EU minimum standards. Red - bathing water quality fails to meet EU standards.

Mr Speaker, the beach continues open, as I speak, and there have been no untoward incidents reported to date. Mr Speaker, the second setback was the temporary closure of Sandy Bay due to the erosion that has taken place over the years and the consequential need to construct rock defences to protect the Both Worlds complex. I must stress that this sand erosion is a totally natural phenomenon which has also affected beaches along the adjoining Spanish coasts. Sand erosion is something that the Government cannot control and the Government has been actively engaged with technical experts in exploring how to restore Sandy Bay Beach and the project recently carried out to replenish lost sand is a clear indication of the Government's commitment. I am delighted to inform the House that the replenishment programme at Sandy Bay has been a success and that the beach was reopened in time for the summer season. A similar sand replenishment programme was also successfully carried out at Catalan Bay to further improve that beach.

As a matter of interest, the works involve the use of a suction dredger to hydraulically place sand and replenish the beaches. In order to allow the works to be safely carried out, temporary closure or restricted access to the general public was implemented during the progress of the works. I should stress that the dredger does not collect sand from the sea bed off the beach itself but rather collects it from a mid point further out to sea, transports it back and then pumps it on to the beach.

The operation succeeded in achieving its objective to maximise the usage of Catalan Bay Beach, and to recreate Sandy Bay Beach for the summer season. There is, of course, the risk that storms could destroy part of the work done but it will be possible in the future to top up any sand lost in the same way, as is common in all other beaches in the hinterland.

Turning to Eastern Beach which has been transformed in recent months and the facilities there which are of the highest standards. Apart from the two new toilet and changing rooms

facilities built last year, the completely new promenade incorporates a children's play-park and a fitness area that no doubt will be as popular as the others already sited around Gibraltar. Car park facilities are also available and the sea wall itself has been refurbished with new access points to the beach.

The accumulation of stones on our beaches by wave action has been forever and ever a recurrent problem and this winter, at Catalan Bay in particular, small rocks and stones had accumulated to over two metres in depth in some areas over the winter period. The Government started the removal in mid February to ensure that when the good weather arrived the beaches would be in a pristine condition, as indeed they were. So much so that the sand was even sieved, in order to remove the smallest of rocks, to a depth of approximately one metre.

The sea wall at Catalan Bay was also refurbished and the car park area has been tarmacked. The new toilet facilities and play park by the Little Genoa complex are a great enhancement to the Catalan Bay Beach amenities.

Last but certainly no means least, the Camp Bay and the Little Bay toilets and the area in general have been refurbished for the summer. I would remind Parliament that the Government has been keeping the toilet facilities at Camp Bay and Little Bay open all the year round for the enjoyment of everybody who cares to use these areas which are very popular during the winter and new play parks have been added to these two beaches.

The Government has further extended the service to the public at all our beaches this year. Since Easter, we have opened the toilet facilities at the beaches on the Eastern side of the Rock. There has also been daily mechanical cleaning and rubbish collection from the beach bins by Master Services from that date. Effectively, all beaches have been fully opened and serviced since Easter.

Nevertheless and irrespective of what I have just said and hopefully not that I have no illusions otherwise that it will happen again, every year in winter we hear the same ill informed comments and unsolicited advice to the Government from political parties and others telling us about the state of the beaches and when we should start cleaning and refurbishing them. The GTB has a professional team of people who are well aware of their responsibilities and duties. They have many years of experience and are the best qualified to determine when to start the refurbishment in order to ensure the careful husbandry of their resources. Obviously, those political parties who offer unsolicited advice do not understand that, if the work is started too soon and/or the storms continue late into the spring, all the good work that has already been done is destroyed at a cost to the tax payer.

This political opportunism was never better illustrated than it was illustrated this winter by a Member of the Opposition who was seen on GBC TV, in the depth of winter wrapped up in an overcoat predicting that "the beaches would not be ready and the Government should start work on them urgently". The level of political hypocrisy of the comments was highlighted by the clearly visible mechanical digger in the background already clearing the beach of the rocks accumulated during the winter and clearly demonstrating that the Government had already initiated the beach refurbishment programme.

Mr Speaker, for yet another year this Government's policies and investment in tourism have proved that growth is possible in the face of adversity. Efficient and value for money marketing are promoting an excellent product to our main markets and the GTB continues to ensure that customer service standards remain paramount in the professional management of the tourism portfolio.

But the success of the industry is also due to the invaluable co-operation that the Government and the GTB receive in a constructive manner from Gibraltar's tourism, leisure, retail and

hospitality industries and I recognise the levels of investment and the commitment being made by the private sector. We should not forget that the Government is not the only entity involved in the success of tourism in Gibraltar. That this is a partnership between stakeholders such as the Gibraltar Chamber of Commerce, the Gibraltar Federation of Small Businesses, the transport operators, the accommodation providers and the inbound operators. Initiatives and new products are not only introduced by Government and we should all applaud the efforts of these stalwarts of the industry. It is their combined efforts, together with Government support, that will determine whether we will continue to enjoy the same level of success in the future.

Mr Speaker, I cannot finish this section of my contribution without paying tribute to Mr Nicky Guerrero and Ms Yvette Zarb, who have now left GTB to move on to jobs in other areas of Government. Both of them have been members of GTB since it was created by this Government and both have done an excellent job. Nicky Guerrero was the Chief Executive of GTB and, through his very effective leadership, has been instrumental in achieving the very successful performance of GTB in recent years. He will be very much missed by all involved in tourism. Yvette Zarb was the Senior Finance and Administration Manager of GTB. The Estimates of Expenditure and the accounts have always shown that GTB has been run with a tight financial rein and this has been due entirely to her efforts and those of her team.

Mr Speaker, I look forward, along with the Gibraltar Tourist Board and the local tourism industry, to another year of growth in 2011 in tourism.

## **ENVIRONMENT**

Mr Speaker, in this, the third and final section of my contribution, I will deal with matters affecting the environment.

I will start by recalling that this year the Government released and published the Gibraltar Environmental Action and Management Plan or the (EAMP) for short. This plan is a comprehensive package that tackles many environmental matters including air, water, waste, the environment/development interface, habitats, noise, energy, transport, pollution, climate change and environmental heritage. It is a forward planning document which contains short, medium and long-term targets that embrace the essence of sustainable development.

The Government is leading by example in the first stage of the implementation of the EAMP. All Government Departments, Authorities and Agencies have been addressed on, and familiarised with, the EAMP's requirements by the Specialised Environmental Officers within the Department of the Environment. As a consequence, each Department, Authority and Agency have been charged with the production of an individual Environmental Policy and Action Plan, an (EPAP). They will take ownership for the EAMP's application within their organisation and assume responsibility for its implementation through the actions set out in their own EPAP's. Ultimately, the EAMP affects the community as a whole in Gibraltar and is addressed to all of us, as we all have a part to play in protecting our environment. Therefore, in the second stage of the implementation of the EAMP, the Government will, through a series of seminars, be advising the public and commercial entities how they are expected and required to play their part.

Mr Speaker, the key issues within the EAMP include the following:

- The living environment which constitutes and includes the natural and urban environments.
- The link between the living environment and human health.

- Strategies for the sustainable development of our living environment as well as nature conservation and management.

The Plan itself attempts to ensure that environmental matters are not seen locally as a constraint to socio-economic activities, but rather as fundamental components of sustainable development, alongside social and economic imperatives. It focuses on the need to strike the right balance between development and environmental protection management.

Mr Speaker, as Parliament is aware, Government has published in full the Epidemiological study which examined the incidence of cancer in Gibraltar, and which was conducted by Dr Hans Sanderson and Dr Patrik Fauser of the National Environmental Research Institute, of the University of Aarhus in Denmark. This had been one of our GSD manifesto commitments. The Government had for several years been attempting to conduct this study jointly with the appropriate authorities in the Spanish hinterland in order that the investigation could take account of, and report on, a wider regional basis. Regrettably, Mr Speaker, this did not prove possible and, therefore, in accordance with its manifesto commitment, the Gibraltar Government proceeded alone. For many years, Mr Speaker, there had been speculation whether the incidence of cancer in Gibraltar was abnormally high and, if so, whether this could be explained by reference to local or regional causes. Back in 1999, the Gibraltar Government initiated a Cancer Registry to collect cancer data in Gibraltar and without this registry a study of these issues would not have been impossible.

Mr Speaker, the full Epidemiological Report is published online on the Gibraltar Government website to ensure that it is readily available to all interested parties and the report highlights two relevant contextual facts, namely:

- (1) The global burden of cancer is increasing, especially in the developed world. Globally one in two men and one in

three women will be diagnosed with cancer during their lifetime. For one in three of these women the diagnosis will be breast cancer;

- (2) The cancer incidence rate increases exponentially with age, especially at 60+years. Accordingly, as populations grow older, and the ratio of older people as a proportion of the whole increases, so does the cancer rate and the proportion of the population affected by cancer.

For the record, Mr Speaker, I will call out the main findings of the Epidemiological study which are as follows:

- (1) The total cancer incidence rate in Gibraltar is within the normal ranges of other European countries;
- (2) Gibraltar is not a high risk community for cancer;
- (3) The total cancer incidence rate in Gibraltar for the whole population is at the EU average;
- (4) The cancer rate for men only is in the lower quarter of the EU range with only four EU countries having a lower rate than Gibraltar;
- (5) The total cancer incidence rate in Gibraltar for women only is in the upper quarter of the EU range, but still within the normal ranges for EU countries;
- (6) In summary, cancer incidence rates in Gibraltar among men is below the EU average and for women it is above the EU average but well within the normal EU ranges. The difference between the men and women rates in Gibraltar relative to the EU average is due mainly to breast cancer;
- (7) Breast cancer represents 38 per cent of cancers in women and is a priority type. Breast cancer is the most

frequent type among European women. The incidence rate among Gibraltarian women is higher than the EU average and up at the upper end, with a similar rate to Denmark, UK and Switzerland;

- (8) Measured concentrations of carcinogens in the air pollution exposures in Gibraltar are within the normal ranges of EU cities.

The conclusion of the Epidemiological Report reads as follows: "The Epidemiological study into cancers in Gibraltar shows that total cancer incidence rate in Gibraltar is within the normal ranges of other European countries and that Gibraltar is not a high risk community for cancer".

I now turn to the subject of renewable energy. A Renewable Energy Working Group has been constituted, with representation from the Gibraltar Electricity Authority, the Department of the Environment and is under the chairmanship of the Government's Chief Technical Officer. The Group continues with their assessment of the viable options in terms of the identification of sites, practicalities and economic viability for each of the options that remain under consideration, these are, ocean currents, solar and wind.

We continue our consideration of wind which is clearly a proven technology and readily available in this area. This option is, however, not free of problems for us due to our limited land resource. The placing of turbines out at sea is now being considered as the best way for Gibraltar to proceed.

Continuing advances in solar energy technology have now made this a possible option as a resource of renewable energy that Gibraltar may be able to consider. However, this option requires a substantial land area which again creates a problem. Government had received expressions of interest from various quarters for solar energy but none of these have progressed beyond this stage.

Mr Speaker, I now turn to our Barbary Macaques, popular or unpopular as they can be depending from which perspective they are viewed. The Monkey Management Contractors Forum constituted by the Government continues to evolve plans for the more efficient management of one of Gibraltar's best tourist attractions. One of these innovative plans is the additional food and water provisioning in the afternoons to the monkeys and this is proving to help in keeping the monkeys on the Upper Rock. Government continues to explore the possibility of exporting monkeys with a view to reducing their numbers and achieving a containment of the population within the Upper Rock. The original contacts established with a North African country are being maintained but have not materialised into tangible results. Contacts are currently being developed with a second African country and strong interest has been shown by a UK animal park. This UK animal park has offered to accept a minimum of one troop of about 30 monkeys and we are negotiating the possibility of this number being increased. A working group has been appointed and an action plan is currently being worked out in close consultation with the destination park in UK. Government has accepted the commitment, as has been done in the past, to meet the costs of exporting the monkeys from Gibraltar, transporting them and delivering them to their destination and, all things being equal, Mr Speaker, I can inform the House that we are working on target dates which will mature before the end of the current year. That is the current calendar year, not the financial year.

Turning to seagulls, Mr Speaker. I will inform Parliament that the four year seagull population reduction programme, which started in 2009, has now completed its third phase. This continued concerted approach is intended to produce a lasting reduction in the number of seagulls breeding and living in Gibraltar. Since its inception, the programme run by the Food and Environment Research Agency, FERA for short, from the UK has produced the culling of a total of 3,526 adult seagulls in 2009, of 4,842 adult gulls in 2010 and this year a further 3,882 adult seagulls have been culled by FERA. This means that



adding these figures, which are achieved by the UK contractor over a six week period, to the number of gulls also culled by GONHS, the Government's local contractor during the course of the year, we arrive at a grand total of 24,685 gulls which have been removed to date since the beginning of 2009. Yes, Mr Speaker, 24,685 gulls and over the same period of three years a total of 2,249 seagull eggs have also been removed. The Government is advised by the Food and Environment Research Agency, its seagull population reduction contractor and by GONHS, its local contractor, that seagull chicks return to the place where they were born. With the elimination of so many eggs and adult birds over a period of four years, the cycle is being broken and after next year, the fourth and final year of the cull programme, the seagulls will return in much reduced numbers and the reduction in the size of the population in gulls in Gibraltar will become apparent for all to see. In fact, it is already becoming increasingly obvious to some of us.

Mr Speaker, turning now to recycling, Parliament should note that there are now bins, of various sizes depending on accessibility, throughout a total of 43 disposal points strategically placed around Gibraltar for the recycling of glass and cans. The Government, in an effort to facilitate this recycling, is actively monitoring the number and locations of disposal points provided. Last year's recycling collection figures were well below the expected targets for a community the size of Gibraltar. Only 12 per cent of the glass total waste stream and only 3 per cent of the cans total waste stream were actually collected for recycling.

The public and catering establishments are, therefore, again strongly encouraged to avail themselves of the recycling disposal points and thereby help to protect our environment. Everyone is encouraged to avoid mixing waste, especially recyclable waste. Every day a lot of time and unnecessary effort is wasted separating by hand glass, cans and household refuse which has been mixed up by being put into the wrong bin.

Everyone is reminded that green is for glass only and yellow is for cans only.

Mr Speaker, work continues on identifying a location for the creation of a permanent environment park where more streams of waste can be segregated. Being able to segregate our waste will assist in its handling for recovery purposes and with recording numbers in order to meet our reporting obligations against targets set by the EU. The temporary facility currently provided at Buena Vista will shortly be relocated to Europa Advance Road.

Importers, be it businesses or members of the general public, of electrical and electronic equipment (EEE) have been made aware that, in order to compile the figures for imported items from which percentages of treated waste electrical and electronic equipment (WEEE) is measured, there is a legal requirement to declare all electrical and electronic equipment being imported into and exported from Gibraltar. Forms for this purpose must be filled in at Customs entry points. This process has been working well but businesses and members of the public should note that initial indications are that the amount of waste electrical and electronic equipment being taken to the Gibraltar General Support Services Limited (GGSSL) premises for transfer to a treatment facility are small and that Gibraltar will not be meeting its EU targets. I take this opportunity to remind everyone that this waste has to be taken to a recycling point.

Mr Speaker, for a number of years the Environmental Safety Group (ESG) has been taking part in a global initiative to 'Clean Up The World'. This effectively means that over a weekend in September each year they have coordinated the efforts of a group of volunteers, many of them who are school children, to remove accumulated amounts of waste from many locations throughout Gibraltar and which have been dumped by a small, but nevertheless, very inconsiderate section of the general public. Many of these locations are difficult to access but all are

being used for illicit dumping of all types of refuse, including large items of household goods and furniture.

These areas were not part of any cleaning arrangements by Government entities and contractors who clean mainly the public highway such as streets and paths and similar public places. However, Mr Speaker, and at Government's request, the ESG provided us with all the necessary information of their locations and so on, and the Master Services contract has now been extended to include the cleaning of all the new areas identified. As I have said, some of these areas are difficult to access and a dedicated team has been employed, given special training such as in abseiling, and provided with specialised equipment and transport for the task. Most areas have already been given the overall initial clean-up and the scheduled cleaning has now commenced but, Mr Speaker, as I stand here on my feet, I am under no illusions that this will clear the problem. There is clear evidence that no sooner does, either the clean up day campaign in the middle of September take place, or the specialised team move to an area and clean it out, within twenty four hours there is waste, including furniture and large goods being dumped in the same area without any consideration for the cost of the tax payer or for the inconvenience to members of the public. I take this opportunity to urge those members of the community who do this to avoid dumping as they do in these areas at this considerable cost to remove it.

Mr Speaker, turning now to air quality. Members opposite may be interested to note that in 2007 and 2008 Gibraltar exceeded the Particulate Matter (PM<sub>10</sub>) annual mean limit value. 2008 was also the first year that we have had a failure of the Nitrogen Dioxide (NO<sub>2</sub>) annual mean air quality objective. As a consequence, Mr Speaker, Government produced an Air Quality Action Plan in order to ensure that, as soon as possible, the PM<sub>10</sub> and NO<sub>2</sub> limit values will be complied with. This action plan and the PM<sub>10</sub> and NO<sub>2</sub> evidence base documents have been made available to the public through the Government

website. The action plan is a live document and is subject to change as and when required in order that the correct measures are applied to ensure that Gibraltar will be able to meet the limit values.

In respect of Gibraltar's Time Extension Notification, regrettably the European Commission did not grant Gibraltar's PM<sub>10</sub> Time Extension Notification Application seeking an exemption from the PM<sub>10</sub> daily Limit Value.

In the EC Reporting Questionnaire for the year 2009, submitted by us on schedule in September 2010, we demonstrated compliance with the Limit Value. It is this compliance that appears to be the principal reasoning behind the EC's refusal to grant the exemption. The EC's opinion is that as we have met the Limit Value in 2009, we should be able to comply from now on and, therefore, there are no grounds for granting an extension. Mr Speaker, we do not agree with the EC's opinion because we know that compliance is heavily influenced by the ability to perform corrections for natural contributions and for the magnitude of these corrections, such as salt and Saharan dust.

It is good that the Decision statements accepts all the evidence base and the arguments that we used to support our Time Extension Notification application. These include:

- Reference years applicable;
- Justification for no measures prior to the reference year;
- Air Quality Action Plan;
- Source apportionment methodology;
- Natural quantification and correction methodology;
- Transboundary quantification methodology.

A decision on our NO<sub>2</sub> Time Extension Notification Application for an exemption of the application of the NO<sub>2</sub> annual mean air quality 2010 objective until 2014 is still awaited.

The Energy Performance of Buildings Programme is now well underway. The Simplified Building Energy Model, which is used to calculate the energy performance of buildings, has been delivered by our consultants, who were previously known as the Building Research Establishment. The Government has accredited 12 individuals locally to use this software and to carry out energy assessments locally. Information about the legislation and the software has been published on the Government website along with the list of assessors. A total of 269 properties were issued with Energy Performance Certificates during 2010.

In addition to the existing monitoring carried out by the Environmental Agency under the Bathing Water Directive, the Department of the Environment developed a monitoring programme aimed at addressing these pressures that are currently affecting our aquatic environment. The monitoring programme is now running into its second year and continues to be extended in line with the requirements of the Water Framework Directive. A Benthic Invertebrates Baseline Study conducted by Knightsfield Limited on behalf of the Department of the Environment shows that the Gibraltar coastal water status is good.

Data on our groundwater, namely the isthmus and bedrock aquifers, is also being collected and this data will be published in the Gibraltar River Basin District Management Plan.

Mr Speaker, the principal objective behind the Habitats Directive is the preservation, protection and improvement of the quality of the environment through the conservation of natural habitats and of wild fauna and flora. The Directive requires Member States to undertake surveillance of the conservation status of natural habitats and species. To achieve this end, surveillance

monitoring is ongoing and the Department of the Environment is apprised on a frequent basis of the results produced by its contracted parties. The results of the monitoring will assist Government in meeting the requirements of the Directive, which include ensuring that the favourable status of our European protected habitats and species is attained or maintained locally.

In July 2006, Mr Speaker, the European Commission through Decision 2006/613/EC accepted the UK's proposal, made at the request of the Gibraltar Government, to list and adopt the Southern Waters of Gibraltar as a Site of Community Importance (SCI). The Government has now, in accordance with the requirements of the Nature Protection Act 1991, the EU's Habitats and Birds Directives, designated the Southern Waters of Gibraltar SCI as a dual marine Special Area of Conservation (SAC) and as a Special Protected Area (SPA).

Earlier this year, the Government published, and will be implementing, the Southern Waters of Gibraltar Management Scheme. The protection regime which had been in place until now is therefore being supplemented by the management scheme.

This Scheme is concerned with promoting the sustainable use of a living, working environment. It does not and I repeat, it does not, aim to prevent the public using the southern waters of Gibraltar or to prevent leisure or commercial activities in the area. It is worth dwelling on that statement, Mr Speaker, because already moves are afoot and there was a certain gentleman interviewed on GBC recently who made reference to the Southern Waters of Gibraltar Management Plan, as evidence of the hidden agenda of the Government to stop their fishing activities. I repeat that sentence that this Management Scheme does not aim to prevent the public using the southern waters of Gibraltar and it does not aim to prevent leisure or commercial activities in the southern waters. Instead, Mr Speaker, it brings together all existing management measures in place and provides the mechanisms by which such activities can

be carried out in a way that they do not damage the habitats or species for which the site has been designated. These measures will in due course be further augmented by legislation in relation to marine leisure activities.

The Management Scheme is not a static management plan, but an ongoing process that aids decision-making and continually evolves to take account of changing issues and legal obligations. It sets out a regime to monitor the condition of the area's features and considers options to rectify any deterioration of natural habitats and the habitats of species as well as the disturbance of the species for which the area has been so designated. Whilst in the first instance this Scheme has been prepared for the responsible statutory authorities, the Scheme's success is dependent on all users of the area playing their part in its management.

Extending three miles to the East and South of Gibraltar and stretching all the way up to the median line to the West of Gibraltar, the Southern Waters of Gibraltar SAC/SPA has long been recognised as an important marine area due to its rich diversity in species and habitats. Sea cliffs, sea caves, reefs and all other marine habitats that form part of the marine ecosystem found along the southern shores of Gibraltar and it is precisely these features that the designation as a marine SAC/SPA aims to protect.

The Government has also designated the 'Rock of Gibraltar' SCI as a Special Protected Area with the 'Southern Waters of Gibraltar'. It will consider the re-designation of the 'Rock of Gibraltar' from a SCI to SAC once the Upper Rock Holistic Plan has been completed.

Mr Speaker, this year the Government celebrated the seventh anniversary of World Environment Day (WED) on Friday the 3<sup>rd</sup> June. Although World Environment Day is celebrated each year worldwide on 5<sup>th</sup> June, due to practical reasons concerning the availability of school children the celebrations took place ahead

of the weekend. The purpose of this United Nations Environment Programme Day is to spread awareness of centre stage environmental issues. This year's theme is "Forests." Events were once again centred on the ever-popular performances by school children and parents were invited to attend. This event was held at the Tercentenary Sports Hall in the morning where a short educational film on forests was also shown. Consonant with this year's theme, a planting event was held at the southern end of the West View Promenade in the afternoon where children from different schools and age groups planted a variety of flora.

Mr Speaker, I will conclude my contribution to this Budget debate by paying tribute to and by thanking all members of staff and all the Heads of Government Departments and the Head of the Gibraltar Tourist Board for which I have political responsibility. In particular, I would like to publicly thank my personal staff within the Ministry of Environment and Tourism for their unqualified and unfailing efforts throughout the year.

Without the dedication, loyalty and hard work of all these persons the efforts of the political Government would remain fruitless and it would be unable to achieve all the good things that this Government has achieved for Gibraltar in the past, is continuing to achieve it in the present and will, I have no doubt, continue to achieve it in the future. Thank you, Mr Speaker.

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

Mr Speaker, I consider it an honour to have been asked by the Leader of the Opposition to shadow the Ministry for the Environment. The environment has always been close to my heart ever since very many years ago I helped to form the Friends of the Earth, Gibraltar Branch. I also remember being the first to introduce into Gibraltar, into its local market, recycled paper. The paper at the time was not the same quality as we see recycled paper now. I was also involved in another project

which saw the recycling of over two million glass bottles through a local company by sending them to a glass recycling plant in Spain.

The GSD Government has failed in many areas but one which they most definitely cannot wriggle out of is their failure to deliver any substance on the environment. Mr Speaker, they committed themselves to produce a target of twelve per cent of energy consumption from renewable sources by 2010. This is what their manifesto of the 2010 election said on this subject: "The GSD Government has a target to produce twelve per cent of energy consumption from renewable sources by 2010. We have already undertaken an initial desktop study of options to achieve this target and we remain committed to this policy." As the Hon Minister candidly accepted during Question Time at the beginning of this year in questions from the then shadow, now the Leader of the Opposition, this manifesto commitment has not and cannot now be met in this term of office. They, nonetheless, still claim that they had carried out the desktop study of options in order to achieve this target. One would, therefore, have assumed that then they would have taken this into account with regard to new buildings and developments and that they would have looked at their desktop and worked on it from an environmental perspective. The reality is that the EU target is now even higher up to fifteen per cent and there has been no progress whatsoever in starting towards this target and the Hon Mr Britto also accepted that the present amount of energy from renewable sources is zero. The aim now is to introduce Gibraltar into part of the UK's own target and to try to clearly avoid the issue entirely.

Another failure of this GSD Government on the environment is that of the building of the sewage treatment plant. In the last election they also promised that this would be completed by 2010. This is what they said in their manifesto: "The plans for the building of a modern, fully compliant plant to treat our urban waste water before it is discharged into the sea continues to progress well. During the next four years we will build this plant

and bring it fully into operation." It is therefore amazing to hear the Chief Minister, when answering my recent questions in this same session of Parliament, say that they do not know as yet the specific type of plant for sewage treatment and for its disposal. We are now in 2011.

The same applies, from the information at our disposal, to the energy from waste plant. One wonders whether this will also feature in their next manifesto and they will say once again that they will be building one over the next four years. Perhaps, Mr Speaker, like that other manifesto commitment of 2007 in relation to the power station. The manifesto, on which the hon Members opposite fought and won the election, said the following: "Waterport power station, OESCO station and MOD power stations will be closed. This is one of the best pieces of news for residents of the south district and west side Waterport areas. All three of Gibraltar's existing old power stations which are located in or near residential areas will be closed by 2010." Well, as we all know this also did not happen. In fact, not only did it not happen but the whole community has suffered power cuts as a result of the lack of planning in respect of the production of electricity. Moreover, the installation of temporary generators at the Waterport power station has created even more problems for the residents of Waterport Terraces. So, Mr Speaker, if the closure of these power stations were, according to the GSD manifesto, one of the best pieces of environmental news for residents of the south district, then the fact that this has not happened must perforce be the opposite, namely, one of the worst pieces of news for residents of the south district.

It is clear to me, Mr Speaker, that on the question of recycling, this GSD Government only pays lip service to the concept. For any Government to take the concept seriously, it needs to look at the materials it uses and throws away. It should lead by example and have an inter-departmental policy which looks at how it disposes of its own waste. It is not good enough just to place cans and glass containers in some parts of Gibraltar and call it a recycling programme. My colleagues and I believe that

the environmental issues should be central to all Government decisions and to inter-departmental co-ordination. All Government departments should have the environment as one of its priorities. As my colleague the Leader of the Opposition has said, all Ministers of a GSLP/Liberal cabinet would be Ministers of the Environment in this respect.

Environmental considerations have not been central to the buildings and construction that has gone up under the GSD Government. It is possible to argue that it is difficult to have private developers making an investment if the environmental bar is put too high. However, the reality is that there are many developments which the Government itself has been responsible for and this is precisely where they have been many missed opportunities. The environment should have been a central plank of the GSD policy in Government's decision making.

Take for instance the air terminal. All the glass could have been installed as power glass panels and at least part of the energy consumption needed to run this project could have come from a sustainable energy source. Yes, I hear the Chief Minister giggling underneath his breath.

The Mid-Harbour buildings could have been fitted with solar panels on their roofs which could have been used, for example, to provide hot water. This type of policy on the environment could have at least initiated the missed targets set by the GSD in its manifesto of 2007. Instead, in answer to Question No. 919 of this session of Parliament, the Chief Minister used considerable subjective language to try to cover up the fact that no sustainable energy considerations were taken on board for this project. Words like "attractive and therefore positive to the environment, a wonderful living environment and enjoyment of the outdoors by all, residents and non residents." This is all very well. It all is designed to sound very good but the only thing in that project which could have reduced the carbon footprint is the hard actions as opposed to subjective language.

In most, if not all, western countries they are using energy saving bulbs and lighting systems. This is seen to be the norm and in many countries energy saving policies are what the Governments are doing at all levels.

The London Olympic city is one example where environmental considerations are regarded as central. The irony is that all the buildings that have gone up in recent years have had the opposite effect in that they increase the demand for electricity from our present non renewable source.

Mr Speaker, it is all very well to have Ministers giving talks on World Environment Day to school children and telling them how we all need to look after our forests. The problem is that some Ministers, the same Government of which they are part of, do not then practice what they preach. They just try to give the impression that they care when it is obvious that they are only paying lip service to the issue. Mr Speaker, the present Government has an inability to grasp the environmental concepts or their importance as an underlying factor in all policy making, an obvious near absence of communication between Government departments with consequential detrimental effects on consistency and end product. For example, the Planning Department is not even informed of major Government projects. This is just one example. The widespread lack of consultation and of involvement of and listening to professionals, especially those in the public sector. Advice is ignored and sound decisions changed for often whimsical expediency. This leads to low morale which in some areas of the public sector results in a failure of important services.

Management systems in the Civil Service, for example, are transparently close to collapse with very capable and hard working frontline staff not having the opportunity of being allowed to better perform their duties or opportunities to contribute to policy and decision making. There is an absence of proper strategic planning in a wide range of areas. Those plans that have been developed, such as in the case of the

Fishing Consultation Paper or the Environmental Action and Management Plan, have failed to involve all stake holders and have so far been either not implemented or not effective. All that is evidence that this Government is a tired Government, lacking imagination, struggling for a sense of direction, made up of disenchanted Ministers whose contribution is often ... ignored or held in contempt. That is, if the Ministers are aware of the issues at all. The Chief Minister is using time that is not his own ... but people who pick up catalogues to order anything from the taps of a Government building, or flowers for a park, to coin operated toilets ... in the belief either, that he can personally shake the fabric of Gibraltar or that he will fool the people into thinking that nothing else matters and often choosing the wrong taps or the wrong flowers or the wrong route of a bus. What other decisions does he take on more fundamental matters that are equally flawed? What does this say about the Government's sense of priority? With those thoughts in mind, I move to my responsibility in respect of Government Services.

Mr Speaker, Government Services is a portfolio which has a wide remit. In relation to electricity generation, it is a matter of concern that there was a spate of power cuts at the end of last year and there are still interruptions to the supply at times. This is because the Government has not had the planning and foresight to make provision for Gibraltar's future electricity needs. This is proved by the fact that a vast amount of money is being spent on hiring skid generators to supply our energy needs.

As I have already identified, this has compounded the environmental problems for people in the area. This is typical of the GSD to squander public money in this way in order to cover up their short comings, when the problem is one that they are responsible for creating in the first place. More squandering of monies which could be used in other areas which this Government have neglected and which have a big impact on people's daily lives as I will later on refer to.

In relation to other Government Services, we see how this Government has failed to deal with issues such as the Customs Department. ... Yes, it is a nervous laugh, Mr Speaker. This is obvious from the way that the Chief Minister has been dealing with questions that I have put in Parliament. The arrogance and disdain which he has for the staff of the Customs Department, because they have had the temerity to reject an agreement that he proposed to them, is there for all to see. One would think that if an agreement is rejected by the staff side, the Government would, if it had a policy of conducting a root and branch review, engage them again in a positive manner. The fact is that the report that was conducted by HM Revenue and Excise team had not been published for reasons which are best known to this Government. It would be interesting to know what the recommendations were and how these reflect on things that were in the agreement presented to the staff side. There are also concerns expressed by the Civil Service union at the manner in which the Government dealt with a separate agreement that was presented to them for approval and rejected by their members.

In relation to the Fire Service, there is a similar scenario. There has been no independent health and safety review of all aspects of the Fire Service, even though reviews have been carried out on certain aspects that interest the Government. It is obvious that the Government have shied away from conducting a report on health and safety issues in the Fire Service.

Mr Speaker, the recent fire at the port raised several questions about the resources and training of the Fire Service. It is clear that, not only was emergency equipment lacking but, also, that the proper training for dealing with maritime emergencies or oil fires of this kind, had not been provided. The Opposition understands that the Service had been asking Government for proper training in these areas and that these requests have been ignored. Indeed, in the past, Chief Fire Officers have also highlighted the dangers of having mixed passenger and industrial operations which are currently operating at the North

Mole. Yet again, unfortunately, these seem to have fallen on deaf ears. The fact that a fire simulator was bought way back in 2006, at a cost of nearly £140,000, and to date has not yet been commissioned, is ample proof of this Government's lack of commitment.

Another example of lack of commitment from this Government towards the Fire Service is the fact that fire fighters have traditionally been doing professional development training on what is ... on a rolling basis. However, what has happened is that the budget for this has been diverted and used for sending new recruits to train in the UK which might be a good thing but it has the effect of, basically, starving the Service of funds to do continuous professional training which is the norm of any front line Service. This was happening for a number of years. In relation to maritime training, it seems odd that, when asked about this, the Minister stated that officers of the Service had been sent to maritime fire fighting advanced training way back in 1998, which is thirteen years ago.

Mr Speaker, I move now to issues relating to culture. It is relevant to remind the House that in October 2000 the GSD Government took the decision to censor an entry in the Gibraltar International Arts Exhibition for what came to be seen as political reasons. An artist entered a sculpture which depicted a crashed G1 car and a figure climbing on to the crashed car and another figure sitting in a deck chair at the top of the crashed car. This sculpture was seen by the then Minister for Culture as offensive. The fact that the adjudicator actually picked the art work as one of the winners did not cross the mind of the Minister himself. This sculpture might have been offensive to the GSD Government but the reality is that art, in a democratic country and society, is open to interpretation.

More recently, a similar situation arose regarding the art exhibition in late April and early May last year. In this case, the work in question was to be a memory wall on the builder's hoardings at the Theatre Royal site. Members of the public

were going to be asked to attach to the hoardings any Theatre Royal memorabilia that they had, like photographs, play bills or anything linked to the building. The intention was to collect the material and make it into an eight feet by four feet collage. The artist was approached by the Government and asked to withdraw the work on the basis, firstly, that No. 6 did not understand it and, secondly, on the basis that there seemed to be a conflict of interest between the work and the Government's own plans for commemorating the theatre, amongst other reasons. In the ongoing discussions, it was revealed that the artist had had to send a three page letter to the Minister of Culture explaining how the item was considered to be a work of art. The Minister, obviously, did not accept the explanation and, during the conversation which followed, Mr Reyes apparently explained that he was in a sticky position. It was obvious that the Government did not like the idea of an artist's event involving the Theatre Royal site because it would only have served to remind the public of the disaster that they had presided over. It is also very odd that the Minister should have spoken of a conflict of interest between the Government's plans for commemorating the Theatre Royal given that no such plans had been announced in all this time. In fact, far from organising any Government event, in answer to Question No. 931 of 2010 in this Parliament, the Chief Minister confirmed that the Government had no plans for a commemorative event. It seems, again, that the idea of a commemorative event was just a smokescreen to discourage altogether the idea of a memory wall.

Indeed, the only thing that the GSD Government have done to the building is to demolish it and they now plan to convert it into an area, into a park with nothing to show, nothing to show for the millions and millions of pounds that have been spent. In fact, I put it to the hon Members of that side of the House that the idea of a memory wall would actually be a good one since all the photographs and memorabilia would have provided an insight of what the old theatre was like anyway. It must be recalled that this GSD Government hailed the Theatre Royal as



a single, most important, cultural project. The nature of the project soon changed from a restoration to becoming a modern theatre ... echoes of the past, a vision thing. When people were telling the Chief Minister that it was too expensive and that it was a non-starter as a theatre due to its location, the reply was that the Opposition knew the cost of things but not their value. The Government have squandered millions and millions of pounds to create, what Mr Caruana once called, a vision thing. This then became a crater in the ground and it has become a car park. The problem with Mr Caruana is that he has very expensive visions and that sometimes they turn into more of an expensive nightmare.

Mr Speaker, despite what the Minister has said today about the John Mackintosh Hall, that place is in a state of neglect. It is disgraceful and the Government should act urgently to resolve the structural problems that exist. The state of the library is shameful. This does not surprise me since the attitude of the Minister when questioned is that schools have very good libraries which are available for students. So, basically, if you are not a student you do not need a library. Gibraltar is entitled to have a proper, modern, up to date public library as opposed to the present facilities which are in a very poor state. The John Mackintosh Hall theatre is either too hot or too cold because the air conditioning has no temperature control. The fact is that little money has been spent on the theatre in the recent past. Some of the committee rooms are in a state of disrepair. The fact is that in this cultural centre a mere £9,610 has been spent on maintenance of the building.

Further, it is very disappointing, to say the least, that the old BFBS building was returned to Government by the trustees of the Music Centre. There have been no informal meetings with the trustees with a view to seeing how the musical aspects of culture should be and can be developed. It is also disappointing to see that in a place like Gibraltar where we have considerable, not only sporting but artistic talent, for example, the Gustavo Bacarissas ..., and as the Minister has mentioned before, we

have still not seen a permanent museum to exhibit works of art, sculptures, sketches, tapestries, et cetera which our people have made. This is what our culture is about. It is all very well to say that monies have been spent on cultural events, as we have heard from the Minister today, listing all the things that he has done such as, Zarzuelas. But this is not enough. The reality is that culture needs to be nurtured within our own people. This Government have censored culture, destroyed a building with heritage value such as the Theatre Royal and largely neglected a cultural centre like the John Mackintosh Hall. This is totally unacceptable and speaks volumes of this Government's real commitment to culture.

Mr Speaker, I move on now to my responsibility with respect to sports and leisure. This Government have failed to conduct a real consultation with the users and stake holders of the sporting community in order to ensure that monies that have been spent have been properly targeted. For example, one could say that although the stands of the hockey pitch have been provided, the reality is that without the flood lights the problems encountered by the hockey fraternity, as to the lack of allocations for training, cannot be solved. Most sports men and women in Gibraltar are at an amateur level and therefore the times they can train are after working hours. During the winter, most of the facilities without flood lights can only be used from 5.00 p.m. to about 6.30 p.m. or 7.00 p.m. which is less than two hours.

In relation to the football, it is known that the Faroe Islands expressed concern about the state of the football pitch when they played the GFA in a recent friendly. The fact is that they were right in that although the artificial turf is of an approved standard, as the Minister said to the GFA manager publicly, the reality is that the current pitch is in need of serious attention. Basically, due to the number of young people and not so young using it, the turf is now very short. It is possible to see the black patches of the pitch which is the rubber compound that has become visible due to the short length of the turf. I see no extra expenditure in the Estimates which could indicate that a new turf

will be laid within the next financial year. The changing rooms underneath the main stands and the one placed at the east end, which are used by footballers and athletes alike, are a disgrace. Indeed, if the Government Health and Safety Officers were to be invited to these changing rooms, they would most probably advise that they should be shut down.

The GASA swimming pool is yet another facility where this Government has failed to invest in a timely and proper manner. The changing rooms are in a shambolic state and even the building is slowly, but surely, corroding. Because of the lack of air treatment, which this Government does not see as a priority ..., the Minister says he will shortly have the report by the experts or the consultant, he said that he would have this shortly, about two years ago as well. We are told that users of the service are being subjected to an unhealthy swimming environment which could be detrimental to their health.

I have been calling for this Government, for many years now, to refurbish the playgrounds around Gibraltar but to no avail. However, in the last few months and in what has been seen as nothing more than an electoral gimmick, the Government have embarked on a frenzy of play parks construction all over Gibraltar. Every time there is a photograph of a Minister opening this new playground, it serves as a reminder of the inaction of the GSD Government over the years and the fact that they have allowed our playgrounds to fall into a state of disrepair that was often dangerous. The Government are insulting the intelligence of the electorate. There is no doubt that so many years of neglect in this area has deprived many children of safe and healthy fun and enjoyment.

This moves me on to a wider issue of youth. Our youth is our future. Most of our young people are well behaved and are respectful of law and order. However, it seems that cracks are now appearing in the system when we see a number of juveniles that are charged with violent and unsocial behaviour. We should also look very carefully at what is done with young

people who leave at the age of fifteen and we should analyse why so many are finding it difficult to obtain employment. The same is also happening at the other end. We invest in the education of our young people to degree level. Then those persons cannot find suitable employment on their return. The Government have said that there are very few graduates out of work. The reality is that there are some who prefer to take on any job rather than join the unemployed. I will not labour on this issue, too much, since I would be treading on one of my other colleague's portfolio.

The money spent on our youth clubs has decreased in the past four years. This can only mean that projects are not offered or that the projects that are being offered are not being taken up by young people. This is an area which, again, needs to be studied and looked at carefully. Our youth need relevant projects and facilities in which they can socialise and work together with those in their peer group for their own and for the sake and the good of our society. Furthermore, we need to try and empower young people to make positive contributions to society.

In conclusion, Mr Speaker, Gibraltar needs a change. Our young people need a change. More and more people are fed up of this GSD Government. They have taken the electorate for granted and now they want to do everything at the last minute. We are confident that a Government of the GSLP/Liberals will correct the shortcomings affecting the society. Gibraltar is crying out for change. The sooner that this change comes, the better. Thank you, Mr Speaker.

**HON J J HOLLIDAY:**

## **ENTERPRISE AND DEVELOPMENT**

### **Economy**

As the last contributor from this side of the House, before the Chief Minister sums up, I am proud to be part of a Government that has achieved such progress and excellent results across the wide spectrum of issues that affect our daily lives. No Government in Gibraltar has ever achieved so much in areas such as education, health, social services, employment, housing, law and order as evidenced by what has already been heard from my colleagues.

Last year, I challenged Opposition Members the Hon Dr Garcia, the Hon Mr Picardo and the Hon Mr Licudi to come up with their own policy statements and strategies regarding aviation, cruising, GBC and transport. It is no surprise, that none of the Opposition Members have come forward with any proposals, in any one of these issues, during the last year. Perhaps, the intention of the GSLP/Liberal Alliance, if ever elected into power, which I sincerely doubt will ever happen, is to try to build on this Government's excellent initiatives and policy strategies, which not only work, but have brought substantial stability and prosperity to Gibraltar.

Messrs Picardo, Garcia and Licudi, as indeed all Members of the Opposition, are very quick to criticise the Government and mislead the public with ridiculous assertions and innuendos. The Members of the Opposition need to learn that an electorate, especially in Gibraltar, will vote a Government into office based on their policies and track record. The GSLP/Liberal Alliance clearly has no policies going forward and an abysmal and embarrassing track record.

The excellent state of our economy announced by the Chief Minister in his Budget address shows a growth rate of 6.5 per

cent in the year to March 2010 and an estimate of 5 per cent in the year to March 2011 with a projected GDP in excess of £1 billion; an extraordinary achievement in today's global economic climate. An overall recurrent budget surplus of £28.3 million in the financial year ending 31<sup>st</sup> March 2011, once again demonstrates the Government's excellent stewardship of Gibraltar's economy and fiscal environment.

The latest OECD figures reveal a Euro Zone showing modest growth in 2010 after suffering a significant drop in 2007 to 2009. Similarly, the UK and Spain have performed poorly as a result of the recessionary period, with prospects of only marginal growth in 2011 and 2012.

It is always important to look at the overall economic picture in order to gauge the success of our economy and how it competes in world terms. A simple analysis of the yearly growth figures in the Euro Zone quickly reveals how well Gibraltar has fared before, during and after the global financial crisis.

In the Euro Zone, headline inflation has risen sharply due to higher indirect taxes and energy price increases, but underlying price pressures remain weak, reflecting high unemployment and significant spare capacity. Prolonged fiscal consolidation is needed in most countries to stop raising the debt-to-GDP ratios and then reduce them to more prudent levels. More credible and detailed multi-year budget plans need to be put in place.

2010 proved once again that Gibraltar has been resilient to the threat of recession when this engulfed, amongst others, Gibraltar's two most important catchment markets, the UK and Spain. This is certainly something that should be celebrated.

In January this year, Government entered a new era with the landmark introduction of the highly competitive 10 per cent corporate tax rate across the board for all businesses, which subsequently established a level playing field nationally and an improved competitive edge globally.

It is important I feel, Mr Speaker, to weigh up and compare the fortunate state of our economy, with the pressures felt by some of the largest economies worldwide. The world may begin in Gibraltar but it does not end at our doorstep.

It is clear that Gibraltar's economy is progressing extremely well against the backdrop of what is happening elsewhere in the Western World. The Government's economic strategy is a beacon for other jurisdictions to follow. However, Government cannot be complacent in how it manages the economy. It is not by sheer coincidence that Gibraltar is faring so well, despite the spin that Members on the opposite side of the House may have us all believe. Gibraltar is in this very fortunate position, primarily because of the leadership and vision of our Chief Minister, the success of which has been demonstrated time and time again over the last fifteen years.

The Government recognises and praises Gibraltar's private sector. It is evident that there is no shortage of entrepreneurial spirit and ingenuity in the local business community. The Government continues to support innovation and diversity, as well as provide an open door policy to any serious investor who chooses to conduct business activity with or from Gibraltar.

### **InvestGibraltar Office**

Mr Speaker, the InvestGibraltar Office, Gibraltar's one-stop-shop for business, continues to provide an effective service to trade and industry by providing sound advice, guidance and support. To date, the Office has been instrumental in assisting small and medium size businesses start up in Gibraltar. I would like to appeal to local businesses to make more use of this Office, especially if they require assistance in applying for Government licences, EU funding and/or putting together a business plan or cash flow projection.

I am particularly proud to announce to the House today that the InvestGibraltar Office has been recognised as an SFEDI Centre

of Excellence, that is, a Small Firms Enterprise Development Initiative, which is the UK Standard Setting Body for Business Support and Business Enterprise. Most of SFEDI's clients are government-funded departments, authorities and agencies in the UK as well as major SME support organisations. This is an excellent achievement and I would like to congratulate those concerned.

### **INVESTOR CONFIDENCE**

Mr Speaker, I am delighted to report to the House that high investor confidence in Gibraltar continued throughout 2010 to date. There are various private sector projects worthy of mention, as follows:

#### **Buena Vista Development**

In March of this year, the Government announced the award of the advertised tender for the development of the Buena Vista site to BV Homes Limited for the sum of £10.2 million. This site was awarded for the development of 42 low rise dwellings. This will satisfy the demand for this type of housing, which is rarely available in Gibraltar and is popular with local purchasers.

#### **World Trade Centre Gibraltar**

Mr Speaker, a World Trade Centre will be built in Gibraltar. This will bring global recognition to our jurisdiction and ensure sufficient top quality office space is available to meet growing demand. It will consist of 15,000m<sup>2</sup> of prime office space and is set to be completed in 2012.

#### **New Hotels**

The development of new hotels and resorts continues to attract significant interest from prospective investors. These hotels cover the full spectrum of grades and will cater for different

needs and budgets. The Government will, hopefully, be making announcements in respect of the various hotels shortly.

## **MAJOR GOVERNMENT PROJECTS**

Mr Speaker, I would like to comment on various Government projects of significant importance.

### **Europa Point Restaurant Complex**

The transformation of Europa Point into a leisure and recreational zone adds a further children's play park as part of the Government's programme to establish and upgrade such facilities around Gibraltar. I am delighted to say the play park has been incredibly well received. Adjacent to it, the Government is building a modern and attractive complex, which will house a cafeteria to complement and serve the recreational area. The facility will be family friendly and a convenient waiting area for people using the large playgrounds and picnic areas. Tenders for the allocation of the cafeteria are currently being invited. The Government will also be announcing shortly the development of what I am sure will become an iconic building, located next to Harding's Battery, the newly created viewing platform. This project will house, amongst other facilities, a fine dining experience with panoramic views of the Strait of Gibraltar. The Government is extremely proud of the way this multifaceted project is unfolding and is very much looking forward to seeing it completed shortly.

### **Chatham Counterguard**

Mr Speaker, the tenders for the vaults at Chatham Counterguard have all been allocated and there will be a mix of commercial activities in the area, some of which are already open for business. The project has proved a new lease of life to the area and makes valuable use of an historic structure, which would otherwise remain disused.

## **Western Beach Land Reclamation**

Mr Speaker, the Government is in the process of reclaiming land for development at the northern side of the runway by Western Beach, predominantly for activities that are of an industrial nature. The pre-contract studies for the reclamation are now nearing completion and a full statement will be issued by the Government in due course. However, the Government intends to reclaim approximately 90,000m<sup>2</sup> of land with works due to commence later this year. This development will in no way affect the use of Western Beach.

## **Retrenchment Block**

The conversion of 29 units at the Retrenchment Block at Lathbury Barracks into facilities for local clubs and associations, met with huge success earlier this year. Overall, the refurbished building provided 1,270m<sup>2</sup> of usable internal space. These facilities are of a high standard and have been welcomed by their current users.

## **Automated Public Toilets**

Another initiative that has been introduced this year has been the opening of new public automatic toilets. Seven automatic toilets have been installed in the areas of the frontier, Winston Churchill Avenue, Waterport Road, Eurotowers, Commonwealth Parade Car Park and Grand Parade. They provide a much improved and needed service to what hitherto had been available in Gibraltar. Their elegant appearance enhances the urban environment of their location. The toilets are designed so that users will find the same standards of quality and hygiene they would expect of their own bathrooms at home. The choice of materials and advanced technology delivers an experience which, in addition to impeccable cleanliness, is comfortable, well lit and easy to use. There is sufficient internal space to accommodate wheelchairs and prams. Mr Speaker, the Government has received numerous compliments from the

public in respect of the new toilets and is extremely proud of this. Contrary to what the Hon Mr Bruzon has said in his contribution yesterday, Government believes that this project represents value for money. However, I would like to correct the statement made by the Hon Mr Bruzon during his contribution yesterday and confirm that the cost of these toilets is not £250,000 as he stated but rather £157,183.93 per unit.

### **New Improved Refuse Collection Shelters**

The Government is pleased to announce the commencement of a programme to modernise its refuse shelter facilities as part of its urban renewal policy. This project will consist of 49 new refuse shelters, which will replace the current open air collection points. These shelters are currently being designed. However, works has already commenced on the first phase of seven selected sites at Cumberland Road, Scud Hill (East), Castle Road, Prince Edward's Road (Forty Steps), Castle Road (Sacred Heart Church), Willis's Road (Tank Ramp) and Cloister Ramp. All units will be fully roofed and will consist of solid masonry enclosures with louvered ventilation and self-closing steel doors. The interior will be fully ceramic tiled and will include lighting, full drainage and hosing facilities. This will provide a higher sanitation standard than has ever existed up until now. These new refuse collection shelters will address and curtail the increasing problem of ape and seagull access to the existing open air collection points.

### **UTILITIES**

Significant investment has also been made in the provision of utilities.

#### **AquaGib**

During the last financial year ending the 31<sup>st</sup> March 2011, a total of 1.7 million cubic metres of potable water were supplied,

which represents an increase of just over 0.5 per cent over the previous year.

Over the same period, AquaGib pumped an estimated total of 3 million cubic metres of seawater to reservoirs for sanitation and fire fighting purposes.

In conjunction with the road works associated with the widening of Devils Tower Road, Eastern Beach Road and the new airport terminal and tunnel, the potable and salt water mains in the area have been extensively relocated and replaced by Government. AquaGib provided the essential enabling and connecting works required to ensure that interruptions of supply to consumers, although in some cases unavoidable, were kept to a minimum as well as undertaking the laying of the new mains along Eastern Beach Road. The opportunity has been taken by AquaGib to finance and replace some of these mains because of their age and condition.

A contract has been placed for the purchase of a further Reverse Osmosis Desalination Plant to augment the potable water production capabilities at Governor's Cottage Camp. This new plant will be located at Waterport as part of Government's policy of diversity of location of plant, associated infrastructure and seawater intakes, in order to ensure security of potable water supply in the event of a maritime or other mishap. The cost of the project is £1.2 million. As a result, the aging distillers at Waterport, which have been in service since the mid nineteen eighties, will be decommissioned. As always, the quality of potable water supplied by AquaGib complies with the rigorous requirements of pertinent EU Directives.

#### **Gibraltar Electricity Authority**

### **GENERATION AND CONSUMERS**

Mr Speaker, the total installed fixed generating capacity continues to be 42.8 Mw with Waterport Power Station providing

15.6 Mw and OESCO the remaining 27.2 Mw. Unfortunately, a series of major breakdowns at the OESCO power plant during January this year has meant that their available installed generating capacity has been reduced by approximately 50 per cent. It is expected that all of OESCO's generating plant will be available in the next three months. As an interim measure, the Government has hired approximately 9 Mw of additional power through the rental of temporary generators. It is also awaiting delivery of additional containerised generator sets which have been purchased to further supplement Gibraltar's generating capacity by another 4.5 Mw.

Waterport Power Station generated 44.5 per cent compared with the 53.8 per cent generated by OESCO and the MOD contributing 1.7 per cent of the total power requirement for Gibraltar, excluding MOD requirements, during the last financial year. The total number of units generated by the Waterport Power Station and purchased from OESCO, including the MOD contribution, was 174 million units.

The units billed to the consumer totalled 167.1 million compared to 166.3 million units the previous year. This represented a marginal increase of 0.4 per cent and the amount collected including arrears was £22.5 million, an increase of 10.1 per cent. The number of consumers stood at 18,248 at the end of March 2011, an increase of 709 consumers which is just over 4 per cent over the previous year.

## **FUEL**

The cost of fuel supplied to the Waterport Power Station this financial year has again increased from £482.25 per tonne in April 2010 to £618.25 per tonne in March 2011.

In this financial year, the total cost of fuel to the Authority was £8.66 million. This is £1.1 million above the estimate. However, in real terms the impact of oil price increases and sterling/dollar

exchange rate fluctuations has been offset by £4.2 million through a fuel hedging arrangement.

## **Gibtelecom**

Building business for future growth is a key element of Gibtelecom's strategy and success. Partial activation of the Europe India Gateway (EIG) submarine cable, which was landed in Gibraltar in May 2010, is currently underway and will significantly enhance Gibraltar's international connectivity. The high quality transmission properties and capacity of this 15,000 km fibre optic cable will contribute to Gibraltar's telecommunications requirements for years to come, and is a further step in positioning Gibraltar as an international communications hub. The Company is in the process of setting up an overseas marketing arm, to take the business into the international arena and capitalise on the EIG submarine cable investment.

Gibtelecom continues to extend the reach of its roaming services, which currently stands at around 450 operators in 140 countries.

Gibtelecom is also extending and enhancing its national infrastructure this year, seeing the beginnings of the development of a Next Generation Network which will eventually facilitate bringing the fixed line, internet and mobile technologies closer together. This investment in technology should facilitate the Company offering increased, yet still uncontended, ADSL broadband speeds. I am advised that the Company's new Wi-Fi service launched in February this year, which allows users to purchase a range of internet packages on-line for use at various public hotspots in Gibraltar, is proving to be popular with overseas visitors. In the first three months, registrations were received from residents of 16 countries.

The Company is also investing in extending its data centre facilities by using some 1,000 square metres of its Mount Pleasant premises. This is helping Gibraltar meet the growing

demand for hosting IT equipment, particularly from the e-gaming sector.

For the third consecutive year, the Company took on apprentices for its four year NVQ accredited Telecommunications Apprenticeship Scheme. This brings the total number of apprentices in Gibtelecom to sixteen, the first intake of which will complete their training next year. This scheme is now recognised as a model for this type of private sector/Government partnership in Gibraltar. Additionally, the Company is also participating in the Government sponsored NVQ accredited Business and Administration Vocational Training Scheme. This offers work experience placements for six months to young school leavers and continues with its long standing programme of graduate sponsorships and student placements.

Gibtelecom's investment in people and technology is helping to embrace the opportunity the fast moving world of communication can bring to the economy.

## **EU PROGRAMMES**

Activity under the Gibraltar Objective 2 (European Regional Development Fund – ERDF) 2000-2006 Programme finalised in September 2010, with the submission of all the required reports and closure documents. Gibraltar was one of the first regions to successfully close its Programme and receive final payment. The total Programme investment had been € 25,202,114.89.

2010 saw Gibraltar obtain the Presidency of the South West European Space Territorial Cooperation Programme (SUDOE). This was an important occasion, as it was the first time Gibraltar held the Presidency of an EU co-funded Programme.

The 2007-2013 Programmes are well underway. At present there is a total of 46 approved projects:-

- 38 ERDF;
- 7 ESF;
- 1 INTERREG.

This represents a total financial commitment to date of £11,212,039 made up as follows:-

- ERDF           £ 5,554,457
- ESF             £ 5,533,582
- INTERREG   £ 124,000

To date these projects have yielded:-

- 80 full-time jobs;
- 16 part-time jobs;
- 14 jobs safeguarded;
- 35 trainees employed;
- 12 new businesses created;
- 6 SMEs assisted to expand;
- 2 projects of environmental importance; and
- 973 beneficiaries undergoing training.

## **CRUISING**

The cruise sector of our tourism economy is doing well and is the result of many years of hard work. The future looks bright.



There are 190 cruise calls scheduled this year, an increase of 8 per cent over last year, with 330,000 passengers. A total of 172 calls have already been booked for next year 2012, with an estimated total of 320,000 passengers. These figures will no doubt increase in the next few months.

Mr Speaker, the cruise industry is looking to find alternative ports in the wake of instability in North Africa and the Middle East. The need to also generate revenue ensures that cruise lines are always seriously evaluating their costs and the soaring price of fuel has added to their concerns. Two ways of keeping fuel bills down have been to carefully consider their itineraries and sailing speeds between ports. In recent years, the length of an average port call has been shaved more and more to allow the ship additional time to get to its next destination. This has had a knock-on effect of reducing the time available for passengers to spend ashore.

More significantly perhaps, is the urgent desire by operators to open up onboard revenue-earning facilities, such as the casinos and shops once the vessels have left territorial waters. This is why the Government has announced an initiative to encourage ships to stay in port until late at night and which resolves several of these issues at a stroke. Cruise ships will be allowed to open their onboard revenue-earning outlets, such as shops and casinos, while alongside, from 6pm until they depart.

It is a win-win situation for both Gibraltar and the cruise lines as it will help them save fuel, give their passengers and off-duty crew the opportunity to enjoy a meal or drink in local establishments and allow more shore excursions to be offered.

This initiative and the potential of Gibraltar becoming a partial-turnaround port were discussed with senior cruise executives in Miami in March, and again in Brussels at the European Cruise Council, where I addressed top industry figures and regulators at that meeting in June. Our relationship with these industry leaders has been built up over a number of years and is not

something that happens overnight. It is, however, extremely useful to hear their views and ideas. It is for all these reasons that Gibraltar has significantly punched above its weight as a cruise port of call.

Government will be undertaking a project to extend and refurbish the Cruise Terminal later this year, which will enhance facilities and be better placed to handle the increasing numbers of passengers. Additionally, the Western Arm will be resurfaced and refurbished, creating a tour bus loading area. This project also includes plans to enhance the general beautification of the walk from the port into town.

I would now like to take this opportunity to mention the unfortunate incident at the Nature Sullage plant on the Western Arm on 31<sup>st</sup> May. The investigation is currently underway, the results of which will be known in due course.

However, I would like to thank the staff of the Gibraltar Port Authority and all the essential services, especially the RGP, the City Fire Brigade, the MOD Fire Brigade, agencies and companies in the private sector, who were involved in one way or another, with handling the situation on 31<sup>st</sup> May and the subsequent clean-up operation.

The port resumed business as usual within 24 hours. Although in the first few days three cruise ships had to anchor off the Western Arm and tender their passengers ashore, ships were docking at the Cruise Terminal again within ten days. It was significant that the "Independence of the Seas", which was docked at the time of the explosion, was back at the same berth, exactly two weeks after the event. While this, in itself, sent a very big signal to the cruise industry that Gibraltar was open for business, it is also worth noting that no cruise calls were cancelled as a result of the incident.

It is irresponsible for the Hon Dr Garcia to make statements of doom and gloom of Gibraltar's cruise sector, when this is simply

not the case. After so many years in Opposition, he should realise the serious consequences his negative statements have on industry players and how they play into the hands of competing ports. He tries to score cheap political points, but the electorate in Gibraltar is more astute than he makes it out to be. The Hon Dr Garcia does not know what he is talking about and his inexperience and lack of knowledge on the subject is very evident.

I challenge the Hon Dr Garcia, again this year, to set out the Opposition's policy on cruising and his vision for Gibraltar as a cruise port when he makes his contribution later today. I am sure that he will not utter a word in this respect.

The Hon Dr Garcia shows little understanding when he implies that cruise ships have not increased in size in recent years and do not carry more passengers. In 1996, the average number of passengers calling at Gibraltar on one ship was 695. This year, that figure has increased to 1,774. Back in 1996, the Western Arm could accommodate four cruise ships whereas now, it is full with two average-sized ships. This is why I have said on many occasions, that Government places more importance on the overall number of passengers rather than on the number of calls. I am proud of the fact that in the fifteen years the present administration has been in office, there has been a growth from 96,684 in 1996 to an estimated 330,000 in 2011. This represents a dramatic increase of 241 per cent in the number of cruise passengers handled per year.

Instead of complaining about figures, the Hon Dr Garcia should realise that Gibraltar achieves remarkably high customer satisfaction ratings in end-of-cruise questionnaires and if he looked towards the Bay more often, he will notice that an increasing number of cruise ships have to anchor or tender their passengers ashore, as the Western Arm is full. The Government is continuing to improve the tourism product to ensure that Gibraltar remains competitive and attracts new cruise business.

## AVIATION

In my contribution last year, I commented on how the global economic downturn experienced during 2009 had also hit the aviation industry hard. Unfortunately, this trend was unexpectedly made worse in 2010 with the eruption of the volcano in Iceland, several strikes affecting British Airways and the appalling weather in the UK in December.

Those unforeseen external influences, along with the commercial decision taken by EasyJet in 2009 to reduce capacity to the Rock in line with their general aviation strategy, have contributed to a traffic decline in 2010 compared to 2009. Airlines continue to have a tough time as fuel prices increase and the industry becomes more competitive than ever.

These are the real reasons for traffic decline to Gibraltar and are apparent to all those that have a sound knowledge of the airline industry. A knowledge which I regret, the Opposition and particularly the Hon Dr Garcia seems not to have. Or if he does, he conveniently ignores the facts in a desperate effort to discredit this Government's achievements on the provision of commercial air services to Gibraltar.

Considering that there was a drop in capacity in 2010, a volcano that paralysed the air traffic over Europe, a number of airline strikes and severe weather in our main core market, Gibraltar did not fare too badly.

The International Air Transport Association (IATA) reported that the average worldwide load factor was 78.4 per cent, which was lower than Gibraltar's average by approximately 6 points. For Europe, passenger demand increased by 5.1 per cent. IATA has cited the effect of bad weather and fuel increases in 2010 as having had an adverse effect on further growth.

To the uninformed, the Hon Dr Garcia's arguments - that it must always be the Government's fault when there are declines in

traffic or cuts in capacity - may ring true. I am pleased to say, however, that those with experience in tourism and, in particular, the airline industry will see through these weak arguments.

I have an experienced team that has an in-depth understanding of the airline and airport industries, who know how competitive the market is and how pro-active Gibraltar must be to maintain and attract new airline services to the Rock.

Airlines will not serve Gibraltar simply because she has a pretty North Face. We have to fight for services in an increasingly competitive market. Let us not be blind to the fact that we face fierce competition from other airports in our geographical region whose catchment areas overlap with ours. We also have to work hard to reiterate the unique characteristics of our market and the good traffic potential that Gibraltar offers.

The average load factor for arrivals from the UK in 2010 was 84.3 per cent. For departures the figure was 84.8 per cent. In both cases the percentages peaked at over 90 per cent during the summer months, with the highest being for departures in August at 95.3 per cent. Gibraltar's average load factor for 2010 was therefore well above the global trend.

Let us remind ourselves of the facts that from 1988 to 1996 the number of arrivals by air had fallen by an appalling 48.4 per cent. I will echo my colleague Minister Britto's statements and ask, how can the Hon Dr Garcia and the Opposition criticise a fall in arrivals for 2010 compared to 2009, when this still represents an increase of 94 per cent over the last year that the GSLP were in Office?

I am pleased to report that preliminary figures show that Gibraltar International Airport has seen total passenger traffic increase from the UK by a very encouraging 23 per cent to the end of June 2011. I would be delighted to hear the Hon Dr Garcia's counter arguments to this good news.

I am pleased to note earlier this year that, as from 1st February 2011, British Airways introduced the Airbus A320 aircraft from Heathrow to Gibraltar, representing an increase in seat capacity of approximately 20 per cent. I must also add, the much overlooked fact, that American Airlines now code share services to Gibraltar from Heathrow with British Airways.

This summer EasyJet are maintaining a daily schedule from Gatwick to Gibraltar and started flights from Liverpool John Lennon Airport on Tuesday 29<sup>th</sup> March 2011. This offers just over 14,500 more seats to Gibraltar from the North West of the UK for the summer schedule. Figures for this new route have been particularly encouraging with preliminary load factors to the end of June 2011, achieving an average of 76 per cent.

Monarch Airlines operates daily from Luton to Gibraltar with an extra four flights a week on Mondays, Wednesdays, Fridays and Sundays, thereby increasing capacity significantly over 2010. The number of flights from Manchester to Gibraltar has risen from three to five a week this summer, representing an impressive increase of 62 per cent over the same period last year.

The overall effect will see the number of seats available from UK and Gibraltar for the summer season, rise by approximately 45 per cent over last year and approximately 30 per cent over the summer of 2009.

This news has been warmly welcomed by all in the tourism, leisure, hospitality and retail industries in Gibraltar. This rise in capacity will see one of our busiest summers ever. However this, obviously, has not been welcomed by the Opposition. In its opinion, as stated publicly in March of this year, the Government is merely playing catch up by announcing increases in capacity.

British Airways, Monarch and EasyJet currently operate from Heathrow, Gatwick, Luton, Liverpool and Manchester. Bmibaby has already announced that it will commence operations from

East Midlands Airport next March and final negotiations are currently ongoing to develop a number of new routes. So watch this space.

So if we are doing badly, in the Opposition's questionable opinion, then things are awful and disastrous, but if matters turn around dramatically to signal an improvement, as is the case this year, it is still not good enough! I ask myself, who is working for political gain?

What, indeed, does the Hon Dr Garcia and the Opposition have to say about the excellent news, announced only days after my attendance at the ROUTES Europe event in Sardinia, that bmibaby will start flights from East Midlands Airport in the UK to Gibraltar next March? Incidentally, this will add a further 13,700 seats in each direction from the UK for the summer of 2012.

In the last full year that the GSLP was in Government, the capacity in terms of seats to and from the UK stood at 218,900. In 2010, the capacity this Government has overseen was up to 363,900 seats. In other words, approximately 145,500 more seats than in 1995. Capacity in 2011 is already set to rise by approximately 100,000.

This Government has now delivered more routes to the UK and has secured more airline customers than any other Government. The detractors of Gibraltar's ability for its commercial air services to grow and to provide incremental business for our new air terminal, or indeed those that question the investment in the new air terminal, must now be feeling very sore.

Gibraltar's new International air terminal is rapidly taking shape, and looking all the more impressive. The Government continues to promote it, along with the benefits that the corresponding road and tunnel project will bring to the airline industry.

Monarch Airlines have stated that the new terminal has been an important factor in expanding operations to Gibraltar and

EasyJet have said this facility will be a great help to their operations to the Rock. These statements, from senior airline executives, have been ridiculed by the Opposition, which has had the gall to state that "the airlines have to work with the Government of the day". I can assure you that in such a cut throat industry, we should be under no illusions that airlines would make such statements lightly. A word of advice to the Hon Dr Garcia, when he makes disingenuous public statements, these are picked up and scrutinised by the decision makers in the industry who find these offensive and counterproductive.

As I said last year, I once again challenge the Hon Dr Garcia to make public the GSLP/Liberal Alliance aviation policy so that if, in his opinion, the Government has got it so wrong, we may learn from his enlightenment and experience on the subject.

## **COMMUNICATIONS**

### **Gibraltar Broadcasting Corporation**

As the Chief Minister stated yesterday in his Budget address, the Government will relocate GBC, in its entirety, to an area within Rooke. Significant investment will also be made in restructuring and enhancing staff, equipment and physical resources. The Government will build a new broadcasting centre, designed from scratch, with two radio stations, television, enhanced online services and office facilities, tailored to the very specific requirements of a modern broadcasting station. Following the recommendations made by the GBC Steering Committee, the Government will be implementing a number of proposals to enable GBC to better serve the community. As I stated in Parliament recently, Government will be making a full statement shortly. The new GBC will switchover from analogue to digital broadcasting and will meet its EU deadline of 31<sup>st</sup> December 2012. Investment in GBC is not simply about the requirement to switchover from analogue to digital broadcasting. The Government needs to do this anyway. The new GBC will

see real change taking place as a result of considerable investment in people, equipment and resources.

I have trouble understanding this year, as I did last year, how the Hon Mr Picardo has the nerve to continue raising the matter of public broadcasting in this Parliament, when it was the GSLP who totally ignored GBC when it was in Office. It is this Government that has taken the initiative, to transform GBC into a modern and well resourced broadcaster. I challenge the GSLP/Liberal Alliance, once again, to come forward with their policies on this matter. However, I truly suspect that they will do nothing or say nothing that will contribute anything to the future of our broadcasting services.

## **ROAD TRANSPORT**

Parliament will recall last year I briefed it on the launch of the Integrated Traffic, Parking and Transport Plan and of the Government's manifesto commitment in this respect. I am happy to report that works go on unabated and more projects within the Plan are nearing completion.

As I have already said, various segments of the Plan are already in place. The North District (Zone 1) of the residents' car parking scheme is already operational on a trial basis. Included in this Zone are Laguna Estate, Devil's Tower Road area, Catalan Bay and Both Worlds. Within each zone, parking facilities have been divided into four types namely:

1. Parking reserved for people who live within that zone. This is regulated by the issue of "Residents' Permits" and only holders of such permits are able to make use of the designated parking spaces;
2. Free parking spaces for cars available to everybody;
3. Free parking for motor cycles available to everybody;

4. "Pay & Display" parking spaces for cars, where parking is only available on purchase of a ticket. These are important and necessary to provide a fair balance between short term and long term parking.

Mr Speaker, Gibraltar Car Parks Limited, which is responsible for the policing and enforcing all Government's parking schemes, has now recruited 20 Highways Enforcement Officers. These officers are properly resourced to carry out their duties and have commenced patrol on the northern side of Gibraltar. Their duties include, amongst others, the management of street parking and meters, "resident only" parking schemes, traffic fluidity and the identification and removal of derelict cars from our streets. As part of their duties, they will be responsible for on the spot fines.

At last year's Budget session, I spoke of the imminent opening of the Trafalgar Interchange. I am sure that everyone agrees that this has been an outstanding success. Gone are the days of long queues of vehicles in the area. Traffic circulation has been significantly improved with the added advantage of the beautification of this part of Gibraltar.

Mr Speaker, October last year saw the opening of Brian Navarro Way and Dudley Ward Tunnel following the completion of major engineering works. This has created a ring road for Gibraltar and has been a major factor in improving traffic flow generally. Furthermore, a new road linking Europort to Queensway via Coaling Island is almost complete and will improve traffic flow and fluidity.

Another success story that I wish to highlight is the introduction of the "blue zones". This is the single blue line painted on the road that forbids all types of vehicles from stopping for any length of time. Evidence of the efficacy of this measure can be seen in such areas as the Trafalgar Interchange, Europort Avenue, Main Street by John Mackintosh Hall and Line Wall Road.

Indeed, Mr Speaker, the Government has progressed even further on the question of providing off-street parking by the award in May of a tender for the construction of two more multi-storey car parks: Arengo's Palace. This new car park will provide 211 car parking spaces on 14 split levels over 7 storeys. It is estimated to take 15 months to complete. The other car park will be situated at Engineer's Lane. This new car park will provide 200 car parking spaces on 5 levels and this is estimated to be completed within 18 months. These two car parks are a key piece of Government's parking solution for the Old Town area.

The second phase, Mr Speaker, of the Park and Ride car park at Devil's Tower Road will be completed by the end of August this year. This will increase parking by 654 spaces. Therefore, a total of 1,005 parking spaces and 16 disabled bays will be available in Devil's Tower Road.

Another part of the Integrated Plan that is progressing satisfactorily is the introduction of the Urban Smart Bike scheme, which in Gibraltar will be known as "GibiBike". This pilot project will initially have 21 bicycle stations located in key areas around Gibraltar, with 130 bicycles. Infrastructure works have commenced on many of the sites and Government plans to launch this Scheme in August.

The Government is already acutely aware of the needs of our beachgoers and has undertaken a refurbishment programme of creating tarmac parking spaces at Eastern Beach and Catalan Bay. Additionally, Eastern Beach has benefitted from a new promenade, landscaping and a new ball playing area and a children's playground.

I now turn to public transport. I am happy to report that the bus shelter replacement programme is now nearing completion. These new bus shelters represent a significant improvement over the old ones they replace. They are more spacious,

comfortable and are fitted with thermal insulated glass which makes them cooler in summer. Another measure that has been introduced is the banning of smoking in bus shelters. The Government published regulations last week making it an offence for people to smoke in a bus shelter. This measure was introduced following feedback from users.

On Saturday 28<sup>th</sup> May 2011, the Government introduced its new bus service. The old routes were reviewed and new ones introduced, which are more consistent with an efficient and modern bus service that provides for point to point transport. The new bus routes have as their main terminus the Market Place bus stop. The Government is aware that there may be room for improvement in the new system. The service is being kept constantly under review and the Bus Company has been instructed to keep a close watch on the entire operation and collate all comments and feedback. This will form part of the review process that will take place in about three month's time. Nevertheless, there has been an overwhelming positive response to the new service. Let me add that passenger usage has increased exponentially. By way of example, comparing a two week period from the 28<sup>th</sup> May to the 15<sup>th</sup> of June 2011 to the same period last year, there was an increase of 34 per cent in the number of passengers carried, from 90,802 to 121,673. Furthermore, the RGP has noticed a marked decrease in traffic especially at peak hours.

Government has also introduced a new revised edition of the Highway Code. This new booklet reflects changes and developments in traffic management and road safety. It also offers the latest road safety rules and practical advice to road users.

Administrative procedures for the replacement of the existing driving licences with a new photo card driving licence and the introduction of tachograph cards for buses and lorry drivers, is well underway. Furthermore, in line with EU requirements, the Government has introduced the Driver Certificate of

Professional Competence (CPC), which encompasses a new qualification for all professional bus and lorry drivers.

It is a pity that the Opposition spokesman for transport the Hon Mr Licudi has favoured the usual GSLP style of criticising all Government initiatives for the sake of it and offering no alternative policies. The Hon Mr Licudi's contribution yesterday clearly showed the GSLP/Liberal Alliance's lack of vision in tackling Gibraltar's traffic problems. I challenge him again to spell out the Opposition's policy on transport.

## **MARITIME SERVICES**

### **Gibraltar Maritime Administration**

The Gibraltar Shipping Registry's commercial fleet continued to grow in 2010, with a 4 per cent increase in ship numbers. In 2010, there were 49 new registrations, bringing the total number of vessels on the Gibraltar Register to 320. These vessels totalled nearly 2.2 million gross tons, with a mean average age of 11 years. This is a young fleet and ship owners continue to express confidence in the GMA, the Gibraltar Maritime Administration, by placing new ships on the Registry, even in times of tight financial constraints. This increase has been achieved without loss of value or quality within the fleet. Ships are constantly monitored and if they fail to meet the GMA's high standards, they will be encouraged to leave the Register. Gibraltar is continuing to climb up the Paris MOU "White List" and is now at number 20. This continued improvement is, in some part, due to the GMA's excellent reputation and customer service, but marketing also plays a major role. In these particularly difficult economic times, targeted promotional visits to areas where there are many owner/operators of ships registered in Gibraltar, are of particular value.

### **Gibraltar Yacht Registry**

An important milestone occurred with the transfer of the Yacht Registry from Companies House to the Gibraltar Maritime Administration. As at 31<sup>st</sup> March 2010, there were 736 yachts registered in Gibraltar. New legislation will shortly be brought to the House which will enable yachts over 24 metres in length, which comply with the internationally recognised Large Yacht Code, to be registered in Gibraltar. This will open a new and exciting market for Gibraltar's maritime services and, to this end, a surveyor has been recruited to carry out the surveys and inspection on these vessels. A promotional campaign is being worked on to attract these discerning owners to register their yachts in Gibraltar. This is an important sector with immense potential for the future.

### **Gibraltar Port Authority**

The Port of Gibraltar continues to consolidate its position as a leading international player and a major contributor, directly and indirectly, to the economy of Gibraltar.

Overall vessel arrivals were up 10 per cent from 10,042 in 2009 to 11,135 in 2010. Bunker calls were up from 6,712 to 6,724 in the same period. Bunkering volumes remained firm, given the fragile world economic market and all-time high oil prices. 4.32 million tonnes were delivered in 2010.

Revenue was up from £5.13 million in 2009/2010 to £6.2 million in 2010/2011.

The introduction of the Port Marine Safety Code and revisions during the year to the Bunkering Code of Practice and the Ship-to-Ship Code of Practice, have also contributed to the overall improvement in standards.

Port safety has been underpinned by a reduction in incident rates and the commissioning of the Vessel Traffic System

(VTS), which is delivering greater “visibility” to operations within British Gibraltar territorial waters. This capability supports law enforcement agencies, who maintain the integrity of our waters. The system also supports local users by enhancing search and rescue facilities. It has also enabled data to be fed directly into the European Safe-Sea-Net database, which allows a global picture to be achieved for Government Agencies, to monitor vessel operations around European shores.

It is planned to make services more user-friendly for all the Port’s customers, by introducing Electronic Banking and payment for all services, via the internet. Electronic payments will be complimented with an E-Information system, enabling ships agents and port operators to gain access to port information.

The platform for these e-commerce proposals will be a new website which is planned to come online at the end of the year. This new website will focus upon Gibraltar being a centre of Maritime Excellence, incorporating the Gibraltar Port Authority, the Ship Registry and the Yacht Registry.

This year the Port was externally assessed for security compliance by the EU; its Safety Management System by external auditors Marico Marine and the International Maritime Organisation, the IMO. The Port was found to be compliant.

The Port continues to invest in training and recruiting personnel to meet the demands of the future.

Mr Speaker, at this point, I would like to pay tribute to the late Captain Tom Naughton, Deputy Captain of the Port, who sadly passed away earlier this year after a very short illness. Tom was only in Gibraltar for a short period of time. Yet, he loved the place so much, that before he passed away, he expressed a wish that his ashes should be scattered in the Bay. A service is being organised by the Gibraltar Port Authority in October. My sincere condolences go to his family and friends.

Mr Speaker, the Port has seen the consolidation of ferry services between Gibraltar and Algeciras and Gibraltar and Morocco. The Gibraltar Algeciras link will be further enhanced by the provision of a regular RoRo cargo service later this year.

The future of the Port looks positive. In 2012, North America becomes an Emission Control Area which means that ships sailing into that region will be obliged to use low sulphur fuel. As Gibraltar is “the last stop” for east-west shipping traffic through the Strait, this should boost bunker sales locally.

### **Bunkering on the East Side**

As the House is aware, the Gibraltar Port Authority is currently considering proposals to allow bunkering activities on the east side of Gibraltar. An Environmental Impact Assessment (EIA) to assess the impact of such activity is currently being undertaken. The consultation and technical process to consider and study the viability as well as identifying the likely potential impact of the proposal commenced in September 2010. The Gibraltar Port Authority engaged Gifford’s (Gibraltar) Ltd, a specialist engineering firm, to conduct a Screening and Scoping Study to identify whether a full EIA is required under the Town Planning (EIA) Regulations 2000 and the Nature Protection Act. During the time that the Study was being undertaken, consultation was carried out with the Department of the Environment, GONHS, the Nature Conservation Council, the Gibraltar Museum, Sub-Aqua Club, Environmental Safety Group and the Gibraltar Federation of Sea Anglers. The Study determined that an EIA was required and it identified the issues that needed to be included in the scope of the EIA. It also established the protocols for a consultation process with those stakeholders which have an interest in the area and took into account the proximity of the proposed east side bunkering to the Southern Waters of Gibraltar’s Special Area of Conservation. The Government is conscious of the views expressed by the various consultees and the interest of the bunkering industry. Therefore, the Government wishes to announce that when the



EIA is completed this will be published and it will encourage public debate on the issue. A Government decision will be taken thereafter.

### **Municipal Berthing**

The Government is pleased to announce that it has taken the policy decision of constructing a municipal berthing facility for local boat owners in the area running parallel to the runway, adjacent to Marina Bay. The project will provide 232 new moorings and is being developed in consultation with the Watergardens and Western Beach Small Boat Owners Committee. This new project will enable the Government to accommodate boats that are currently on the hard, as well as reducing the current waiting list substantially. Subject only to technical issues, work on the new facility will commence before the end of the summer. The new facility will be in addition to the one currently located at Watergardens, which, following a request made by the Committee, will remain in situ for as long as the current users require it.

### **OVERALL**

Mr Speaker, in my contribution today, I have talked about policy, vision, responsibility and the future. These issues are the building blocks of any serious Government. After listening for nearly two days of contributions from the hon Members opposite and Dr Garcia's still to come, I have heard no mention of these issues. Not even a policy statement. All the GSLP/Liberal Alliance does from the Opposition benches, is to try and rubbish the achievements of the GSD Government. What are the building blocks of the GSLP/Liberal Alliance? I would really like to know because I find no substance in their contributions.

The GSD Government has been, and always will be, about the people of Gibraltar and its future.

The GLSP did considerable damage to Gibraltar's international reputation during the dark days they were in Government. This is a fact. The GSLP/Liberal Alliance is now trying, with everything they have in their arsenal, to get back into Government. All I can say is that the electorate does not suffer from amnesia. The electorate will not be fooled by believing that the GSLP/Liberal Alliance today would be any different to what it was 16 years ago when the GSLP were in Government. History should not be allowed to repeat itself. These were difficult days for Gibraltar.

Mr Speaker, in the run-up to an election, I am surprised that the GSLP/Liberal Alliance continues to try to discredit the impeccable reputation of our Chief Minister as a leader, and rubbish the excellent achievements of the GSD Government over the last 15 years instead of putting forward what they stand for and setting out their policies.

Gibraltar cannot afford a change of Government at the next election, Mr Speaker.

### **HON DR J J GARCIA:**

Mr Speaker, I will be making my contribution seated, as I did last year, with your leave.

### **MR SPEAKER:**

Yes.

### **HON DR J J GARCIA:**

A general election is just round the corner and this is very apparent from this budget. Whereas in other years, social insurance, rates, electricity and water have gone up, this time

they have not. This has taken nobody by surprise. It has also fooled no-one.

This Government increasingly gives the impression, as the election draws closer, that they are desperate to cling on to power no matter what it takes. This has come across in almost every Budget address that has been delivered from that side of the House this year. The reality, Mr Speaker, is that when the electorate are fed up of a Government, they are fed up and there is little that the incumbent administration can do to hold back the tide.

Before I move on to my parliamentary portfolio, I would like to say a few words on another matter that has reared its head at Budget time for the last two years. Mr Speaker, the nature of the incursions by the agencies of the Spanish state into the territorial waters of Gibraltar are now even more serious than when I raised this issue in the Budget of 2009. That same year, in December, Civil Guards entered the Port of Gibraltar and landed on our soil. In September last year they removed a suspect from RGP custody in the Bay. They have interfered with military exercises and with calls by naval vessels. In another incident, the Spanish navy ordered a vessel berthed on the east side to move away on the basis that it was in Spanish waters.

This is totally unacceptable and it cannot be allowed to continue. There are two issues here. The first is that we know that the United Kingdom is responsible for the defence of Gibraltar and for maintaining the integrity of British sovereignty. This they must do. The second is that those foreign agencies cannot be allowed to exercise jurisdiction inside an area of sea which is not Spanish. Mr Speaker, the Government have said in the past that this is Gibraltar's responsibility and not that of the UK. Spain's attempts to exert jurisdiction has happened time and again. The Guardia Civil have stopped persons on pleasure boats and asked for their documents. They have had no hesitation in clashing with the Royal Gibraltar Police and other

agencies in their continuing attempts to assert Spanish jurisdiction in British Gibraltar territorial waters. The Opposition fully back and support the actions of the Royal Gibraltar Police and the assistance rendered by the Gibraltar Defence Police, Customs, the Port and the Royal Navy. The RGP, in particular, have been on the front line and faced the Guardia Civil often with inferior resources. It is unacceptable, Mr Speaker, that the upgrading of Gibraltar's maritime capability, which the Government identified was necessary in 2009 has still not happened in 2011, even though, as I said earlier, the situation is now worse than it was then.

The Chief Minister has given the impression that his reference to increasing the maritime capability of the Government, made in 2009, was in the context of the planned new Borders and Coastguard Agency. Given that no reference to such an Agency was made in the Budget of 2009 or indeed in the Budget of 2010, this is very odd, particularly when the comment was made in the context of the maritime resources available to the agencies in existence at that time.

Encouraged by the cavalier attitude of the Spanish law enforcement agencies, and backed by the policy of the Spanish Government on this matter, we have now also seen other private Spanish citizens take to the sea and harass beachgoers, for example, in Camp Bay. Mr Speaker, people are entitled to make use of our beaches without having to endure harassment of this kind. It is obvious that the situation is poised to degenerate even further. The danger now is that what may have started as issues of sovereignty and jurisdiction could evolve into issues of public safety and security as well.

Mr Speaker, I now move on to tackle some of the issues for which I am responsible in this House. I start with tourism and note that the Chief Minister this year chose to say nothing on the subject.

## **TOURISM - Statistics**

Mr Speaker, the production of accurate and up to date tourism statistics continues to be an issue. The world has changed. We now live in the age of the internet where people want instant access to information in order to be able to take business decisions. In this context, it is obvious that these tourism statistics, as indeed other figures, need to be reliable and available within a reasonable period of time. This would allow players in the industry to plan ahead, to market and to budget accordingly.

The latest official figures for Gibraltar which have been tabled in this House are for 2010. We are now half way through 2011. There are places where figures are made available sooner. There are business people out there who want to analyse last month's statistics as opposed to what happened six to eighteen months ago, which is what we are doing now.

This is not to say that there have been no improvements. In the past, the Opposition has acknowledged that the increase in the sample of those questioned for the tourism survey, for instance, is a positive development. I also welcomed the principle behind the Minister's decision to exclude frontier workers from the figure for arrivals by land. This was something that the Opposition had been pointing out for many years. However, we did not quite agree on the merits of the formula that was used in order to achieve this end when this was discussed in this House during Question Time.

Mr Speaker, there continue to be obvious anomalies. The figure for cruise passenger arrivals refers to the number of passengers on board the vessel, as opposed to the number of people who actually disembark. More significantly, although an attempt has been made to account for frontier workers, there has been no attempt made to take into account other people who arrive by land and who are neither tourists nor frontier workers.

For example, the indications are that the number of people who are coming in to purchase two specific products, namely tobacco and petrol, is on the increase. This has coincided with a serious unemployment problem in Spain which is even worse in La Linea. This trend is reflected in the figures for import duty, which although not broken down by item, has shown a huge increase from an actual of £61.2 million in 2009/2010 to a forecast outturn of £90.8 million in 2010/2011, an increase of nearly £30 million in one year. This is matched by a corresponding increase in the figure for the number of people coming into Gibraltar by land from 9.7 million to 11.1 million. It is surely no coincidence that the surge in import duty is matched by a surge in arrivals by land.

I know that this was an issue that the Hon Mr Britto referred to in his address and he asked what should we do with these people? Should we turn them away? No, Mr Speaker, the answer is they should not be counted as tourists in a tourist survey and this is probably why the visitor arrivals by land have gone up.

The point is, Mr Speaker, that in the same way as frontier workers are not tourists, neither are the people who come in through the border to purchase tobacco and petrol. In the case of the former, there is room for considerable distortion given that the same person can cross in and out of Gibraltar several times a day and be counted four or five times in the arrival figures each day. This is something that needs to be looked at in order to arrive at reliable statistics of visitor arrivals by land.

## **TOURISM - Air: Civil Aviation**

Mr Speaker, it has long been our policy that Gibraltar Airport should be developed further by encouraging flights from regional airports in the United Kingdom. This is why we have always welcomed any move to establish new routes from such airports. This is something that did not require a new air terminal and that certainly did not require a political agreement or, an airport deal, with Spain.

It is obviously a matter for regret that the Government have taken so long to move in this direction. I remember, shortly after I started to shadow tourism, that the then Minister came back from a conference saying that he had been in contact with sixteen or seventeen new airlines. However, nothing further was to materialise and the Government stopped attending these conferences completely until a couple of years ago. This change in policy obviously reflected the need to justify the expense of the new air terminal by attracting more business. We will never know what would have happened if this process had been started sooner and independently of the new air terminal. It is likely that Gibraltar might have been in a better position today.

It was therefore interesting to listen to the Hon Minister Holliday, responsible for aviation, on Newswatch when he said recently that the market for Gibraltar was regional airports in the United Kingdom. He added that the wider European market was very difficult as this depended on commercial viability and could take a while. Mr Speaker, if only they had seen the light sooner and not after fifteen years and tens of millions of pounds!

It is a fact, Mr Speaker, that for most of their term in office from 1996 there have been less air routes to and from Gibraltar airport than there were when they were first elected into Government. In other words, there has been little or no growth in terms of air routes over the last 15 years. Indeed, even now in 2011 there are flights to five destinations Heathrow, Gatwick, Luton, Manchester and Liverpool. There were also five destinations in 1996. We expect there to be six next summer when flights commence to East Midlands Airport. Mr Speaker, there can be no denying that it has been a slow and painful process and that even now there are still no air links between Gibraltar and Morocco or even between Gibraltar and Spain despite the fanfare that greeted the establishment of the route to Madrid in December 2006. This all seems a very distant memory now.

Moreover, it is also important to bear in mind that air arrivals fell by 30,000 in 2010. This represents an 18 per cent drop on the 2009 figure and is lower than 2008, 2007, 2006, 2005 and 2004. We clearly need to catch up and any movement forward, as I have said before, will initially be in order to stand still.

It is obvious, Mr Speaker, that each and every new airline that increases capacity or routes, as well as any new ones that come in, have rehearsed very carefully the line that their expansion is partly or entirely due to the new air terminal building and this is probably the point that the Minister was referring to but he has not quite grasped all of it. The reality of the business world is that they will only come here if they can make money. The primary consideration is the commercial viability of the route and not the size or the scale of the air terminal at the Gibraltar end of that route. Indeed, it was amusing to hear one of these airlines say in November 2010 that their decision to open a new route to Gibraltar had nothing to do with the new air terminal but to change their tune in February 2011 by which time it was described as a great help to their operations. The point was the change in position which is what I am referring to. Like I said, Mr Speaker, it was well rehearsed.

We need routes that will prove to be solid, reliable and there for the future. Flights to Madrid and Barcelona have already proved to be a non-starter commercially. The Madrid route has now been tried by three different airlines. Even the Manchester route has been discontinued two times since 1996. Therefore, when the Government make announcements of new routes and new airlines just before a general election, no doubt in order, in part, to save their political skin and justify the enormous cost of the new air terminal. We should always bear in mind that such routes should endure the test of time.

Mr Speaker, people fly to a tourist destination for the product, they do not fly here for the air terminal. In other words, I know of nobody who sits at home with a tourism brochure or looks at what a destination has to offer on-line and then decides whether

to go there or not on the basis of that country's air terminal. It is simply unrealistic and self-serving to pretend otherwise. Moreover, it is also a mistake to see the terminal as a gateway for tourism to Gibraltar, although there may be a spin-off effect. The fact is that in 2009 no less than 62 per cent of visitor air arrivals went to Spain. In 2010 this went up to 67 per cent. They did not come into Gibraltar. They did not stay in our hotels and did not contribute to our economy in a significant manner. There are no indications that this is going to change and the percentage of visitor arrivals going to Spain continues to go up.

Indeed, there is a risk that this percentage will increase even further once the building adjacent to the air terminal has been constructed on the Spanish side. This is because we will then make it easier for air passengers to fly to Gibraltar and then bypass Gibraltar completely. The irony is that the taxpayer will have paid handsomely to the tune of millions and millions of pounds for this to happen. In this context, more flights, more airlines and more routes will only mean more people flying to Gibraltar in order to go straight to Spain.

Having said all this, the fact is that the air terminal debate has now been overtaken by events to the extent that the building is there and we are now stuck with it whether we like it or not. While it is possible to argue that the old terminal could have done with a facelift, even with an expansion or modernisation, it is a huge leap to go from there to the massive scale and expense of a new terminal at a different location next to the frontier fence.

It is worth pointing out that last year there were about 130,000 visitor air arrivals in 2010. The air terminal at Jerez, for example, handled 1.05 million passengers in 2010 and yet it is proportionately smaller than Gibraltar's new terminal. The air terminal renovation works there cost 15.8 million euros and it can handle a maximum of 2.8 million passengers annually. We have a terminal designed to handle a maximum of about a

million passengers a year in a project that has cost at least four times more.

Moreover, a comparison with a regional airport in the United Kingdom serves as further proof that things could have been done differently or for considerably less money. London Southend is a small regional airport in Essex. In 2008 there were about 48,000 passengers travelling through it and the forecast is that about 1 million are expected to do so in 2012, coinciding with the London Olympic Games. The airport is owned by the Stobart Group, a trucking firm. They paid £21 million for it in 2008. The Group has just invested £60 million on a new control tower, a runway extension and a railway station. The £60 million also included, apart from all that I have just read out, the construction of a new air terminal with a capacity to handle at least 700,000 passengers per year. Mr Speaker, in Gibraltar the £60 million has barely bought us the terminal alone.

This issue is indeed a matter of judgement and of spending priorities. The present Government have chosen to spend tens of millions of pounds on the terminal and on associated works and relocations. We would have spent a fraction of this amount to improve the existing facility where needed.

## **TOURISM - Upper Rock**

The basic point, Mr Speaker, is that tourists come to Gibraltar for the product. The centrepiece of that product is the Upper Rock itself. This has suffered from years of neglect and under-investment, with some comparatively recent refurbishment as the election draws closer. It is obvious that for many years the Government has regarded the Upper Rock as little more than a money-making machine. The House knows that in the financial year 2008/2009 only £25,000 was spent as capital expenditure on the Upper Rock when in that same year over £2 million had been raised in revenue. In 2009/2010 £300,000 was spent, yet in 2010/2011 the estimate was revised downwards to £100,000.

This represented a cut in public expenditure on the Upper Rock of 33 per cent.

It is now impossible to tell what the exact estimate for Upper Rock investment is going to be because in the financial year 2011/2012 the sub-heads have been merged. In the financial year 2010/2011, the relevant sub-head which was then called "Upper Rock Tourist Sites" was merged with Head 101 Departmental, subhead 1(l)(ii) called "Other Sites". This still allowed the Opposition and others to deduce how much was being spent on the Upper Rock. However, from 2011/2012, in the Estimates now laid before this House, the merged heading "Other Sites" has itself been included in Head 101 sub-head 1(d) called "Other Departments, Agencies and Authorities". The end result is that it is no longer clear, at a glance, to deduce how much, or how little, the Government plan to spend from the Improvement and Development Fund as capital investment in the Upper Rock.

Mr Speaker, in 2005 the Government trumpeted a £2 million three year improvement programme for the Upper Rock. The figures show that the House voted £1.8 million in that time, of which only £710,000 was spent.

The consequences of this lack of investment over the years has been highlighted by others also. It is not only us, not only the Opposition who are saying it. A Chamber of Commerce annual report complained precisely about this and added that our tourist product looked increasingly tired and reflected a lack of innovation in tourism in product development. It went on to say that "tourism requires a higher rung in the priority ladder of the Government." A survey conducted by the Federation of Small Businesses expressed similar sentiments. It said that "Gibraltar must start to take our tourism product seriously". It pointed to "a lack of significant investment" and it declared that "some of our best products look tired at best and third world at worst." In March of this year, pictures of the Upper Rock, which were posted on the internet, showed an abandoned car which had

been stripped down and dumped, metres of wire fencing rolled up and abandoned by the side of the road, World War 2 structures filled with rubble, falling to bits and used as a latrine and no regular road maintenance. The plaque where Her Majesty once stood in 1954 was dilapidated and the ornamental stone framework so overgrown that it could hardly be made out. These pictures were taken in March 2011, Mr Speaker, and they speak for themselves.

Mr Speaker, the Government have already confirmed that they see the creation of an Upper Rock Authority as the way forward. They have also said that an Upper Rock Holistic Management Plan is being produced. It has taken them fifteen years to arrive at this conclusion, Mr Speaker. This is too long and is not good enough.

## **TOURISM - Hotels**

I now move on now to hotels. Mr Speaker, 2010 was a bad year for the hotel industry. The official figures are, in certain categories, the worst that I have seen in the twelve years that I have been shadowing tourism. Arrivals at hotels in 2010 are the lowest since 2005 and down by 6,000 on the 2009 figure. The number of tourist arrivals in 2010 were 37,500. This is the lowest figure since the year 2000 and down from 44,500 in 2009. Tourist sleeper occupancy is the lowest since 1996 at 24 per cent and overall sleeper occupancy is the lowest since 1997 when it stood at 42.8 per cent.

Mr Speaker, the Hon Minister for Tourism gave a list of reasons to explain the drop in arrivals none of which were obviously connected to his Government or to their policies. They included the Iceland volcano, the economic crisis, strikes, poor UK weather and issues with airline capacity. The point is, Mr Speaker, that the same issues would have obviously affected everywhere else as well and that other places still did better than us.

For example, in this context, it is relevant to note that at a time when Gibraltar's hotels enjoyed 49.5 per cent occupancy, 27 per cent tourists, in August 2010, hotels in nearby Spain were doing much better. In what is traditionally a peak month, Tarifa enjoyed 94 per cent occupancy, Algeciras 82 per cent, La Linea 81 per cent while Gibraltar enjoyed 49.5 per cent. Therefore, it is not possible to claim that international trends are responsible for this situation given that other places nearby did much better than us.

It was quite incredible, Mr Speaker, that, against this background, the Government chose to pay 180,000 euros for a cruise liner to host 340 athletes and others in 200 cabins during an international sporting event that took place in Gibraltar. There should have been better planning and coordination with the hotels who ended up with an average of 237 free rooms when that event took place. It is clear that event-led tourism has assumed even greater importance in attracting visitors to stay in our hotels and occupy beds and rooms. The success of the annual international chess tournament hosted by the Caleta Hotel is a case in point. This is an example of how things should be done.

### **TOURISM - Marketing**

Mr Speaker, the reality is that in order to make our tourist industry work we need to have the marketing right. The Government have spent about £12 million on tourism marketing alone since 1997/1998. There is plenty of room for improvement.

It is obvious that the world has changed since they came into office in 1996. There are more and more people who choose where they go on holiday on-line and it is important that Gibraltar's marketing focus also moves in this direction. When I typed in the words "hotels in Gibraltar" into the internet search engine "Google", some time ago there was no GTB listing coming up in the first page. The website Bookings.com showed

seven hotels none of which were actually in Gibraltar and Tripadvisor.com showed ten hotels, only two of which were in Gibraltar. The rest were in the Campo de Gibraltar or as far afield as Algeciras. Indeed, some time ago someone else sent me a similar search on Expedia which showed 21 hotels only 3 of which were in Gibraltar.

It is clear that our marketing has to evolve along with customer trends. Given that more business comes on-line than from trade fairs, it would make sense to reassess the way in which Gibraltar markets itself directly to its customers.

We have often said that the marketing of Gibraltar over the years has been haphazard and inconsistent. For example, in 2003 the Government spent £72,000 attending the World Travel Market. The following year they decided not to have a stand at the exhibition at all on the basis that the new location in Excel in Docklands, outside the centre of London, was not suitable. The Minister still travelled for pre-planned meetings but there was no stand. This remained the position in 2004, 2005 and 2006. However, in 2007 the Government changed their mind and decided to have a stand once more even though the reasons that had been given for not having had one for the previous three years were still valid. This is symptomatic of the way in which the marketing of Gibraltar has been handled.

The basic point is that the marketing has been inconsistent and haphazard. Its effects have not been monitored. In addition to this, value for money does not appear to have been a consideration.

### **TOURISM - Cruise calls: Port issues**

Mr Speaker, the effect on cruise calls in the wake of the explosion in a sullage plant next to a cruise ship that rocked the North Mole at the end of May remains to be seen. The Minister has said that there was no effect, in the sense that there were no cancellations and obviously we welcome that. The

Opposition certainly hopes that it will have no effect and that cruise liners will continue to call here into the future as they have done in the past.

However, the incident has served to throw the spotlight on many aspects of Government policy, not least the mixed use of that section of the North Mole for both cruise passenger calls and for industrial activity. It has emerged in the aftermath of the fire that the operators of the sullage plant had already secured planning approval from the Government to dramatically increase their capability. Reports point to the fact that plans were well underway to expand the facility from 7000 cubic metres to 12,000 cubic metres of tank storage for which planning permission had been obtained and building control approval was being awaited.

Mr Speaker, the Government have announced, at the same time, the expansion of the cruise liner terminal in the North Mole. The Minister, the Hon Mr Holliday, told a cruise conference recently that plans had already been drawn up to expand and refurbish the Cruise Terminal. He also said then that these plans would now take into account the Government's longer term goal to turn the Western Arm into a dedicated cruise facility.

The conflicting demands of these two types of business could not have been brought into sharper focus than by the explosion and fire in May. It is also very odd that, in his capacity as Chairman of the Development and Planning Commission, the Hon Mr Holliday approved the granting of planning permission for an extended sullage operation at the North Mole in December and then, wearing his hat as Minister for Transport including cruises, plans have also been advanced to expand and refurbish the Cruise Terminal as well. The Government are on record as having said that they will use all the powers at their disposal to prevent the commencement of operations by the operators of the sullage plant. It is already peculiar enough that there should be an apparent contradiction in Government policy

with regard to this matter. It is beyond belief that at the heart of these conflicting decisions is not only the same Government, but incredibly the same person who as Chairman of the Development and Planning Commission approved the expansion of the sullage plant, as the Minister for Transport took the policy decision to expand the cruise terminal and as Minister for the Port presided over the presence of the sullage plant and the Cruise Terminal in the same place.

Mr Speaker, regardless of what may happen with cruise liner calls in the future as a consequence of this incident, an analysis must also be conducted of what has occurred in the past. The Government will continue with their well-worn mantra to the effect that Gibraltar is the best cruise Port in the Mediterranean, if not the world. The reality is that there is plenty of room for improvement.

There has been a drop of 26 per cent in the number of cruise ships that called at Gibraltar in 2010, when compared to 2009. In other words, while there were 238 cruise calls in 2009, this dropped to 175 last year. The number of tourists coming to Gibraltar on a cruise liner, which is the point the Hon Minister was making earlier, but they also suffered a corresponding drop of 12.5 per cent. This fell from about 348,000 in 2009 to about 304,000 in 2010.

This negative performance, however, is not part of a wider trend which is affecting different cruise ports in the region. While Gibraltar lost 63 cruise calls, Malaga gained 20 ships and stood at 321 in 2010. Passenger numbers in Malaga went up by 35 per cent. A similar picture was reported in the Port of Cadiz where cruise calls went up by 33 per cent and cruise passengers went up by 42 per cent.

So at the same time as Gibraltar went down, Malaga and Cadiz both went up. The tragedy is that ports like Malaga and Cadiz started years ago, well behind Gibraltar in this respect and that we have now been overtaken and outperformed. The Opposition want Gibraltar to do better and to attract more cruise



ships and more passengers. These are high spending tourists who then contribute to our economy. Sadly, the picture in 2010 was not one of growth. The Government have pointed with optimism to the figures for cruise bookings for 2011-2012. They know, as well as I do, that what matters are not the bookings but the actual calls that materialise in the end.

In relation to yacht arrivals, Mr Speaker, I do not want to say much other than there was a significant drop of 233 in 2010 when compared to 2009. Indeed, the 2010 figure of 3,189 yachts is the second lowest number of yachts calling at Gibraltar since 1996. I wish to take the opportunity to draw attention to the comments made in the Report of the Principal Auditor regarding yachts. Mr Speaker, the Principal Auditor has said that there is no system to allow the Port Department to verify the accuracy of returns submitted by the marinas on the number of berths. The abolition of the yacht reporting berth in 2005 has meant that the Port cannot check on arrivals independently and that this function now lies entirely in the hands of the marinas. This was a measure that the Opposition voted against at the time and the Principal Auditor has now also reflected the concern that exists on this matter.

In relation to the Port, Mr Speaker, it does not make any sense that most of the staff in the administration office were sent on a paint-ball shooting excursion in Spain at a time when there were three cruise liners in Gibraltar. The Minister has described this as “team building”. It is obvious that if the Government wanted to pick a day for staff bonding in the Port Authority, then they clearly picked the wrong day. There are complaints from Port operators at the short notice that they were given of this closure which the Minister has confirmed was done “by word of mouth”.

Mr Speaker, in the light of the explosion and fire at the Port only a couple of weeks later, with a cruise liner alongside, it was obviously not a good idea to close down the offices when there were three cruise liners in Port. The Opposition understands that there were two liners alongside and that one was using

tenders to ferry people to and from the mole. The Port Advice List of shipping movements for 13<sup>th</sup> May 2011 shows that the Grandeur of the Seas left at 6.00pm, the Star Princess left at 4.00pm and the Saga Ruby at 7.00pm. The Port office closed at 1.00pm on that day. This was not a wise move and it does raise serious safety and security issues.

It was unfortunate that, following on so closely from the accident that affected the Independence of the Seas, a passenger on another Royal Caribbean vessel, the Grandeur of the Seas, suffered an accident in the area of the Cruise Terminal. It has been reported that this person leaned on a crash barrier to recover her balance causing it to topple over and injure herself. The barrier was free-standing and not linked together forming a chain.

Mr Speaker, it is obvious that a health and safety assessment could have spotted this and saved considerable time and trouble to all concerned. However, the end result is that Gibraltar's Port received negative international publicity for the second time in a month.

## **TOURISM - Expenditure**

Mr Speaker, as the House knows, the tourism arrival figures by land, air and sea are transposed into the tourism expenditure figures and from there into a whole host of economic data for Gibraltar. The Expenditure Survey reflects this situation drawing on the information provided by the sample of tourists who are questioned.

The reason why we want tourists to come to Gibraltar is because of the money that they spend in our shops, restaurants and other services. It was mentioned earlier that the tourism expenditure figure has grown to a record of £286 million in this last year 2010. In 1996, Mr Speaker, the year in which the GSD came into office, this expenditure stood at £181 million. This

means that there has been a growth of 58 per cent in the amount spent by tourists in Gibraltar during their time in office.

However, in 1988 tourism expenditure stood at £43.3 million. As I have just said, in 1996 the figure was £181 million and the House should note that this was also a record in its day. This means that the growth in expenditure terms from 1988 to 1996 was 319 per cent. It was nearly six times greater under the previous administration in half the time than it has been under the present GSD administration, even though millions and millions of pounds have been spent on marketing Gibraltar since they came into office. It is worth highlighting the point that even the Minister for Tourism has said that the monetary contribution made by tourists is at the end of the day what counts.

## **HERITAGE**

Mr Speaker, I now move on to heritage matters. The Opposition continues to be critical of the planning policy of the Government and the way in which they have conducted the allocation of former MOD lands and buildings. Both an inadequate planning policy and a failure to tighten the tender conditions have put at risk a number of former MOD properties at the same time as others have been razed to the ground. This is an issue that the Opposition has complained about many times in the past, both inside and outside this House, and it is inexcusable that this procedure has not been tightened up. These buildings are part of the heritage and character of Gibraltar and we cannot afford to lose them all in this way.

This year, Mr Speaker, I would like to move the focus to the fortifications of Gibraltar. These are the walls, the bastions, the batteries and other defences which are located all over the Rock. There has already been concern expressed in the media and by the Heritage Trust and others at the degree of vandalism which has taken place in some of these areas. It is clear that in many cases access to the sites has been made easier by the lack of an adequate perimeter wall or fence. In other words, the

Government have failed either to make the site secure or to ensure that any defects in security are promptly addressed.

In a recent newsletter, the Heritage Trust echoed concern at the state of the Devil's Gap area and in particular the battery itself. They said that this site has been subjected to vandalism and graffiti and that they intended to restore it. The Trust asked the Tourist Board for assistance in making it secure so that the refurbishment works could go ahead in a secure site.

The Northern Defences have also been vandalised after persons obtained access through a hole in the fence. Indeed, the Trust pointed out that it seemed that some kind of rave or party had taken place with hundreds of bottles strewn all over the place and an enormous amount of rubbish. Again, they asked the Government to clean up and secure the site.

The Minister earlier referred to problems with vandalism at Forbes Quarry and Stay Behind Cave which we understand are now going to be protected. It is obvious that this protection should be extended to other areas.

But, Mr Speaker, not all problems are caused by vandalism. There is a complete river of mud inside some of the tunnels in the area of Hanover Gallery and Star Chamber which are linked to each other. The mud is pouring down due to the lack of maintenance and neglect and when it rains, the accumulated rubbish is washed in.

The Opposition understands that there are parts of the defensive network which have been eroded by rain. The lower communication tunnels are full of cables and rubbish. This is an area that is steeped in history and which is neglected and lying to waste. Some tunnel walls have been broken by tree roots and this can clearly be seen inside the tunnels themselves where the roots poke out of walls and ceilings. There are packets of crisps, empty drink cans and chocolate wrappers all over the place.

The House will recall that a group of Spanish tourists actually broke into the old Moorish Castle complex. They took extensive footage of the area and placed it in "Youtube" for the world to see. This is another breach of security in an area of high historical value.

Mr Speaker, we have a duty to preserve and protect our heritage and pass it on from generation to generation. It is totally unacceptable that so many of our fortifications find themselves in such a state of decay and disrepair.

## **CONCLUSION**

In conclusion, Mr Speaker, let me say that there remains much more to be done.

The Government, in a transparent and desperate attempt to cling on to power, have unleashed a bonanza of goodies in this Budget on the electorate. The reality is that many people can now see through this. The indications, Mr Speaker, are that no matter what they say and no matter what they do, their time is up. The way it looks, people will say thank you very much, take what they have been given, and then throw them out. It happens to all Governments.

I would like also, Mr Speaker, in passing, to take this opportunity to associate myself with the comments made by my Hon Friend the Leader of the Opposition regarding the retirement of the Hon Mr Britto. It has been a pleasure to work with him, or perhaps against him, and in many ways he has set an example of what a Parliamentarian should be.

I also take this opportunity to thank you, Mr Speaker, as well as the Clerk and the staff of the Parliament and for the assistance they have provided over the year. Thank you.

## **ADJOURNMENT**

### **HON CHIEF MINISTER:**

I have the honour to move that the House do now adjourn to Wednesday 6<sup>th</sup> July 2011 at 3.00 p.m.

Question put.                      Agreed to.

The adjournment of the House was taken at 2.13 p.m. on Tuesday 5<sup>th</sup> July 2011.

## **WEDNESDAY 6<sup>TH</sup> JULY 2011**

The House resumed at 3.00 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 and Communications  
The Hon J J Netto - Minister for Family, Youth and Community  
Affairs  
The Hon Mrs Y Del Agua - Minister for Health and Civil  
Protection  
The Hon D A Feetham - Minister for Justice

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

### **OPPOSITION:**

The Hon F R Picardo - Leader of the Opposition  
The Hon J J Bossano  
The Hon Dr J J Garcia  
The Hon C A Bruzon  
The Hon N F Costa  
The Hon G H Licudi  
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 a report on the Table.

Question put.                      Agreed to.

### **DOCUMENTS LAID**

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

I have the honour to lay on the Table the Annual Report of the Gibraltar Police Authority for the year ended 31<sup>st</sup> March 2011.

Ordered to lie.

### **THE APPROPRIATION ACT 2011 (continued)**

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

Obliged, Mr Speaker. Well, Mr Speaker, it is a very hot day. I am told that temperatures are at near record levels but I fear that they are going to rise a little bit further during the course of the afternoon.

Mr Speaker, once again we have a series of addresses in this House by hon Members opposite which fail to acknowledge, to any material degree, what everybody else in Gibraltar can see for themselves and instead limit themselves to a few isolated areas of criticism. A few areas where the Government has not got round to fulfilling its manifesto commitment and seeks to disparage, almost disqualify, the huge progress that Gibraltar has made every term under this Government, including this term, including this last twelve months. All of it counts for nothing as far as the hon Members are concerned.

I think it would give them much more credibility if they were to acknowledge the progress. Acknowledge the achievements and then they would have more credibility when they do make criticisms. So, Mr Speaker, we have had the usual array of points by the hon Members. Some of them appear to have been taken out once again from last year's speech, dusted it down, or not in some cases, and just make the same old tired and boring points all over again.

My Learned Friend Mr Costa has not been an exception. His usual line is, do not look back because people are not interested in the past, people are only interested in the present or in the future. Well, Mr Speaker, even overlooking the fact that you cannot ignore the past because you do it at your peril by risking a repetition of history, it would be nice if at least the hon Members lived by their own mantra of not looking to the past. Never mind his colleagues, he himself based almost his entire criticism of the Government's huge performance on health and care services by looking back to a handful of cases to base his argument that because he says we have failed the vulnerable in the past, effectively, we should not be trusted with their needs in the future. So it seems to be alright even for Mr Costa to look to the past to make his political argumentations but somehow he seeks to legitimise when the Government itself looks to the Opposition's past when they were in Government. Well, Mr Speaker, as somebody who was not afflicted by the history of the GSLP when they were last in Government, we on this side of the House, entirely understand why he would wish to make that mantra stick.

His colleague, the always illuminating Mr Linares, appears to be stuck, not just in the past, but indeed on the same subject in the past. I mean, how many times is this House and the people of Gibraltar going to be treated to his lecture about the Theatre Royal and how many times is he going to refer us back to one painting in one art exhibition, goodness knows how many years ago about a squashed car with somebody sitting on top of it. Mr Speaker, I cannot even remember when that exhibition was but it was certainly in the past. So, I do not think that they can, with any credibility, stick to that mantra. So which is it? Is past record a reliable measure of future reliability or not? If it is for the Government, it is for the Opposition and we know what the relevance of the past is. The relevance of the past is that the electorate are entitled to judge who has the better record. Who has more reliably and trustworthily, and to better effect for the people of Gibraltar, exercised and discharged the reigns of political power in Gibraltar and the way voters do that is by

comparing the performances of people in the past when they have been entrusted with that very thing. The other relevance of it, as I keep on reminding him every time he makes the point which is almost every year, I think it is every year, is that I think that the electorate are entitled to know who has suffered a Damascene conversion. Who may be engaging in hypocrisy. Who may be engaging in, listen to what I say now even if I did not do it myself when I had the chance to do it. These are relevant factors for an electorate to take into account.

Mr Costa said that my colleague the Minister for Social Services, Jaime Netto, had failed certain vulnerable individuals. Mr Speaker, we do not agree that we have failed certain vulnerable individuals and certainly not the three that he used by way of example, but of one thing I am sure, when the people of Gibraltar last entrusted governance of this place to the hon Members opposite, the hon Members opposite failed all vulnerable individuals in Gibraltar. Not three, which is all that he could come up with in fifteen years, all vulnerable individuals. Yes. The same GSLP that now pretends to be concerned about the plight of the vulnerable, abandoned them all for all eight years that they were in office. There was barely a safety net. There were barely social services to speak of. They froze the financial support upon which the most vulnerable in our community depended, caring not a jot how they would count the pennies at the end of the week, to quote the Hon the Leader of the Opposition to which I will come later. Not a jot. Well, this is an interesting comparison that the electorate will have to make at the last election, at least those who choose how to cast their votes by reference to who has done better for the vulnerable. A party that did nothing and abandoned the most vulnerable in our community to their lot in life, freezing their financial support, investing practically nothing in the social and caring services on which the most vulnerable depend or the GSD that has a record that I have already described once in this week in this House and which I will come to a little bit later. Or now even. Who has established not just a safety net where one there was not before but we have established modern care services when none

existed before. If he is critical of the level of safety net that we deliver with £16.5 million pounds of expenditure a year, imagine the safety net that existed with £1.5 million of expenditure a year. If he thinks that with five hundred and ten care workers that we have now the Government is ignoring the vulnerable, imagine how they were ignored between 1988 and 1996 when there were only a hundred and ten. One fifth of the number of people delivering care services in this community and imagine how we are living before we unfroze their financial support and gave them significant increases. Everything. Everything. From the minimum income guarantee to the minimum wage, to disability allowances, to social assistance, to unemployment benefit, everything. Not, as the Hon Mr Bruzon called, when he said that people were at a crossroads at the next election and they had to choose between what he called, I think, a socialist philosophy or something else. No, no, no. The people who presided over the abandonment of the vulnerable, were the people who abuse the word socialist in the name of their political party and now, the ones that do not like political gimmicks and do not like the electorate being seduced with empty words, they now hold themselves out as champions of the vulnerable.

It is not credible, Mr Speaker. It is not credible now. It was not credible when they did it last year and it was not credible any of the years that they have done it before. So, when the vulnerable in our community, as he calls them, see who has built women's homes and who has built up elderly care services and who has put in place child protection legislation services and additional homes, they will know what the answer to that is and it is not because I say it and they certainly will not believe it when he says the contrary because they can see it with their own eyes. It is typical of the Members' opposite style that they should try to denigrate this by distorting three individual cases which, in any event, do not have the reasonable interpretation that he has sought to put on. He has had his explanation of those three cases. I am not going to repeat them. They are in the public domain. Suffice it to say that, for the record, his interpretation that any of those cases were the result of an

abandonment of the vulnerable by the Government is simply unsustainable on the proper facts of those cases as he has had them explained to him and as he has chosen to ignore as they always ignore all the explanations given to them because they are not interested in the truth. They are interested in what they can squeeze by political distortion and political manipulation.

The hon Member who lined up to pre-empt that we would all be terribly mean and nasty to them but the hon Member lost no time in describing the Hon Lady Minister for Health's speech as a toxic time bomb with no substance. While saying nothing himself ... *[interruption]*.

#### **HON N F COSTA:**

No. On a Point of Order, Mr Speaker. I did not say that. I said that the press release in reply to our initial press release where an issue was a toxic bomb, not the speech, which is incorrect.

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

I see. Sorry. Yes. Do not worry. But still, ignoring, while saying nothing of substance himself, ignoring all the information that the hon Lady had put in front of him in the very debate that we are talking about yesterday or the day before.

Bed blockage. We all know that Gibraltar, like all places around the western world, has a problem of beds. Acute clinical beds in hospitals being blocked by elderly people who are medically discharged but either they or their families do not want them to go home. This is a universal, European problem which we are actually doing more than most to try and resolve, but still, one Member of the Opposition criticises the Government for cancelling operations due to bed blockage by the old who are not ill, whilst another, criticising the Government for making old people who are not ill leave hospital. Well, Mr Speaker, the hon

Members do not offer a solution for that conundrum because, to quote the now immortal words of the Hon the Leader of the Opposition, you do not need to be a mathematical genius to work out that if you have a finite number of beds in a hospital and they fill up with people who are not ill, just old, and that this goes on indefinitely, at some point all the beds are going to be occupied and if at that point somebody comes in to hospital or wants to come in to hospital needing an operation, there will be no beds. So what is it? Do you want to criticise us for cancelling operations because the beds are blocked by elderly people or do you want to criticise us for making elderly people vacate those beds because at no stage have I heard a recognition from the hon Member of what the Government is trying to do to solve that problem which is to deliver domiciliary care at home, build more homes for the elderly, develop an Alzheimer and Dementia's residential facilities and develop the old John Mackintosh Wing at the old St Bernard's Hospital for the elderly.

Then he moved on to free spectacles for children and he comes to this House to say that the Minister is not telling the truth whilst himself ignoring all people public statements by the Minister. Well, Mr Speaker, if he believes that the Minister is not telling the truth, why did he not grill the Hon Lady at the last Question Time? He asks dozens and dozens and dozens of questions about health and it did not occur to him to raise in this House, what he raises in press releases, that apparently the Hon Minister is misleading the people of Gibraltar by pretending to have made provision for free spectacles for children. Mr Speaker, the Government have introduced free basic spectacles for children. Not any spectacles. Say I want a set of Gucci frames for my kid. I do not expect the tax payer to pay for it and this is what he calls deception on the part of the Minister. Of course, Mr Speaker, this debate about whether the tax payer should be paying for Gucci frames or for non-Gucci frames would have been entirely academic had they been in office because they had no commitment to provide free spectacles of any kind, Gucci or otherwise.

It is the usual ritual of, never mind what I have done in the past or what I have said I would do or not said I would do, I am going to criticise you for the way that you have done what you promised to do, even though I did not promise to do it at all. And that, Mr Speaker, is the style which all the hon Members, even the hon Member to whom I am addressing myself now in the House, who is certainly not amongst the worst, but even he cannot resist the temptation to do this. Then, it is almost impossible for the Government to know whether they should listen to what they say or not. So he and certain others raise with us, he albeit based on incorrect facts and making misleading statements to the public, but he identifies an issue which when we focus on it we see some merit in one aspect of the issue that has been raised by him and actually by a few old age pensioners directly with us in the Government. He asks us to change it, and when we do, he accuses us of electioneering and going for votes, votes, votes. You see, he is not really interested in the plight of the pensioner that might have had to pay, or whose spouse might have had to pay the prescriptions because the spouse was working. If he had been motivated by that sincere concern, he would have applauded the Government's decision to pay heed to what he was saying and not criticise us for last minute electioneering.

Mr Speaker, the Hon Mr Licudi did not say much but having discoursed at length in this failed forum with recent members of his Executive Committee from the field of education, I think the new education ... and knowing his views, it appears to the Government that the new Opposition spokesman for education appears to have adopted the views of the new member of the GSLP Executive Committee on these matters. Mr Speaker, the Government do not believe that our educational system needs a root and branch review. I had thought that we had always, both sides of this House in the past, recognised that our education system was actually a Gibraltar success story and, therefore, Mr Speaker, like all systems, they require to be kept under review. Things require to be changed. Things require to be done and the Government will continue to introduce improvements in a

non-dramatic and non-disruptive manner but to suggest that our educational system requires a root and branch review, which is what you normally do to institutions that are failing their uses, is not a view to which the Government subscribes. He says that there are insufficient resources. Well, look Mr Speaker, what are sufficient resources? People working at the coal face always want more money for the coal face. It is always possible to spend more money on everything but the resources invested in education have improved and increased very significantly and I do not think that there is a particularly credible case to be made on the basis of the sufficiency or insufficiency of the Government's expenditure on education. Still, if the Hon the Leader of the Opposition, were he ever to find himself on this side of the House, wants to make good on his view that my budget surpluses are too small and that he wants one of £40 million not £30 million, he is going to have to curtail the instincts of those of his spending Ministers who appear to believe that the answer to everything is simply to throw more money at it.

Mr Speaker, the Hon Mr Bruzon asked why the GSD has taken so long to address the shortage of rental homes. Well, Mr Speaker, Gibraltar has always had a shortage of rental homes. That did not prevent the party of which he is a member and of which he is so proud because of its socialist credentials ... That did not prevent that party when in Government from ignoring the plight and the needs of people in need of rental homes because they provided barely none or certainly very few in their eight years in office. So, if he wants to criticise us for not providing even more rental homes even faster, to enjoy any credibility when he does so, he has to start by acknowledging that our record on the provision of rental homes is infinitely better than the party of which he is so proud of.

Mr Speaker, the hon Member said that people in Gibraltar find themselves at a crossroads. Indeed they do, Mr Speaker. He appealed ... He stood at that crossroads as a, sort of, electoral traffic policeman, holding up the, sort of, socialist philosophy banner. Mr Speaker, what socialist philosophy does he think is

recognisable in the track record of the GSLP except the abuse of the word in its party's name? Mr Speaker, the GSLP have had no socialist philosophy even in Government or in Opposition. It is the GSD that is the party that has enhanced and protected worker rights and their standards of living. It is the GSD that has shown real commitment to the vulnerable. It is the GSD that has shown real commitment to the elderly. It is the GSD that has shown real commitment to the housing needs of those who could afford to buy, of those who could not afford to buy and those who could afford something in the middle which is to buy some share of their home. Mr Speaker, the record of the socialist philosophy of the hon Members opposite in Government is notorious, absolutely notorious, best reflected by the fact that, almost to a man, every ex-trade union leader in Gibraltar is either a member of, supporter of, or activist in the GSD and not the GSLP.

Mr Speaker, listening to the Hon Mr Linares is like listening ... Listening to his addresses is like watching paint dry on a wall. Every year he regurgitates the same old, tired subjects. The Art Exhibition, the Theatre Royal, his friends in the Customs Department and why the terribly mean Government did not collapse at their feet after they had rejected a twelve per cent increase for doing nothing extra. His view is that we should have gone running back and said what more can I offer you for doing nothing extra. What more should the tax payer pay you? This is his view year after year. I suppose they buy him a beer afterwards to then say, well done, Steven. Well done, for raising these issues on our behalf. And then the same old point about the missed twelve per cent manifesto target on renewable energy but how many times does the Hon Minister for the Environment have to explain to him that we have abandoned that target because the EU has abandoned that target by the date mentioned in the manifesto. So if he wants to, if he thinks there is any, sort of, electoral gimmickry in it, he could criticise the Government for abandoning the target by the date even though everyone else in Europe has done it but he cannot keep on saying you have not met the target. You have not met the



target. Ignoring the fact that the Government has no intention of going to meet the target because it has abandoned the target for reasons that have been explained to him at least half a dozen times and which he either does not understand or does not care to accommodate in his thinking. It is dire, Mr Speaker, dire and then when he raises new issues, it is only to say things that are not true. Mr Speaker, it was during the days of the GSLP Government, it is as if the hon Member has been away to Mars, been away there for the last fifteen years and has just come back and thinks that the GSLP is still in office. It was in the days of the GSLP Government that practically nothing was spent on City Fire Brigade training. The GSD Government has hugely increased the amount of funds provided for training in the City Fire Brigade. It is up to the management of the City Fire Brigade how they choose to spend that money in terms of what training they choose to do. It is not true, as the hon Member has said, that the Government has refused a specific request for fuel fire or any other type of fire fighting training. What does he think that the Chief Fire Officer rings up the Minister and says, Minister I would like to train my officers on fire ... No, no. No, no, we do not want our firemen to be trained in fuel fire. No, go and train them on, sort of, putting out fires in nuclear power stations or something, of which we have none, but we do not want you to train them to fight fires in fuel that we have a lot of in Gibraltar. But this is what would have to be true for what the hon Member said to be true. Then he has some, sort of, this obsession with green, you know. That's fine. I think it is good that he should hold the Government to account for the way in which we comply and deliver with our environmental policies but what he cannot do, simply because he came to the House with a speech typed, ignore the things that he was told in this House by me not ten days ago in Question Time. He said earlier this week in his Budget address, all recent buildings do the opposite, in terms of green policy. Well, it is not true. It is not more than ten days ago that I explained to him the long list of environmentally friendly design features of the Mid-Harbour Estate which is the last building that the Government designed and built, including in the list that I gave him, energy saving,

green, I do not think they are painted green, light bulbs which he went to the trouble to say that we did not even do that. Not even light bulbs, he said. Well, light bulbs were specifically one of the things that I told him were being introduced. *[Interruption]*.

**HON S E LINARES:**

Point of Order, Mr Speaker.

**CHIEF MINISTER:**

So, Mr Speaker ...

**MR SPEAKER:**

Order. What is the Point of Order?

**HON S E LINARES:**

Mr Speaker, I think the Chief Minister got that completely wrong because I did not say that the Mid-Harbour Estate actually did not have ... I actually emphasised that it did have energy saving bulbs.

**MR SPEAKER:**

I seem to recall that.

**HON S E LINARES:**

So if he cares to listen to what I said.

## HON CHIEF MINISTER:

Well, Mr Speaker, the hon Member said that all buildings ... all recent ... His exact words were ... He may have said that as well, which I did not pick up, but he certainly said, because I have a note of it, all recent buildings are the opposite. When he set out what he thought was the sensible way to do things, all recent buildings are the opposite. Well, the most recent buildings are not the opposite, although it is true we did not install solar panels on everybody's roofs and all of that. Mr Speaker, the Hon Mr Linares, once again, makes his point about the Chief Minister's expensive nightmares. I cannot do more than just repeat the facts. Mr Speaker, the only wasteful expensive nightmares that I have had as Chief Minister is the £20 million plus pounds that I have had to spend of tax payers' money on cleaning up the In-Town Energy from Waste Plant fiasco left behind for us by the GSLP Government and the millions and millions and millions of pounds of tax payers' money that I have had to spend on fixing the home ownership schemes by the caring, careful, socialist Government that they saddled on the hands of a whole generation of property owners. That is the only expensive nightmare that I have had. Mr Speaker, he then went on to say that we have failed to consult sport on the proper targeting of funding. Well, Mr Speaker, is he not aware that the targeting of sport funding is decided by a Committee, comprising mainly sportsmen and sports association representatives themselves. What more consultation can you do than that and he is still denying it. Well, alright. We have given up trying to get the hon Member to understand or to accept anything. So, I am not saying it to try and persuade him. I have no doubt that it will be as unsuccessful in persuading him as we have been of persuading him on anything but all the sportsmen listening will know that this is true. And then the playgrounds are an election gimmick. Well, Mr Speaker, he is a teacher, was a teacher. I do not know whether he knows what a gimmick is. A gimmick is something insubstantial, words made to look real when, in fact, there is nothing of substance there. That is a gimmick. Well, Mr Speaker, I would not describe the

magnificent and extensive playgrounds which have been so successful, as a gimmick. He may believe that we have left all of our ... I do not know what we are supposed to do with the hon Member. So, I suspect that one is supposed to win the election, get the manifesto, do everything in the first eighteen months, everything, because anything that you do in the second half of the term is an election gimmick. Done at the last minute, I suppose we have built all the houses just to come on as an election gimmick. Well, Mr Speaker, it is a four year term manifesto. There is still, potentially, up to six months of it left to run. That is one eighth of the term. I do not see why the hon Member thinks that buildings and playgrounds, as part of the fourth year of a four year programme, is an election gimmick. I can understand that he is electorally worried that many parents in Gibraltar will value this that the Government has done for them with their money. Not with the Government's money, with their own, the tax payers' money. So, if we do not do our manifesto commitments they criticise us. If we do, after a certain date, they criticise us. So, obviously, there is only a small legitimate window, according to their political theory, there is a small political window of legitimacy. They have never explained to us what they think this window is or where it lies in the term. There is, apparently, only some limited political window where it is legitimate for the Government to do what it is in its manifesto that it would do. If I was, sort of, pulling rabbits out of a hat the day before polling and doing things that we had never said we would do, or never committed ourselves to do, there might be some justification for his view but when the Government are doing no more than going systematically through its manifesto, that we should have to suffer the constant nervous description by the hon Members of everything that we do as an election gimmick, persuades nobody and certainly not the electorate.

Mr Speaker, it is not true, I regret to tell the hon Dr Garcia, that I have said that I am now changing to the Agency, to the new Borders and Coastguard Agency, the references that I made in the House last year about this question of resources and

jurisdiction. What I described in the House in my address on the First Reading of this Bill are the functions that the Borders and Coastguard Agency would do. In other words, I have listed them but the point about the resources, that I made last year, to discharge the jurisdiction and the functions of the Gibraltar authorities, is exactly the one that I have made yesterday, or the day before yesterday, by listing the functions and the caveat that I have made last year is exactly the same as the caveat that I have made the day before yesterday, namely, that the fact that we were doing this did not displace the British Government's responsibility for the defence of the sovereignty of Gibraltar's waters. Well, Mr Speaker, the Government does not agree with the view repeatedly expressed by the hon Member that Gibraltar's needs could have been serviced, could have been satisfied in terms of aviation by the old terminal simply having what he called "a face lift". We shall just have to agree to disagree and we shall just have to agree that the air terminal is a statement of the GSD Government's vision for the future prosperity and stature and international standing and prospect and confidence of this community. A vision which the hon Members opposite clearly do not share but if they shared it, they certainly would not bring it to fruition, to the sort of approach that the hon Member advocates, a [*inaudible*] paint, a face lift, for a building that was temporary, even when it was built, and which is long, long past its shelf life. I do not know how often the hon Member goes to the air terminal or travels but if he thinks that the embarrassing cattle market chaos that is experienced and witnessed by residents and visitors alike at that air terminal when more than one flight in or out coincides in it, if he thinks that that problem can be resolved by a face lift to the existing terminal, then I fear that the hon Member lacks the vision or the capacity to develop the full potential of this community. The hon Member made the point that there was mixed use at the north mole and he expressed some surprise in the mixed use between fuel and cruise terminal and expressed some surprise that the Hon Deputy Chief Minister, the Minister for the Port and also for Development, should, in one capacity, have authorised or been party to the approval of the expansion of the sullage plant and,

on the other, have been party to the decision to expand the cruise terminal and the hon Member felt that there was some contradiction in this. Mr Speaker, there is no contradiction in this. Things happen in life and you learn and draw the lessons from them because until that fire took place not even the cruise lines themselves were concerned by the presence of the sullage tank and fuel tanks on the terminal. On the basis of the hon Member's view nobody would ever change anything. Accidents happen. You do not learn the lessons from them because that is somehow an admission of some contradiction in the past. Well, Mr Speaker, again, I have to take a different view than that which the hon Member takes and express the view that there is no such contradiction and that the Government will make reasonable decisions to save, to accommodate the needs of all the affected parties in this, including saving the considerable economic interest of the cruise industry for the wider economy of Gibraltar.

Well, Mr Speaker, I turn now to the Hon the Leader of the Opposition, that is to say, the new Leader of the Opposition, the one that now sits in the middle there. Mr Speaker and it is always the same thing. He insults me first and then complains that I insult him and when I have responded to his initiation of insults then he predicts that I will respond [*inaudible*] to his initiation of insults. He has questioned my fitness and reliability to be Chief Minister. He has put in this debate my personality, my supposed spite, the supposed way in which I treat my Ministers and I therefore now feel entitled and legitimised to do the same to him. It is difficult to avoid denigrating and humiliating him. He predicted that there would be some humiliation and some denigration. Well, Mr Speaker, if I can just slip into the Spanish for a moment. If you are going to push the "*grano*" out of the skin, you cannot then complain that you put the "*parche*" as well. Mr Speaker, the hon Member predicts that I would have things to say about him in the knowledge that he is then going to say a number of things that leave me no alternative. Mr Speaker, what he calls denigration and humiliation is the natural consequence of having to correct the

nonsense and the untruths that he utters as a matter of personal style and instinct and I tell him that both by a combination of the ignorance that he displays and the deceit to which he sees fit to resort, he is unfit to be Chief Minister of this community. So I regret that this year cannot be an exception to last year and previous years. For it to be an exception, he would have to limit himself to saying things that are true and he would have to limit himself to saying things that are not a distortion of the realities as they have happened. Mr Speaker, he quoted De Gaulle. He then went on to say that I had all the spite but none of the statesmanship of De Gaulle but he quoted De Gaulle to say, "I respect only those who resist me but I cannot tolerate them". I would like to suggest to him a slightly different version, Mr Speaker, "I respect only those who stick to the truth but I cannot tolerate those who use deception as a systemic political measure".

Mr Speaker, he started by extolling the virtues of the man that he has now pushed to one side to the Ministry of Employment. "Mr Bossano leaves big shoes to fill. He turned our economy around and laid the building blocks for growth." Well then, Mr Speaker, if all that is true, why then did he join the GNP and not the GSLP initially. Why did he plot Mr Bossano's downfall and move to leave the party with Mr Feetham and when you were both standing up heading to the door, and if he had reached the door and turned the door handle, you went back and sat down at the exact same table? Why? Why, if all this is true and why since that day, why since that day, if the people of Gibraltar are to believe that he is truthful and sincere in the eulogy that he pays to Mr Bossano now, why has he spent every year since then plotting to replace him as Leader of the party? After all, it is not as if poor Mr Bossano wanted to retire. He has just told the people of Gibraltar he wanted to stay until he was ninety two. Well, I will tell him why. I will tell him why he eulogises the man that he has been plotting against for the last five or six years, despite being this brilliant pair of shoes that he cannot fill the size of, because he knows that it is Mr Bossano and not him that enjoys the support of and controls the political power base of the

GSLP. He is nothing more than Mr Bossano's front man as far as enjoying the support of the grass roots of the GSLP [*inaudible*] and that is why he sticks close to him because without the support of the "Leader of the Opposition", I believe he is, in fact, effectively still the Leader of the Opposition, without his support, he enjoys no support to speak of in the party that he claims he leads or genuinely knows he does not. Well, if there is another explanation for treating so shoddily a man who has got this huge size of shoes and who has performed these economic miracles in turn, if there is another innocent explanation ... Or is it just the case of young Cassius there, has a lean and hungry look. Is it just the case of him putting his personal political ambition over the right of Mr Bossano to enjoy the size of his shoes and all the miracles that he has performed for Gibraltar in the past? It has got to be one or the other. If he does not think that my first suggestion is it, well perhaps the second one is it.

Mr Speaker, almost wherever you touch on the hon Member's address, you find things that you cannot let past for simply being untrue. So he says, "at last in this year's Budget address, the Hon Chief Minister recognised now, at last now, that there are sectors of the economy that are going through difficult times in the recession". Well, Mr Speaker, I think I have done this in every Budget address in the last three years. I do not know whether he bothers to listen to what I say in this House or not but in my Budget address delivered on Thursday the 1<sup>st</sup> July 2010, speaking about the private sector, I said, "and so, Mr Speaker, to a review of the private sector part of our economy. In short, there are the usual sector differences in terms of performance. Although there is no getting away from the fact that the global recession and the banking crisis and resulting in credit crunch are affecting everyone to some degree or other. Local businesses in every sector can be affected in a number of ways, falling external customer demand, exchange rate movements which can both affect demand and cost of stock, lack of credit availability or the high cost of such credit as is available. In addition to such factors, some sectors suffer local

effects such as cross border competition, sometimes on an unlevel playing field". So where is the truth? Where is the dependability and reliability for truth that the people of Gibraltar are entitled to expect from their Chief Minister when he comes to tell this House that now, at last this year, I have recognised the effects of the international recession on some sectors of the local trade? He said, "that as true patriots, we wish only to see a prosperous and socially just community where wealth is not the preserve of a few but the status of all those who aspire to work for it and a safety net is provided for those who cannot". A sort of fusion of Margaret Thatcher and Wedgwood Benn, you know, all in one. Sort of capitalist for the rich, a saviour of the poor and the vulnerable on the left, and in the middle as well, because now we are all workers one day and then we are not the next, as I will show him in a moment.

Well, Mr Speaker, if he really believes that what he wants to see is a prosperous and socially just community where wealth is not just the preserve of a few but the status of those who aspire to work for it and a safety net is provided for those who cannot, I regret to tell him that he has joined the wrong political party the third time of asking. He should have joined the GSD. Not the GSLP. Where were the patriots who wish to see a prosperous and socially just Gibraltar at the time of the Kvaerner tapes or the fast launches? Some patriots. Better to see the shipyard close just to cause problems for the GSD Government. Some patriots. Where was the socially just GSLP when they denied Moroccans access to the labour market, year after year? Where was the socially just Government when the GSLP raised taxes of the lowest paid by the most, every year? Where was the socially just GSLP interested in the safety net for those who could not aspire to the millions that he hoped everybody would when they froze the minimum wage, unemployment benefit, social assistance and disability allowances? Where was this socially just GSLP? Certainly, nowhere that the people of Gibraltar could see or benefited from. I am not surprised the Hon Mr Costa wants the people of Gibraltar to forget the past.

Where was the socially just community with a safety net when they invested money in anything and everything except in our social services which is the safety net? Safety net is just another word for social services which not only did they not invest in but they left to a couple of private sector charities to do what little there was of social services and now they come preaching to us with all that we have established by way of real social services and real safety net, they come preaching to us about a fair and just society with a safety net. Mr Speaker, has the Leader of the Opposition not realised yet that workers, the low paid, the vulnerable, those that depend on our health service, the elderly had to wait until Gibraltar had a GSD Government. The GSD Government has delivered social justice and a safety net after the GSLP had systematically and as a matter of premeditated and conscious political choice, ignored it all and abandoned them all for eight long years of GSLP rule in Gibraltar.

The hon Member, and he has already become notorious for it in the few weeks that he has been in his new job, thinks that you can become politically popular by pretending to be all things to all men, all of the time. He added an additional quality to that. All things to all men, all of the time and never impose anything or anybody. Well, Mr Speaker, this all things to all men person will contradict himself within the same sentence if he thinks it will help him score two goals instead of one. Mr Speaker, there are many people, he said, who have to count the pennies to reach the end of the week. Here comes Mr Picardo to make sure that there is never anybody who has to count the pennies to reach the end of the week. Well, Mr Speaker, thanks to the GSD, it is many fewer people than under the GSLP. I mean, who does he think now has to count the pennies to reach the end of the week. The three thousand four hundred pensioners that we have swept out of the tax net altogether and who now pay zero tax or the three thousand low income earners that used to pay up to fifteen hundred pounds a year in tax and now pay zero tax. Is he saying that they are now counting their pennies? Well, if they were counting their pennies to reach the end of the week, they

were counting their pounds when they were in Government. Or perhaps the workers on the minimum wage that the GSLP froze and which we have unfrozen and increased significantly, perhaps those are the people that he thinks are counting their pennies now, or perhaps all the other tax payers that have had their tax burden reduced by up to fifty per cent and more. Perhaps they think that those are the people counting the pennies. Or perhaps the people who are now getting unfrozen benefits. Or perhaps the people who now had no income at all, the elderly and who have now got a minimum income guarantee. What is more likely? That they are counting their pennies now or they were counting their pennies before 1996 when the so called socialist caring Government did not give a toss whether they got to the end of the week financially or not.

Mr Speaker, he said, "some aspects of the measures announced today will help" ... I suppose one should thank the Lord for small acknowledgements ... "but in my view they do not go far enough", he said. "There is not enough tax cuts. There is not enough increase in sponsored patient's allowance. There is not enough rates discount for business" and he would have cut taxes to eighteen per cent this year. With the very next breath, he told me that I have turned Parliament into a kasbah, a souk where I sell myself to the lowest bidder. Well, Mr Speaker what is it? Am I Scrooge that has not cut taxes enough, not increased sponsored patients enough, not cut rates? Am I Scrooge that has been very ungenerous with his giveaways or am I a kasbah or a souk merchant, election, election, election, votes, votes, votes? I cannot be both. Not even I can do that, both. Well, Mr Speaker, I do not sell myself to any bidder highest or lowest but I certainly do not sell myself to non-existent Mexican investors or to people that fiddle with pensioners' money.

So, Mr Speaker, which is it? Because he has told the people of Gibraltar that everything, he has told them everything. In the space of forty minutes, he has occupied every single position. What is it? Have I thrown the family silver at the electorate in a

souk and kasbah like gesture or have I been insufficient and, let us not forget, that this is an election year for both of us. It would have been an election year for him if he had won the last election, his party. Well, so it is not a kasbah souk if he, in this same election year, had cut the taxes by more than I have cut them because he said he would have cut them to eighteen per cent. So, if I cut them to more than eighteen per cent, I am a souk kasbah tradesman, but if he cuts them to eighteen per cent in the same pre election Budget, then that is okay. That is just the GSLP manifesto and there is no kasbah merchant electioneering there. You see, Mr Speaker, he says one thing now and another thing in three minutes time, depending on what point it suits him to be making at the time and these contradictions and these incoherent positions are several times on the same page of transcript. Sometimes even in the same sentence. The extent to which the hon Member is willing to engage in this deception of his real position appears to know no limits. I suppose he has got to because he has got no alternative because he knows that the Government have done a very good job. He says, "the long and short of it, Mr Speaker, is that after three long years of take, take, take, the public will not be fooled by one year of some give". Well, Mr Speaker, does the hon Member think that he can get away with only counting takes over these three years and ignoring the gives over the same years? I do not mind him limiting his assessment of the Government's performance just to this term. I know how tiresome it must be for him when I take him back to the full glorious technicolour version going back the whole fifteen years. So I have some sympathy for the hon Member's instinct to want to limit the Government's performance assessment to the last four years. But does it not strike him that just loyalty to the truth would require him ... If he is going to limit the assessment during the last four years, that he has got to work out the net position. Not just the takes but the gives as well. Mr Speaker, there is barely a tax payer, I would say there is no tax payer in Gibraltar who is not significantly financially better off over the last four years counting all the gives and all the takes. People of Gibraltar, as a result of the spectacular success of our economy

under the GSD stewardship, have had fifteen years of give, give, give and more give. People feel it. They know it. They are enjoying the higher standards of living that go with it and that are [inaudible] with it and then, sort of, to demonstrate, apparently not that I am some sort of souk merchant but that I am some sort of Scrooge, taker of people's quality of life and income, he says, "and amongst the takes, takes and takes is the fact that he has increased electricity by fifty per cent and water by thirty eight per cent over fifteen years". Well, Mr Speaker, does he not know what has happened to the price of oil during that time. Does he not realise that what he criticises, limiting increases to fifty per cent or thirty eight per cent on electricity and water, is not a case of take, take, take, it is another example of give, give, give by the Government because most consumers of electricity and water all over the world have had to pay much more than fifty per cent and thirty eight per cent. Does he not understand that one of the things that the Government have done precisely is to absorb much of the cost increases that many others have passed on to the consumer and that the fact that we have limited the increases to what we have is a question of give, give, give and not of take, take, take. Mr Speaker, the hon Member need only look to the figure of the subvention by the Government to the Gibraltar Electricity Authority and the [inaudible] contribution in lieu of tariff rises that it pays every year. They are there for him to look at. To see the extent to which the Government have increased the cost to it, to avoid having to pass to consumers the real cost in utility tariffs that consumers in Spain, in France, in Germany, in Britain, in Ireland, in Northern and Southern Europe, all over the world, have had to take on the chin and that we have exempted them from in large measure and that is give not take. Yes. It is a record. It is a record subsidy. It is a record subsidy, it is a record protection of all our citizens compared to the fate suffered by so many of their counterparts all over the rest of the world and people in Gibraltar know this. Just from listening to Sky News and reading the newspapers of the sort of percentage of utility cost rises that are inflicted, not once, but twice and three times a year, just across the border, in Spain, reflecting the price

of fuel and its effect on the utility production. But he does not understand, Mr Speaker. He does not understand and worse still he does not care.

Then, Mr Speaker, he went on to talk about tax. Well, the GSLP manifesto commitment has a commitment to increase the standard rate of tax to thirty per cent in 2008/2009. Well, Mr Speaker, the standard rate of tax was thirty per cent in 2008/2009 without the need for the people to take the considerable risk of electing them into office. Indeed, it always has been. The standard rate of tax is a deduction rate for unregistered employees and tax payers without a PAYE code or certificate. It is not a tax rate paid by anybody. That is what the phrase standard rate of tax means. It is not what he and I pay. We are presumably registered for PAYE and we are in good order. The standard rate is the rate of tax that employers have to deduct from their employees when they do not have a PAYE code. It is a default rate, only paid by those who are not in good standing with the tax authority. So, did they mean perhaps standard rate in the sense not of the standard rate in our tax legislation, which I have just described to him? Did they mean perhaps both in their manifesto and him yesterday, or the day before, did he mean a standard rate in the sense of a rate of tax standard to everybody that everybody would pay? Well, Mr Speaker, if he meant that, it would mean a huge tax rise for thousands of tax payers who already paid much less and even before the 2007 election paid much less than the standard rate of thirty per cent. So, I suppose he did not mean that either and he said that lowering the standard rate would principally favour working people. Well, Mr Speaker, he recently said, this is when he was in one of Chief Minister of all Gibraltarian moments, we are all working people he told us in his coronation interview as I recall. We are all working people. Well, Mr Speaker, if we are all working people then it would not principally favour working people, it should favour all of us. So that was when he was addressing us and not his comrades, trying to, sort of, inveigle some of Mr Bossano's grass roots support. It is possible then that when he, in his own address and in the manifesto at the last

election, when he said that they would lower the standard rate to the levels therein stated, could they have meant the top rate? Mr Speaker, if they meant the top rate, that is not what they said and certainly they need to be a bit more familiar ... He needs to be a bit more familiar with the way the tax system in Gibraltar works. He said, if that is what he meant, the top rate, he said, this was two minutes after accusing me of being a souk salesman, a kasbah trader, he said that he would have reduced then the top rate, if that is what he meant, to eighteen per cent this year. This is what he would be announcing and he would have kept the allowances system in place as well. Well, Mr Speaker, I do not know whether he understands what he talks about. In fact, I know he does not. The cost of doing that would be in excess of twenty five million pounds a year. More than twenty per cent of all the Government's collection from personal income tax in one year and he was going to do that ... We have got a surplus of twenty eight million. He would have given twenty five of that away. So he is not worried about the debt levels in our economy, then, obviously. So all this scare mongering that he is doing about the level of public debt in Gibraltar is another deception of public opinion because he was going to give away the public debt. He was going to give away the entire Government surplus in one stroke of a pen. Except that it is not even that bad. It is worse because he was going to give away twenty five million pounds of revenue. That is almost the whole, effectively the whole of the surplus, and in the very next breath he said that my surplus of twenty eight million was too low and that he would have had forty million surplus. So, let us be clear. He is very worried about the level of public debt but he is going to give all the Government's revenue away in tax. He is going to give away all the Government's budget surplus in tax but he is going to increase the surplus which is too low. Because Caruana has been so mean with his huge tax rises that by now he would have given away twenty five million pounds more of tax and he was going to announce it this year, a few months before the election, which would not have been kasbah trading and it was still going to have a surplus.

Mr Speaker, I think you could comfortably summarise what the hon Member knows and understands about public finance on the economy on the back of a postage stamp. I do not think he has the slightest clue about the working of public finances in Gibraltar, or the taxation, or the meaning of what he says, or the economic or financial effect of what he says or proposes. He cannot possibly have a clue. Mr Speaker, and if he had managed to save Gibraltar from the terrible public debt implications whilst giving away the whole of the surplus and at the same time increasing it from twenty five to forty, he certainly would not have had any left to encourage people to give up smoking, just to use telegraphic language, as he said in reference to import duty. You see, nothing, none of the pieces of the jigsaw that he lays out to the people of Gibraltar, just a handful of months before he offers himself to them as their Chief Minister and Minister of Finance, unless, of course, he is not going to be any of those things ... He shows the most remarkable, stark, comprehensive ignorance of all matters fiscal, economic and *[inaudible]*. And it does not even require a value judgement, it simply requires a reading of the contradictory things that he says one sentence after another on the same page often in the same paragraph of his own speech. Then he says, "should not the distribution to workers, especially the very lowest paid, be greater this year". So, first of all he chastises me for giving things away in an election year because I am a bazaar trader and then he criticises me for not having given enough away to the lowest paid. Well, Mr Speaker, this is in one of his, let us have more kasbah, not less kasbah, moments. But has the hon Member not got it into his head, yet, that, thanks to the GSD Government's relentless tax cutting over fifteen years, the very lowest paid workers, as he calls them, do not pay tax, they pay zero tax and has he not got it into his head, yet, that those earning between eight thousand and fifteen thousand are already paying less than eleven per cent in tax. So why does he say that his standard rate of eighteen was going to give them, was particularly interesting for the workers, and that those earning between fifteen and twenty five are already paying an effective rate of less than seventeen per



cent? Does he not get it into his head that forty three per cent of income earners in Gibraltar are already paying effective tax of less than fifteen per cent? That is less than fifteen pounds out of every hundred that they earn and that eighty five per cent of income earners in Gibraltar are already paying less than twenty per cent, less than twenty pounds, many of them much, much, more than twenty per cent less on their tax. Has he not understood, Mr Speaker, that someone earning ten thousand pounds in 1995 paid two thousand three hundred and seventy five pounds in tax and that next year they will pay six hundred pounds? This year's tax cut alone will give them a minimum of two to three hundred pounds. That is twenty five per cent of everything that they paid in tax last year. A quarter reduction in the tax bill. Mr Speaker, I am sorry. I know that the hon Member thinks very highly of me but not even I can find a way of cutting further the taxes of people whose taxes I have already cut to zero. I cannot for the life of me think of a way of doing it. Mr Speaker, the savings of people as they go up the range, five thousand pounds income, eight hundred and fifteen pounds saved. Eight thousand pounds of income, seventeen hundred and fifteen pounds of tax per year. Ten thousand, one thousand seven hundred and seventy five. This is a wage for some people. Fifteen thousand pounds, at least two thousand five hundred and sixty one pounds saved. Twenty thousand pounds income, three thousand four hundred and thirty two pounds of tax saved. Mr Speaker, this question, should not the distribution to workers, especially the very lowest paid, be greater is asked to the party that has done it by the party that did not and instead raised the taxes of the very lowest paid workers every year by the most. It is the ultimate contradiction, Mr Speaker. So he accuses me who have lowered taxes every year of election, election, election, using tax payers' money to buy votes, whilst, at the same time, telling me that I have not gone far enough and that he, in this same election year, would have done even more election, election and election and have cut them even further. Well, Mr Speaker, it is just not ... The hon Member lacks the credibility to present himself as a serious candidate for the political leadership of this community.

He said hundreds of thousands of pounds paid to consultants without even having a second thought to put those contracts to tender. This is after he had accused me of innuendo and insinuation. Well, Mr Speaker, I suppose the purpose of telling people that hundreds of thousands of pounds have gone to consultants without even having a second thought to put those contracts to tender, is to somehow get people to believe that there is necessarily some surreptitious corruption going on with this process but, of course, that would not be an insinuation or an innuendo on his part. Well, Mr Speaker, may I remind the Hon the new Leader of the Opposition that we use exactly the same consultants as the GSLP did with one important exception, that they are not the only ones that we use. We use them and everybody else to make sure that everybody gets a fair share of the cake and may I further remind the Hon the new Leader of the Opposition that no Gibraltar Government has ever gone out to tender for consultants services except, on a number of occasions, this GSD Government and certainly the previous GSLP Government and the AACR administration before that, did not. It has never been the practice of the Government and it is no use the hon Member saying that yes but now there are EU Directives. Those EU Directives were binding even when they were in office and the point here is not compliance with EU Directives or not. The point of not going out to tender is not some sort of accusation that we are in breach of EU Directives, it is to send the message out there that there is some corruption going on when we are doing nothing other than what Gibraltar Governments have always done in this regard except that we have made it fairer.

Well, Mr Speaker, hundreds of thousands of pounds to professionals and consultants without even a second thought to put those out to tender. The last consultant, that I am aware of, we paid hundreds of thousands of pounds to, was his law firm Hassans to which, without going out to tender, we paid nearly three hundred thousand pounds for drafting the new tax laws. Well, Mr Speaker, I do not remember the hon Member complaining about that. He takes his share of the loot. Then

comes running to this House to accuse the Government of having banked the loot. Well, Mr Speaker, there has got to be a ... You know, even Judas, at least, had the decency not to keep the ill gotten thirty pieces of silver. No, no, no. He benefits. He takes his partner's share of hundreds of thousands of pounds put out to his consultancy firm without a tender, then comes to this House having pocketed the money to accuse the Government of corruption without a thought of going out to tender. It is typical. It is a monument to the hypocrisy and duplicity which characterises the hon Member's deceitful political style.

Then he moved on to the media and his favourite subject of the 7 Days newspaper. The hon Member's incoherence and contradictions get even worse in relation to this issue. A very excitable new Leader of the Opposition told the House a number of things. He said that "thousands of pounds a month had gone to one particular publication in advertising" which he then identified as the 7 Days which he said "is transparently the scandal sheet of the party in Government. Something", he said, "had gone wrong and stayed wrong with the Chief Minister's democratic compass, using tax payers' money to fund the GSD's in-house party organ, using tax payers' money to fund GSD propaganda in election year. Abhorrent", he said, "to any democrat. May, he said, evidence that democracy in Gibraltar is not secure. Democracy", he said, "was threatened". He said "we were using state funds for party advantage. He could not", he said, "emphasise enough how out of hand the funding of 7 Days had got. How improperly it clearly is and how contrary to the established criteria for the proper application of public funds", he told us, in one of his most solemn exaggerated moments. "We are talking", he said, "about massive amounts. Well over a hundred and fifty thousand pounds". The owners of the 7 Days have to work much harder for a hundred and fifty thousand pounds than his firm has to work for three hundred thousand pounds but never mind. It was certainly over a longer period. Mr Speaker, he said, "the independence", of apparently all the media. "The independence of the media", he said, "is

threatened by this and with it, democracy itself" by this alleged abuse of tax payers' money. Mr Speaker, he ... I hope that in the cold light of day the hon Member will acknowledge the clear excesses of his comments. They are all based on his view that the 7 Days is, "the GSD's in-house party organ". Well, certainly, Mr Speaker, I acknowledge that the 7 Days is supportive of the Government but, just as he says that that will be obvious to anybody with "half of one brain cell", it will be equally obvious, I put it to him, to anybody also with only half of one brain cell, that the Panorama is exclusively, and always, supportive of the Opposition. It is actually owned and edited by Dr Garcia's father. Dr Garcia is the Leader of one of the Opposition Alliance parties, who himself works in the group of companies of which the Panorama is a part. Now, this Panorama is always critical of the Government. Never supportive of anything that we do. Is never critical of the Opposition. Always supportive. They have journalists in it who feel quite free to rant and rave against the Government. There is one chap there ... I do not know what connection he has with Gibraltar, a chap called Eade. Goodness only knows whose interests inspire his pen. But anyway, he has recently said that the Gibraltar Government encouraged the joint sovereignty policy of the UK Government and he has also said that people in Gibraltar need to be careful because the GSD Government may already have done a secret deal with Spain. Not just with the PSOE but also probably with the PP as well and that we are leaving it until after the election. Well, Mr Speaker, I do not know if, in the hon Member's warped and now notoriously unreliable judgement, whether this Panorama that I have described is a scandal sheet. I do not know whether he would think that it is the Opposition's in-house party organ. I do not know whether he would think that it publishes GSLP/Liberal propaganda. I do not know whether he thinks that it is advantageous to the GSLP/Liberals. What I do know is that it got, during the same period of time as the dreadful 7 Days got this scandalous, out of control, democracy threatening sum of a hundred and forty five thousand pounds this same Panorama, which presumably does not in the hon Member's mind fit the same category, got a hundred and sixty

two thousand pounds, an even more scandalous, large, out of control, democracy threatening, un-Westminster principled respecting sum of money. I do not know whether he thinks that that also renders democracy insecure in Gibraltar and then, as if all of that were not enough, as if all of that were not enough, as if not recognising that the Government publishes adverts in the 7 Days by exactly the same criteria as it publishes in the Panorama, which are incapable of being described, other than in exactly the same terms in relation to the support that one tends to give to one party and the support that the other gives to the other, but with the very next breath, as if that contradiction and incoherence were not enough, he then chastises me again for “the disgraceful way in which I supposedly treated Clive Golt”. Now let us all understand this, the supposedly disgraceful way in which I treated Clive Golt was not to give Government advertising to the undeniable in-house GSLP scandal sheet called The New People and this led to a legal challenge that he supported.

So, Mr Speaker, whilst pressing the Government and whilst describing as disgraceful the Government’s decision not to give publicly funded advertisements to the GSLP’s in-house party scandal sheet, he now stands up in this House and says that if I give it to what he thinks is the GSD’s in-house scandal sheet, that that threatens democracy in Gibraltar and that that puts Gibraltar’s democracy into an insecure condition, which is something he has been pressing me to do in favour of his own rag for the last eight years. There is no limit to the incoherence, to the inconsistency and to the contradiction of which the hon Member, in pursuit of his systemic lack of sincerity, trustworthy and reliability, escapes no boundaries and if he is not careful he will end up like Pinocchio. No one in Gibraltar will ever believe a word he says on anything.

**HON F R PICARDO:**

[Inaudible].

**HON CHIEF MINISTER:**

Well, Mr Speaker, that is not the history of my electoral record. We will see whether it turns out to be the history of his electoral record. Mr Speaker, he then went on to say “well, at least the hon Member has now done the decent thing and has made amends to poor Mr Golt by employing him as the Government’s Press Director”. Well, Mr Speaker, if that were indeed making amends I think it is probably an excessive act of contrition. I mean from not giving the man an advert to putting him at the heart of my Government, three doors away from my own office, privy to all my confidential information, I mean he must think I am a Saint, willing to submit to penance of that degree, for the disgraceful way in which I have treated Mr Golt in the past. Mr Speaker, the reason why Mr Golt is now free to be employed by the Government is exactly the same reason as the Government did not give advertising to the GSLP’s scandal sheet called The New People before which was that he was the Editor of the GSLP’s in-house scandal sheet. You do not even deny that it is the in-house scandal sheet. You used to send Christmas Cards to GSLP party members from The New People. I do not think even the hon Member is willing to stoop low enough to argue that The New People is not the in-house scandal sheet of the GSLP. When Mr Golt stopped being associated with the production of that newspaper, he became not just eligible for advertising but eligible to be employed as my Press Secretary, not proving that I am a Saint when it comes to the magnitude of the penance that I am willing to do, proving the genuineness and sincerity of the reason originally given for not giving the adverts in the first place, which he now calls disgraceful. Mr Speaker, the only disgraceful thing here is the extent of the hon Member’s willingness to distort and to deceive Gibraltar on almost every issue that he addresses upon.

Then, the hon Member not knowing when to stop digging a hole and not content to have botched every issue that he had then touched on in his Budget address thought that he would go for a walk in the field of social insurance contributions. Well, Mr

Speaker, social insurance contributions, amongst other things, go to pay the health service, GPMS. It goes to pay old age pensions but certainly, in many of countries of the world and I would make no secret of it here, I would not deny it here, it is regarded loosely as a form of taxation. It is a form. All sums of money that Government's take ... It is not income tax in Gibraltar because it is not based on your income as it is in the United Kingdom. But all sums of money that Government's take from people are some sort of taxation, albeit not income taxation. I do not know why the hon Member had to hyper ventilate for so long about the fact that we had increased social insurance contributions over fifteen years. Had he just stood up and asked me whether I would concede the point, I would have immediately rushed to do so and saved him all that he is now going to have to listen to me from at this moment. Why, he asked, if we had a surplus, was it necessary for the Government to increase social insurance contributions? Mr Speaker, of course, social insurance contribution rise. Otherwise, the old age pension fund would soon also become a totally unfunded liability on the Consolidated Fund. The Consolidated Fund is already making a contribution to the old age pension. The Hon the Leader of the Opposition that ... or rather, yes, I keep on making this Freudian slip because really in my mind I continue to consider the Hon Mr Bossano as the real Leader of the Opposition. In his address to this House, the Hon Mr Bossano, Opposition spokesman for Employment, said that the state pension scheme will face problems as presently structured and he was making the point, with which I agree, that there will come a point in time in the future when there are too many pensioners for the number of working contributors. So, of course, the hon Member, the Leader of the Opposition, was not here to hear his great ex-Leader because I suppose he was busy recording podcasts for his Facebook page. But, Mr Speaker, presumably the hon Member is not suggesting that the Government should not increase social insurance contributions and allow the funding deficit, which the Hon ex-Leader of the Opposition correctly identifies will develop in the future, to simply get of an even greater magnitude. The facts about social insurance

contributions are not the selective use of statistics that the hon Member has had recourse to, in and outside of this House. The facts are these, Mr Speaker. Under the GSLP Government, over a period of just eight years, employee's social insurance contributions increased by nine pounds forty a week. So he can do his own fifty two times table. I have not brought mine with me. To work out the amount of money by which this represented an increase in, the workers that he is now so concerned about, tax. That represented, in just eight years, a hundred and ten per cent increase, an average, a hundred and ten, divided by eight, forgetting the compounding just for a moment, just do some simple mathematics, an average of fourteen per cent a year. The employer fared better because at that time he was not concerned about the lowest paid, he was concerned for those trying to make their fortune ... the GSLP. The employers went from twelve pounds sixty eight, or rather, the employers went up over those eight years by twelve pounds sixty eight a week, a hundred and forty four per cent over eight years, an average of thirteen per cent per annum. So, fourteen per cent per annum average over eight years for long suffering workers and thirteen per cent, or thereabouts, a year, just under twelve point nine something per cent, for employers. Well, Mr Speaker, the very first thing that they did. This concern that the hon Member said, what a way to increase the cost of doing business in Gibraltar, he said, of our cuts, which I will contrast in a moment with those, of our rises, I beg your pardon. The first thing that the GSLP did when they came into office in 1988, remember. I do not think anybody in Gibraltar can forget. March 1988. Written in black in most peoples' diaries, I suppose. The first thing that they did, in August, even though social insurance is normally reviewed in December for January, in August of 1988, three or four months after arriving in office, the first thing that they did was increase the employer's social insurance contribution to eight pounds seventy nine from six pounds seventy nine. A rise, overnight, of two pounds equivalent to twenty three per cent, overnight, and now he comes to this House lamenting much smaller increases by the Government being an unacceptable way of increasing the cost

of business. So how much has social insurance contributions risen by under the GSD Government. Not over eight years but over fifteen years. Eleven pounds fifty for employers compared to the higher twelve pounds sixty eight under the GSLP and in more years under the GSD than under the GSLP, fifteen against eight, a total under the GSD Government of fifty four per cent as against a hundred and forty four per cent in eight years, fifty four per cent in fifteen years. His average, their average, thirteen per cent a year to business. Our average, less than three point six per cent a year. For the employees, the ones that he is now so concerned about. The only thing he is concerned about is to grab their votes. He could not care less about any other aspect of it. Mr Speaker, for employees, we have increased contributions by seven pounds twenty nine pence over fifteen years compared to their nine pounds forty pence. More than two pounds twenty pence a week more over eight years, compared to my two pounds odd less over fifteen years. My total, forty one per cent over fifteen years. Their total, a hundred and ten per cent over eight years. Their average, to the long suffering workers that they so much care about, fourteen per cent average a year. Mine, two point seven per cent a year. And of course, Mr Speaker, he has the gall to go on television and lambast the GSD for what it has done with social insurance contributions. It is shameful. It is shameful and, of course, there is another difference between the socialist GSLP and the supposedly uncaring GSD, and it is that we, in delivering smaller increases to workers in Gibraltar than they did, protected the lowest paid workers whilst they punished the lowest paid worker the most. Their increases, because they were flat across the board for everybody, punished the lowest earning people most. We have not increased the rate on the lowest paid since 2005, five or six years ago, and in 2007 we lowered the rate for part-time, casual and the lowest paid workers in Gibraltar.

So who took, took, took and who has given, given, given. Who really cares for workers? Mr Speaker, the GSLP would not recognise caring for workers or the lowest paid if it came at them in the form of a lorry and knocked them over, and then he says,

take, take, take, take ignoring all the give, give, give, give, Mr Speaker, even with our increases in social insurance contributions, workers, each and every one of them are still hugely, hugely, hugely financially better off as a result of our much, much, much larger income tax cuts that we have given at the same time as increasing social insurance contributions by less than they did.

Mr Speaker, the "*piece de resistance*", however, of the hon Member's address came on the subject of the public debt. So we have established he knows nothing about social insurance contributions, tax, the Government's fiscal position. It now remains for me to demonstrate that by knowing nothing about public debt either, he knows absolutely nothing about any aspect of the economy. Mr Speaker, the gross debt of the Government is four hundred and eighty million pounds. The net debt of the Government is two hundred and seventeen million pounds. Does he still not understand, or is it that he does not care about the difference and he goes out to tell elderly people in Gibraltar a version of facts which he hopes they will not understand and worry about. Which is it? Does he not yet understand that, in terms of affordability, in terms of risk being left for future generations, in terms of what people should worry about around their dinner tables at home, it is not the gross public debt that is relevant, it is the net public debt that is relevant? Does he not understand that the difference between the two, which is two hundred and sixty three million pounds, represents no risk to the Government or to tax payers because it is sitting in a bank account of the Government and that the Government have borrowed it from pensioners and savers to give them a higher rate of return on their savings than the banks will give them and just put it there, in cash. Does he not understand that the Government could repay most of it, all except two hundred and seventeen million pounds of it, this evening, if I wanted to, in cash? Does he not further understand that the figure of four hundred and eighty million could come down overnight to two hundred and seventeen million or thereabouts, a bit more, just by shunting the debentures into the

Gibraltar Savings Bank where they always used to be issued from. Does he really think that the difference is worth worrying the people of Gibraltar about? Or does he not care how much he worries the people of Gibraltar about? He either does not care or he does not understand. I think it is a combination of both. Mr Speaker, I am perfectly willing to have a debate with the hon Member about whether he thinks that two hundred and seventeen million pounds is too high. That is the amount of money that the Government has borrowed and spent. Two hundred and seventeen million pounds is the amount of money that the Government has borrowed and spent. The other two hundred and sixty three million pounds that the Government has borrowed, and is sitting there and it would take one signature of my pen to eliminate it, at the expense of much of the transparent fiscal reconstruction that we have been doing. Well, Mr Speaker, but I have to alert the hon Member to something. If he wants to debate with me whether two hundred and seventeen million pounds is too high a level of debt for this economy, I have to warn him that the guru economist, with the big shoes that are going to be difficult to fill that is sat to his right, will be arguing with me against him, because when we debated the public debt legislation in 2008, the then Leader of the Opposition, the one that he thinks miraculously turned around the economy and has shoes that are so big that neither of us, not even both of us together can fill, said, we see nothing wrong with the level of two hundred million pounds in an economy of our size. As far as we were concerned, it was really a question more of looking at how the money is invested than whether we are borrowing too much or not and does he really for a minute think that Mr Bossano was talking about the gross debt. Economists do not debate the gross debt. They debate the debt that is out there at risk and you know that he was not discussing the gross debt and that he was discussing the net debt because I have just read it to you. It was really a question more of looking how the money is invested, spent. He was complaining that he did not want to see me spending it on an air terminal that was too big. That he [*inaudible*] wanted to spend it on something else. So why does he now mislead and scaremonger

the people of Gibraltar on the back of his economic ignorance? In 2008, that is three years ago, when our economy was at least fifteen per cent smaller than it is now, or thereabouts, I have not done the calculation on my feet, the then Leader of the Opposition thought that there was nothing wrong with a public debt of about two hundred million. Now, he goes out on his ridiculous little Facebook page warning families at dinner to multiply, divide the debt by the population, multiplied by the number of people eating cereal bowls around the table and that is what each of them owes to the bank. Shame on him. Shame on him. Not just for his economic ignorance but for his level of dishonesty with the people of Gibraltar. Mr Speaker, and if the Hon the new Leader of the Opposition thinks that public debt at two hundred and seventeen million pounds, net public debt, is a problem, why is he saying that my budget cuts do not go far enough and that he would have cut revenue even more. Well, if he thinks that the public debt of Gibraltar is a problem, he is not just ignorant and deceitful, he is irresponsible because in the belief that we are on the verge of an economic collapse, he is threatening to make the Government's economy even worse. He does not believe it. He does not believe it himself. Yet he goes out there to tell the people of Gibraltar in the hope that they will not understand and that, in their lack of understanding, some will worry as indeed some have and I have got news for them. He is wrong as well when he says that net public debt in 1995 would have been zero if calculated as it is now. It is not true. It is untrue. It is not zero in 1995 even if all the Government's piggy banks were taken into account. Even though we do not take all our piggy banks into account as we calculate it today. But even if we took all our piggy banks into account, our published measure of net public debt has never taken all the Government's piggy banks into account. It is not zero whether they take all the piggy banks into account or whether they do not take all the piggy banks into account and that is not the worst of his incoherent contradictions.

Mr Speaker, the hon Member left this House. He went to the GSLP party offices and he produced a podcast which he hung

on his first Facebook page. He told the people of Gibraltar that there is “an issue with the economy that I want you to understand”. Mr Speaker, he has no chance of making the people understand what he himself plainly does not. He does not understand it. His colleague, with the big economic shoes, does not think that there is an issue with the net public debt around two hundred million pounds. Then he said to the people of Gibraltar in this podcast, we are talking about every man, woman and child in Gibraltar owing sixteen thousand pounds to the banks. Every voter owes twenty four thousand pounds to the banks and about net public debt he said, every Gibraltarian man, woman and child still owes seven thousand. You see the problem with the hon Member is that he hears things when he is watching television and says, oh, I am sure I have heard some very clever economist somewhere convert public debt into an equivalence of so much per household, or so much per capita. But no one is stupid or dishonest or disingenuous enough to put it in the terms that the hon Member shows. Every man, woman and child in Gibraltar is owing to the banks. Well, there were old ladies ringing up asking over what period of time they had to pay their sixteen thousand pounds to the banks. He has no shame. He has no shame because he does not care about the truth and even if he did care about the truth, he does not have enough economic knowledge to use accurate language. He is a disgrace. If he believes that the people of Gibraltar are going to put the future of their children and their grandchildren of an economic illiterate like the hon Member opposite, he has got another thing coming. No man, woman or child owes a single penny to any bank. Mr Speaker, does he care that he goes out there to tell untruths to people that he knows do not grasp these concepts and terminology? He does not give a fig. He does not give a fig because he is quite willing to steal the votes of the people of Gibraltar even by lying shamelessly to them. Could it have been ... This is such an act of stupidity that I ask myself, could it have been a genuine error on the hon Member's part? Could he just not have confused himself? No, I had to conclude. Why? Because not content with telling every man, woman and child in Gibraltar that they owed money to the bank, he then

went on to explain to them how much more they owed to the bank if there was three or four of them sitting around the dinner table. So he said, for a family of three it is twenty one thousand pounds and for a family of four it is twenty eight thousand pounds. Well, Mr Speaker, since it makes no difference in terms of macroeconomic terms whether you divide between households. If he goes to the trouble of giving a, sort of, league table, a, sort of, instant calculator for worried people at home, how much they owe to the bank. So, parents have got to count their children and if you have got five children, you owe the bank twenty eight thousand pounds. Well, thank goodness for parents who only have one child, because they, according to John Fabian Keynes, only have seven thousand pounds to pay to the bank. So there is no possibility, there is no possibility of error. He set out, by using this family multiplier effect, I think he heard the hon Member use the word multiplier, talking about the national accounts and he said, I know, I will apply the multiplier to my public debt broadcast and he applied the multiplier by children around the lunch table and, in doing so, he deprived himself of any possibility of arguing innocent mistake. He set out to try and make people believe that they owed money to the bank and that they owed more to the bank the more people that there were in their household.

Shameful and then, Mr Speaker, having left this House to go on his ridiculous little Facebook podcast to lie to the people of Gibraltar by telling them all these dreadful stories, I said, well, what did he say when he was in the House, what did he have the courage to say when he was looking at me in the face. What he said about public debt was “there is room for less debt”. Well, Mr Speaker, from saying in this House, as Leader of the Opposition and Shadow Finance Minister, that there is room for less debt, which was as aggressive and hostile as his observation on public debt got in this House, to rushing to Watergardens to tell people having supper in their houses that they had all suddenly become more indebted to the bank and that they had to count their kids to work out by how much, it is a hell of a difference of approach which also deprives him of a

defence about innocence. But there is no room for a defence about innocence as we will discover in a moment.

He said in his little podcast ... It reminds me of the ... I remember when I was a boy there used to be adverts for washing powder. There was one called OMO and I will never forget. It was OMO washes whitest and his approach to the use of the internet is a, sort of, marketing exercise as a substitute for any knowledge, any substance, any understanding, any trustworthiness, any reliability, any dependability of what it takes to be Chief Minister of Gibraltar and he thinks that, by waffling to people on his twitter and on his Facebook, enough Gibraltarians are going to fall for his OMO washes whitest little approach to politics. Well, he has misjudged, badly, the people of Gibraltar. When you are being told, he said, that things are doing so well in the economy that we can afford tax cuts, what is he trying to imply then that things were not going so well in the economy that we can afford tax cuts? Because two hours earlier he had stood in this House saying that he would have cut them even more. In the knowledge of what the debt was. So, now on top of it, we wanted to use a formula of words that put into doubt whether it was affordable, whether the tax cuts were affordable, whether the economy was doing as well as we pretended, having just left the House saying, that he would have had an even bigger surplus, that he would have cut taxes by even more and that I had not given away enough tax.

So he wants to be, as always, all things to all men depending on where he is and who he is talking to. So he wants to tell people that high borrowing means that we are in economic trouble. He wants to cut at the same time taxes further and at the same time he wants to raise electricity, water and social insurance contributions less and he wants to have an even higher surplus. Well, Mr Speaker, none of what I have yet said about the hon Member's shameful performance on the question of public debt compares in its gravity with what I am about to tell him now.

Mr Speaker, the truth seems unable to navigate its way past the hon Member's vocal chords. In his podcast he told the people of Gibraltar that there was a legal limit of five hundred million pounds for the gross public debt. That is untrue. It is a lie. He told the people of Gibraltar that with the gross public debt and the company debt of twenty million, of which he said added up to five hundred and two million, we will forgive his mathematics ... The Government, he said, now owes more than the law allows them to owe. Well, that is untrue. That is a lie. It is a very serious charge to make at a Government made by an ignorant person who neither knows nor understands what he is saying and is quite happy to go out there to lie about it. It is not true. It is a premeditated, fabricated lie. It is not true that the gross public debt limit is five hundred million pounds. Nor that the Government has borrowed more or has exceeded its legal limit. Again, I ask myself, could it be an innocent mistake? Well, you know, ignorant people can make innocent mistakes. Could it be an ignorant mistake? Again, I had to come to the conclusion that it could not be and I will explain to him why I came to the conclusion that it could not be an innocent mistake and that it was a premeditated lie on his part. Firstly, the legal limits and the factors that contribute to it are set out in the law. He is a lawyer. He should know it. Indeed he was in the House when we passed it. Secondly, I explained the legal limits and how they were calculated in my own Budget address just minutes before, well, his own speech, a couple of hours before he rushed from the House to record his disgraceful lie. And what is even more telling even than that, is that, surely, if at 5.30 pm or whenever he recorded his disgraceful little podcast, he believed that the Government had exceeded the legal statutory borrowing limit, do you not think he would have said so in the House two hours earlier when he spoke here. So, he speaks in Parliament as Leader of the Opposition, Minister of Finance, holding the Government to account for its stewardship of public funds and he says that there is room for less public debt and then he goes out there to tell the people of Gibraltar that the Government have borrowed more than its legal limit. Well, if the Government had borrowed more than its legal limit, I would have



expected it to feature, at least in passing, in his speech in this House. No such thing. You see, it cannot be an innocent mistake because the innocent mistake would have been made here and there. Not only out there. The man ... I have to tell the hon Member what I said to him at the beginning of this point. The truth simply cannot navigate its way past the Hon the new Leader of the Opposition's vocal chords.

Mr Speaker, I therefore give notice that I intend to move a motion in this House which reads as follows: "This House notes the video podcast posted on his Facebook profile page by the Leader of the Opposition in relation to the Budget debate in general and public debt in particular and condemns him for lying in it to, and thereby premeditatedly seeking to deceive and mislead all the people of Gibraltar who view it or otherwise learn of its contents" and I give written notice of that right now. And in these circumstances, he has the audacity to say that I have lost my democratic compass, well, Mr Speaker, his problem is that he has no moral compass, let alone a democratic compass. None. He does not care the lies that he utters to deceive the people of Gibraltar out of their voting. It is precisely, Mr Speaker, these characteristics and instincts of the hon Member, his economic ignorance, his could not care less attitude to the truth, to the difference between right and wrong, which have already got him into trouble professionally with a case in Spain, the case in England and the professional complaints, that Gibraltar cannot afford to have and will not have in their Chief Minister. He accuses me of hocking Government buildings for debt. Mr Speaker, the only hocking that Gibraltar cannot afford is a Chief Minister hocked to Gibraltar's opponents in the United Kingdom and worse, Gibraltar's opponents in Spain, with all these cases pending over his head. That is what we cannot afford. *[Interruption]*.

**HON F R PICARDO:**

On a Point of Order Mr Speaker.

**HON CHIEF MINISTER:**

... and Mr Speaker ...

**HON F R PICARDO:**

Mr Speaker, on a Point of Order and therefore the hon Gentleman will sit down.

**MR SPEAKER:**

I will hear the Point of Order.

**HON F R PICARDO:**

Mr Speaker, just on a Point of Order, the hon Gentleman has said many things today which I will deal with somewhere else but he has now said that I am somehow hocked in respect of these cases and I think he should realise that there are absolutely no cases pending against me in any jurisdiction and that therefore I am hocked to neither enemies nor friends of this place and if he wants to elaborate on that perhaps he should bring another motion or we can have a discussion outside of this place if he likes where he and I can clarify to each other what the position is. But if he wants to use that sort of language I think he has got to justify it. There are absolutely no cases whatsoever hanging over my head.

**HON CHIEF MINISTER:**

Yes, Mr Speaker. That is a self-evident reality at the moment. The point about hocking ...

**HON F R PICARDO:**

Mr Speaker, I am not going to accept this business of, at this moment, because there is absolutely no question whatsoever of anybody being able to get away with suggesting that there might, at any time in the future, in relation to the same facts, be any cases against me. There is about as much of a chance that the hon Gentleman will be the subject of a prosecution as there are that I will be or any other Member of this House. So there is no question of anybody holding me in hock over anything and I invite the hon Gentleman to understand it.

**HON CHIEF MINISTER:**

Well, Mr Speaker, it remains to be seen. He is giving evidence. I mean, on the question of giving evidence, Mr Speaker, does the hon Member not think that it is right that the people of Gibraltar should know, or does he try to sweep everything under the carpet, that last week or the week before, he was in the United Kingdom giving evidence in one of these trials where ... I do not know if it is true or not, perhaps he would elucidate for us, where quite serious allegations were put to him by ... cross-examined by counsel involved in the case. Do you not think the people of Gibraltar deserve, at least, to know ... *[Interruption]*.

**HON F R PICARDO:**

I want to clarify that ...

**HON CHIEF MINISTER:**

Do you not ... I have not finished. I am half way through the question and then I will certainly give way to him and he can answer. Does he not think that the people of Gibraltar are entitled, at least, to know that their Leader of the Opposition and

aspirant candidate for the GSLP is at the moment, was then at the moment, he is no longer, was at the moment, was then giving the evidence that has become of some notoriety, he thinks unfairly, I think perfectly rightly, in the last few months. Obviously, he does not. He was hoping ... and, Mr Speaker, this business about secrecy and confidentiality is a complete nonsense.

**MR SPEAKER:**

Hang on. Before we go any further. When the Hon the Chief Minister mentioned that particular aspect, I was about to draw to his attention that he was in danger of straying into the realms of irrelevance for the purposes of Budget debate. The Point of Order has rather opened up the matter, somewhat more than I would have liked to see it open. I do not believe it ought to be dwelt on much further than this because it is not really, in my view, relevant to the Budget debate.

**HON CHIEF MINISTER:**

Mr Speaker, having said all that ... *[Interruption]*.

**HON F R PICARDO:**

Mr Speaker, I wish to have the opportunity at least to answer the hon Member. *[Interruption]*.

**MR SPEAKER:**

Yes. But as I say ... I have allowed the hon Member to answer but there is a danger that we are going to stray away from the Budget debate and then ... *[Interruption]*.

**HON J J BOSSANO:**

*[Inaudible]*.

**HON F R PICARDO:**

Mr Speaker ... *[Interruption]*.

**MR SPEAKER:**

I will listen to what the hon Member has to say but, as I say, let us not open the debate beyond the Budget debate.

**HON F R PICARDO:**

I am grateful. Mr Speaker, the position is that there is no secrecy or confidentiality to speak of. I have given evidence as a prosecution witness in a prosecution in the United Kingdom, the subject of which is subject to reporting restrictions and, therefore, I have not been at liberty to inform the public of that but I am delighted for the opportunity to do that today.

**HON CHIEF MINISTER:**

Of what? Of giving evidence?

**HON F R PICARDO:**

Mr Speaker, the whole thing is subject to reporting restrictions and, perhaps, if you refresh your memory from your days at the bar, you might find that that includes whether somebody is giving evidence or not. Mr Speaker, there is no secrecy or confidentiality to speak of other than that. But the important

thing is this. My evidence was welcome ... was sought by the prosecution and I have not been the subject of any accusations made by either prosecuting counsel or defence counsel and I am very happy, at the time that it is available, to make a transcript available to the hon Gentleman so that he can read the whole thing and he can no longer attempt to mislead people as to the facts that occurred when I gave evidence in the United Kingdom. I am also happy to inform the House that the scandal sheet that I referred to before, the 7 Days will soon be receiving ... *[Interruption]*.

**MR SPEAKER:**

No, no, no. Order, order, order. Order. Order. We are not going to go into 7 Days.

**HON F R PICARDO:**

Well, fair enough. Okay.

**MR SPEAKER:**

I have specifically allowed the hon Member to reply to the aspect.

**HON F R PICARDO:**

I am very grateful, Mr Speaker, for the opportunity to have done that.

**MR SPEAKER:**

Again, I repeat my earlier ruling that I think it is in danger of straying into irrelevance.

**HON CHIEF MINISTER:**

I will not [*inaudible*], Mr Speaker, the [*inaudible*]. Mr Speaker, in conclusion, the hon Member's address to this House and the hon Member's reporting outside of this House of the issues that we have debated in this House, are riddled with the lies and the deceptions that I have explained in this House. It is a matter of the utmost gravity, Mr Speaker, and, frankly, I think that people in Gibraltar are entitled to know, not that the hon Member may have made a mistake, if a mistake it was, well look, I suppose if you make too many mistakes it becomes symptomatic of other things, of unsuitability for other reasons. But these are not mistakes, Mr Speaker. This rushing off to his podcast to say something out there quite different to what he said here, which is a lie, is not a mistake. It is a monument to the hon Member's instinct to have his electoral way by hook or by crook.

Mr Speaker, I do not believe that the people of Gibraltar will fall for this and I do not believe that the people of Gibraltar will want such a person as their Chief Minister and I believe therefore, Mr Speaker, that when the time comes, the people of Gibraltar will give a more generous recognition of this Government's performance, economic and in other areas as well, than the hon Members have during this debate been willing to do, and therefore, I have not the slightest hesitation in commending the Bill to the House.

**HON F R PICARDO:**

Point of information only and I am going to limit myself to information. The House has received notice of a Motion. I just

wish to inform the House. I think you are all aware that I will not be available in the House after the end of this week until the beginning of August. I just inform the House if the Hon Leader of the House wants to take the Motion in my presence, that I will not, be available after Friday until August.

**HON CHIEF MINISTER:**

Mr Speaker, the truth will keep. I am very happy to wait.

Question put.                      Agreed to.

The Bill was read a second time.

**HON CHIEF MINISTER:**

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

Question put.                      Agreed to.

**COMMITTEE STAGE**

**HON CHIEF MINISTER:**

I have the honour to move that the House should resolve itself into Committee to consider the Appropriation Bill 2011, clause by clause.

**THE APPROPRIATION BILL 2011**

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

## **Clause 2**

### **CONSOLIDATED FUND EXPENDITURE**

#### **HEAD 1 EDUCATION AND TRAINING**

##### **Head 1 - A Education**

Subhead 1 – Payroll

Subhead 2 – Other Charges

Head 1 - A Education – was agreed to and stood part of the Bill.

##### **Head 1 - B Training**

Subhead 1 – Payroll

#### **HON J J BOSSANO:**

Mr Chairman, we used to sit here for so many years until the hon Member came along and since I do not follow anything he suggests, I am still standing up even if nobody else does.

#### **MR CHAIRMAN:**

I think it is usual at Committee Stage for Members to be seated but.

#### **HON J J BOSSANO:**

No, no, no. Perhaps, not in your time but before, they did stand up.

#### **MR CHAIRMAN:**

Well, in Westminster they do remain seated but the hon Member is at liberty to stand.

#### **HON J J BOSSANO:**

In Gibraltar we do not slavishly follow everything they do in the United Kingdom.

#### **MR CHAIRMAN:**

The hon Member is at liberty to stand if he wishes.

#### **HON J J BOSSANO:**

On Personal Emoluments in Training, Mr Chairman, are the emoluments of people that were involved in training in GDC included in the figure?

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

Yes, they are there in the figure of £859,000 which the hon Member will see a corresponding figure last year further down the page of £385,000.

#### **MR SPEAKER:**

The Hon the Chief Minister is following the trend of standing up as well.

**HON J J BOSSANO:**

Well, since he has followed my example, I will now follow his and stay seated.

The extra £300,000 that we are being asked to vote is the result of the move of the people from the GDC and I think, at the general principles of the Bill, my hon Colleague and Friend who has not, as far as I am concerned, tried to plot against me, asked for this information to be provided, either when the hon Member exercised his right of reply or when we came to vote the money, so that we would know if there is £300,000 more being voted, what that £300,000 is due to, in terms of how much is the increase that would have been there anyway, and the increase that is the result of the transfer.

**HON CHIEF MINISTER:**

Mr Chairman, this presentation of the Estimates does not pre-empt the change of the employer. If he looks at the establishment page on page 19, he will see that they are still listed there as Gibraltar Development Corporation staff, the second last item there, but in terms of the vote, as the GDC Head was disappearing, I am told that it has been provided for here under Personal Emoluments. It is the same expenditure. Now the information that the hon Member asked for, I could not give him yet in final form. There was in the agreement that was not to be, an assimilation table which basically had the GDC scales and the corresponding Civil Service scales side by side and that there was an assimilation exercise but, of course, as the scales were not exactly co-extensive, people would come across from the GDC in to the Civil Service and may have had to rise a bit to the nearest Civil Service point just above. So, I cannot and there has not yet been a final, given that there is not an agreement ... We have not yet discussed the agreement [*although*] the Government intends to offer the same as was in the agreement. So it is not a huge amount but there is an

increase. There is an increase over last year's labour cost by virtue of the assimilation into the Civil Service and the assimilation into the Civil Service tables. But I think it would be wrong for me, today, to give the hon Member assimilation tables which have not yet been consummated in terms of implementing the Government's decision to include these people as civil servants assimilated on that basis. Indeed, some of them, the clerical and admin grades, are straight across assimilations into existing Civil Service grades which obviously exist in clerical and ... but those that do not do clerical and administrative grades work, they will have to be assimilated into new grades created in the Civil Service. For example, if you are an Upper Rock site kiosk. Those do not exist. That would be a new grade created. So, they are included there. Their transfer is not pre-empted. They are still listed as GDC but that is the financial provision for their salary even whilst they remain as GDC employees.

**HON J J BOSSANO:**

Yes, but Mr Chairman, we are voting £859,000 instead of £505,000. So, effectively, what I am asking is, of the £354,000, can they tell me how much is the increase to the people who were there in the Personal Emoluments, that is, the salaries of the people who were there without the GDC and how much is due to the GDC because the amount that is there, presumably, is the amount of money that is payable to eleven people in the twelve months from the 1<sup>st</sup> April to the end of March because that is what we are doing here now. We are voting salaries of people for a twelve month period backdated to the 1<sup>st</sup> April. So effectively, what we are saying is, at the moment there is no money in the GDC. I am not very sure how they have been paid until now when there was no provision here and no provision in the GDC and my understanding is that after the end of the financial year, the Government are not free to pay new things. It is only free to pay based on the preceding year's Estimates. Well, this was not in the preceding year's Estimates. So how have people been paid in April, May and June?

**HON CHIEF MINISTER:**

Well, Mr Chairman, they are being paid out of this vote which ... I can only assume the Financial Secretary has vired into a ...

**HON J J BOSSANO:**

Where?

**HON CHIEF MINISTER:**

Mr Chairman, I am actually being told that the rule of spending money before appropriation in the four months of the year applies to last year's because there was a Head last year at GDC. The four month rule that says that you can spend until the end of July before appropriation has been interpreted by the Financial Secretary to mean that during the first four months they were spending, I think it is one third that you can spend or something, of last year's votes and last year's votes included GDC votes for contribution for salary.

**HON J J BOSSANO:**

The contribution. Yes. I am not disputing that. For example, Mr Chairman, if what we had was that, of the £385,000, which is the outturn, we voted a year ago £401,000 to pay the salaries of the GDC staff, £385,000 was paid but, of course, it was paid under a sub-head that has now disappeared. I do not think that the fact that there was money there that could have been spent means that you can then show it as Personal Emoluments where it was not before. You can spend it in the same thing in which it was being spent and it was not being spent ...

**HON CHIEF MINISTER:**

It was being spent last year on contributions to the Gibraltar Development Corporation - Staff Services.

**HON J J BOSSANO:**

That is right.

**HON CHIEF MINISTER:**

Therefore, until ... In April, May, June and July you could spend up to a third from last year's vote on the things that you could spend it on last year.

**HON J J BOSSANO:**

Which was a contribution to the Gibraltar Development Corporation - Staff Services.

**HON CHIEF MINISTER:**

But the Gibraltar Development Corporation exists.

**HON J J BOSSANO:**

Of course, it exists. That is right and the Government has chosen ...

**HON CHIEF MINISTER:**

Then the contribution was made ...

**HON J J BOSSANO:**

Mr Chairman, the Government have chosen to have in the pages in the back of the GDC an empty column from 1<sup>st</sup> April. Now, in my view, the correct interpretation of the power that the Financial Secretary has is that he is entitled to pay this year, in advance of appropriation, one third of the £385,000 to the GDC which would then appear as income of the GDC. What I do not think he is entitled to do is to say because Parliament approved that last year, I am going to interpret that, that they are going to approve this year the £859,000 and put the money there when it was not there a year ago. I do not think he is entitled to do that.

**HON CHIEF MINISTER:**

Well, Mr Chairman, a better point might be or another way of making the point that he may be making, indeed, may be to say that we have passed the law that says that monies now need to be appropriated out of the Gibraltar Development Corporation as well. This is the effect of the law change that we did in February. So, I thought the point that he was making was that, having put the money under last year's vote, relying on last year's vote, having put it into the GDC, we now need appropriation of the House for the GDC to spend it because of what we did in February.

**HON J J BOSSANO:**

No. I was not making that point because we have not come to that part of the Bill yet. The point that I am making is that here, what we are doing is, we are saying we are voting under Personal Emoluments which is the payment to civil servants directly to them. Not to another entity who then pays them. In all the other cases of the Agencies, the people who work in the Agencies who are public servants are not paid directly from the Personal Emoluments of the budget. They are paid from the

contribution that we make to the Agency or the Authority and that is what has been going on with the GDC until now. Therefore, until this Parliament changes that, the Financial Secretary and the Government are not able to do something which was not what was approved initially, in my judgement. Therefore, in my judgement, what this book shows is not something that it is possible to do.

**HON CHIEF MINISTER:**

Mr Chairman, the Financial Secretary tells me that he takes a different view. I could only begin to understand that the hon Member may have a point to be making with the one that I started to explain to him which he said was premature, that he was not making that one yet, but if he is not making that point, if he is making the point that ...

**HON J J BOSSANO:**

Mr Chairman, if we were putting the money into the GDC, right, then we would have to do with the GDC what we are doing with all the other Agencies and Authorities, if that was included, but the Government has chosen to treat the GDC different from all the rest. That is, to treat them as if, in fact, the integration had taken place on the 1<sup>st</sup> April. So the income of the GDC has disappeared and the expenditure of the GDC has disappeared as from the beginning of the financial year.

**HON CHIEF MINISTER:**

This presentation is clearly on the basis that the financial provision for salaries that are still GDC employee salaries is being provided for in this Personal Emoluments Head. That is true and the hon Member appears to believe that that is not permissible.



**HON J J BOSSANO:**

Precisely, because all the Personal Emoluments are the personal ... In fact, I think, in one of his previous explanations to me, Mr Chairman, when he was talking about the difference between public servants and civil servants, he said, what makes a civil servant a servant of the Crown and not a servant of the entity that is employing it, is that they come out of Personal Emoluments. That has not happened yet.

**HON CHIEF MINISTER:**

Well, Mr Chairman, whilst I acknowledge that in the past the Personal Emoluments Head, usually Head 1 of every vote, has, *de facto*, gone for the payment of salaries of people who are civil servants and not for the payment of others. I am not sure that there is any legal reason that requires that, although it certainly has been by the way the finances have been structured in the past. I believe that the decision that has been made is that the Head 1 pays for the Payroll of the people that are described in the establishment on the previous pages and that establishment has now been made to include, novelly, the Gibraltar Development Corporation. So I think this presentation is permissible, despite what the hon Member has said, provided that there is no legal rule that says that Head 1 – Payroll must necessarily be limited to the payroll of civil servants but that it is permissible if Head 1 – Payroll means payroll of the persons declared to be part of the establishment and particulars of which are provided on the preceding pages which now include the GDC. I do not know what the answer to that question is. I do not think and the view has been taken in the Treasury. So they clearly do not think that there is any legal impediment to paying non-civil servant wages. I agree with the hon Member that, as we speak, GDC employees are not civil servants.

**HON J J BOSSANO:**

Right.

**HON CHIEF MINISTER:**

They have obviously taken the view that there is no legal impediment to paying GDC non-civil servant wages out of a provision made for the purpose in Head 1 Payroll, even though in the past that has been limited to civil servants payroll, on the basis that Head 1 legally is applicable to anything that is described under the establishment which now includes GDC.

**HON J J BOSSANO:**

I see. Then perhaps ... Can the hon Member, Mr Chairman, then explain to me, since Head 1 is the one that is being used since the 1<sup>st</sup> April and the Estimates of last year did not have GDC staff, how have they managed to do it before today? They have been doing this in April, May and June and if the explanation given to us today is that they have done something for which Parliament had not voted funds on the basis that in the funds we are voting today we are being shown where it is going because it is on page 19 which is not part of anything we are voting. It is there illustrating how the money is going. Well, that illustration was not there in last year's budget and, therefore, the money that they are using from last year's budget is the money based on the £385,000 payment to the Corporation. So what have they been doing in April, May and June, using money that was approved by Parliament as a contribution to the Gibraltar Development Corporation and not contributing it to the Gibraltar Development Corporation, using it as part of Personal Emoluments? Before [*inaudible*].

**HON CHIEF MINISTER:**

Mr Chairman, I have given the hon Member a speculative assessment of the legality of how we are voting it this year.

**HON J J BOSSANO:**

From now on.

**HON CHIEF MINISTER:**

Yes, which is not to say that that replaces the explanation given for how it happened in April, May and June, which is not that explanation. The explanation about what happened in April, May and June. Well, in April, May, June and now part of July ...

**HON J J BOSSANO:**

Yes.

**HON CHIEF MINISTER:**

... is that it was being ... The warrants do not refer to this year's book. The warrants for the first four months of the year refer to last year's book.

**HON J J BOSSANO:**

Refer to last year's approved [*inaudible*].

**HON CHIEF MINISTER:**

So nothing that is written in here could provide the explanation for what has happened before today. What has happened before today can only be justified, if it can be justified by reference to the rules relating to last year's book.

**HON J J BOSSANO:**

Right.

**HON CHIEF MINISTER:**

Last year's ... The Financial Secretary has taken the view that last year's book included a vote for GDC salaries, which he is describing as contribution to GDC.

**HON J J BOSSANO:**

That is what it read, yes.

**HON CHIEF MINISTER:**

But it is for staff.

**HON J J BOSSANO:**

Yes.

**HON CHIEF MINISTER:**

That he has therefore refilled, under that rule, that Head with monies up to a third or whatever the rules say about last year's provision, which had been used by the GDC for staff salaries.

**HON J J BOSSANO:**

So, in fact, what the hon Member is then telling the House is that, in the first three months of this year, the payment of these people was still done through the GDC and not directly by the Department?

**HON CHIEF MINISTER:**

Yes. Mr Chairman, provisionally, yes, because they are still ... The Government have not ... The Government cannot make these GDC employees civil servants until we change the Pensions Act to deny them a final salary scheme. If we let them into the Civil Service today ...

**HON J J BOSSANO:**

I did not realise there was that loophole there.

**HON CHIEF MINISTER:**

You had not. You see, so we do not purport to have done it yet.

**HON J J BOSSANO:**

I see.

**HON CHIEF MINISTER:**

We cannot do it yet until we have closed the final salary pension scheme to them. If I made them civil servants ... Well, if I, I cannot make them civil servants. If the Public Service Commission made them civil servants tomorrow, by operation of the Pensions Act they would acquire a right to a final salary pension scheme. So, they are still GDC employees. They are employees and the GDC financial structure remains in place for these three months of the year.

**HON J J BOSSANO:**

Is the hon Member able to give me the figure in terms of the breakdown of the additional expenditure incurred this year under Personal Emoluments so that we can compare it with the outturn for last year then?

**HON CHIEF MINISTER:**

In respect of GDC staff?

**HON J J BOSSANO:**

In respect of GDC staff, yes.

**HON CHIEF MINISTER:**

Mr Chairman, I am told that the basic salary element is £359,397, but I would not wish to mislead the hon Member. That does not purport to be a mathematical calculation of what their pay will be when they do become civil servants. That is just a provision in respect of their continuing Civil Service status. Now that is basic. Their provision for allowances and overtime

and all of that is not included in the £859,000, it is included in the respective Subheads for overtime further below. So the £859,000 only includes the basic salary to the tune of £359,397.

**HON J J BOSSANO:**

In the £32,000 Pension Contributions, is the contribution to the No. 2 Provident Fund of the people that are currently still in the GDC. Is that correct?

**HON CHIEF MINISTER:**

Yes, Mr Chairman. That is the case. Yes.

**HON J J BOSSANO:**

That will have been included then previously in the £385,000. Is that right?

**HON CHIEF MINISTER:**

That would have been included in previous years in the contribution to Gibraltar Development Corporation – Staff Services. That, he can even work out what it amounts to because it is a [*inaudible*].

Subhead 2 – Other Charges

**HON J J BOSSANO:**

Can I ask, Mr Chairman, in terms of the expenditure on Training and Development Courses which is all blank everywhere. Is it

that there is any change or is it that ... The Construction Training Centre appears as £40,000 this year. Presumably, it was the same as the GDC was spending. So the expenditure has moved just to this Head but is there any change in any of this or is it just as it would have been if it had stayed where it was?

**HON C G BELTRAN:**

The same as it would have been if they had stayed in the green pages.

Head 1 - B Training – was agreed to and stood part of the Bill.

## **HEAD 2 CULTURE, HERITAGE, SPORT AND LEISURE**

### **Head 2 - A Culture and Heritage**

Subhead 1 – Payroll

**HON J J BOSSANO:**

Yes, Mr Chairman, when I made my contribution I assumed that the notional £1,000 of Pension Contributions in this Head and in others was in anticipation that from a given date new entrants will be covered by the Provident Fund and I asked for confirmation about it.

**HON CHIEF MINISTER:**

Where, Mr Chairman? Can he just remind me what Head number we are on? 2A?

**HON J J BOSSANO:**

This is the ...

**CLERK:**

2 - A Culture and Heritage.

**HON J J BOSSANO:**

It is Subhead(1)(e) where it says Pension Contributions £1,000.

**HON CHIEF MINISTER:**

Yes, Mr Chairman. He is right. That is for when they are civil servants and ...

**HON J J BOSSANO:**

For when there are new civil servants coming in which are [inaudible].

**HON CHIEF MINISTER:**

Which have to have contributions paid to the Provident Scheme.

**HON J J BOSSANO:**

This appears in all the Heads and is the same explanation?

**HON CHIEF MINISTER:**

[Inaudible].

Subhead 2 – Other Charges

**HON F R PICARDO:**

Mr Chairman, yes in relation to 2(2)(j) which is the John Mackintosh Hall – Knightsfield Holdings amount which seems to always exceed the £210,000. Is that the contractual amount the £210,000?

**HON CHIEF MINISTER:**

Mr Chairman, this is not the contract sum. Apparently, the contract has expired. So it is a sum which is exceeded because they themselves have sub contracted costs like cleaning and there may even be some pay increase provision there for their staff that always pushes it up. So what we do is that we just provide the same figure and then it comes in at a bit higher by virtue of things that they have not been able to contain, by virtue of their cost increases, which is just passed to us.

**HON F R PICARDO:**

So it is like a cost plus agreement, like the one we see with Master Services? So it has become a cost plus agreement?

**HON CHIEF MINISTER:**

Mr Chairman, this is one of those contracts that is marking time whilst we set up the new Culture and Heritage Agency which will subsume this entity and the staff and this activity. Rather like

the situation with Security and Immigration Limited, where the contract has been allowed to roll over pending a restructure. So, there is no longer a contract with a contract sum written in it but the parties just continue to implement the terms of the contract until the new arrangements ...

**HON F R PICARDO:**

Therefore, the process has become a cost plus process, the negotiated or agreed cost plus process?

**HON CHIEF MINISTER:**

Yes. It has become effectively ... They do what they can do under the figure that is provided and, if we want them to do more, they come to us and ask for money and if they do more ... If what they are committed to doing costs more, then they pass the cost to us.

**HON F R PICARDO:**

I see. Mr Chairman, in relation to 2(3)(f) which is the Gibraltar Heritage Artwork, we are putting £1,000 in a year and then that is just a provision in case there is any piece of other we decide in a competition that we want to buy, for example.

**HON CHIEF MINISTER:**

Well, it is there, Mr Chairman, as a provision in case art work comes up on the market. There are years in which we spend more than the estimate and ... Well, always more than the estimate and the money is drawn from supplementary funding.

**HON F R PICARDO:**

But is this ... You are talking about something coming up in the market. Is this, for example, a rare print of Trafalgar, or is it a particularly, well regarded piece of art work in a competition that we decide to buy from the artist, or both?

**HON CHIEF MINISTER:**

It could be but mainly the fund is there for Gibraltar related art work. It does not have to be a painting of Gibraltar. For example, in the past we have bought paintings by Bacarissas, who was a Gibraltarian painter of some international repute. A lot of the scenes, in fact, most of the scenes that we bought, probably all of the scenes that we bought, were not of Gibraltar but they are ... It is, nevertheless, part of our ... and we buy them to ... for investment but also, as well as repatriating some of our heritage, but it could also be the purchase of a painting, particularly a good painting, in a more contemporary art exhibition.

**HON F R PICARDO:**

I know the Government have bought a number of the highly commended paintings in some exhibition and this would cover that as well?

**HON E J REYES:**

No, Mr Chairman, no. That is something different.

**HON F R PICARDO:**

Right. So that is under another Head?

**HON E J REYES:**

These are of heritage value, like the Chief Minister was trying to explain ... of heritage value either from a Gibraltar artist that we wish to repatriate back to Gibraltar or of a Gibraltar related theme.

**HON F R PICARDO:**

Alright. Okay.

**HON E J REYES:**

Those are purchased prizes.

**HON F R PICARDO:**

Sorry.

**HON E J REYES:**

Those paintings that are bought are from ... It is a prize given in the art exhibition and the condition of the prize is the purchase. The painting then becomes the property of the administration and it is acceptable by the artists' world and, it is sort, of ...

**HON F R PICARDO:**

Oh, I see. When they enter the painting.

**HON E J REYES:**

Yes. They enter the painting and which is why ... I could give the hon Member, sort of, greater information but during these last four years we have, in consultation with the Fine Arts Association, actually reviewed the prizes and pushed them up a bit because we have been advised by their Committee to, sort of, say, look, the average price at which a painting is sold nowadays is 'x' and it has gone up five or ten per cent, so we push the prizes ... I think we pushed the prize up from £4,000 to £4,500 just more or less to keep with inflation, Mr Chairman.

**HON F R PICARDO:**

Alright. Thank you.

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

Head 2 - B Sport and Leisure

Subhead 1 – Payroll

Subhead 2 – Other Charges

Head 2 - B Sport and Leisure – was agreed to and stood part of the Bill.

**HEAD 3 HOUSING**

Head 3 Housing - Administration

Subhead 1 – Payroll

Subhead 2 – Other Charges.

**HON F R PICARDO:**

Yes, Mr Chairman. On Housing Legal Expenses. The actual two years ago was £13,000. The estimate for this year was £6,000 and the forecast outturn was £6,000 but we see an estimate of £12,000 for next year, despite the estimate and the outturn this year being the same. Is this because of the tribunal creating more expectation of cases or ...

**HON F J VINET:**

No, Mr Chairman. There just happens to be a larger number of legal cases involving, for example, decanting which ends up going to court and we are expecting the figure for this current year to go up because we are still awaiting invoices relating to ongoing or past cases which we just have not received yet.

**HON J J BOSSANO:**

Mr Chairman, can I just go back to Payroll, Subhead (1)(e). The Pension Contributions figure is £13,000. Is it that there is already somebody covered by the Provident Fund but paid personal emoluments?

**HON F J VINET:**

Mr Chairman, I am being advised that that relates to people who are already, currently, GDC employees.

**HON CHIEF MINISTER:**

So they are GDC pension contributions.

**HON J J BOSSANO:**

Oh, there are some GDC employees in the Housing Department as well, are there?

**HON F J VINET:**

Yes, Mr Chairman.

**HON J J BOSSANO:**

And there was previously what ... a contribution to GDC which has now disappeared? Or is it that they have come into the Housing for the first time? So they would be covered by the £132,000 of last year, is that right?

**HON CHIEF MINISTER:**

Yes. Mr Chairman, you will find them on page 29 of the booklet. There were two types. Some were Housing Department, across the square here, and others were Workers Hostels.

**HON J J BOSSANO:**

Right.



**HON CHIEF MINISTER:**

So, it is Other Charges Subhead (4) of Housing - Administration and this relates to the housing, to the £132,000 part of it, which is why it is £13,000 and not £59,000.

**HON J J BOSSANO:**

The £159,000 we voted last year which had an outturn of £132,000?

**HON CHIEF MINISTER:**

That is the one because those are Housing Department people as opposed to Workers Hostel parked under the Housing Department.

**HON J J BOSSANO:**

And are the Workers Hostel somewhere else then?

**HON F J VINET:**

They have been seconded for some time, although they came under the Care Agency, and this year they have moved under the Housing Department.

**HON J J BOSSANO:**

So the £13,000 covers what, both groups or only one?

**HON CHIEF MINISTER:**

Mr Chairman, if I could just take him to both places so that he can see it. The industrials, the workers hostels, the industrials are in Subhead 1(2)(d) on page 28. The entry there of £18,000 Pension Contributions under Industrial Wages.

**HON J J BOSSANO:**

And those are the people from the hostel. Right?

**HON CHIEF MINISTER:**

Those are the people from the hostel in respect of their basic salary. Why does there not seem to be enough? That is the whole payroll cost. The £465,000 is the whole payroll cost. So the provision of £18,000, that I have just pointed him to, does not approximate ten per cent of that figure. Of the figure of £465,000, apparently, only around £180,000 or £90,000 worth is basic salary, the rest is allowances, overtime, social insurance contributions and ... Mr Chairman, everything that was included in the £465,000 figure, if he can find that again.

**HON J J BOSSANO:**

Sorry, Mr Chairman.

**HON CHIEF MINISTER:**

Everything that is included in the £465,000 figure is the equivalent of everything that used to be included in Subhead 1(2) on page 28 in ... What was £465,000 last year on page 29 is now provided for on page 28 under Industrial Wages. It actually totals £404,000. You have got to add the £20,000

which is not in the £465,000, so that he will see that there are Basic Wages of £257,000 for which the pension provision provided is £18,000.

**HON J J BOSSANO:**

£18,000.

**HON CHIEF MINISTER:**

Yes.

**HON J J BOSSANO:**

And that is what, for the four industrials shown in the Establishment on page 27?

**HON CHIEF MINISTER:**

No. It is for the twenty odd industrial staff in the hostel.

**HON J J BOSSANO:**

Where are they?

**HON CHIEF MINISTER:**

Ah, yes. The staff is actually shown on page 27 because ... No. Ah, they have been in the Care Agency. They are in the Care Agency, 31. If he can go to page 130, it says, Workers Hostels 31 (Seconded to Housing Ministry).

**HON J J BOSSANO:**

I see. So they moved from the GDC to the Care Agency and then seconded from the Care Agency to the Housing Department. Is that what happened?

**HON CHIEF MINISTER:**

That is what has happened so far.

**HON J J BOSSANO:**

So far. [*Inaudible*].

**HON CHIEF MINISTER:**

Well, they may not be moved. They may not be ... they may stay Care Agency. They are not included in the [*inaudible*] as staff. These 31 are not amongst the 160 GDC employees that are likely to be made civil servants. They are not employees of the GDC today. They used to be employees of the Social Services Agency and have therefore now become employees of the Care Agency [*inaudible*] but, in terms of the day to day business, there has always been a little bit of a turf war, a negative turf war, as between the housing people and the social services people as to whether the hostel really belongs in housing or social services. So they have now landed in the Care Agency whose employees they always were as [*inaudible*] but, in fact, they are seconded to the Housing Ministry that takes day to day responsibility for hostels.

**HON J J BOSSANO:**

So, in this current financial year, this is being voted on the basis that the hostels are the responsibility of the Housing Department?

**HON CHIEF MINISTER:**

Yes. Indeed. As has been the *de facto* situation in terms of time.

**HON F R PICARDO:**

If the hon Gentleman would go back, at 2(2)(g) the Decanting Expenses that the hon Gentleman told us about in relation to Legal Expenses. Those seem to be going down from a forecast outturn of £28,000 this year. Is it that most of those issues are now being dealt with or ... The legal bills go up but the costs go down.

**HON F J VINET:**

Mr Chairman, the Decanting Expenses relate, for example, where there is a need to temporarily house the tenants in hotels or other rental accommodation. It just so happens that, during this last financial year, there was a need to re-house, temporarily, some tenants for a longer time than has been in the case in the past.

**HON F R PICARDO:**

Yes. I accept that but it is now going to £16,000 which is more than the estimate last year. Does that mean that some of that is

still going to continue happening or is it expected to ... Is it creeping in to this financial year from last, for example?

**HON CHIEF MINISTER:**

No, Mr Chairman. It is a raised provision. Last year we estimated £10,000. They spent £28,000. This is a demand led item of expenditure. So, instead of estimating the same amount as they spent last year, we just raised the previous year's estimate. It is a way of preventing ratchetting in public ... In the end it will be what it is, but if you provide people with £28,000, you will find that they will spend even more than £28,000.

**HON F R PICARDO:**

By people, you mean the Minister.

**HON CHIEF MINISTER:**

I mean ... Well, he does not do the spending, but certainly the Minister is the one who permits it.

**HON F R PICARDO:**

Right. Mr Chairman, in relation to 2(2)(l) which is the Lift Maintenance Contract, that is going up. Is that because we are making provision for that contract to cover the new estates? The Lift Maintenance Contract. Is that the contract covering the new estates?

**HON F J VINET:**

No, Mr Chairman. That relates to a greater number of lifts in existing estates. For example, although at the moment there are still two lifts which remain the maintenance responsibility of the Gibraltar Electricity Authority, namely, Kingsway House and Alameda House in Alameda Estate. There were others who have since moved under the contract we have with Otis. So that figure, a large figure, covers an increased number of lifts now contracted out to Otis.

**HON F R PICARDO:**

How is it that there are two lifts in one estate that are covered by the old agreement? Are they passing block by block?

**HON F J VINET:**

No, Mr Chairman. It is just that, historically, they have been the responsibility of the Electricity Authority and as new lifts have been installed, for example, the Tower Blocks, they used to be the responsibility of the Authority. We installed new lifts. Otis installed them and they retained thereafter responsibility for the maintenance.

**HON F R PICARDO:**

I see.

**HON F J VINET:**

So it is not inconceivable that at some point in the future those two remaining lifts will also be contracted out to Otis or some other contract.

**HON F R PICARDO:**

I see. Alright. Thank you.

**HON J J BOSSANO:**

In respect of the new Subheads (n) and (o), Albert Risso House and the Mid-Harbour, what are those payments for and to whom are they made?

**HON CHIEF MINISTER:**

Mr Chairman, it is a provision for things that are not yet in practice, in operation at ... Albert Risso House foresees a warden service which is not yet in place in its final form and also for water consumption in the public areas. We are still under the warranty period for this building, so a lot of the defects that arise ... In the future, there will be a maintenance cost thereto, but at the moment that has been done by the contractor. So it is for warden services and water consumption. There is a provision of £40,000 in Albert Risso and the £75,000 in respect of Mid-Harbour estate is similarly a provision not for warden services because there will not be warden services in the Mid-Harbour estate but again for cleaning arrangements, consumption of water and electricity in public areas. In other words, all the expenses that will fall to the Government as owner of the Mid-Harbour estate. It is only a provision. We have no idea what it is going to cost. The estate is just up and running, beginning to be populated now. It is a nominal provision. I suppose we could have put a £1,000 there. Instead, somebody had a crack at putting something more realistic but we do not pretend that it is the result of any calculation of any scientific basis.

**HON J J BOSSANO:**

Is the responsibility for the maintenance something that will fall on the Housing Works Agency or will there be a contract for this area added on to somebody else by the Government?

**HON CHIEF MINISTER:**

Mr Chairman, that decision has not been made but, in principle, it is much more likely that it will be contracted out.

**HON J J BOSSANO:**

Then there would have to be a different Subhead.

**HON CHIEF MINISTER:**

And then there would have to be a contract Subhead as there is for other ... As there has been for Edinburgh House for some time.

Head 3 Housing - Administration – were agreed to and stood part of the Bill.

**HEAD 4 ENVIRONMENT AND TOURISM.**

Head 4 - A Environment

Subhead 1 – Payroll.

**HON F R PICARDO:**

Mr Chairman, in relation to 1(2)(f) Overtime. The Discretionary amount seems to be exceeded every year and yet we still seem to make the same provision. Is there a reason why we do not make a more realistic provision there?

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

Mr Chairman, the excess is in relation to the pay review and the consequent increase is directly related to the annual pay review.

**HON F R PICARDO:**

Oh. I see.

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

Therefore, that is why the increase comes in.

Subhead 2 – Other Charges.

**HON F R PICARDO:**

Yes, Mr Chairman. In relation to 2(3)(c) the Air Quality Monitoring. The price here, I thought, was the fixed contract price and yet we see an estimate that exceeded only very slightly, which is lower than the actual for 2009/2010 and an estimate that seems quite precise for £279,000 this year. Is that contract price?

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

Can he repeat the Subhead that we are talking about?

**HON F R PICARDO:**

Yes. 2(3)(c) – Air Quality Monitoring.

**CLERK:**

Page 35.

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

It is a contract and it is directly ... It is a contract percentage increase.

**HON F R PICARDO:**

Right. So how did we get it wrong this year?

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

Well, because presumably we budget for the ... It is not necessarily a built in percentage. It can be an extension of services as well.

**HON F R PICARDO:**

Right.

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

Especially in Air Quality, we have been changing as we have gone along.

**HON F R PICARDO:**

I see.

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

So it is almost certainly an increase of service.

**HON F R PICARDO:**

On the issue of Environmental Directives where we have ...

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

Can I have the Subhead please?

**HON F R PICARDO:**

Sorry. It is Subhead 2(3)(i), at the bottom of that page.

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

Yes.

**HON F R PICARDO:**

With an estimate of £180,000, we spent £2,000 less. We are estimating £165,000 next year.

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

There has been an absorption of a number of Directives into the same boat. The Water Directive, Maintenance of Energy Performance of Buildings, the Habitats, the [*inaudible*] reporting and a number of others. They have all been absorbed into the same boat and I am also told that the contract placements vary the funding requested each year.

**HON F R PICARDO:**

But it is going down. If there are more Directives covered, how is it that it goes down? That the obligations are somehow not duplicated or ...?

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

I do not have the note of why it has gone down. (q) at the bottom of page 35.

**HON F R PICARDO:**

There is no (q), (i).

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

(i). Sorry. I beg your pardon. I know that a number of Directives have been absorbed into the [*inaudible*] word but why there is a decrease I do not ...

**HON CHIEF MINISTER:**

Mr Chairman, I cannot tell the hon Member. It is what the Department has bid for. I have got to bid here and it is all there. It can only be that ...

**HON F R PICARDO:**

Less duplication, perhaps, if everything has been dealt with under ...

**HON CHIEF MINISTER:**

Perhaps, something had to be done last year which cost a little bit less than estimated. £2,000 less but it does not have to be done again this year and they have just stripped it out of the bid.

**HON F R PICARDO:**

Yes.

**HON CHIEF MINISTER:**

I mean it is the only explanation. There is no ... There has been ... Sometimes I would say to him, well, wishful thinking, you know. The hope in the budget office is that expenditure can be curtailed but this is not such a case because I am looking at the

bid and it has all been provided for. So it is not the department that deals with this, the hon Members, the technical ... It is not that they want to do any monitoring or bid for any monitoring that has not been ... So that could not be the explanation. It has to be something that has dropped out of the needs list.

**HON J J BOSSANO:**

Mr Chairman, going back to Subhead 2(2) Cemetery Expenses. This was just under £15,000 in 2009/2010 and we voted £13,000 last year and the outturn is £15,000. I mean, what exactly are these expenses and why is it that the Government seems to be trying to keep it down to £13,000.

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

It is not the Government trying to keep it down, Mr Chairman. The first question is what is it and it is the cost of repairs to the paving. Because of the way the paths were paved, they cover the entrances to some of the vaults, when there is a burial in one of those vaults the pavement has to be replaced and I am told that there was an over budgeting last year and that is why it has been reduced this year.

**HON J J BOSSANO:**

How can there be an over budgeting if the outturn is higher than the actual?

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

Sorry. Not over budgeting. I beg your pardon. Over expenditure.

**HON CHIEF MINISTER:**

Well, it is just a provision which is shown ...

**HON J J BOSSANO:**

Mr Chairman, in 2009/2010 it was £14,966 and in 2010/2011 it is £15,000. So how can it be realistically expected to cost ..., these things ... something happens every year, to cost £13,000 in 2011/2012.

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

Mr Chairman, the hon Member should go back to my first explanation. These are the paths along the cemetery. There are vaults off those paths. If five burials take place in a vault that is next to the path then there are five sets of paving that have to be replaced. If there are ten then there are ten the following year and if there are two the next year ... So the figure is not an increasing expenditure figure like in most items. As it is ...

**HON J J BOSSANO:**

Can the hon Member tell me for how many he has made provision this year with £13,000?

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

I have no idea what it is in relation to that.



**HON CHIEF MINISTER:**

It is a financial provision, Mr Chairman, which may have been exceeded twice.

**HON J J BOSSANO:**

But if the hon Member tells us that it was £15,000 last year and not £13,000 because there were more than anticipated, then he must be anticipating the same number this year ...

**HON CHIEF MINISTER:**

We are hoping that less people will die with vaults next to the paths.

**HON J J BOSSANO:**

Can he explain why there is a specific vote just for this and it is not included with other expenditure of the cemetery?

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

Why not, Mr Chairman? You could ask the same question about any other Subhead in the Estimates.

**HON J J BOSSANO:**

I do not think you ... So that means that if the bit that breaks is from another part of the pathway, we have to look for somewhere else in the Estimates to find where the cost is met from, is that it?

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

No, no, no. This is paving of the pathways. All the pathways everywhere.

**HON J J BOSSANO:**

So for the pathways in all the cemetery where there is a certain amount of discontent as to how effective putting them straight is, the hon Member is saying that there is £13,000 a year and that notwithstanding the fact that you spent £15,000 last year and almost £15,000 the year before that ... I mean, it does not make any sense to me. If it was another area but it is something that clearly is not ... Is it that they only want £15,000? That is it. They have asked for £15,000.

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

I think they are saying that last year they under budgeted but I take the hon Member's point that if they were to have the same number of burials this year, they would have under budgeted again. On the other hand, if there is one burial less or two burials less, they would be over budget. It is as my hon Friend said, it is more a provision than an actual estimate because you cannot accurately estimate one way or the other.

**HON F R PICARDO:**

Mr Chairman, in relation to 2(4)(c). That contract has come in bang on estimate. The estimate was very close to the actual two years ago and yet it is now doubling and a bit. Can the hon Gentleman tell us why?

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

Yes. That is directly connected with the cost of water. We used to have three thousand free units of water from AquaGib but that is no longer available since certain North Front aquifers are not being used. So we now have to pay for the water and that is what the increase is all about.

**HON F R PICARDO:**

Right, and the next Subhead which is (d). I note, Mr Chairman, that that is the contract that increased by £170,000 or so between 2009/2010 and 2010/2011. It increased by half a million between the estimate and the outturn and it is now set to increase by another quarter million between the outturn and the fresh estimate. I think we were told last time that that was the cost plus agreement. Does the hon Gentleman know how it is that we are going to be spending about three quarters of a million pounds more between last year's estimate and this year's estimate.

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

Yes, Mr Chairman. The increases are due to additional areas, the maintenance of the new public toilets, maintenance of the bus stops and additional loans for capital expenditure.

**HON F R PICARDO:**

Additional loans for capital expenditure?

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

To Master Services.

**HON F R PICARDO:**

So the amount includes amounts that the Government advances to Master Services as loans?

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

No. I am not quite sure about that.

**HON F R PICARDO:**

Or the cost to Master Services of loans it takes? So let me just get this right. Master Services takes a loan for capital expenditure and the cost of servicing the loan is part of the agreement with the Government. Is the capital expenditure part of the agreement or just the servicing? What I mean is that the amount of the loan that Master Services take, is that also covered by the agreement? Would it be cheaper for the Government to advance the money for the purchasing of the machines rather than taking commercial borrowing?

**HON CHIEF MINISTER:**

Not usually, but I think they use hire purchase providers of small business loan type things that are run in Gibraltar. Otherwise, the Government will either have to give them the loan and be a lender to its own contractor or buy the equipment and be a gifter or a provider of equipment to its contractor, neither of which ...

**HON F R PICARDO:**

A contractor can be an operator of the equipment for the Government, for example.

**HON CHIEF MINISTER:**

Yes, but that is not the way the contract is structured.

**HON F R PICARDO:**

Right.

Head 4 - A Environment – was agreed to and stood part of the Bill.

Head 4 - B Technical Services

Subhead 1 – Payroll

Subhead 2 – Other Charges

Subhead 4 - B Technical Services – was agreed to and stood part of the Bill.

Head 4 - C Tourism

Subhead 1 – Payroll

Sub Head 2 – Other Charges

Head 4 - C Tourism – was agreed to and stood part of the Bill.

**HEAD 5 FAMILY, YOUTH AND COMMUNITY AFFAIRS**

Head 5 - A Family and Community Affairs

Subhead 1 – Payroll

Subhead 2 – Other Charges

Head 5 - A Family and Community Affairs – was agreed to and stood part of the Bill.

Head 5-B Youth

Subhead 1 – Payroll

Subhead 2 – Other Charges

Head 5 - B Youth – was agreed to and stood part of the Bill.

**HEAD 6 ENTERPRISE, DEVELOPMENT, TECHNOLOGY AND TRANSPORT**

Head 6 - A Enterprise

Subhead 1 – Payroll

Subhead 2 – Other Charges

**HON F R PICARDO:**

Yes, Mr Chairman. On General Expenses the actual for 2009/2010 was £8,900, more or less. The estimate was £6,000 for the last year. The forecast outturn was £14,000 and yet we are still going for £6,000 as an estimate. Is that an under estimate?

**HON J J HOLLIDAY:**

Are you referring to Office Expenses, (1)(a)(i)?

**HON F R PICARDO:**

(1)(a)(i).

**HON J J HOLLIDAY:**

Mr Chairman, the explanation I have here is in respect of some additional responsibilities that had been added to the Ministry during this year which are not expected to be carried forward for next year and they are, sort of, a temporary expense that has been incurred throughout this current year.

**HON F R PICARDO:**

Mr Chairman, and in relation to 2(2)(b) where Land and Property Management from an estimate of £110,000 went down to an outturn of £70,000 and is now going down to £40,000. How is it that that is being reduced quite so dramatically from an estimate of £110,000 last year to an estimate of £40,000 this year?

**HON J J HOLLIDAY:**

Yes. This Head, Mr Chairman, is in respect of various expenses that are incurred by the Land Management Committee who sometimes have to incur expenditure in making buildings secure, in doors that are broken down and, in this case, there is a decrease as a result of the fact that the old St Bernard's Hospital ..., before it used to be secured through this vote and this is no longer the case as it has been redeveloped.

**HON F R PICARDO:**

Mr Chairman, in 2(4)(f) the Maintenance Agreements and Licences Contracted Services. That seems to be going up fairly

dramatically having come in bang on estimate to almost double or at least another £200,000 odd.

**HON J J HOLLIDAY:**

Yes, Mr Chairman. I do not have a note here but I remember asking the question at the time of preparing myself for this Committee Stage and I believe that there were items of expenditure that were previously covered under the I&DF which have subsequently been transferred to the Consolidated Fund in order to ..., because they are annual recurrent expenditure and therefore more properly covered under this Subhead.

**HON F R PICARDO:**

Thank you. In terms of 2(4)(g) which is the Electronic Data Communications, that has been an actual £388,000 although we estimated £365,000. We are now estimating £300,000. Is that an under estimate because it seems to come in at £388,000 consistently?

**HON J J HOLLIDAY:**

Well, this is a contract that exists between the Government and Gibtelecom in respect of electronic data communications and I assume that the figure this year has been renegotiated because I remember that being extremely high and there may have been a renegotiation of the terms of the agreement which would provide a saving.

**HON F R PICARDO:**

So is there an agreement with Gibtelecom for this?

**HON J J HOLLIDAY:**

Yes. Absolutely.

**HON F R PICARDO:**

Can you tell us that it has been renegotiated to £300,000?

**HON J J HOLLIDAY:**

Well, I know that the IT Department wanted to renegotiate in order to cut down on the expenditure. I am not absolutely sure whether that has been renegotiated but the fact that it is in the estimates here, I assume that is the figure which has been agreed on going forward.

**HON F R PICARDO:**

But that might have been also the case last year because there was an attempt to reduce from £388,000 to £365,000 and yet this year it has come in at around £388,000.

**HON J J HOLLIDAY:**

That may well be the case but that is the figure that has been provided as ... This actually, sometimes fluctuates depending on the volume of traffic and the use of the facility.

**HON F R PICARDO:**

What facility is it?

**HON J J HOLLIDAY:**

It is the use of the electronic data communications system. I am not very technically minded but it is a facility in order to communicate and use the intranet amongst Government Departments.

**HON F R PICARDO:**

Oh, the intranet. I see. Right. Thank you.

Head 6 - A Enterprise – was agreed to and stood part of the Bill.

Head 6 - B Transport - Port and Shipping

Subhead 1 – Payroll

Subhead 2 – Other Charges

**HON F R PICARDO:**

Yes, Mr Chairman. In relation to 2(3)(b) Marketing and Official Visits. That has been coming in ahead of the estimate. This year quite considerably ahead of the estimate and yet we are still going back to stick with an estimate of £30,000. Is that an attempt to control the expenditure?

**HON J J HOLLIDAY:**

Mr Chairman, there is a marketing vote and therefore there is a marketing strategy which is put in place based on that project. However, sometimes, during the year, there are opportunities to advertise in specific journals or newspapers or whatever, where

Gibraltar, for example, may be featured. In this case, there was a Guardian special feature on Gibraltar where the maritime administration agreed to participate and the Government, generically, decided that it would use that particular newspaper to promote the shipping registry.

Head 6 - B Transport - Port and Shipping – was agreed to and stood part of the Bill.

#### Head 6 - C Transport - Aviation

Subhead 1 – Payroll

Subhead 2 – Other Charges.

Yes, Mr Chairman. In terms of Regulatory Support, there is a reference to £45,000 as an estimate on an outturn of £50,000, which makes sense but the estimate was actually for double. Is it that we were anticipating a particular activity which we are no longer going to be involved in?

#### **HON J J HOLLIDAY:**

No. Not at all, Mr Chairman. I think the issue is that obviously in the early days as a Civil Aviation Authority there was an element of abnormal activity in terms of being able to get the Director of Civil Aviation to be trained and attend various courses et cetera which needed to qualify him going forward. The basis of that has now been established. So therefore, this activity in this area will be on going because there has to be ongoing training and ongoing qualifications that need to be obtained as things go on but the activity is actually much less than in the beginning he had to, sort of, grab the whole basis of a number of wide range activities.

#### **HON J J BOSSANO:**

In respect of 2(1)(c) Terminal Management Limited contract of £1,065,000. That is the sum for the whole year. Is it that they are going to be still running the airport in the whole of the financial year?

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

No, Mr Chairman. It is there because at the time that the Estimates were tabled, the Government had not pressed the button on implementing the alternative and, therefore, it is just there. That Head will disappear. It will have some amount in it for the first few months of this financial year but sometime before the new air terminal opens in September, the transfer of the staff to the new operators will have been implemented and so the Financial Secretary would have to open a new Head and vire to it.

#### **HON J J BOSSANO:**

What is it that the Government owned company will then be paid from this Head?

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

It would have to be a contribution. Yes. It would have to be some form of payment for ... Well, there is quite a lot of restructure. There are ... The Government have not yet decided whether it is going to be during the financial year or wait at the end of the financial year and divert the revenue of the airfield and all the costs ... Not the airfield, I beg your pardon, the air terminal, landing charges, parking charges and other revenue. In other words, get all the revenue and all the expenditure and put it all altogether and if there is a shortfall of revenue over

expenditure, that will have to be paid as some sort of contribution to the company by the Government, somehow or another.

**HON J J BOSSANO:**

At the moment the company is going to be then both the owner of the terminal and the manager of the terminal and do they get the money from the people who have got shops and things like that in there?

**HON CHIEF MINISTER:**

At the moment it has not started. Those are precisely the sort of issues that we are contemplating. I think the view that will very likely emerge is that everything will go into the company. Concessions, rent collections, aviation revenue but also the operating expenditure and the contribution to the MOD. I think my preference for doing it in that way reflects the fact that it will always be better to have all the operating expenses and all the operating revenue of the air terminal. So that somebody can look and say well, how much is the air terminal costing to run, net. You start putting things all over the place. You can never see whether it is a loss centre and, if so, by how much, or whether it is a profit centre and, if so, by how much.

Head 6 - C Transport - Aviation – was agreed to and stood part of the Bill.

Head 6 - D Transport - Vehicle, Traffic and Public Transport

Subhead 1 – Payroll.

**HON J J BOSSANO:**

Mr Chairman, the people who were covered by the contribution to the GDC. In page 50, the numbers are down from twenty seven to fourteen. Is it the case that the £647,000 forecast for last year covered the twenty seven and only fourteen are being retained here and given that the GDC is no longer there, where are the remaining people?

**HON CHIEF MINISTER:**

Mr Chairman, these are the reductions accommodated for by the ex-GSS Wardens that have moved to become Highway Enforcement Officers in the employment of Gibraltar Car Parks Limited. The remaining number are the people who remain in the GDC who are lollipop ladies and I think there is one traffic warden that did not go to Car Parks Limited.

**HON J J BOSSANO:**

So the ones that are here are the ones that are intended to end up as Government employees and the ones ...?

**HON CHIEF MINISTER:**

Yes, and the ones that have gone have gone to ...

**HON J J BOSSANO:**

What are they GDC seconded to the company or are they ...?

**HON CHIEF MINISTER:**

They have become employees of the company for now but the Government have a commitment to review their status if the ones who stayed behind end up with the Government. In other words, if the Government [*inaudible*] go to become an employee of the company and then find that they have missed out because had they stayed they would have become civil servants. So there is an agreement with the Unions to review that. So some of the ones that have gone to the [*inaudible*] may become civil servants and then be seconded back to the company ... [*inaudible*] the Unions now, that is, the Government have decided to go ahead.

Subhead 2 – Other Charges.

**HON F R PICARDO:**

Yes, Mr Chairman. At 2(1)(e), Mr Chairman, the Office Rent which has gone down from the estimate and is now estimated to be £5,000, is that anticipating a move of the operations?

**HON CHIEF MINISTER:**

No, Mr Chairman. The balance is passed to a central vote in the Treasury from where it is now paid.

**HON F R PICARDO:**

I am sorry. Can ...

**HON CHIEF MINISTER:**

It is not that the rent has gone down or that fewer properties have been occupied, it is that the balance is being transferred to a central vote in Treasury where it has now paid as rent to the Government company that now has these buildings.

**HON F R PICARDO:**

Right.

**HON CHIEF MINISTER:**

This is what is referred to as the hocking arrangement.

**HON F R PICARDO:**

Oh, this is the mortgage for the office development of the consultant?

**HON CHIEF MINISTER:**

No. Not that hocking arrangement, the other hocking arrangement.

**HON F R PICARDO:**

Oh, I see. Right. There are so many, that one loses track.



**HON CHIEF MINISTER:**

The hocking arrangement whereby properties have been placed into a company and then used as collateral for the raising of the loan that they do not approve of and that company is in turn funded by the payment of rent to us.

**HON F R PICARDO:**

On driving licences at 2(2)(e), Mr Chairman.

**HON CHIEF MINISTER:**

Sorry.

**HON F R PICARDO:**

Driving licences which is 2(2)(e), there is a very low estimate for this year. A very high actual two years ago. The forecast outturn greater than the estimate last year, is that retraining that had to happen which is now coming to an end or what is it?

**HON CHIEF MINISTER:**

No, Mr Chairman. In the year in which it was £32,000, there was a bulk purchase of the holographic strips that go on to the driving licences. It has just stopped being purchased. It is a consumable. It is dealt with here and not in capital.

Head 6 - D Transport - Vehicle, Traffic and Public Transport –  
was agreed to and stood part of the Bill.

Head 6 - E Postal Services

Subhead 1 – Payroll.

**HON F R PICARDO:**

Mr Chairman, the Temporary Assistance Subhead at 1(1)(d) seems to always make provision for an estimate of £49,000 which is always exceeded. Is that because it is impossible to estimate accurately and we want to try and keep it down or are there other reasons why?

**HON CHIEF MINISTER:**

Well, it is the vote from which supply postmen are paid and it is an unknown quantity what the absentee or the need for supply postmen will be and it is really just an attempt not to enshrine creeping, rising creeping expenditure. Some years, for example, he will see that it has been as high as £83,000 and then it was £65,000. It is arguable that it is always going to be, however much we are hoping to keep it down ... it is unlikely to come in at the estimated figure.

Subhead 2 – Other Charges.

**HON F R PICARDO:**

On Telephone Services at 2(1)(c). Again, that is a constant estimate of £16,000 which is constantly exceeded. Now, is it not possible to provide a more accurate estimate?

**HON J J HOLLIDAY:**

Well, it is ... it is what the Chief Minister has just said. Mr Chairman, it is a matter of trying to keep overheads as low as possible so even though there may be the need to go for supplementary funding, it is one way of making sure that when they have reached that level, they seek supplementary funding and satisfy the office of the Financial Secretary that there is a need for it at that particular moment in time.

**HON F R PICARDO:**

Okay. That seems to be the theme for many of these Subheads. The next one on Printing and Stationery. The final one on Banking and Related Services. Does that make it more laborious also?

**HON J J HOLLIDAY:**

Well, it is more laborious but it is one way of making sure that we keep tabs on overheads. Otherwise, if you see what they actually propose coming in, it is much higher and therefore you need to make sure that you give them a budget which they need to work from and then they need to justify ... They try and work for that sometimes. In the case of the Post Office, they need to use the telephone for business with the United Kingdom. They need to be in touch with other postal services, et cetera, and therefore they need to justify that they have reached what was set for them in that particular year but they need to go further.

**HON F R PICARDO:**

Right.

**HON J J HOLLIDAY:**

That you will see is a general theme going very much across the board and therefore you get the figures repeating year after year because we feel that those levels are what they should be targeting.

**HON F R PICARDO:**

In fact, the estimates for both 2(1) and 2(2) are a thousand pounds less than the estimates for last year.

**HON J J HOLLIDAY:**

That is correct.

Head 6 - E Postal Services – was agreed to and stood part of the Bill.

Head 6 - F Broadcasting

Subhead 2 – Other Charges

Head 6 - F Broadcasting – was agreed to and stood part of the Bill.

#### Head 6 - G Utilities

Subhead 2 – Other Charges.

**HON J J BOSSANO:**

Mr Chairman, the contributions to the Electricity Authority, does the figure here take into account the three per cent that the hon Member said, earlier in the opening statement, that was going to be raised in the electricity bills. Is that adjusted in the revenue figure here, or not?

**HON CHIEF MINISTER:**

No. There is no provision here for any tariff rises that may materialise after today.

**HON J J BOSSANO:**

This is on last year's rate, is it?

**HON CHIEF MINISTER:**

Yes.

Head 6 - G Utilities – was agreed to and stood part of the Bill.

#### **HEAD 7 HEALTH AND CIVIL PROTECTION**

##### Head 7 - A Health

Subhead 2 – Other Charges

Head 7 - A Health – was agreed to and stood part of the Bill.

##### Head 7 - B Civil Contingency

Subhead 1 – Payroll

Subhead 2 – Other Charges

Head 7 - B Civil Contingency – was agreed to and stood part of the Bill.

##### Head 7 - C Fire Service

Subhead 1 – Payroll

Subhead 2 – Other Charges

Head 7 - C Fire Service – was agreed to and stood part of the Bill.

#### **HEAD 8 ADMINISTRATION**

##### Head 8 - A No. 6 Convent Place

Subhead 1 – Payroll

Subhead 2 – Other Charges.

**HON F R PICARDO:**

Yes, Mr Chairman. 2(4)(e), there was an estimate last year of £17,000 for something called an EU Database and Website Expenses. Only £4,000 were spent and only £2,000 is estimated to be spent this year. Is that a cost or is that

something that we were going to develop that we are no longer going to develop?

**HON CHIEF MINISTER:**

Mr Chairman, I am told that in 2010/2011 they had bid for a subscription, to an online subscription to an EU database which, in fact, they never took up which explains the fact that they estimated £17,000 and the outturn came out at £4,000 and that £4,000 is in respect of general EU website expenses, advertising on the website and all of that.

**HON F R PICARDO:**

Right. Mr Chairman, it carries on over the page. In Subhead 2(13) Research, Development Studies and Professional Fees came in at £41,400. Two years ago we estimated £10,000. This year we did nothing with it, but we are estimating £10,000 again. Can the hon Gentleman tell us what it is that we are making provision for there?

**HON CHIEF MINISTER:**

Yes. Mr Chairman, it is a notional provision. A small provision for any studies, research, professionals that we may engage to assist in any such research. In some years, the need arises for it and other years it does not. So it is just ... It is a completely ...

**HON F R PICARDO:**

It is a nominal ...

**HON CHIEF MINISTER:**

... nominal provision. There is nothing in mind. It may not be used at all or it may be exceeded.

Head 8 - A No. 6 Convent Place – was agreed to and stood part of the Bill.

Head 8 - B Human Resources

Subhead 1 – Payroll

Subhead 2 – Other Charges

**HON F R PICARDO:**

Mr Chairman, 2(1)(e) the Rent and Service Charges. Again, that goes down. Which of the hocking arrangements is that? Or is it related to something else?

**HON CHIEF MINISTER:**

It is one of the buildings that are now rented from the Government company.

**HON F R PICARDO:**

Right. The same one? The same arrangement?

**HON CHIEF MINISTER:**

No. What is this, the Human Resources Department? We are on 8 - B, are we?

**MR CHAIRMAN:**

Yes.

**HON CHIEF MINISTER:**

So this would be the New Harbours.

Head 8 - B Human Resources – was agreed to and stood part of the Bill.

### **HEAD 9 - FINANCE**

Head 9 - A Finance Ministry

Subhead 1 – Payroll

Subhead 2 – Other Charges

Head 9 - A Finance Ministry – was agreed to and stood part of the Bill.

Head 9 - B Treasury

Subhead 1 – Payroll

Subhead 2 – Other Charges

**HON J J BOSSANO:**

Mr Chairman, under Government rents, the offices that are being rented now are £2 million. Can the hon Member explain how these rents have been arrived at for places that were not previously being rented, obviously?

**HON CHIEF MINISTER:**

I am told, Mr Chairman, it is a rent rate that has been advised by Land Property Services as representing a going rate for the offices.

**HON J J BOSSANO:**

Is that the same for all of them, irrespective of where they are ... or?

**HON CHIEF MINISTER:**

No. I suppose each office has been assessed on the basis of its location. Its ...

**HON J J BOSSANO:**

Well, can the Government provide then the breakdown of the £2 million figure showing which of the offices that were given in answer to the question, when I was given the list of the offices that had been transferred. Can he show me how much rent is being paid in each one of them?

**HON CHIEF MINISTER:**

Yes. I do. Could we take a photocopy and pass it on to the hon Member.

**HON J J BOSSANO:**

Is the nature of the rental agreement with the Government owned company one that there is any review of rents built in or ...?

**HON CHIEF MINISTER:**

There is provision for a rent review of three per cent per annum, Mr Chairman. This is all linked to the funding for the loan.

**HON J J BOSSANO:**

I accept that. So presumably the buildings that made the rent possible were selected on the basis that the yield of this would enable the company to service its ... Is that correct? Can I just ask about the next one, General Rates. The provision for Government Buildings – General Rates? This is a new one. Government has never paid rates to itself before.

**HON CHIEF MINISTER:**

Well, Mr Chairman, it has not in the past but that has been an error in the past because under the Public Health Act it has always provided for the Government to be liable to rates and it has never actually happened. LPS claim that they have always made a book entry but as there has never been voted expenditure in any Government vote nor has there ever been any revenue item in the rates vote, it cannot be said to constitute

payment of rates. So what we have done this year is just put the rates in the revenue column and just charge it until the Public Health Act can be changed, if that is what we decide to do. But having had it pointed out to us, we did not feel that we could just ignore the Act and not pay the rates.

**HON J J BOSSANO:**

Why then should the argument have been, all these years, that you could not charge rates on the Crown on Crown property and that for that reason we could not charge MOD rates and there was the imperial preference, or whatever it is they used to call it, and they made a contribution in lieu of rates. Look if the Public Health Act requires the Crown in the ...

**HON CHIEF MINISTER:**

No, Mr Chairman. That is not how that comes about. That comes about because in the Public Health Act itself there are several sections. I think it is sections 290 something or 390 something but there are at least six or seven sections that statutorily, this goes back to the 1950's, it statutorily creates a different regime for the payment of rates by the MOD occupied properties. It is not that we could not under the Act charge rates to the MOD and therefore somebody else invented something to do it by the side door. This [*inaudible*] contribution of rates is actually provided for by particular sections of the Public Health Act which do not make the MOD subject to the normal rates regime but exposes them to a different regime. Now that same Act then says that the Government is subject to rates and that is what has not been reflected ever in the Estimates of Expenditure book. In other words it has been ... I suppose somebody in the past must have said why do we not just net, what is the point of the Government paying itself and they netted it off but that is not what the Act says. The Act does not say netting off. The Act says that the Government shall pay rates.

Head 9 - B Treasury – was agreed to and stood part of the Bill.

Head 9 - C Customs

Subhead 1 – Payroll.

**HON F R PICARDO:**

Mr Chairman, can the hon Gentleman explain to me at (1)(b)(iii) the Manning Level Maintenance. There was no estimate last year but we spent more than the actual the year before. Now this year we are making an estimate of £140,000. Why is it that we had no estimate last year but we are going back to the process of estimate this year?

**HON CHIEF MINISTER:**

No, Mr Chairman. I think ... Mr Chairman, I cannot explain to him why it was at zero last year. Perhaps, it was that last year we were having to end, much to the ... Perhaps, it was that last year, much to the horror of the Hon Mr Linares, we might have been planning to end the manning level maintenance which applies mainly at the customs border manning but we did not do it and so the expenditure was incurred. I can only assume that that is the reason why it was at zero, as estimated not to happen, and then the existing practice continued. There was no change and therefore the expenditure came in and, indeed, came in with a vengeance. It came in even higher than the 2009/2010 figure. This is what happens when you threaten to stop things.

**HON F R PICARDO:**

This time we are estimating for it again. So, is it that something was going to be done that we did not do and that we are now not going to do. That is what I am trying to understand. What is it that ...?

**HON CHIEF MINISTER:**

I do not know, Mr Chairman, whether there was more activity in the fast operation. I do not know.

**HON F R PICARDO:**

No. I am not asking why it is that we went from £148,000 to £190,000.

**HON CHIEF MINISTER:**

No. I cannot tell him why it has now being estimated at £140,000 again when last year it was £190,000.

**HON F R PICARDO:**

Right.

**HON CHIEF MINISTER:**

I hope it means that someone is going to curtail the absenteeism that leads to the need for the manning level maintenance.

**HON F R PICARDO:**

But does it also mean that whatever plan there was to eliminate that, is no longer on the cards?

**HON CHIEF MINISTER:**

Well, yes. It certainly means that. It means that we are estimating on the basis that the practice will continue of manning level maintenance.

Subhead 2 – Other Charges

Head 9 - C Customs – was agreed to and stood part of the Bill.

Head 9 - D Income Tax

Subhead 1 – Payroll

Subhead 2 – Other Charges

Head 9 - D Income Tax – was agreed to and stood part of the Bill.

Head 9 - E Finance Centre

Subhead 1 – Payroll

**HON F R PICARDO:**

Mr Chairman, there is an estimate of £367,000 against an outturn of £182,000. Can the hon Gentleman tell us whether

this doubling of the amount takes into consideration what he has referred to as the recruitment of many more Jimmy Tippings?

**HON CHIEF MINISTER:**

No. There is no provision for that. It reflects the figure which is currently shown further down the page, under the forecast outturn column, as £267,000. It is the same point as I discussed with the Hon Mr Bossano under Training, at the beginning of this session.

**HON F R PICARDO:**

Right.

Subhead 2 – Other Charges

**HON F R PICARDO:**

Mr Chairman, the amount for Marketing, Promotions and Conferences always exceeds the estimate. Is the under estimate just an attempt to control spending there?

**HON CHIEF MINISTER:**

Well, I accept that last year it exceeded it by a great amount £90,000. Otherwise, the previous year was £126,000. I think this is just a measure of the number of conferences they go to. We have had ... Oh no, I beg your pardon. I was not speculating accurately. It is actually advertisements placed in Gibraltar supplements. In this case, in the Financial Times and the Guardian. Last year's figure was £90,000 higher than estimated because of advertisements placed in Gibraltar



supplements published by the Financial Times and the Guardian.

**HON F R PICARDO:**

These are the fabulous editorial comments ...

**HON CHIEF MINISTER:**

These are the non purchased editorials.

**HON F R PICARDO:**

Non purchased, correct. That is it. That is the cost of them?

**HON CHIEF MINISTER:**

Well, Mr Chairman, I wish that the Financial Times editorial independence were available to be purchased for sums of money of that sort.

Head 9 - E Finance Centre – was agreed to and stood part of the Bill

Head 9 - F Gambling Division

Subhead 1 – Payroll

Subhead 2 – Other Charges

Head 9 - F Gambling Division – was agreed to and stood part of the Bill.

Head 9 - G Statistics Office

Subhead 1 – Payroll

Subhead 2 – Other Charges

Head 9 - G Gambling Division – was agreed to and stood part of the Bill.

Head 9 - H Procurement Office

Subhead 1 – Payroll

Subhead 2 – Other Charges

Head 9 - H Procurement Office – was agreed to and stood part of the Bill.

## **HEAD 10 EMPLOYMENT, LABOUR AND INDUSTRIAL RELATIONS**

Subhead 1 – Payroll

Subhead 2 – Other Charges

Head 10 Employment, Labour and Industrial Relations – was agreed to and stood part of the Bill.

## **HEAD 11 JUSTICE**

Head 11 - A Justice Ministry

Subhead 1 – Payroll

Subhead 2 – Other Charges

Head 11 - A Justice Ministry – was agreed to and stood part of the Bill.

Head 11 - B Courts - Gibraltar Law Courts

Subhead 1 – Payroll

Subhead 2 – Other Charges

Head 11 - B Courts - Gibraltar Law Courts – was agreed to and stood part of the Bill.

Head 11 - C Attorney General's Chambers

Subhead 1 – Payroll

Subhead 2 – Other Charges

Head 11 - C Attorney General's Chambers – was agreed to and stood part of the Bill.

Head 11 - D Prison

Subhead 1 – Payroll

Subhead 2 – Other Charges

Head 11 - D Prison – was agreed to and stood part of the Bill.

Head 11 - E Policing

Subhead 1 – Payroll

Subhead 2 – Other Charges

Head 11 - E Policing – was agreed to and stood part of the Bill.

**HEAD 12 IMMIGRATION AND CIVIL STATUS**

Subhead 1 – Payroll

Subhead 2 – Other Charges

**HON F R PICARDO:**

Yes, Mr Chairman, the EU Format Passports at (2)(b), is that also an issue of stocking up. Is that why it fluctuates?

**HON CHIEF MINISTER:**

Yes, Mr Chairman. That is exactly right. It is the stocking of blank passports.

**HON F R PICARDO:**

Mr Chairman, of (3) which refers to Security and Immigration Limited - Contracted Services. That is what we are now told is going to become the Border Agency?

**HON CHIEF MINISTER:**

Correct.

**HON F R PICARDO:**

Mr Chairman, given that the hon Gentleman announced that in his speech, why is that not reflected here to become an Agency.

**HON CHIEF MINISTER:**

Because it is not ... these decisions are not shared with those who prepare this document back at the time of the year that they prepare this document which is ... I mean, this is tabled by the end of April. Is it not?

**HON F R PICARDO:**

But is it not the position, Mr Chairman, the reason we are all required to sign up to it as confidential because it is supposed to reflect that sort of decision and we are bound to keep it to ourselves even though reflected in the book.

**HON CHIEF MINISTER:**

So, Mr Chairman, the hon Member is assuming that the decision to go down that particular route had been taken by that date and he should not assume that. It was certainly in the Government's contemplation but not decided as a matter of policy in a way that would justify reflecting it in the Budget book. I mean, when does something that is being thought about and contemplated become adopted policy, albeit with deferred implementation, is key to whether you ... You know, it is not adopted policy, done dusted and decided ...

**HON F R PICARDO:**

He does not have to convince me of that. If that is the position, then it should not be reflected in the book but what he told me the first time was that it was not a decision shared with those who made the estimates when it went into the book. That is what I do not accept, Mr Chairman. Once ...

**HON CHIEF MINISTER:**

[*Inaudible*]. It is a thinking shared. It is not an [*inaudible*].

**HON F R PICARDO:**

Fair enough, but once a decision has been made ...

**HON CHIEF MINISTER:**

Oh, yes, of course.

**HON F R PICARDO:**

... if it had been made, even if not announced, it should have been reflected in the book and we would all be bound to keep to ourselves whatever clue we might have had to it.

**HON CHIEF MINISTER:**

This is not stated here so that he does not find out between the 30<sup>th</sup> April and the Budget debate. That is not the case.

**HON F R PICARDO:**

Exactly. So what the hon Gentleman is telling us is that the decision to create the Agency had not yet been made as a final decision at the time that the book was published?

**HON CHIEF MINISTER:**

Yes. The exact arrangements that would operate in relation to these employees and when Security and Immigration would cease to exist. All those arrangements had not crystallised with sufficient certainty to justify changing the presentation of its historical treatment for financing purposes.

**HON F R PICARDO:**

Right.

**HON J J BOSSANO:**

Mr Chairman, the employees would become employees of a wholly owned Government company, is that correct?

**HON CHIEF MINISTER:**

No, these employees will become employees of a statutory agency to be called the Borders ...

**HON J J BOSSANO:**

So they would be public servants then?

**HON CHIEF MINISTER:**

Sorry.

**HON J J BOSSANO:**

They would be public servants, not Government employees.

**HON CHIEF MINISTER:**

They would be public servants, not civil servants.

**HON J J BOSSANO:**

Can he say how many heads are covered by this provision?

**HON CHIEF MINISTER:**

I do know that because I have been looking at those very papers in the last few weeks. I think there is ninety ... Mr Chairman, speaking from memory, I think they are in the order of ninety or something of that [*inaudible*] Security and Immigration officers. Yes, Mr Chairman, remember that they man quite a lot. They man the airport, the frontier, shift work ...

**HON F R PICARDO:**

Cruise liner terminal.

**HON CHIEF MINISTER:**

Cruise liner terminal. You know, it is quite a significant operation, the ferry terminal. It is quite a significant operation and then some of those double up to man the security scanners in the airport. So it is all one work force.

**HON J J BOSSANO:**

In the explanation that the hon Member gave about extra roles, would that then mean that they would be ... When the transfer takes place, if there are going to be additional things that they are going to be doing, would that imply that they would need to recruit more people or is the Government thinking that it can be done with the ninety that are there already?

**HON CHIEF MINISTER:**

No, Mr Chairman, these ninety people have got no wiggle room left in their time. They are rostered very tightly and very efficiently, I have to say. Government is not a critic of the way that this service ... The fact that it wants to do it differently in the future, as I have made it clear to the Directors, does not mean that we are critics of the way it is being done. It has been done very effectively in the past in terms of rostering staff efficiently. There is no spare capacity for these people to do other things, so all these other functions that I listed in my First Reading address would either have to be provided by other public servants moving or by new recruits. We have got to enter into discussions with existing, some existing civil servants, some existing public servants, to see whether they are interested in being consolidated under this Borders and Coastguard Agency which would make the whole series of things that I explained much more cohesive and coherent and give a much more corporate ... and the Hon Dr Garcia would argue, solid presence than might have been.

**HON F R PICARDO:**

Mr Chairman, will that include negotiations with the Customs Department?

**HON CHIEF MINISTER:**

It might include negotiations with parts of the Customs Department. It might indeed.

**HON F R PICARDO:**

The maritime part or the land based parts?

**HON CHIEF MINISTER:**

Mr Chairman, I do not want to pre-empt. I said at the end of my list, such as other related functions as, and I do not want to flag up to any particular group of workers whether or not, if the Government is putting them in play for this, before they have even heard themselves.

**HON F R PICARDO:**

The word borders immediately suggests that Agency or that Department, rather?

**HON CHIEF MINISTER:**

Well, look, if we follow the practice in the UK, for example, the people in the Immigration and Civil Status office would be potential candidates for coming across. Some of the functions of the Customs, obviously not the EPU or whatever. Some of

the functions in the Customs Department would be contemplatable within this. The Government may not be completely obsessed about the idea of putting them in but this organisation can be as comprehensive and as full of related activities as the Government is able to come to agreements with the affected staff.

**HON F R PICARDO:**

Oh, you would not impose it on anyone?

**HON CHIEF MINISTER:**

Mr Chairman, we cannot impose change of working conditions.

Head 12 Immigration and Civil Status – was agreed to and stood part of the Bill.

**HEAD 13 PARLIAMENT**

Subhead 1 – Payroll

Subhead 2 – Other Charges

**HON F R PICARDO:**

Mr Chairman, it seems to me that we are continually estimating £40,000 for Commonwealth Parliamentary Association Expenses and consistently spending £61,000. Is it that we are more confident, now that Mr Britto is not going to be with us, that we are going to be able to stick to it and I say that in the best possible sense?

**HON CHIEF MINISTER:**

No, Mr Chairman. This is much more likely to be that the one remaining member of the Widows and Orphans Pensions Scheme is ... I do not know what he is doing, he is ... I am being reminded that I had expressed the hope that the travel costs relating to this would be paid from a central fund for travel costs but I am not aware that there is any ... We go to the same events every year. I do not think it is the regional and the plenary of the ... not the regional ... [*inaudible*]. Yes, and the Hon and Gallant Colonel Britto who is done a lot of these trips, reminds me that it depends on where the CPA meetings are. You know, the more exotic and distant the place, the more it costs.

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

**HEAD 14 GIBRALTAR AUDIT OFFICE**

Subhead 1 – Payroll

Subhead 2 – Other Charges

Head 14 Gibraltar Audit Office – was agreed to and stood part of the Bill.

**HEAD 15 SUPPLEMENTARY PROVISION**

Subhead 1(a) – Pay Settlements

Subhead 1(b) – Supplementary Funding

Head 15 Supplementary Provision – was agreed to and stood part of the Bill.

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

### **Clause 3**

#### **HEAD 17 CONSOLIDATED FUND CONTRIBUTIONS**

Subhead 1 – Contribution to the Improvement and Development Fund.

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

### **Clause 4**

#### **IMPROVEMENT AND DEVELOPMENT FUND EXPENDITURE**

##### **Head 101 - Departmental**

Subhead 1 – Works and Equipment

Subhead 2 – Public Administration

Head 101 - Departmental – was agreed to and stood part of the Bill.

##### **Head 102 - Projects**

Subhead 1 – Beautification Projects

Subhead 2 – New Roads and Parking Projects

Subhead 3 – Relocation Costs

### **HON DR J J GARCIA:**

Mr Chairman, in relation to Head 101, just going back, Head 101 Subhead 1(d). Is it possible to have breakdowns of the forecast outturn and the estimates in terms of what the money is going to be spent on?

### **HON CHIEF MINISTER:**

Mr Chairman, he has got an idea of the forecast outturn over the page. It is just that this year, instead of giving each such entity their own departmental capital vote, it is being centrally controlled as a pot and they are each to make their bid, their own expenditure cases separately. But if he wanted to see the, sort of, breakdown last year, it is in the now disappearing Head 101, Subhead 1 - Works and Equipment. He can see it in the next ... Can you see that? So really what has happened is that we have put them together rather than giving each Department, Agency and Authority a separate smaller amount.

### **HON DR J J GARCIA:**

The funds have not been specifically allocated to any project then, is that the case?

### **HON CHIEF MINISTER:**

No. Each of these ... The reason for doing this, is that this grows and if each Department gets its separate capital vote, they grow into it and they spend it. Regardless of whether it is absolutely essential [inaudible]. They have got to make a bid against a central vote and then it is not their money and, if it is not their money, they do not feel the need to spend it regardless of whether they need it. It is just a way of bringing some discipline to the necessity of expenditure. It may turn out that

the figure is distributed not dissimilarly to how it was last year. We have to see how it goes.

**HON F R PICARDO:**

Just below that on (e) Gibraltar Broadcasting Corporation, there is a vote there of £300,000. That does not take into consideration any of what the hon Gentleman said.

**HON CHIEF MINISTER:**

No. That is a sum of money that they have just for keeping them going, basically. They are gradually renewing some of their older equipment as part of their present operations, not as ... so it does not ... The answer is that it is not any part of the provision for what we announced.

**HON F R PICARDO:**

So where do we see that money?

**HON CHIEF MINISTER:**

That expenditure is not yet provided for here because we do not know when it will start. First of all, we have got to get the building from the MOD, then money has got to be spent on works to the building which involves an extension. We think that that might start during the financial year but if it does it will be a relatively small amount. We may be in a position towards the end of the financial year to make a start. So, it would not ... There is not going to be a huge amount of expenditure in this financial year on the projects that we announce. I think we have got to view that as a two to three year project. Alright.

**HON G H LICUDI:**

Mr Chairman, in Head 102 - Projects, Subhead 2, we see Parking Projects, £350,000. We know that the Devil's Tower Road Car Park is, the second phase, in the process of being built and there have been announcements for two other major car parks. I seem to recall the cost of the other car parks around £5 million. Where is that money coming from?

**HON CHIEF MINISTER:**

Mr Chairman, at the moment ...

**HON G H LICUDI:**

I am reminded that it is £11 million both Arengo's and Engineer Lane.

**HON CHIEF MINISTER:**

Yes. At the moment this book reflects what was the intention at the time and that is that it was going to be funded through the companies, not necessarily Gibraltar Car Parks Limited. It may be that it will now be funded not through the companies but through the Improvement and Development Fund, in which case the figure of £350,000 will end up being much higher. It depends whether the funding is done. I am just recalling the discussion I had with the Hon Mr Bossano who asked me about this because we have contracted, in the name of the Government. We have contracted in the name of the Government. In the event, we have contracted in the name of the Government and that might oblige us to put the funding through this. So the funding that would have ended up going through the companies will have to appear here instead and this £350,000 will then be much higher.



**HON G H LICUDI:**

But where is the actual money that we are voting?

**HON CHIEF MINISTER:**

No. We are not voting anything at all.

**HON J J BOSSANO:**

Given that the decision on the company was on the basis that they were able to obtain this facility from the Royal Bank of Scotland, I think it was, to take on the existing car parks and the new one in Devil's Tower Road, was the bank actually approached about the possibility of including these new ones as well or not?

**HON CHIEF MINISTER:**

It is possible but we just have not done it yet. Nor the revenues that these car parks ... It is possible to do it that way but we have not approached them yet and we do not know whether they would. It is all about whether Gibraltar Car Parks Limited is seen to be having sufficient revenue to fund more capital works.

**HON F R PICARDO:**

In relation to the £14 million in Subhead 2(a)(i) there, does that take into consideration any of the discussions that the hon Gentleman has told us he is in the process of concluding in relation to the tunnel aspect of that vote?

**HON CHIEF MINISTER:**

Let me see if I can find a legally safe formula of words to answer him.

**HON F R PICARDO:**

I am quite happy for him to tell me outside if he prefers.

**HON CHIEF MINISTER:**

Whatever happened, we would not envisage a great delay. If the critical contractual relationship does not collapse, then this will be incurred through the present contractor. If the critical becomes more critical and there is a coming to blows, we would envisage a sufficiently seamless transition for this expenditure still to be incurred by the alternative means of completing the project.

**HON F R PICARDO:**

I think I know what he means. I am not going to press him further given that he has told us this ...

**HON CHIEF MINISTER:**

Well, Mr Chairman, there is a plan B, if plan A collapses and plan B involves doing it by another ...

**HON F R PICARDO:**

By another means.

**HON CHIEF MINISTER:**

Yes. Exactly.

**HON J J BOSSANO:**

In Subhead 4, are we there yet or not?

**MR CHAIRMAN:**

No, we were in Subhead 3 then we got diverted back to Subhead 2.

**HON F R PICARDO:**

On Subhead 3, Mr Chairman.

**MR CHAIRMAN:**

Okay. Yes, Subhead 3.

**HON F R PICARDO:**

Mr Chairman, does the £3,750,000 incorporate the potential cost of the Lands Agreement that the hon Gentleman has told us is likely will be done?

**HON CHIEF MINISTER:**

No, Mr Chairman. It does not and we are trying to negotiate with the MOD on the basis that there will not be a huge capital funding cash flow. In other words, that the deal could be as self-

financing as possible in terms of the chronology of handover of sellable assets against ... It may not be possible for that to be completely self-financing but we are not expecting a huge ... The deal that we hope to do, if its doable, we would not expect a huge advance funding before we can convert asset sales into the funding source. It is all about the relationship between the timing of when they hand us sellable assets and when we have to incur relocation expenditure and to the extent that we have to incur relocation expenditure ahead of the handover of sellable assets, then that is something that has to be funded. The relocation has to be funded from the Government's own monies temporarily ... We are trying to keep that amount and gap to the minimum.

**HON F R PICARDO:**

You do not envisage if there is going to be any such cost in this financial year?

**HON CHIEF MINISTER:**

If we get the deal that we are hoping to get, not a lot.

**HON G H LICUDI:**

Mr Chairman, under Subhead 3 ...

**HON J J BOSSANO:**

Can I just ask ... That means then that the figure there is in respect of the buildings that have already ...?

**HON CHIEF MINISTER:**

Yes. It is. That is in respect of the 2007 Lands Agreement.

**HON G H LICUDI:**

Mr Chairman, there is provision for other relocation costs to be incurred, not just the MOD, the figure of three and a half million. Can the Government explain what relocation costs it expects to incur?

**HON CHIEF MINISTER:**

Mr Chairman, there are a number of relocation projects underway which are not MOD but which result from all those projects. For example, the Yacht Club is being relocated. Mother Goose Nursery is being relocated. The Sea Scouts are being relocated. There are five or six or seven ...Sorry?

**HON G H LICUDI:**

All these are in the Mid-Harbour area?

**HON CHIEF MINISTER:**

Yes. Most of them result from the vacation of the area of the Mid-Harbour but not just the footprint. Some of them relate to Sea Scouts which are in the area of No. 4 Dock. As a result of relocating the Yacht Club, there is a need to relocate the Police Depot. So there are all those relocations that result from the deal. That result from the rezoning of land use but which are not MOD relocations. They are people in civvy street.

**HON F R PICARDO:**

Mr Chairman, can he give a breakdown of those? Does he have it to hand?

**HON CHIEF MINISTER:**

I do not have it to hand but it does exist because it is something that ... From memory, it is the Yacht Club, the Sea Scouts ... There are one or two others, the Police Depot. The Mother Goose Nursery ... but that is out of the Mid Town, not the Mid-Harbour. There are one or two others but I am not aware if they have started yet, so I do not know whether they are provided for there, for example, as part of the clearing of the site next to the current hostel on Devil's Tower Road, which is a site identified for more housing. That is where the Government temporarily located the workshop garages that were in Fish Market Lane and there is a project to relocate them elsewhere and that is a relocation project too.

**HON F R PICARDO:**

Can he give us a breakdown of the costs of the ones that he mentioned?

**HON CHIEF MINISTER:**

No, Mr Chairman. I cannot but I think the most significant one is the Yacht Club relocation which is a significant cost.

**HON F R PICARDO:**

How much is that, Mr Chairman?

**HON CHIEF MINISTER:**

Mr Chairman, from memory ... It would be from memory ... Well, it is certainly in excess of a million, a million and a half pounds, somewhere around that order. If you write to me, I am very happy to give him all of these figures that he is ... Let us be clear, Mr Chairman, this also is a provision. He should not expect to find £3.5 million worth of relocation projects. There could be a number of relocation projects for which this is funding and we will see how many start and how many do not start in the financial year.

**HON F R PICARDO:**

The Police relocation he talked about. Is this the proposed relocation down to North Mole?

**HON CHIEF MINISTER:**

The site of the Police relocation is not yet fixed. We are still looking for the most appropriate site.

**HON F R PICARDO:**

Is North Mole now off the cards?

**HON CHIEF MINISTER:**

No. It is not off. But there are various potential locations within the North Mole. Not just one.

**HON F R PICARDO:**

Not just the one next to the stevedoring berths?

**HON CHIEF MINISTER:**

There are other areas nearer the town.

**HON F R PICARDO:**

Right. Nearer the town in the North Mole area or ...?

**HON CHIEF MINISTER:**

Yes, yes in the North Mole.

Subhead 4 – Reclamation Projects.

**HON J J BOSSANO:**

The £4 million for Reclamation Projects, is that the reclamation that is taking place in Eastern Beach or are there any other reclamation ...?

**HON CHIEF MINISTER:**

Yes, Mr Chairman, this is a provision for the matter that we discussed at Question Time about the East Side, the building and the handling of the mountain into it and all that.

**HON J J BOSSANO:**

The other reclamation that was mentioned by the Minister for Trade, is that somewhere else, the one in connection with the small boats in Western Beach?

**HON CHIEF MINISTER:**

This Head will provide for both.

**HON J J BOSSANO:**

For both.

**HON CHIEF MINISTER:**

Yes.

**HON G H LICUDI:**

For both means the project in relation to the small boats provision by the runway?

**HON CHIEF MINISTER:**

No.

**HON G H LICUDI:**

Not that.

**HON CHIEF MINISTER:**

No. Both the reclamations, the East Side and Western Beach. Western Beach is not about small boats ... but primarily about creating a flat area of land [*inaudible*].

Subhead 5 – Other Projects

**HON G H LICUDI:**

Mr Chairman, under Other Projects, I cannot see a provision there for what we have just discussed, the small boats beside the runway. Can the Government say where that is provided for?

**HON CHIEF MINISTER:**

No, Mr Chairman. It is not provided for under the Improvement and Development Fund.

**HON G H LICUDI:**

Does that mean it is not going ahead or there is a provision somewhere else?

**HON CHIEF MINISTER:**

No, Mr Chairman. It means it is not provided for under the Improvement and Development Fund.

**HON F R PICARDO:**

Mr Chairman, in relation to (t) there, the Town Range Building (Clubs) where we are making a provision. Is that a provision the £100,000, or is it the full amount the hon Gentleman believes we need to spend?

**HON CHIEF MINISTER:**

No.

**HON F R PICARDO:**

It is just that the hon Gentleman will see that we estimated £150,000 last year.

**HON CHIEF MINISTER:**

Mr Chairman, there was a project which has slipped. It did not happen last year at all, to refurbish some of the premises in the old bakery for clubs and associations and it just did not happen last year. It is the building behind the Senior Citizens Club in Town Range. Basically, there are two floors there which are unoccupied. Some of the upper floors are occupied but some of the lower floors are not and they have been allocated to some, earmarked for some clubs and association and this is one of the things that did not happen last year. It should happen.

**HON G H LICUDI:**

Mr Chairman, there is a provision for Smart Bikes at (n). That is the project where you pick up the bike in one place and leave it somewhere else because there is a separate provision for implementation of parking and traffic plan? The Smart Bikes are

part of that. The £400,000 in the implementation of the plan. Do the Government have any details of what that envisages? Which particular aspects of the plan because there are some, like bus shelters, which are provided for separately. Smart Bikes are provided for separately but then there is a general head of implementation. Does that have any particular [inaudible]?

**HON CHIEF MINISTER:**

I suspect that that is mainly a provision for works that need to be done for the zoning of districts into the residents area, all the traffic signs, all the road markings. All the making good of car parks, for example. The forecast outturn of that figure would include the works that were done in the Forbes Quarry car park. So as we go district by district and designate [inaudible], roads need to be painted, road signs need to be put up, some car parking areas need to be tarmacked and fenced off. It is just a provision for that sort of the thing and we hope to roll this out in the next few months. There has been some teething problems in the north district in terms of whether there is ... of striking the right balance between one and so forth but we are sufficiently confident that it does the trick in sufficient measure to now roll out into other districts and that work is now being done, which roads are going to be designated for what type of parking in the various districts.

Subhead 6 – Equity Funding – Gibraltar Investment (Holdings) Limited

Head 102 - Projects – was agreed to and stood part of the Bill.

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

Clause 5 – was agreed to and stood part of the Bill.

## **Clauses 6 and 7**

### **Appendix B - Gibraltar Sports and Leisure Authority**

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

Mr Chairman, perhaps it is just worth noting for Hansard, given that it is the first time we do it. This clause 6 of the Bill, we are now going through the green pages but not as we used to go through them before. Now we are going through them as if they were white pages. In other words, to appropriate the expenditure of those Authorities and Agencies listed there.

#### **HON J J BOSSANO:**

Mr Chairman, can I just ask the hon Member, because I remember when this was being discussed before that I questioned the rationale of this, given the apparent incompatibility between the freedom enjoyed by the members of the boards of these Agencies in determining ... Normally, in any other department, when these places were departments, it was the Financial Secretary that had to approve money that had been voted for one thing being used for something else. Now, that, in fact, does not apply to these things unless ...

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

Mr Chairman, the intention is that they will have to revert to the Financial Secretary for virement as if this were Consolidated Fund expenditure.

#### **HON J J BOSSANO:**

Yes, but in the case of the departments, it is not just a question of intention. It is that there is a legal requirement to do that.

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

At the moment we do not think that the law that we passed in February covers virement between these things. So it will just be vired ... Until that matter is looked at and determined and made the subject of legal cover, it will be done by instructions from the Financial Secretary.

#### **HON J J BOSSANO:**

But the hon Member feels that this does not reduce the flexibility that the Authorities had in using ...? One of the two arguments in favour, apart from the question that it was the policy of the Government to try and find ways of reducing the number of people becoming entitled to Civil Service pensions which was the explanation given in the GDC and to some extent in all the ones that were hived off. But, for example, in something like the Electricity Authority which is really a commercial ... In other parts of the world, they would be a commercial entity. The management of the place decides, on a day to day basis, what is the most efficient way of using the money they have got, which was something that was argued that under Civil Service rule they did not enjoy that flexibility. How is that going to be made compatible?

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

Mr Chairman, I do not think that is what is meant by operational autonomy. It is all about an operational style which is more in keeping with the nature of the activity. Even in Government

Departments, the Financial Secretary does not actually make ... I mean, he may sign things off but at the end of the day, it is departmental managements that, in effect, make the virement decisions by putting up the requests through the Financial Secretary. I do not suppose he goes in and second guesses them. So I think this Financial Secretary business is a little bit of a rubber stamp and I suspect always has been in Government Departments. So it is there as an oversight mechanism but I do not think that anybody would pretend that the Financial Secretary makes the decision about whether it would be reasonable to spend some of the money that was down here for the running expenses of the Sports and Leisure Authority, instead spending it on the sports development unit, which is the ...

Appendix C - Housing Works Agency

Appendix D - Care Agency

**HON F R PICARDO:**

Mr Chairman, the Contracted Services at (33). The forecast outturn is half the estimate of what last year was. The year before, it was even less. We are still voting them £30,000 in terms of cleaning. Is it that we are encouraging them to spend more? There may be a good reason for it. It may be that there are areas that we want ...

**HON CHIEF MINISTER:**

It may appear to be the reverse ...

**HON F R PICARDO:**

The whole principle. Yes.

**HON J J NETTO:**

Yes. That is right. It is a provision for Johnstone's Passage which did not happen until the end of January 2011.

**HON F R PICARDO:**

Sorry, a provision for?

**HON CHIEF MINISTER:**

Johnstone's Passage. The old [*inaudible*].

**HON F R PICARDO:**

Yes, yes. It used to be my school many years ago.

**HON CHIEF MINISTER:**

[*Inaudible*].

**HON F R PICARDO:**

Sorry. I am sorry. St Mary's, very proud of it I am too, by the way. Mr Chairman, (38) which is Drug Awareness. We estimated £15,000, they spent £2,000. Well, we did not estimate at the time, I suppose they estimated, they spent



£2,000. Now they are estimating £24,000. Is this part of a programme? A drug awareness programme or ...?

**HON J J NETTO:**

Well, Mr Chairman, there was an increase of £9,000 which relates to expenditure in relation to drug awareness reflected under Medical Books (25) but this has been decreased from there and included under this particular Subhead. The remaining £13,000 difference was a saving from the original amount allocated from 2010/2011. The only expenditure charge to this item was a drug awareness conference held in November 2010.

**HON F R PICARDO:**

Sorry. I do not understand what the hon Gentleman is telling me. We estimate £15,000. We only spent £2,000. There is a saving of £13,000. I am with you that far, but we are now estimating £24,000. He said something about the £9,000. I did not quite hear what it was he said about the £9,000.

**HON J J NETTO:**

The notes I have, Mr Chairman, is that an increase of £9,000 related to expenditure in relation to drug awareness reflected under Medical Books (25) which has been decreased and has been included under this Subhead.

**HON F R PICARDO:**

Oh, I see. You are moving it from somewhere else.

**HON J J NETTO:**

Yes.

**HON F R PICARDO:**

Right. Thank you.

Appendix E - Gibraltar Port Authority.

**HON DR J J GARCIA:**

Mr Chairman, I have a question in relation to (24) which is the Slop Oil Reception and Treatment Ltd. There is an amount there of £580,000. What is going to happen to that, given the accident that happened at the plant?

**HON CHIEF MINISTER:**

Mr Chairman, this is a complicated situation. The slop plant operator, a company called Nature Limited, is well represented legally on that side of the House and I would not wish to say but there is a situation whereby the Government is not going to make any decision about the future of the plant until we have had the reports of the accident. At the moment, the position is that the Government is refusing to allow the plant to reopen and so we have a port. As a port, we have an obligation to provide slop collection but not slop processing. So we can collect and export which is what Ceuta does and Malta does and various other ports. We used to do it for them here.

**HON F R PICARDO:**

Mr Chairman, regardless of the representation issue, I think the question being asked is exclusively about the numbers and therefore it is just a question of does the Government expect either whether it is through [*inaudible*] otherwise that there will be the expenditure in terms of the Government's obligations in some way? That is the area we are raising, I think?

**HON CHIEF MINISTER:**

The Head will remain, whether the situation I have just described to the hon Member and the prevailing situation adds to the costs being less or the costs being more, I suppose depends on what the cost of handling the slops for export is, as opposed to treatment, but it could easily be more, rather than less.

**HON J J BOSSANO:**

Mr Chairman, on the Personal Emoluments. What is the explanation for conditioned overtime having gone up by £100,000 over the estimate and then a further £40,000 this year?

**HON CHIEF MINISTER:**

Mr Chairman, we do not have the breakdown. We think it is the fact that vacancies were filled during the year. If he looks at the booklet, there were seven or eight vacancies and also that the cost of conditioned overtime increased but I do not remember if that was last year or the year before. So I do not dare, almost dare suggest it because I cannot remember if it happened last year or not, when the treatment given to Saturday, Sunday and Bank Holiday premium changed.

**HON J J BOSSANO:**

The conditioned overtime is normally based on rosters. Is that what this is?

**HON CHIEF MINISTER:**

Yes. Conditioned overtime is overtime hours worked by people that is part of their conditioning. Rosters or things of that sort. Yes. As opposed to discretionary. For things of that sort. I think it is almost always, probably always, shift work.

**HON J J BOSSANO:**

That is why it is not very usual that there should be an increase like this from one year to the next because the shifts are the same all the time, every year. If there had been a big pay rise then that would be reflected in the overtime but there has not been, if we look at the personal emoluments. Is it that there are any new ...?

**HON CHIEF MINISTER:**

Mr Chairman, I think there was something done where we agreed to make Saturday, Sunday and conditioned hours ... I am just trying to remember what it was. Was it reckonable for overtime. I cannot remember. What was it that we agreed? Mr Chairman, we are going to try and find out. At the moment, the only sensible thing that we can see is that it is filled vacancies that were not funded in 2009/2010 and that were not estimated to be filled and that were filled but you would expect to find a commensurate increase in the salaries figure.

**HON J J BOSSANO:**

Of course. If there were vacancies.

**HON CHIEF MINISTER:**

If there were vacancies and it does not appear to sustain that theory.

**HON J J BOSSANO:**

Has there been any change in the grades eligible to overtime. Are there senior posts that previously were not entitled to overtime which have now become entitled?

**HON CHIEF MINISTER:**

No. It would not be that because it is shift work. This is not overtime hours worked. This is the conditioned number of hours worked by shift workers. Now, I am just trying to recollect exactly what the subject was. It is just that at this time of the night ... I have got a feeling that we agreed that Saturday, Sunday and weekend premiums would be calculated at a higher rate and that therefore it increased the cost but can we move on, Mr Chairman, and come back when we have an answer to that.

Appendix F - Gibraltar Electricity Authority

**HON F R PICARDO:**

Yes, Mr Chairman. Can the hon Gentleman tell me where we are making provision here for the cost of the skid generators?

**HON CHIEF MINISTER:**

Yes, Mr Chairman. Actually, those are operated by Mechanical and Electrical Services Limited, a Government company and not ... So there is actually no cost provision here.

**HON J J BOSSANO:**

Then how do they get paid?

**HON CHIEF MINISTER:**

That, in turn, is being funded from the company structures of which it forms a part.

**HON F R PICARDO:**

Which is not transparent to us in the book.

**HON CHIEF MINISTER:**

Well, it is not transparent to you in the books because the companies are not yet transparent.

**HON J J BOSSANO:**

But surely it is a cost of generating electricity. So how come ... I mean, if the Electricity Authority ... The books that we have got enables us to see what the receipts are and what the cost of providing the electricity is, irrespective of who is doing it, surely, they should be charging the Electricity Authority for that? Otherwise, forget about whether it is transparent or not. It

seems to be inaccurate because we have got a cost of electricity here which understates the real cost.

**HON CHIEF MINISTER:**

Mr Chairman, I am told that the operating costs will appear here. The operating costs, basically being maintenance and fuel consumption, will appear here in the Electricity Authority figures but not the cost of hiring the equipment. One or two will have been purchased but most of them are on lease which is something that the Government has wanted to do to ensure resilience of supply and, therefore, that capital cost has not been saddled on to the Electricity Authority. Basically, there is enough generating capacity in Gibraltar with OESCO, MOD and the Waterport Power Station. There is not enough, as the hon Members keep on pointing out to us and from power cuts and things, when there is an unusual coincidence of outages, usually in OESCO, but sometimes in the MOD power station too, and the Government has, itself, made the investment in having this equipment here to make sure that the consequences of outages in these three suppliers is not that there is a discontinuation of power supplies. So, the GEA is taking the cost of the operating expenses and the Government is procuring the generating equipment.

**HON J J BOSSANO:**

We are not questioning whether we should have that facility there to deal with emergency.

**HON CHIEF MINISTER:**

No. Sorry. That explanation was in an attempt to explain why the capital expenditure cost is in the companies and not in the GEA. This is not equipment that is being procured by the GEA,

it has been procured by the Government, but it is being operated on behalf of the Government/Government company Mechanical and Electrical Engineering Services Limited by the GEA. The GEA was not directed to incur the expenditure itself in acquiring the equipment as GEA equipment.

**HON J J BOSSANO:**

Well, can the Government say what is the estimated cost of renting this equipment in the current financial year, even if it is not shown in the accounts of the Electricity Authority?

**HON CHIEF MINISTER:**

From memory, I think the rental costs are somewhere in the order of a £1 million a year.

**HON J J BOSSANO:**

Did the hon Member say that one of the sets had been purchased and the rest ...

**HON CHIEF MINISTER:**

More than one. I think we purchased two or three on the basis that the rental costs, compared to purchase costs, made it appropriate ... When we had time to buy. Initially, they were brought in quickly on hire and they had to be brought in from where they were available but the ones that we bought in slower order, we were able to buy because the suppliers lead in time, we could wait and we also wanted to have some as part of our civil ... The reason why we bought some of them is that we wanted to have some civil contingency mobile, movable, electricity generating capacity. For example, if there was some

civil contingency in the South District which severed the distribution cables to the area, we had wanted to have some transportable generating capacity, as part of the general civil contingency response, that could be moved. So that we could plonk a generating set in Europa Point and serve the ... At the moment, there is not a lot of that available. At the moment, civil contingency planning has not hugely accommodated for the need to re-supply utilities from something that might have happened that may prevent the existing utility from reaching a generating source and it was a combination of those two reasons that we said, well, then we will buy a couple of these things. When I say a couple, it might have been three, two or three.

**HON F R PICARDO:**

Do you know the breakdown between ...?

**HON CHIEF MINISTER:**

Oh, yes. Many more purchased ... I think there were seven or eight or nine even. These machines are small. They tend to be one megawatt machines. They can see it if they go round to the car park area round the back of the power station. They are all lined up there. They are very small machines which explains why the high number of them. I cannot tell him how many were purchased and what the relative cost of those were but I think each machine cost £600,000 or something. We can get that breakdown but I think, from memory, that each machine cost about £600,000, £650,000 or £700,000, the ones that we bought. But if they are particularly interested in having this, perhaps, we will write to you setting out how much the company has spent on purchase, the numbers of the capacity that we have purchased and how much is the accurate rental cost and how many megawatts have been rented in.

**HON F R PICARDO:**

Thank you. Mr Chairman, in terms of the capacity of providing mobile generation capacity, once you move one of these devices, is it possible to plug in an area or do you need a distribution panel between the generation and the ...

**HON CHIEF MINISTER:**

It is possible to plug them in to sub stations.

**HON F R PICARDO:**

To sub stations. Right.

Appendix G – Gibraltar Health Authority

**HON J J BOSSANO:**

Mr Chairman, the bank nurses that are used to supply to cover for absences, are they shown here in the manning levels or are they just not shown at all and come under some Head other than personal emoluments?

**HON MRS Y DEL AGUA:**

Mr Chairman, I believe they would be shown or have been historically shown under Relief Cover.

**HON J J BOSSANO:**

Are these bank nurses people that are just employed when there is a sudden need to bring somebody in or are any of them, sort of, called bank nurses but really working the fifty two weeks of the year?

**HON CHIEF MINISTER:**

The nurse bank, Mr Chairman, is used to cover for absent nurses.

**HON J J BOSSANO:**

Absent meaning not just temporary absences like illness and that?

**HON CHIEF MINISTER:**

Yes, yes, yes. Yes that. This is why this area of expenditure has mushroomed out so much over the years together with the Relief Cover vote and that is that they are now having, sort of, teacher like manning levels. So, before nurses went off sick and the others used to muddle through and now instead of muddling through they get covered for and this is a significant source of expense ... Sorry.

**HON S E LINARES:**

Like a supply basis.

**HON CHIEF MINISTER:**

Yes, exactly.

**HON J J BOSSANO:**

But are they on permanent supply fifty two weeks a year?

**HON CHIEF MINISTER:**

No. These are not substitute contract nurses. No. The nearest thing is indeed a supply system.

**HON J J BOSSANO:**

Yes, but we know that there are teachers who are on supply the whole academic year.

**HON CHIEF MINISTER:**

This is not the case.

**HON J J BOSSANO:**

This is not happening with the nurses.

**HON CHIEF MINISTER:**

No.

**HON J J BOSSANO:**

Is their rate of pay the normal rate of pay for ... Presumably, if they are on a supply basis, they do not have an entitlement to annual leave or sick leave or anything like that because they do not work a whole year?

**HON CHIEF MINISTER:**

Correct.

**HON J J BOSSANO:**

So have they got a different rate of pay or are they just paid for the hours that they work at the normal rate?

**HON MRS Y DEL AGUA:**

I believe that is the case, Mr Chairman.

**HON J J BOSSANO:**

Which of the two?

**HON Y DEL AGUA:**

A normal rate as other ... Sorry, the former. The normal rate as any other nurse on an hourly basis.

**HON J J BOSSANO:**

So it is not that they get ... I think, in the case of a school teacher, I seem to remember that they used to be on a higher rate because they were not entitled to holidays or ...

**HON S E LINARES:**

In the case of school teachers what they do is they divide the number of days that they have during the year and they are paid relatively to the day that they do.

**HON C G BELTRAN:**

They do not lose out compared to the ...

**HON J J BOSSANO:**

They do not lose out compared to the ...

**HON C G BELTRAN:**

... p and p teacher who is [*inaudible*].

**HON J J BOSSANO:**

That is right. Right. But this is not the case with the nurses?

**HON MRS Y DEL AGUA:**

I do not think so, Mr Chairman.

**HON J J BOSSANO:**

Can I just ask ... I think then ... I notice there was in the Government, may be in the Treasury, £1.5 million Relief Cover. Is that what is paying for this then?

**HON CHIEF MINISTER:**

No, Mr Chairman. That, yes. That is, yes. That is instead of. If he looks at page 147 he will see the £3.58 million reducing to a thousand pounds token. If he looks at page 147, Item 11. What we have done is that we have taken that into the Treasury in an attempt to get to grips with it. Mr Chairman, look at ... The hon Members will see ... They can only see two years there. But if they follow that head of expenditure back over a number of years, it is just growing exponentially and this is manning and recruitment through the back door and we tried one year and we had a discussion one year about whether it could be controlled ...

**HON J J BOSSANO:**

Yes, yes. I remember.

**HON CHIEF MINISTER:**

...and this is now an attempt to bring it even more under control by actually having the Controlling Officer sitting in the Treasury and not in the Agency. They will have to make a case for the use of this vote. Obviously, there are many cases in which it is important. Consultants need to have locum cover. So we are not saying that there is not a legitimate use for this but it cannot be increasing manning levels by management decision.

**HON G H LICUDI:**

Mr Chairman, in page 80 as the hon Member has said, we see £1.5 million voted for this under Treasury and we clearly have had a gross under estimate in the past where £1.4 million was estimated last year and £3.5 million was expended. As I understand the hon Member to be saying, is it that by giving this to the Treasury there will be much more control and therefore the expenditure will come down?

**HON CHIEF MINISTER:**

That is the idea but we do not know by what measure we will be able to curtail it but at least we will be satisfied that it is not unnecessary expenditure.

**HON G H LICUDI:**

But is that an admission that this year we have had unnecessary expenditure because the estimate with £1.4 million and the forecast outturn is £3.5 million?

**HON CHIEF MINISTER:**

Well, Mr Chairman, forget the ... If the hon Member will just for one moment forget the estimate of £1.4 million and compare actual year on year, this expenditure has increased from £2.1 million in 2009/2010 to £3.6 million nearly in 2010/2011. Well, that is a very significant increase in expenditure for something that is supposed to be for relief cover. We are not convinced, in the Ministry of Finance, that this vote is being used as Government policy intends. There is a Relief Cover policy document which management deploys and we do not think it is being properly operated at a management level. If these were small amounts of money, you would just leave it to



management's discretion. But on this basis, this is going to become one of the biggest heads of expenditure in the GHA and it just needs to be kept under control. Health expenditure is already increasing exponentially enough without subheads becoming so significant in over ... The increase in expenditure is ...

**HON F R PICARDO:**

Greater than the estimate.

**HON CHIEF MINISTER:**

Well, almost. Almost greater than the estimate. The increase of expenditure is £1.4 million or £1.5 million against an estimate of ... Yes, greater than the estimate. Absolutely. Greater than the estimate of £1.4 million. The GHA would argue that the estimate of £1.4 million is an unrealistic imposition by the Treasury, by the Finance Ministry, in 2010/2011. So I am saying, forget the estimate because it is something that was done centrally on a, sort of, hope basis and they would argue, with some justification in the GHA management, that we simply slashed too much. But even year on year which is real expenditure. This is not the estimates accurately or not. Expenditure has increased from £2.1 million to £3.6 million and we are not satisfied that that is for acceptable policy reasons and therefore we are going to try and control it from the centre.

**HON F R PICARDO:**

But how is that going to work?

**HON CHIEF MINISTER:**

How does it work?

**HON F R PICARDO:**

How is the control going to work?

**HON CHIEF MINISTER:**

Well, the GHA management have got to get the permission of the Financial Secretary on each and every case to access this money. They do not have money. They do not have this money. They do not have a Head.

**HON F R PICARDO:**

They have got a nominal now?

**HON CHIEF MINISTER:**

Well, but they are not entitled to vire into it.

**HON F R PICARDO:**

Now, Mr Chairman, I understand that and I understand the reasoning for it that the hon Gentleman has explained but on a day-to-day basis how is that going to work if a nurse is needed on the ground? Are we going to, at least, give them a bit of string so that they can deal with the day-to-day problems?

**HON CHIEF MINISTER:**

Well, that is how we started and really therein lies the [inaudible]. Whether we can devise a system that delivers greater financial control without disabling the coal face from access to the services that they need in a timely fashion and that is up to the Financial Secretary's working methodology with the GHA management to try and do it in a way which does not cause that delay. These are mainly expenses that before were not incurred. The fact that they are being incurred at all is itself a policy novelty. Do you know what I mean? That has grown and grown. The practice has grown and grown. There was always some relief cover for locums for consultants. The consultants have all, particularly the short handed consultants, the single-handed consultants ... They were always historically covered by locums. So there has always been a vote for relief cover. But if he goes back over the years, it was a fraction of this amount and it has gradually been ratcheted up, ratcheted up, ratcheted up without any central cognisance, any financial decision in the Finance Ministry that we were budgeting to spend this extra amount of money. So we find out, almost at the same time as you do, at the end of the year when, you know ... and it just cannot be that way. It is becoming too large an item to allow to develop as another, well, it will be whatever management decides is it going to be. It is just too much.

**HON F R PICARDO:**

How has it worked in the past few months since the end of the financial year?

**HON CHIEF MINISTER:**

The Financial Secretary says it is working reasonably well. I am sure that if he says that he gets the requests and that he approves them [inaudible].

**HON G H LICUDI:**

Mr Chairman, the fact there is so much apparent need and if we take the view that management considers that there is a need for relief cover, these are management decisions based on the requirement of the health service and if we take that view that if they request it, it is because they need it and if so much is needed does that not say something, Mr Chairman, about the manning levels themselves and whether that should be reconsidered.

**HON CHIEF MINISTER:**

Mr Chairman, certainly we are not willing to increase ... Certainly, I am not willing to provide funding for an even greater increase in the manning levels. There has been a huge, huge increase in the manning levels of the GHA and they have just got to learn to provide a service with the very extended manning levels that they have got. Just look at the number. The hon Member asks for the information on a regular basis. Who does that? Who does the health? The Hon Mr Costa. Over the years you can see the number of ... Well, I said so in my own Budget address. The number of additional doctors, dentists and consultants and ...

**HON S E LINARES:**

Mr Chairman, in the nurse cover, is there any criteria like there is in teaching where, for example, a teacher, in relation to absenteeism through sickness, has to bring in a certificate and then they get a supply in by the second day or third day, usually, unless it is something that is pre-known. Is there any criteria within the GHA that does this for nurses, for example?

**HON CHIEF MINISTER:**

No, Mr Chairman. I think that this is precisely one of the reasons why this vote has gone up so much and that is that what started life as a little nursing bank to provide cover in areas where nursing absence was critical ... So you have got a small unit and the nurse does not turn up. It is hard for the others to struggle through. I think has increasingly been deployed to almost every absence, any absence and this is why it has mushroomed. Whereas the original intention was not to provide universal cover for every nurse that was ever absent from every post but, rather, a resource for critical areas where nursing absences seriously degraded the operating capacity of the GHA. That I think is what has happened and one of the reasons why it has grown so much, is that it has just become much more systemic in practice than was originally intended.

**HON G H LICUDI:**

Mr Chairman, in (13) there, it says Recruitment Contractual Expenses and Accommodation. What does that cover, recruitment contractual expenses?

**HON CHIEF MINISTER:**

Mr Chairman, this is the cost of agency commissions and accommodation costs of contract nurses.

**HON G H LICUDI:**

These are the contract nurses that are brought for the relief cover?

**HON CHIEF MINISTER:**

No. These are the a hundred and ten. I think that when he asked last time he was told there were a hundred and ten contract nurses. I am just trying to remember the answer that we gave him to a written question. Some nurses are permanent and pensionable. Usually, the local ones are permanent and pensionable. Some are on contract. Not permanent and pensionable employees.

**HON G H LICUDI:**

There is a separate cost to an agency of commission of £785,000.

**HON CHIEF MINISTER:**

Yes.

[Appendix H - Gibraltar Regulatory Authority](#)

**MR CHAIRMAN:**

We do not seem to have concluded Appendix E - Gibraltar Port Authority. We will probably have to come back to that.

**HON CHIEF MINISTER:**

Mr Chairman, the Port Authority. I am told that when they moved to the Port Authority they got their fifteen per cent up lift and that this carried through into the cost of conditioned hours. Conditioned overtime hours, Saturday, Sunday premium.

**HON J J BOSSANO:**

Mr Chairman, they did not move into the Port Authority when the increase takes place. They were already in the Port Authority the year before and the up lift happened when they left the Port Department. So that explanation, which may have been cooked up in the last minute, will not work. The Port Authority when it was £260,000 and the Port Authority when it was £284,000.

**HON CHIEF MINISTER:**

Mr Chairman, can he leave that with us. Minister Holliday will get in touch with the hon Member tomorrow once he ... because the person he has spoken to is not the person who deals with it. That has been his explanation. The Hon Joe Holliday will get the information from the finance section and ring the hon Member and tell him.

Appendices B to H – stood part of clauses 6 and 7

Clauses 6 and 7, were agreed to and stood part of the Bill.

The Schedule, Parts 1 to 5 – were agreed to and stood part of the Bill.

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

**THIRD READING**

**HON CHIEF MINISTER:**

I have the honour to report that the Appropriation Bill 2011 has been considered in Committee and agreed to, without

amendments, and I now move that it be read a third time and passed.

Question put.                      Agreed to.

The Bill was read a third time and passed.

**ADJOURNMENT**

**HON CHIEF MINISTER:**

I have the honour to move that the House do now adjourn to Thursday 7<sup>th</sup> July 2011 at 2.30 p.m. when we will take, in case hon Members want to know what they need to prepare for, a number of Bills that are takeable. Anyway, I think that the ones we can take are the Gibraltar Culture and Heritage Agency Bill 2011; the Financial Services (Banking) (Amendment) Bill 2011; the Gibraltar Garrison Library Trust Bill 2011; the Gibraltar Port Authority (Amendment) Bill 2011; the Traffic (Amendment) Bill 2011 but not the Criminal Procedure and Evidence Bill 2011 or the Crimes Bill 2011. The Hon the Leader of the Opposition and I had a discussion a day or two ago in the ante room. He is keen, and I am happy to accommodate him, to take, I was going to say all the motions that are [*inaudible*], but I am sure there is one he is not keen to take.

**HON F R PICARDO:**

Delighted to take them all.

**HON CHIEF MINISTER:**

Oh, here it is. The two motions that had been published before today, the granting of the Medallion of Honour to Kaiane

Aldorino and the Mayor motion, we will take that tomorrow afternoon if the House is content with that.

**HON F R PICARDO:**

I think the hon Gentleman has also indicated he wanted to take the motion on the letters that one can carry after their name on the Medallion being conferred. Yes, that one is also added.

**HON CHIEF MINISTER:**

Yes, and that one too. Yes.

Question put.           Agreed to.

The adjournment of the House was taken at 8.55 p.m. on Wednesday 6<sup>th</sup> July 2011.

**THURSDAY 7<sup>TH</sup> JULY 2011**

The House resumed at 2.30 p.m.

**PRESENT:**

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

**GOVERNMENT:**

The Hon P R Caruana QC – Chief Minister

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

**OPPOSITION:**

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

**ABSENT:**

The Hon E J Reyes - Minister for Culture, Heritage, Sport and  
Leisure

The Hon N F Costa

**IN ATTENDANCE:**

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

## **COMMUNICATIONS FROM THE CHAIR**

### **MR SPEAKER:**

Following the Committee Stage yesterday of the Appropriation Bill, the Hon the Chief Minister reported to this House that the Bill had been considered clause by clause in Committee and had been passed without amendment. I think we can all be forgiven yesterday, as we neared the end of a six hour session, for having overlooked the fact that clause 2 of the Bill had, in fact, been amended. Originally, as drafted, clause 2 referred to the sum of £315,779,000. As members will recall, this was looked at and the amount was, in fact, £316,599,000. So I thought the record ought to be rectified to the effect that the Bill was considered in Committee and passed subject to that amendment and the Bill is deemed to have been passed by this House subject to that amendment.

### **Clause 2**

In clause 2(1), delete the figure “£315,779,000” and replace with the figure “£316,599,000”.

### **The Schedule**

In Part I of the Schedule, delete the figure “£28,312,000” and replace with the figure “£29,132,000”; and delete the figure “£315,779,000”, wherever it appears, and replace with the figure “£316,599,000”.

### **Explanatory Memorandum**

Under the heading Consolidated Fund Expenditure, delete the figure “£401,779,000” and replace with the figure “£402,599,000”.

## **BILLS**

### **FIRST AND SECOND READINGS**

#### **THE GIBRALTAR CULTURE AND HERITAGE ACT 2011**

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

I have the honour to move that a Bill for an Act to make provision for the establishment of the Culture and Heritage Agency and for connected purposes, be read a first time.

Question put.                      Agreed to.

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

I have the honour to move that the Bill be now read a second time. Mr Speaker, this Bill creates an Agency to be known as the Gibraltar Culture and Heritage Agency and legislates for the provision of cultural and heritage facilities and development programmes in the community by it. This establishment of this Agency for culture and heritage public administration responds to the Government's view that specialist areas of activity are better dealt with in a more focussed way by bits of the public administration that are not part of the single body called the Civil Service. It enables the more targeted recruitment, for example, of people who are vocationally interested in culture and heritage rather than generalist clerical and administrative grades moving into these posts. The Sport and Leisure Authority, there have been other examples of it, the Electricity, the Port but the Sports and Leisure Authority has been I think a prime example of this policy, which I know sometimes the hon Members opposite or perhaps never, they do not agree with but the Sports and Leisure Authority, I think, is an example of how by ring fencing the activity within its own little bit of the public sector, it has been

possible to recruit into sport and leisure administration, people with specific interest in sport. I do not want to call them sporty types but the sort of people that are themselves interested in sports and therefore bring a vocational dimension to the sports and leisure industry as we hope now to replicate in the Culture and Heritage Agency. Of course, you can get just anybody to work in culture and heritage but it enriches the delivery of the public service if the people working in it are selected, amongst other things, for their particular interest in culture and in heritage.

Clause 1 contains the short title and the commencement clause and the hon Members will see ... and comes into operation on such day as the Government may appoint.

Clause 2 is the usual interpretation clause which places ministerial responsibility for the proposed agency within the remit of the Minister with responsibility for Culture and Heritage.

Clause 3 establishes the Agency. The agency consists of a total of six members. These are the Minister as Chairman, the Chief Executive Officer appointed under clause 10, two persons in the employ of the Agency, one of whom shall have specific responsibility for culture and the other who shall have specific responsibility for heritage and two other persons appointed by the Minister and whom shall hold office for the period and on terms that the Minister deems appropriate. Sub clauses (3) to (5) deal with the removal of certain members of the Agency and their re-appointment. Sub clause (6) empowers the Minister to appoint an employee of the Agency to be its secretary.

Under clause 4, the Agency is a body corporate with perpetual succession with its own seal and it may sue and be sued in its own name.

Clause 5 sets out the procedures for meetings of the Agency. This includes setting a quorum of three members plus the Chairman. Ensuring the Agency meets at least once every six

months. These meetings are in addition to those of the Management Board under clause 11. The Agency may meet more often if it feels the need to do so.

Clause 6 sets out the functions and duties of the Agency. In addition to any functions set out in other legislation, it must, so far as it is mandated to do so by a Government and is provided with sufficient resources, therefore promote, protect and preserve the culture and heritage of Gibraltar. Administer Government policy in that field. Operate, manage, administer and maintain cultural premises and facilities as entrusted to it by Government and advise the Government on cultural and heritage matters.

Clause 7 grants certain powers to the Agency in order that it is able to carry out its functions and duties. These include being able to employ persons, purchase, lease and dispose of property, enter into contracts, erect, equip and maintain buildings, plants and equipment and publish papers, books et cetera as may be conducive to the advancement of its functions or duties.

Clause 8 allows for the Agency to arrange for the discharge of its duties via committee, sub-committee or employee of the Agency or by a Government department or other agency or an authority.

Clause 9 allows the Agency to regulate its own procedure and make standing orders regarding any of its committees, subject of course to the provision of clause 5 regarding its own meetings.

Clause 10 places a duty on the Government to appoint a Chief Executive Officer of the Agency. He or she shall hold office on such terms and for such other period as may be specified in the instrument of appointment.

Clause 11 provides for the appointment of two management boards by the Agency. The Culture Management Board and the Heritage Management Board and therefore the structure created is a Culture and Heritage Agency with a main board and then two management boards, one specialising in culture, the other specialising in heritage. The Boards, that is to say, the two management boards, will include officers of the Agency and must meet at least once a calendar month.

Clause 12 sets out the financial duties of the Agency. The main one being that it must ensure that its outgoings are not greater than its revenue. Its main source of revenue will be monies which may from time to time be voted by Parliament for its purposes.

Clause 13 legislates for the establishment by the Agency, with the Accountant General, of a general fund, into which all monies received by it shall be paid and out of which all payments by the Agency shall be paid. The clause also provides for the Chief Executive Officer to be responsible for the management of the fund and allowing the Agency to borrow funds temporarily from the Government by way of advancement.

Of course, Mr Speaker, all this is in the context of the new arrangements that we have been grappling with during the last week and before, that the funds, any revenue that is not derived from the Consolidated Fund has to be channelled through that and then the expenditure of the Agency also needs to be appropriated by this House as we did with all the green pages yesterday.

Clause 14 makes provision for the Agency's accounts and the auditing of the same. The Agency is required to keep proper books of account and cause statements of accounts for each financial year to be prepared. The accounts are to be audited and certified by the Principal Auditor as soon as practicable thereafter. After such audit, the Agency must prepare and submit a report to the Minister detailing its operations for that

year and the report and accounts must then be laid before Parliament. The clause also makes provision requiring information on future expenses and other financial and statistical information.

Clause 15 empowers the Agency to engage in fund raising activities subject to the Minister excluding specific forms of activity.

Clause 16 sets out the financial year of the Agency including a proviso for the first year of its existence.

Clause 17 provides for no personal liability to attach to any member of the Agency for anything done in good faith under the provisions of the Bill.

Clause 18 sets out that the Government may, by notice, require the Agency to make good on any failure by it to comply with its duties.

Clause 19 places a restriction on execution by means of attachment of property being issued against the Agency.

Clause 20 makes the functions of the Agency a public purpose within the definition of that phrase for the purposes of the Land (Acquisition) Act.

Clause 21 is a regulation making power for the purposes of the functions and duties of the Agency.

Clause 22 makes consequential amendments. The first is to the Public Services Ombudsman Act 1998 including the Agency in its Schedule so that the Public Ombudsman will have jurisdiction in respect of the new Agency. Sub clause (2) includes a number of amendments to the Gibraltar Heritage Trust Act 1989 in order to move certain powers and duties from the board under that Act to the Agency proposed to be created under this Bill. These amendments relate to the part of that Act dealing with the



museum and the disposal of antiquities. In other words, the executive powers, the statutory legal powers currently in the Gibraltar Heritage Trust will be transferred to the new Agency. Sub clause (3) allows for the making of consequential amendments to regulations made under this Act.

Mr Speaker, I give notice that I will be proposing a very small amendment to clause 22 of the Bill, what will become section 22 of the new Act, to not remove one of the powers listed there from the Gibraltar Heritage Trust. I will explain that when I come to it.

Mr Speaker, this Bill is the first in a two stage piece of legislation designed to change the architecture for the custody, care, management and administration of culture and heritage, particularly heritage. At the moment, we have the Heritage Trust Act 1989 with which the hon Members may, some of them, will be familiar which creates the Gibraltar Heritage Trust, which is a body of unpaid volunteers with no, sort of, funding but actually endows them with a whole series of executive powers of a governmental type which they are neither resourced, or equipped or staffed to discharge. The new architecture of which this is the first bit, and I will explain what the other two bits are in just a moment, is the recognition of the fact that the responsibility for policy, funding, enforcement and the primary responsibility for executive action in respect of culture and heritage should vest in the public administration and that the Gibraltar Heritage Trust, which have a very important role to play, should be an NGO, not an un-resourced bit of the executive. An NGO whose primary role will be to continue to advise the Government and the new Agency on heritage matters and, most importantly, to be free to be, when necessary, supportively critical and when necessary, unsupportively critical of the Government and the public administration and the Agency when it does not look after culture and heritage as well as they do. This is a division of responsibility with which the Gibraltar Heritage Trust are entirely comfortable, in the context of the much wider remit for this new Agency. For example, the next

piece of the jigsaw is the retrieval into the Agency of, what is now Knightsfield Holdings Limited, the whole of the Museum, John Mackintosh Hall. That will be retrieved back into the Agency and then we hope shortly to publish a Bill which is the main piece of heritage legislation. At the end of the day, all this Bill does is set up one bit of the architecture which is the creation of the Agency itself. It does not deal in substantive terms with statutory provisions for caring for heritage and culture. That will come in the new Heritage Act which is a huge document dealing with creating of listed buildings, the different tiers of listing, making sure that the heritage dimensions are properly looked after in terms of the planning process, not just by having a seat in the DPC but by planning applications having to go to this separate body, as well as the custodians of heritage. That new Act will then include, that next Bill will include the amended provision, the amended constitution for the Gibraltar Heritage Trust. Mr Speaker, I think that that will, all of this together, reposition, refocus, re-resource and will create a much more effective mechanism and architecture for the holistic and coordinated administration of our culture and of our heritage. So, Mr Speaker, this little bit of it is the preparatory step by the Government to prepare its bit, which is the creation of the Agency, which will be its participation, the vehicle through which it will participate in the new regime to be created by the new Heritage Bill when it is published very soon. The Heritage Trust obviously is being carefully consulted on that piece of legislation and I think it will be a pretty consensual piece of legislation when it emerges.

I commend this Bill to the House.

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

**HON S E LINARES:**

Mr Speaker, we will be abstaining on this Bill which is the position the Opposition has been taking on the different Agencies and Authorities that have been set up.

**HON J J BOSSANO:**

Can I ask the hon Member to clarify? I take it that they have identified the people that are currently in the Civil Service who will move to this Agency as has happened with other entities?

**HON CHIEF MINISTER:**

Yes. It has to be said it is a pretty depleted group of people. There are not very many of them. I believe that most of them are happy and anxious for this new move. If any were not, then they would be re-accommodated elsewhere in the Civil Service. It is such a small number of people that we do not expect any difficulty of that sort.

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 F J Vinet

Abstained:                The Hon J J Bossano  
                                 The Hon C A Bruzon  
                                 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 today, if all hon Members are content.

Question put.            Agreed to.

**THE FINANCIAL SERVICES (BANKING) (AMENDMENT) ACT 2011**

**HON CHIEF MINISTER:**

I have the honour to move that a Bill for an Act to amend the Financial Services (Banking) Act, be read a first time.

Question put.            Agreed to.

**SECOND READING**

**HON CHIEF MINISTER:**

I have the honour to move that the Bill be now read a second time. Mr Speaker, this Bill makes a relatively small but not inconsequential single amendment to the Act. The hon Members may recall that some years ago we inserted into the Banking Act a provision allowing the Government, in protection of the macroeconomic long-term interests of Gibraltar, the ability effectively to veto the grant of a banking licence to somebody.

Not the ability to grant a banking licence to somebody but the ability ... That is the granting of licences is detached from the Government. So the Government really has no control over who find themselves a part of the economic constituency of Gibraltar, which can have huge reputational risks and responsibilities, consequences which then convert into macro economic problems which the Government is then politically responsible for grappling with. This is one of the difficulties with the concept of independent licensing and independent regulation but it leaves necessarily the Government with ultimate responsibility but not very much power or control in the lead up to the development of events. So we inserted a clause in the Act that the Minister for Finance could, if he felt that the public interest required it, withhold his consent to the grant of a licence. So he could stop somebody getting a licence but could not give somebody a licence.

Mr Speaker, we had not focussed at the time that section 72 of the Banking Act, which creates the rights of appeal, gave the right of appeal to the Supreme Court in terms which were applicable to the withholding of consent by the Minister. So, section 72 reads, any person aggrieved by the refusal of any approval or consent required under this Act. So the effect of introducing a power to the Minister to withhold consent to the granting of a licence, coupled with the language of this appeal right, effectively gave a right of appeal over the Minister's withholding of the consent. Now, because of the nature of the right of appeal which is not by way of judicial review but by complete appeal, in other words, the Court can substitute its assessment over the appealed body's assessment, you have the situation where those with political and executive responsibility for the economic prospects of Gibraltar make an assessment of the public interest and are exposed to a judge making a different assessment of the macro economic interests of Gibraltar. In the Government's view, that is wholly inappropriate. Judges are not equipped to have knowledge or to make assessments of when economic events proposed short, medium or long-term risks to the macro economic interests of

Gibraltar which is not to say, Mr Speaker, and this is very important, which is not to say that the Minister's decision to withhold his consent cannot be challenged in the Court. It can be challenged in the Court but by the mechanism of judicial review, which does not enable the judge to substitute his own economic assessment for the Finance Minister's economic assessment. So the effect of this amendment is that the Court cannot substitute its judgement on a non-judicial matter for the judgement of the Minister on that non-judicial matter but any aggrieved party can certainly have recourse to the Courts to ensure that the Minister has exercised his judgement and made his decision lawfully, which means reasonably, for good cause and for demonstrable good reason. There are enough lawyers in this House for it not to be necessary for me to further explain the difference between a right of appeal and access to the judiciary by means of judicial review. The effect of this is to eliminate the normal right of appeal but to leave perfectly intact the right of legal challenge of the Minister's decision by means of judicial review. Mr Speaker, there would be no point in having given the Government of the day a right to overrule the Financial Services Commission, who are technical people, on their decision to grant a licence, because, of course, the Minister's decision in the public interest to withhold his consent would only arise after the Financial Services Commission ... to issue a licence. It would wholly illogical for the Government to have the power to overrule the Financial Services Commission only to allow a non-technical judge to have the power to overrule the Government in the right of appeal. This is not the intention. We might as well not have done the original change in giving the Government the right of protecting the public interest in pursuit, in discharge of its governmental obligation. So, Mr Speaker, I commend the Bill to the House.

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

**HON G H LICUDI:**

Mr Speaker, we will be opposing this Bill and we will therefore be voting against. The hon Member is right that the Act gives the Government the right of veto in respect of the granting of banking licence but we have a system where the general decision on whether banking licences ought to be granted or not, is given to an independent body. Independent of the Government and we would expect that independent body to take all necessary factors, all proper factors, into account in deciding whether or not it is right in a given place to grant or not to grant a licence to a particular applicant. The hon Member is also right in saying that even with this provision, there is still the right to access to Court through the means of judicial review. Thus where the Minister withholds consent, that withholding of the consent can be challenged by way of judicial review but the hon Member knows well that the grounds for a judicial review are much narrower, as he has said, and precisely this is the reason why he wants to bring this. Much narrower than in a general appeal where generally the grounds on a judicial review may be procedural or where the decision is so unreasonable, what we lawyers call "Wednesbury unreasonable" and therefore no reasonable person would have taken that decision. We consider that it is right. If there is a withholding of consent in circumstances where the independent body has taken a decision already that an applicant is a proper applicant and ought to be given a banking licence, we consider that it is right in those circumstances of the withholding of consent, that the matter should be placed before a judge for a judge to rule. The hon Member says it is wholly illogical. We disagree. There is nothing illogical at all in the matter going before the Courts for a judge to rule. All that may happen, Mr Speaker, is that the judge may consider that the Government got it wrong. The Government is not infallible. The Government can have regard to the interests of Gibraltar but the Government can get it wrong. Especially in circumstances where the independent body has already decided that it is appropriate that a licence ought to be granted and we consider that it is right. In all the circumstances

in relation to the purpose for which this power to withhold is granted, it is right that the Government ought to be scrutinised, ought to be fully scrutinised by a Court of law, applying all the necessary legal principles and not just those principles which apply for judicial review and for those reasons, Mr Speaker, we will be voting against this Bill.

**HON CHIEF MINISTER:**

Mr Speaker, I seem to recall that the hon Members voted in support of the insertion of the power of veto in the first place. I stand to be corrected. I am relying on my memory.

**HON F R PICARDO:**

On a Point of Order. We actually voted against the power of veto. We said that we felt that if the Financial Services Commissioner had felt that there was a case for a licence to be granted, then that we felt it was appropriate ... but I am relying on my memory and I stand to be corrected but I believe we voted against.

**HON CHIEF MINISTER:**

We are just confirming that.

**HON G H LICUDI:**

Mr Speaker, whilst we are waiting for that. I know that the hon Member is now supposedly on his feet and I would ask him to give way for one second, just to clarify this. Can the hon Member say in his response what motivates this? Is it prompted by any particular information that the Government has in relation

to any particular applicant or is it just a general principle of policy?

**HON CHIEF MINISTER:**

Mr Speaker, I thought that my memory was not failing me on this. The hon Members voted unanimously in favour of the Bill in 2009.

**HON F R PICARDO:**

I have got to see the Minutes and I would like to see the Hansard please, Mr Speaker.

**HON CHIEF MINISTER:**

Mr Speaker, can I suggest a ten minute recess.

The House recessed at 3.05 p.m.

The House resumed at 3.10 p.m.

**HON CHIEF MINISTER:**

Mr Speaker, the position is that, in accordance with my recollection, the hon Members opposite did indeed vote in support of the Bill that gave the Government the right of veto which is the right in respect of which we are now wishing to curtail the right of appeal. It is true that, in expressing his support, the then Opposition spokesman for financial services and now Leader of the Opposition, expressed the view that the Financial Services Commission was a sufficient custodian of the public interest of Gibraltar in respect of these matters but added, but having said that, and now I quote him "but having said that,

we will respect the fact that the Government believes that this is a power which it requires in these economic times. The Government will, of course, have more information at its disposal, in respect of these issues which may be relevant, than we do and for that reason we will vote in favour of the Bill." Now, Mr Speaker, the hon Members, then, supported with whatever degree of reluctance and I think they understood the arguments that the Government were putting, that you could not have ultimate responsibility for the economic fortunes and prospects of Gibraltar, without having any control over who is allowed in to Gibraltar that could end up being a bomb that subsequently explodes, in economic terms, creating ...

**HON J J BOSSANO:**

*[Inaudible]*.

**HON CHIEF MINISTER:**

Fine. It is a different ... the hon Members may think this is very amusing. In the unlikely event that they find themselves on this side of the House, they will understand that the Government, and many others in the finance industry, expend a lot of time repositioning Gibraltar's reputation and all it takes to bring the House of cards down is one rotten apple in our midst to hit the international press and it may be that the hon Members opposite are willing to allow that degree of consequence that the protection should be only the judgement of the Financial Services Commission. I make no apology ...

**HON XXX:**

*[Inaudible]*. It is about the judge ...

**HON CHIEF MINISTER:**

Mr Speaker, first of all I am dealing with the logic of the hon Member's decision, not the hon Member's decision but some of the logic of what the hon Member has said for justifying his lack of support for the Bill. We will come to the judge point in a moment. So, they support the Bill on the basis that the ... or rather they do not support this Bill on the basis that the Financial Services Commission should decide in a given case and I am just saying to him that I am sorry that, having persuaded them once that that was not safe for Gibraltar, they now use the opposite reason for which they voted in favour of the Bill last time. Now they use the opposite reason to justify voting for this one. We shall just have to agree ...

**HON XXX**

*[Inaudible]*.

**HON CHIEF MINISTER:**

Well, Mr Speaker, I believe there is a lack of logic in their position but it does not matter. We shall just have to agree to disagree that the Government thinks that, as the ultimate political responsibility holder for the macro economic interests of Gibraltar, the elected Government of Gibraltar and not the unelected, unaccountable Financial Services Commission of Gibraltar should have the power to make the ultimate judgement of what threatens and what does not threaten the public interest of Gibraltar. Now, that is a difference between us and it is a difference ... is one that we feel no difficulty in having. Mr Speaker, it is precisely to narrow the grounds that we are bringing this Bill. We do not want the Courts to be able to do what the hon Member appears to think the Courts should be able to do.

**HON G H LICUDI:**

*[Inaudible]*.

**HON CHIEF MINISTER:**

No, Mr Speaker, and I do not think the hon Member believes it either and he can only believe it ... He can only believe it whilst he is on the Opposition benches. If he was ever responsible for Government of Gibraltar ... Mr Speaker, judges are not experts at everything. Judges are experts and are ... constitutionally exist to decide when people, including the Government and including Ministers, have broken the law, have violated somebody else's legal rights or have behaved, in any other way, in breach of their legal obligations. That is what judges do. They decide whether conduct is legally reprehensible, impeachable and should not be accepted and that they continue to be able to do through the mechanism of judicial review, even in respect of a decision of this sort in this Bill. The hon Member goes on to say, and I have no hesitation whatsoever in placing clear water between his position and the Government ... The hon Member then appears to say that judges should be allowed to replace their assessment on technical, political and economic matters. Not about the legality of a matter but about whether something threatens or does not threaten the public interest of Gibraltar in terms of its possible consequences on the economy and I do not agree.

**HON G H LICUDI:**

Mr Speaker, will the hon Member give way?

## HON CHIEF MINISTER:

No. When I finish making my point. I will not give way to him right now and I do not agree with that. The hon Member, first of all, thinks that the Financial Services Commission should be the sole custodian of Gibraltar's public interest. Of course, if something goes wrong ... Of course, if something goes wrong and companies flee Gibraltar, it will not be the Financial Services Commission that the people who lose their jobs go running after, it will be the Government of the day. So, the hon Member, first of all, believes that the Financial Services Commission should be the first custodian and then he says that the next custodian should be a judge that knows even less than the Financial Services Commission about the economic public interest of Gibraltar. In other words, anybody and everybody, except the Government of Gibraltar, democratically elected by the people of Gibraltar and accountable to the people of Gibraltar, precisely for the defence of the public interest of Gibraltar. I cannot understand, Mr Speaker, why the hon Member feels that everybody is appropriate to make a judgement about the defence of the public interest of Gibraltar, except its democratically elected, hireable and fireable Government, the only one of the three organisations that we have mentioned here. The Financial Services Commission, the Government and the judge. The only one of the three of them that is accountable to the people of Gibraltar and who is to boot responsible for the consequences of it, is the Government and they are the only ones that they believe to be disqualified from making the judgement. Well, Mr Speaker, I have to say that we do not agree. I would agree with the hon Members if, but only if, we were reserving to ourselves a right for a ministerial power, freed from oversight and supervision and challenge in the Courts. That would be completely objectionable and unacceptable but what we are doing has the effect which is the effect that the Government desires to have, which is that somebody can test in a Court the lawfulness of the Government's decision and squash it and send it back to the Minister to make a lawful proper decision. In other words, that

the judge should adjudicate on the lawfulness of the Minister's decision. But if the decision is lawful, if the decision by the Minister, by the Government of the day, is lawful, who is a judge to decide that he has a different view about the economic prospects of Gibraltar and what challenges it and what does not and this is what the hon Members want to do by giving the judge a general right of appeal to ... or rather preventing us from taking it away, enabling the judge to substitute his own assessment of things that no longer go to legality. They go to a political, economic assessment of what threatens Gibraltar's economic prosperity and interests in their future.

Mr Speaker, I record the lack of logic. It is true. It is true that the hon Members voted in favour of a measure in a Bill which also included, whether they were aware of it or not, certainly we had overlooked the point ... Perhaps, they were more astute than the Government was but which contained a right of appeal, Mr Speaker, and that is fine and they can certainly use that as a reason for voting against this Bill which is about withdrawing the right of appeal. It is not about whether the Minister should have the veto. What is at stake here is not whether somebody should have the right of complaining to a judge about the Minister's decision. What we have here is a disagreement about what the nature of that right should be. Should it be a right that says, judge, the Minister has acted unlawfully, make him act lawfully, which is what we say, or should it be a right of appeal that allows somebody, that the Government of the day believes is dangerous for Gibraltar's macro economic interests in the long-term, to go to a judge, a family judge or a criminal judge or any other type of judge and ask him, judge, will you please take a different view to that taken by the Government of the day and tell the Government that my presence in this economy does not represent a threat to the future economic interest of Gibraltar. That is the nature of the disagreement between them, because the right of appeal is not based on a legality, it is simply a right of appeal inviting the judge to take a different view. Not on the legality. Just a different view about whether there is or is not a

risk to the public interest of Gibraltar, in a subject matter that he knows nothing about and has no responsibility for.

So, Mr Speaker, we shall just have to vote our different ways and I regret that I have not, on this occasion at least, been able to persuade the hon Member opposite.

**HON G H LICUDI:**

Is the hon Member giving way?

**MR SPEAKER:**

Is the hon Member giving way? Has the hon Member concluded his ...?

**HON CHIEF MINISTER:**

Yes.

**HON G H LICUDI:**

Obliged, Mr Speaker. The hon Member says that the Government does not agree that these are matters that a judge should decide. Well, that is precisely what they agreed two years ago. Two years ago they introduced a right ... or three years ago. 2008 or 2009. Two or three years ago. When they introduced the right of veto, it was specifically subject to the right of appeal. So it was appropriate then, two years ago ...

**HON CHIEF MINISTER:**

Does the hon Member not listen to what I have said? I have just told him that, when the Government introduced the subsection, we were unaware that by using the word "consent" in section 23(2A), we were inadvertently invoking the lack ... in section 72 the right to appeal. It was not the Government's intention in 2009 to make the exercise of this power subject to appeal. In fact and unwittingly, we were making it subject to the right of appeal because we were not aware that by the use of the word "consent" we were invoking the provisions of section 72(1)C of the Act which says, "any person aggrieved by the refusal of any approval or consent required under this Act" and the power of veto that we gave to the Minister. If I had put "the Minister shall have a veto", if I had drafted ... if the section ... if the 2009 amendment had been drafted in the form that avoided the use of the word "consent" and had said "the Minister shall have a veto to the issue of a licence", there would have been no right of appeal. It was the use of the word ... It was the formulation of the section using the word "consent" that, unknown to us at the time, had the effect of bringing it squarely within section 72 and making it subject to the right of appeal. It is not going to change the hon Members view now, but I can assure them that at the time the intention was that there should be no right of appeal. That it should be left to judicial review. Mr Speaker and the hon Member asked, I cannot remember if the Hon Mr Licudi asked, or was it the Hon Leader of the Opposition. Somebody has asked today whether this desire to make this appeal was in the context of a specific case. It was the Hon Mr Licudi. I am grateful to him. Well, Mr Speaker, we were alerted to the problem by a specific case. There was a specific case in which the Government formed the clear view that it would be hugely threatening to the macro economic interests of Gibraltar to have allowed the grant of a licence. The Financial Services Commission took a different view, at least by a majority, took a different view. The Government had not the slightest shadow of doubt that this was an accident waiting to happen with incalculable, but significant, macro economic implications. That



was the position we faced with a case that achieved some notoriety around town and the hon Members may personally be aware of the case in question. Well, Mr Speaker, that was the case in which we were threatened with an appeal and then it would have been out of the Government's hand. It would have been the Chief Justice or the Puisne Judge or somebody that would have decided whether this thing that the Government of Gibraltar thinks is a huge risk to Gibraltar, is something that we all have to live with and then if the thing happens, it is not the FSC or the judge that pays the price, it is the Government of the day that has to put up with the macro economic implications of a collapse. Well fine, Mr Speaker, the hon Members think that that is how it should be. We take a markedly different view. We do not think that that is how it should be and, therefore, we will vote in favour of the Bill and the hon Members can vote against.

**MR SPEAKER:**

Does the hon Member wish to continue?

**HON CHIEF MINISTER:**

*[Inaudible]*.

**MR SPEAKER:**

He was interrupted by the Hon the Chief Minister.

**HON CHIEF MINISTER:**

Oh, I see.

**MR SPEAKER:**

Having given way to him, then the Hon Chief Minister interrupts him.

**HON CHIEF MINISTER:**

He is very happy. This is not about who has the last word.

**HON G H LICUDI:**

No, Mr Speaker. I am not intending to reply any more.

**MR SPEAKER:**

Thank you very much.

**HON G H LICUDI:**

It is just that certain explanations have been given which we are entitled to take into account.

**HON CHIEF MINISTER:**

Mr Speaker, I am very happy for the hon Member to speak again. I am not suggesting you should not speak or who speaks last. It is a ...

**HON G H LICUDI:**

No, no, no. I do not want to speak again.

**HON CHIEF MINISTER:**

*[Inaudible]*.

**HON G H LICUDI:**

Mr Speaker, I do not want to speak again.

**HON F R PICARDO:**

Mr Speaker, can I just ask the hon Member whether he would consent, whether he would give us Government votes for an adjournment of five minutes so that we can consider the argument he has put because this is an issue which he says affects the macro economic issues of Gibraltar. We want to consider what he said.

**HON CHIEF MINISTER:**

Mr Speaker, I am very happy to recess the House if the hon Member wants to recess.

**MR SPEAKER:**

The House will recess for five minutes.

**HON F R PICARDO:**

Obliged Mr Speaker.

The House recessed at 3.30 p.m.

The House resumed at 3.35 p.m.

**HON G H LICUDI:**

We now realise that there is no change of heart by the Government. It was simply something that was inadvertent, it was not realised at the time and, more importantly, the hon Member has mentioned that this has been prompted by a specific case. So it is not just hypothetical, something that could happen. A specific case which has been brought to the hon Member's attention and in which they have been involved and which, according to the hon Member's view, as Minister responsible for this matter, could have threatened the macro economics of Gibraltar and, on that basis, we are persuaded that the Government ought to have this Bill with the support of this House.

**HON CHIEF MINISTER:**

Mr Speaker, I am grateful to the hon Members for being open to be persuaded by argument.

Question put.                      Agreed to.

The Bill was read a second time.

**HON CHIEF MINISTER:**

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

Question put.                      Agreed to.

## **THE GIBRALTAR GARRISON LIBRARY TRUST ACT 2011**

### **HON CHIEF MINISTER:**

I have the honour to move that a Bill for an Act to make provision for the establishment and terms of a Gibraltar Garrison Library Trust; to vest in the Crown in right of the Government of Gibraltar certain buildings now occupied by the President and Committee of the Gibraltar Garrison Library; to vest ownership of the books and other chattels now forming part of the Gibraltar Garrison Library in the Trust established by this Act; and for related 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, I think that this Bill represents an event which I believe will be welcomed by both sides of this House and that is the transfer to the auspices, but not to the operational day to day control exclusively of the Government, of the Gibraltar Garrison Library.

Mr Speaker, I think it is a pretty uncontentious statement to make that the Garrison Library, both the building by itself, the book and other aspects of the collection by itself and thirdly, both of them together, are an important part of Gibraltar's heritage and Gibraltar's heritage is not divided into two. There is not a Gibraltarian heritage and a British military heritage distinct to it. Gibraltar has one single heritage and it has military aspects, as it has civil aspects, as it has architectural aspects, as it has literary aspects, as it has artistic aspects and many aspects to it. It is all the heritage of our country. It is all the

history of our country and of our people and therefore part of our heritage.

Mr Speaker, I would like to thank the present Committee of the Gibraltar Garrison Library and, in particular, its President Colonel James Mitchell, for making this transfer possible at this time and for unblocking a number of issues that had been obstacles in the past. I believe, Mr Speaker, that this is the right decision. Whilst in the past, the Committee have been able to keep this important piece of heritage in a way consistent with its importance, financial constraints have now rendered that not to be the case and this heritage cannot be allowed to dilapidate further because the custodians and the owners of it understandably lack the financial ability to look after it. They have acknowledged that. We would like to express the Government and on behalf of the people of Gibraltar's appreciation for their agreement therefore to transfer it to the people of Gibraltar through its Government.

Mr Speaker, this Bill then makes provision for the establishment and terms of a Gibraltar Garrison Library Trust and vests in the Crown in right of the Government of Gibraltar the buildings now occupied by the President and Committee of the Gibraltar Garrison Library and vests the books and chattels, the Collections in the Trust that we will create if we pass this Bill. So the buildings go to the Crown in right to the Government of Gibraltar and the books and other bits and pieces of the Collection, the contents so to speak, goes to this Trust established under this Act.

Clause 1 contains a short title and commencement clause and the Act will come into operation on such day as the Government may appoint.

Clause 2, as always, is the interpretation clause.

Clause 3 establishes the Trust in order that it may hold property for the benefit of the people of Gibraltar and carry out the

objects and purposes provided in this Bill. So, in terms of the books and the collections, what we are creating is a Trust, the beneficiaries of which are the people of Gibraltar.

Under clause 4, the Trust is a body corporate with perpetual succession with its own seal and it may sue and be sued in its own name.

Clause 5 sets up the Board of Trustees of the Trust. The Board shall consist of between three and eight members and include the Minister with responsibility for culture and heritage as Chairman. Mr Speaker, to recognise the military links historically with this piece of heritage, the Commanding Officer of the Royal Gibraltar Regiment and such other persons as may be appointed by the Chief Minister will also be members of the Trust. So, in other words, the Commanding Officer of the Royal Gibraltar Regiment is an ex officio member of the Board of Trustees and that is the link between the past and the future. The Trustees hold their offices for a period of three years unless one of a number of circumstances set out in sub clause 6 applies. For example, the person becomes incapacitated or fails to turn up at three consecutive meetings without proper reason. Sub clause (9) empowers the Minister to appoint a person to be the Trust's Secretary.

Clause 6 sets out the procedures for meetings of the Trust, including the quorum, ensuring the Trust meets at least once every six months and also establishes a method of voting.

Clause 7 provides for what is property of the Trust. This includes Collections and chattels vested in the Trust by this Bill or subsequently acquired by it. I think it is worthy of particular mention that the Committee of the Garrison Library have agreed to transfer, not just the buildings and the collections free of charge, but also what monies they have left, also are transferred to the Trust, or subsequently acquired by it. Monies vested under clause 14. Monies provided by the Government. Monies gifted or bequeathed to it by any person and money derived by

income or activities of the Trust. Sub clause (2) provides that the Collection must be housed in the library building unless the Government agrees otherwise. In other words, the Trustees will not be free, without Government consent, to remove the book collection from that building.

Clause 8 sets out the objects and the purposes of the Trust in greater detail. It shall be for the benefit, use and enjoyment of the people of Gibraltar and, in so far as the resources of the Trust, including financial resources provided by the Government permit, shall include the restoration, preservation, maintenance and expansion of the Collection. The maintenance and management of the Garrison Library Building to allow access to the building and Collections when not inconsistent with its other functions and to encourage, promote and advance the written culture, history and literary heritage of Gibraltar and promote, reading, research and all forms of literary activity and culture. Sub clause (2) places restrictions on the generality of these functions including, that officers of the Garrison may not be charged general fees for access to the building or Collection that the building may not be used for any purpose prohibited by the Government. Two points there, Mr Speaker. Firstly, that in recognition of the fact that this was the property of the officers of the Garrison that they have transferred to the Government and to the Trust free of charge, the Government has conceded that officers of the Garrison will not be charged entry fees for use of the library which was theirs and they have gifted to us. The other point that I would make is that the Government has an intention to refurbish the printer's building. Perhaps, leave the old Chronicle printing equipment on the top floor of it as a, sort of, printing museum, but also to use the lower floors to house the Government archives and to create between the Garrison Library and the old printer's building a, sort of, centre of excellence, a consolidated centre for research containing Gibraltar's two most important historical sources of material, the Garrison Library's Collection and the Government archives with proper research and reading rooms and indeed with a ... something that we are looking into at the moment, which is to

scan large parts of all that material into a retrievable data base so that people can have full access to all the content without exposing to danger of damage or theft or destruction, any of the original materials. Mr Speaker, I think that will cost some money but I think it will be an important contribution to the accessibility of this wealth of material, not just to present but to future generations of Gibraltarians as well.

Clause 9 grants certain powers to the Trust in order that it is able to carry out its objects and purposes. These include being able to acquire an interest in the building, purchase ... I should just mention that this ability to research database and to scan and to retrieve through scan would also include back issues of newspapers, local newspapers and things which will be a huge resource. These include being able to acquire an interest in the building, purchase books, to enhance the Collections is another thing. The Collection is not just deteriorating physically and needs to be ... some work doing at it to actually restore some of the books but just as we are doing with paintings, I think there is a need to continue to expand the Collection. There are Gibraltar related books out there which can be purchased and brought back to Gibraltar. So the collection will once again continue to grow. Mr Speaker, employ persons, enter into contracts, maintain and equip the building, publish papers, books. Establish rules for access to the Collections and building. Establish and operate bank accounts and engage in activities to stimulate the giving of money or property to assist the Trust in advancing its purposes.

Clause 10 allows the Trust to establish Boards or Committees for the purposes of conducting its affairs, including a management Board. The Trust may regulate its own procedures and those of any Board or Committee it establishes.

Clause 11 sets out the financial duty of the Trust. The main one being that it must ensure that its outgoings are not greater than its revenue.

Clause 12 makes provision for the Trust's accounts and the auditing of the same. The Trust is required to keep proper books of account and cause statements of accounts for each financial year to be prepared. The accounts are to be audited and certified by the Principal Auditor as soon as practicable thereafter. After such audit, the Trust must prepare and submit a report to the Minister, detailing its operations for that year and that report and accounts must then be laid before Parliament. This clause also makes provision requiring information on future expenses and other financial and statistical information.

Clause 13 sets out the financial year of the Trust including provision for the first year of its existence.

Clause 14 vests property in the Trust as set out in the Schedule.

Clause 15 provides for no personal liability to attach to any member of the Trust for anything done in good faith under the provisions of this Act and clause 16 makes similar provision for the members of the current Gibraltar Garrison Library Committee, in particular, if they are agreeing to the vesting of the property as a Trust. Now, Mr Speaker, that I think was worthy of a word of further explanation. These are Committee members, effectively Trustees, who are gifting their Trust assets there to another entity. It would be ... It is I think right to ensure that they are given legal protection for doing so. In other words, if some officer of the Garrison does not stick his hand up and say, "Hey, and what right do you have to give this property to the Government". Mr Speaker, another thing that perhaps I should explain is that this Bill would be expropriatory if it was not with the consent of the Committee members and the President. So I should have said and I now say, for the purposes of Hansard, that they have approved the terms of this Bill and are entirely supportive of and content with its passing and adoption in this House. Otherwise, we would just be expropriating somebody else's private property which would expose us to the risk of having to pay them compensation under the Constitution and it

is not the case and perhaps I should have made that important point sooner in my address.

Clause 17 is a regulation making power to provide for the carrying out of the purposes of the Act.

Clause 18 repeals the Gibraltar Garrison Library Act. The Schedule sets out in Part 1 the premises vested in the Crown and in Part 2 the Collection that other chattels vested in the Trustees.

Mr Speaker, I commend the Bill to the House in the hope that the hon Members will support it. In the knowledge that this is the finishing of business started in 1988 by the hon Member opposite and that it has taken us some time but we have managed it in the end. 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 the Opposition will be supporting the Bill for the reasons that the hon Member has outlined and we will be voting in favour.

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 are content.

Question put.                      Agreed to.

**THE GIBRALTAR PORT AUTHORITY (AMENDMENT) ACT 2011**

**HON J J HOLLIDAY:**

I have the honour to move that a Bill for an Act to amend the Gibraltar Port Authority Act 2005, be read a first time.

Question put.                      Agreed to.

**SECOND READING**

**HON J J HOLLIDAY:**

I have the honour to move that the Bill be now read a second time. Mr Speaker, the Gibraltar Port Authority was established under the 2005 Act. It consists of a Minister as Chairman with various representatives of the *[inaudible]* Gibraltar as members. When the 2005 Act was passed, the Ministry had a Chief Executive who by virtue of his office was a member of the Authority. The Act specifically stated that it is the Chief Executive of the Ministry who is the member. Since 1995, the Ministry has had various officers including a Principal Private Secretary who has acted as Chief Executive. However, the official title of these officers have not necessarily included the word Chief Executive. This Bill seeks to correct this minor anomaly by replacing Chief Executive with a senior officer nominated by the Minister. There would be no difference in practice as the senior officer of the Ministry will continue to be a member of the Port Authority. The only difference is in the title. I commend the Bill to the House.

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

**HON DR J J GARCIA:**

We will be abstaining on this Bill, Mr Speaker.

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 F J Vinet

Abstained:              The Hon J J Bossano  
                              The Hon C A Bruzon  
                              The Hon Dr J J Garcia  
                              The Hon G H Licudi  
                              The Hon S E Linares  
                              The Hon F R Picardo

The Bill was read a second time.

**HON J J HOLLIDAY:**

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

Question put.            Agreed to.

**THE TRAFFIC (AMENDMENT) ACT 2011**

**HON J J HOLLIDAY:**

I have the honour to move that a Bill for an Act to amend the Traffic Act 2005, be read a first time.

Question put.            Agreed to.

**SECOND READING**

**HON J J HOLLIDAY:**

I have the honour to move that the Bill be read a second time. Mr Speaker, this Bill represents an important road safety measure which the Government has decided to promote.

Clause 2(1) amends section 44 of the Traffic Act 2005 to facilitate the conviction where the only conviction is supplied by a traffic camera. This amendment is needed on the basis that, as section 44 now stands, a speeding conviction is not available where there is only witness to the alleged offence.

Clause 2(3) amends section 89 which is a regulation making section. As this section now stands, an offence contrary to any subsidiary legislation may attract a fine at level 1 on the standard scale which has a maximum value of £100. In practice, of course, the Courts impose much less than that. This amendment, therefore, ups the penalty to imprisonment, fine or both.

Clause 2(5) substitutes section 97 of the Act. Essentially, it will fit in to the fixed penalty scheme, the possibility of fines being imposed on the back of evidence submitted by a traffic camera.

Clause 2(7) which inserts new section 98A into the Bill and clause 2(9) which inserts the new section 104, makes provision,

consequential to that, by example, enabling the Minister to affix and approve traffic cameras.

Finally, clause 2(8) amends section 101 which is a regulation making section, by inserting a new paragraph (c). This paragraph is *[inaudible]* drafted and is intended to facilitate the making of secondary legislation.

Mr Speaker, amendments will be made to this Bill in Committee and I have written to you already in this regard. I commend the Bill to the House.

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

#### **HON G H LICUDI:**

Mr Speaker, there are a couple of matters on which we would ask for clarification from the hon Member, in particular, in relation to clause 2(5) which amends section 97 of the Traffic Act. By section 97, changes are made to the fixed penalty provisions in the Act whereby these provisions will now apply to any offence under the Act which is punishable on summary conviction and any other offence which is designated as a fixed penalty offence. So, new section 97(1) will be the application provision. Section 97(2) is, essentially, the more substantive provision which gives power and it gives power to a police officer or other authorised person and it applies where a person is found ... a police officer or any other authorised person finds a person on any occasion, either committing an offence or having reason to believe that that person may commit an offence and what this does then is give that person, the police officer or the authorised person, a power to give a choice to the person committing the offence and the choice is, either you accept a fixed penalty notice or you simply report it for process and subsequently face a prosecution. It is important to note that the way it is worded at the moment, as I understand it, this

power, this choice only applies where a person is found committing an offence. Not where a car is found in a place where an offence is being committed but where a person is found committing an offence for which an offence is liable and there seems to be a contradiction between this and a later section which will be subsection (12) of that 97 which says "In any proceedings for an offence to which subsection (1) applies, no reference shall be made after the conviction of the accused to the giving or affixing of any notice under this section". Subsection (2) as I understand it, as I read it, does not provide for affixing a notice to a vehicle. Generally, that applies where you see a vehicle maybe parked improperly or parked on a blue line or causing an obstruction. There is no one there and you affix a notice to the vehicle, a car or a motorbike, but subsection (2) specifically requires that a person be found committing the offence and I am wondering whether the hon Member can clarify what is the intention behind subsection (2). If there is a simple explanation and I am simply misreading this, then we would welcome that explanation, but if it is intended that we should have fixed penalty provisions where vehicles are found and notices can be affixed, I am wondering whether this actually achieves that.

There is a second point which is in relation to, again section 97(8). What section 97(8) does is provide a defence to the registered owner of a vehicle given that subsection (7) would create the offence to the registered owner of a vehicle in certain circumstances. Where there is a digital device that has detected a vehicle or a vehicle has been found and an offence is being committed then, clearly, the registered owner will be prosecuted but the registered owner will have the right to say, "not me governor, it was somebody else", and what subsection (8) provides is that at the time ... he can prove that at the time of the offence the vehicle was in the charge of some other person and, and this is the important bit, he had exercised all such diligence as was practicable to avoid the commission of the offence by that person. How does he discharge that onus? Does he come to Court and say, I really told him that he should not commit an



offence with this vehicle. Or I gave him a written notice. How does he honestly discharge an onus, a burden which is on him of showing that he has exercised all such reasonable diligence when he lends a car to somebody, or to your wife, or to your son, or a friend, when you do that. How do you exercise due diligence to make sure that an offence is not committed and whether there is a practical difficulty in that burden ever being, or possibly being discharged? Those are the two points on which we would ask for clarification from the hon Member.

**HON CHIEF MINISTER:**

Mr Speaker, first of all, I think whilst it is perfectly legitimate that we should debate the points that he has raised in the context of an amendment, I ought to point out to him that all the points that he has raised touch on issues which are the same in this Bill as they are in the existing section. Yes. Yes. Mr Speaker, let him take my word for it, just for now and he will have the opportunity. Indeed, if I could deal firstly with his point which was that the fixed penalty notice system, that the fixed penalties first point was, the fixed penalty notice system requires a policeman or authorised person to find a person on an occasion, and if he turns up and finds a parked car, without a person being present then he has not found a person on an occasion. Can I refer the hon Member to subsection (7) of clause 2 which reads, "Subject to subsections (8) and (9) below, where a police officer or other duly authorised person believes that an authorised camera or other digital device has detected a vehicle or finds a vehicle on an occasion", that is, the police officer or authorised person, "finds a vehicle on an occasion and has reason to believe that on the occasion there is being or has been committed in respect of it an offence to which this section applies, he may proceed under this section as if he had found a person reasonably believed by him to be committing the offence, and for that purpose the registered owner of the vehicle shall be the person liable for the offence and a notice affixed to the vehicle shall be deemed to have been given to the registered owner". In other

words, that subsection accommodates precisely the circumstance that the hon Member is describing, namely, that you come across a vehicle committing an infringement and there is no person present, and that is not new either, except I believe the references to digital device or cameras which may be relevant, which may be new. But the rest of it is drawn from the existing section. Otherwise, Mr Speaker, I am surprised that the hon Member has not spent all the years of his legal career successfully defending everyone that has had a fixed penalty notice without having been present at the time that it was issued. You can imagine all the money that we lawyers could have made all these years at the expense of the poor state. Mr Speaker, that is not the case. Also, can I just mention to him, Mr Speaker, that the principal amendments brought about by this are ... The most important one brought about by all of this is that the present section makes the Magistrates' Court the centre of it. So you have to pay your fine into the Magistrates' Court and the Magistrates' Court is the administrative centre. The principal reason why this section is amended, as I am sure he will have noticed, is to transfer that out of the Magistrates' Court. Un-clutter the Courts from the clerical administration of the payment of fines for parking tickets and transfer that to Gibraltar Car Parks Limited. That is the principal area where there are amendments here. We have also introduced preparatory sections to allow fixed penalty notices to be identified by camera or other digital device. In other words, if the Government installs cameras in particular places, bus stops for example, and they capture a car parked in a bus stop, it will be possible in future to issue a fixed penalty notice following the viewing of that picture later on by somebody who views the camera. In other words, that is the sort of ... But those are the only two amendments. Everything else replicates the legal structure and the statutory framework of the original, including the second point that he has made which is this business of the shifting of the burden. In other words, it is not possible to have any statutory regime about offences, about vehicles, which requires you to identify the actual driver. So if you find a car parked, necessarily you do not know who has parked there and if you see a car speeding or a

car is caught speeding on a speed camera, you may not be able to identify the person. I mean, there are some pretty notorious cases going on now in the UK about people alleged to have asked their wives to take their points and things, and these are the problems. So all motoring offences, all motoring offences of that sort are always on the basis that the registered owner of the vehicle is deemed to have been the person and then, obviously, otherwise we mothers and fathers who let our young children, our children drive our vehicles, would be constantly hauled before the Courts, prosecuted for speeding and God knows what manner of other offences. Obviously, there is a provision that allows the registered owner to say, no no, you cannot prosecute me for speeding because I was not driving the vehicle. Or you cannot prosecute me for parking the car there because I did not park the car there and what is more, before I lent my car to my son, I gave him a thorough lecture that he was not to speed and he was not to park in a no parking area, and that is what the law requires. This is not the case in Gibraltar only. This is the case in the United Kingdom and everywhere else. This is the Anglo-Saxon jurisprudential way of dealing with these matters. But there is no change here. This represents no departure from the Traffic Act as it has been forever. "He had exercised all such diligence as was practicable to avoid the commission of the offence by that person". I do not know. I have never defended anybody on a charge of this sort. I do not know how the Courts have interpreted that. But they have interpreted it in England and in Gibraltar. There must be a huge body of jurisprudence on it and that is how it is done and I cannot, sort of, help the hon Member beyond that, except to tell him that there is no departure on either of the points that he has made, except the ones that I have pointed out about digital device and things from the existing Traffic Act.

Question put.                      Agreed to.

The Bill was read a second time.

**HON J J HOLLIDAY:**

I beg to give notice that the Committee Stage and Third Reading of the Bill be taken 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 Gibraltar Culture and Heritage Agency Bill 2011;
2. The Financial Services (Banking) (Amendment) Bill 2011;
3. The Gibraltar Garrison Library Trust Bill 2011;
4. The Gibraltar Port Authority (Amendment) Bill 2011;
5. The Traffic (Amendment) Bill 2011.

### **THE GIBRALTAR CULTURE AND HERITAGE BILL 2011**

**Clauses 1 to 21** – stood part of the Bill.

**HON CHIEF MINISTER:**

Yes, Mr Chairman, one of the ... the hon Members may not have been able to, sort of, mark all those amendments of the

Gibraltar Heritage Trust Act on, to see what the precise effect of all of them is. Perhaps, I could just tell them that one of them that is listed there in little (a) is 21(1) and the effect of that is that section 21(1) of the Gibraltar Heritage Trust Act presently reads, "The Government may by order, after consultation with the Board", meaning the Board of the Heritage Trust, "declare any object that is not older than 100 years but is otherwise an object described in paragraph (a) of the definition of the term antiquity in section 2 to be an antiquity". The effect of including that section in this list is that the consultation is then not with the Heritage Trust but with the Agency. I see no need to eliminate the consultation with the Heritage Trust. So the elimination ... if we scratch the reference to 21(1) from this Bill, we would be leaving in place, rather than eliminating, the consultation with the Board. But I would like to further amend the Bill in a way that I have not given notice of, instead of deleting "the Board" and replacing with "the Agency" that the Government should have to consult both. So, I want to move two amendments with the leave of the House, neither of which I have given notice of. One is the one that I have just explained. In other words, delete 21(1) from the list of sections in clause 22(2)(a) of the Bill. But then add a new amendment that says, add after the word "Board" in section 21(1) of the Act the words "and the Gibraltar Culture and Heritage Agency". So the effect of those two amendments, if the House agrees to them, is that the Government must continue to consult the Heritage Trust before declaring an antiquity, but also the Agency, not the Agency at the expense of the Heritage Trust.

**MR CHAIRMAN:**

Would the hon Member care to indicate where exactly the additional words go because we have got subparagraphs (a) to (f) over there.

**HON CHIEF MINISTER:**

No, Mr Chairman, I think we would have to add a new little (g) and we would say, in section 21(1) after the word "Board" add the words "and the Gibraltar Culture and Heritage Agency".

**MR CHAIRMAN:**

Thank you.

Clause 22, as amended, stood part of the Bill.

**The Long Title** – stood part of the Bill.

**THE FINANCIAL SERVICES (BANKING) (AMENDMENT) BILL 2011**

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

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

**THE GIBRALTAR GARRISON LIBRARY TRUST BILL 2011**

**Clauses 1 to 6** – were agreed to and stood part of the Bill.

**Clause 7**

**HON C A BRUZON:**

Mr Chairman, I have just spotted that, under the heading Property of the Trust, towards the end of that clause in sub clause (2), "unless the Government shall agree otherwise", the

word “Collection” with a capital C does not have an s at the end as is the case everywhere else in the Bill.

**HON CHIEF MINISTER:**

Not in my printed copy. He says it does or it does not.

**HON C A BRUZON:**

It does not have an s. The only time “Collection” does not have an s is when it is spelt with a small c at the beginning in the explanatory notes. But in clause 7(2), unless the Government shall agree.

**HON CHIEF MINISTER:**

I think the hon Member is right and what is more “the Collection” is a defined term and it is defined in the plural.

**HON C A BRUZON:**

That is right.

**HON CHIEF MINISTER:**

So I think that is well spotted. I am grateful to the hon Member. So that should read with an s, Mr Chairman.

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

**Clauses 8 to 18** – 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 GIBRALTAR PORT AUTHORITY (AMENDMENT) BILL 2011**

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

**The Long Title** – stood part of the Bill.

**THE TRAFFIC (AMENDMENT) BILL 2011**

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

**Clause 2**

**HON J J HOLLIDAY:**

Mr Chairman, I have given notice in clause 2(1) that the words “Legal Notice” at the end of that clause be deleted and substituted by the words “notice in the Gazette”.

**MR CHAIRMAN:**

But there are a number of amendments. In fact, all the amendments are related to clause 2.

**HON J J HOLLIDAY:**

Yes. Shall we carry on down the list as they come.

**MR CHAIRMAN:**

Yes. I think we might as well do that in turn.

**HON J J HOLLIDAY:**

Okay. So the 2(4) that has been taken note of.

**MR CHAIRMAN:**

That is right.

**HON J J HOLLIDAY:**

Then in sub clause (5), section 97(1)(a), it should be a small a instead of a big A, a capital A, and in (b) it should be a small d instead of a capital D.

**MR CHAIRMAN:**

Yes.

**HON J J HOLLIDAY:**

Correct. Then we move to section 97(7). We want to insert after the words "shall be the person liable for the offence" the words ", in the case of a vehicle detected on camera, a notice sent to the owner by registered post and, in the case of a vehicle physically found,". Then in section 97(8)(a), it is a small a instead of a capital A and in section 8(b), it is a small h instead of a capital H. Then in section 97(9), the third line, "before the hearing, he has" rather than "he was".

**MR CHAIRMAN:**

Yes.

**HON J J HOLLIDAY:**

And in section 97(10), after the words "to a vehicle under subsection (7)", insert the words "or served under this section". We want to insert "or served under this section".

In section 97(13)(a), the word "Prescribing" has to be a small b instead of a capital B. Subsection (b) should be a small b instead of a capital B for "Prescribing" and in (c), again, small b instead of a capital B.

In clause 2(7), section 98A, after the word "camera", "the evidence of a recording taken by a camera" we want to insert "or such other electronic device as the Minister may subscribe by notice in the Gazette" and then delete the rest of that sentence.

In clause 2(8)(c) a bit further down. It should be "providing for any matter relating to the control". So the words "or thing" are deleted.

Then in clause 2(9), in inverted commas you will see "Minister may install", I think it is "Traffic Cameras", in the heading.

Then in section 104(1), "The Minister may install or cause" rather than "caused to be installed".

**HON F R PICARDO:**

Just on that particular subsection where the hon Gentleman is taking us now. He is looking for the removal of the "d" in caused which I think makes sense. But the words "The Minister may install" would remain, based on the suggestion made in the

notice, the amendment of which he has given notice. I just wonder whether he would agree that it should read "The Minister may cause to be installed" rather than "The Minister may install or cause to be installed" because actually, otherwise we are talking about the hon Gentleman himself installed and I know that he is remarkably tall and it would be cheaper to have him installed but I think it would be helpful if we would just have "The Minister may cause to be installed". That would also mean that we amend section 104(2), because that talks about ... At the end of that it says "other recording device that he may install or cause to be installed" and that should read "or other recording device that he may cause to be installed under this section". So it is the same amendment twice to take him out of the installation.

**HON J J HOLLIDAY:**

That is correct, Mr Chairman. Thank you very much for that. But then, going back to section 104(1). Once we have made the alterations of the "caused" section, "by such person as he may authorise so to do such cameras" and then delete "(whether closed circuit television cameras, still image cameras or other camera)". That is to be deleted. Then in "or other digital recording devices" the word "digital" has to be deleted.

**MR CHAIRMAN:**

I am sorry, after the word "such cameras".

**HON J J HOLLIDAY:**

Well, from "such cameras" and then from "(whether closed circuit television cameras, still image cameras or other camera)". All that can be deleted. So it will read "so to do such cameras or other recording devices" and leave the word "digital" out as well.

**MR CHAIRMAN:**

Yes.

**HON J J HOLLIDAY:**

And then in section 104(2), "The Minister shall designate by notice in the Gazette" and eliminate the words "Legal Notice". Then at the end of that sentence what has been suggested by the Hon the Leader of the Opposition applies. Then in subsection (3), again, "entities as the Minister may specify by notice in the Gazette" and deleting the words "Legal Notice". My apologies, Mr Chairman, for such a number of minor errors but it was only after the Bill had been published that I actually sat down to focus on what was before me.

**HON G H LICUDI:**

Mr Chairman, there is another reference to "Legal Notice" further up. Section 98A. I cannot recall whether I have heard the hon Member change that. That was changed.

**HON J J HOLLIDAY:**

I think I have done it because I have gone ... but you may have ... yes, but it is there. There are three instances where the words "Legal Notice" have to be deleted. Four cases.

**HON S E LINARES:**

It is in clause 2(2) of your own amendments. So you have done it.

Clause 2, as amended in the manner indicated by the Hon Minister, stands part of the Bill.

**Clause 3** – was agreed to and stood part of the Bill.

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

### **THIRD READING**

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

I have the honour to report that:

1. The Gibraltar Culture and Heritage Agency Bill 2011;
2. The Financial Services (Banking) (Amendment) Bill 2011;
3. The Gibraltar Garrison Library Trust Bill 2011;
4. The Gibraltar Port Authority (Amendment) Bill 2011;
5. The Traffic (Amendment) Bill 2011,

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

Question put.

The Gibraltar Culture and Heritage Agency Bill 2011.

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 F J Vinet

Abstained:           The Hon J J Bossano  
The Hon C A Bruzon  
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.

The Financial Services (Banking) (Amendment) Bill 2011;

The Gibraltar Garrison Library Trust Bill 2011,

were agreed to and read a third time and passed.

The Gibraltar Port Authority (Amendment) Bill 2011.

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 F J Vinet

Abstained:           The Hon J J Bossano  
                          The Hon C A Bruzon  
                          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.

The Traffic (Amendment) Bill 2011.

The Bill was agreed to and read a third time and passed.

## **SUSPENSION OF STANDING ORDERS**

### **HON CHIEF MINISTER:**

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

Question put.           Agreed to.

## **GOVERNMENT MOTIONS**

### **HON CHIEF MINISTER:**

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

**“This House resolves that the Honorary Freedom of the City of Gibraltar and thus also the Gibraltar Medallion of Honour be conferred on Kaiane Aldorino for her extraordinary personal achievement in becoming Miss World 2009 and for the enormous pride and global recognition that her achievement has represented for Gibraltar as a whole.”**

Mr Speaker, I think there is little more to add to what has been said during the last eighteen months or so, to and of Kaiane Aldorino. I think that her grant of the Freedom of the City and the bestowal upon her of the Gibraltar Medallion of Honour are entirely within the scope of the purpose for which those two awards exist. The Freedom of the City is for those who have earned the respect of the people of Gibraltar and who have brought satisfaction and achievement from which Gibraltar as a whole benefits. The Gibraltar Medallion of Honour is bestowed upon those who have exceptionally achieved in the interests of Gibraltar and the role of those bestowed the Gibraltar Medallion of Honour is supposed to read, in decades time and even in centuries time, to include the names of those people who in one way or another have contributed in exceptional and significant measure to the collective journey of the people of Gibraltar over the years, over the decades and over the century. In other words, people who are architects in some way of the success of Gibraltar and of what Gibraltar is and becomes. I believe that winning the Miss World Contest falls into that category given that we are a small country of just 30,000 people in a large, large planet. Mr Speaker, I will never forget where I was when I received the news. There is this business that people can always remember where they were when they heard that Kennedy was assassinated and I will always remember where I was when I heard the news. I was sitting in the stands at Old Trafford waiting for a football match to kick off when the news came through and, as a lifelong Manchester United supporter, I have to say that never have I cared less how the match finished. Such was the element of excitement and untaintable, even by an adverse result for Manchester United, joy and satisfaction that the news brought to me and all the other Gibraltar Manchester United supporters club with whom I had travelled, the same applies to them. Mr Speaker, I think that few individuals ... I mean, we politicians tend to think of ourselves as the centre of life in Gibraltar and the bearing upon which everything else turns and I do not think any of us, or anybody else, can have brought so much joy, celebration, satisfaction, sense of Gibraltar having triumphed against all the odds in a



planet that is not universally friendly and supportive of us, as Kaiane's success achieved. It is, of course, first and foremost a massive personal achievement for her as the motion seeks to recognise, but after that, it has been a massive achievement for Gibraltar and, as I say, few individuals over our history can claim to have been the source and the fount therefore of that degree of joy and celebration to so many people in Gibraltar. I hope that her father and her boyfriend and my wife will allow me to say that she is also an extraordinarily beautiful lady. But I do not want to get into more trouble. I got into some trouble for the nature of my greeting kiss at the airport on the day that she arrived back in Gibraltar, Mr Speaker. But she is not just an extraordinarily beautiful lady. I think she is an extraordinarily attractive personality and I think her success at Miss World was not just due to the fact that she is an extraordinarily beautiful lady, it was that, coupled with that extraordinarily Gibraltarian like nature that she enjoys. Her friendliness. Her sincerity. Her humility. Her sense of participation without any aspiration to win in that company that won over the judges in the end. Mr Speaker, she has put Gibraltar on the map, in yet another sense, and I hope that, in accepting this award from this House, she will be encouraged to accept the Gibraltar Government's offer to deploy her to the Gibraltar House in London where her success and her personal qualities will continue to be able to be available for the good of Gibraltar in promotion and work of that sort. Mr Speaker, I know that this House will support this motion unanimously and I now sit to allow the Hon the Leader of the Opposition to add in the hope and in the knowledge that I will be able to support whatever words he may say on the subject, as I hope he will be able to support the ones that I have. I commend the motion to the House.

Question proposed.

**HON F R PICARDO:**

Mr Speaker, indeed there is a massive measure of agreement in the House today in relation to this issue. My prepared notes for today start by this reference, many people internationally say that they always remember where they were when the death of President Kennedy of the United States was announced or when the Eagle module from the Apollo XI landed on the moon. I am delighted that the hon Member will always remember watching Manchester United lose.

**HON CHIEF MINISTER:**

I told him yesterday he enjoyed the wrong [*inaudible*].

**HON F R PICARDO:**

I am delighted that the hon Member will always remember watching Manchester United lose that day and, Mr Speaker, in Gibraltar terms, many if not all of us will always remember where we were when Kaiane Aldorino was crowned Miss World given that it was a moment of unbridled joy. There is no question that the achievement, in being crowned Miss World, is exclusively Kaiane's own. She has though, through personal discipline and natural beauty both inside and out, which is perhaps even more important, reached the highest levels of recognition internationally for both beauty and talent. Kaiane, moreover, is widely known to always have been and to continue to be totally down to earth. We are therefore lucky to have a Kaiane in our community and in our country to serve as a positive role model for young women the world over and in our community in particular. Mr Speaker, when one looks at the list of nations both who have won and who have not won the title of Miss World, we can see just how stunning her achievement is. Mr Speaker, put it this way, less countries have had the honour of winning Miss World than there are countries competing in the

competition and thanks to Kaiane we are one of those winning countries, and that certainly made the world sit up and take notice. Whilst we are always going to punch above our weight, let us not take for granted the massive personal achievement of those like Kaiane who put us on the map for a positive reason such as this was. Mr Speaker, there is perhaps only one measure of disagreement across the floor of the House and that is perhaps that not all politicians in this House think that we are the centre of the world. But, Mr Speaker, for that reason, Kaiane did put us on the map and she deserves the honour that the Medallion was set up to recognise which is the provision of exceptional service and contribution to the interests of Gibraltar and its people which is what the motion creating the Medallion talks about. I think, Mr Speaker, that it is also worth recalling that Kaiane is only the second woman to receive the Medallion following in the footsteps of Mrs Dorothy Ellicott who received it for public service and services to heritage. Mr Speaker, the fact that she is only the second women to receive the Medallion of Honour is a distinction indeed. But I have reflected with Kaiane herself that her achievement also reflects something more. It reflects, Mr Speaker, the achievement of the women of Gibraltar and all of the women of Gibraltar in some measure. The long and the short of it is, Mr Speaker, that we on this side of the House entirely support this motion for a lady who has made our country proud and she has made us a recognisable quantity in the elite of international beauty. All the Miss Gibraltar's before her have already expressed their pride in her, Mr Speaker. All the Miss Gibraltar's since refer to her as an inspiration and we in this House, Mr Speaker, are right to confer on her the highest honour we can from here on a Gibraltarian. Mr Speaker, the Freedom of the City Act says in section 2 that the Government may, following a resolution of the Parliament admit to be honorary free men of the City of Gibraltar, persons of distinction and persons who have rendered eminent services to the City. Having analysed already her suitability for the Medallion of Honour, Kaiane is certainly in our analysis, a person of distinction who has rendered eminent services to our City for the reasons I have already described, and therefore she is certainly

within the provisions of the section envisaging the bestowing of this award and we agree that the Government should proceed, based on the unanimous resolution of this Parliament, although I doubt that she will soon be exercising the right to march up Main Street with bayonets fixed which is what the Freedom used to represent for those of the military institutions that received it. Mr Speaker, from my understanding of the role of those who have received the Freedom of the City, Kaiane will become today the first woman to have the Freedom bestowed upon her. Although the Girl Guides and the Loreto Nuns, collectively, have had the distinction bestowed on them collectively in the past few years. That in itself, Mr Speaker, is illustrative of her massive achievement and how we rate it and her. It would be wrong not also to recognise, Mr Speaker, the way in which Kaiane's parents and the wider family supported her throughout her reign as Miss World and Miss Gibraltar. Let us be clear, it was clearly an honour for Kaiane and her family to see her crowned but the crowning was only the beginning of a tough year of work, travel and commitment requiring even more personal sacrifice. The coronation was only the beginning of the work, not the end of it, and in that year of work, despite the international support of the Miss World Organisation, it was always going to be her family that was going to have to be there to support her. Mr Speaker, it is also right nonetheless that we should recognise today the Miss World Organisation. The support they gave our young Gibraltarian Princess once she was crowned the World Wide Queen of Beauty was also clear. We must collectively send a thank you to them for their treatment of our precious Kaiane in the year that she walked the international stage as an ambassador for charity, beauty and talent in the name of the Miss World Organisation. Mr Speaker, she was the toast of Gibraltar as Miss Gibraltar. She was the toast of the World as Miss World and she will now forever and rightly be a free woman of the City of Gibraltar and well deserved holder of the Medallion of Honour. It is our pleasure to support this motion unanimously and without hesitation.

**MR CHAIRMAN:**

Does any hon Member wish to speak to the motion. I do not suppose the mover wishes to reply.

**HON CHIEF MINISTER:**

Not with an invitation like that, Mr Speaker.

Question put.                      The House voted.

The motion was carried unanimously.

**HON CHIEF MINISTER:**

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

**“THIS HOUSE,**

- 1. RECALLS its Motion dated 18<sup>th</sup> July 2008, establishing the civic award scheme known as the Gibraltar Medallion of Honour, bestowed by Parliament by Resolution, to living and deceased Gibraltarians, and others, who Parliament considers have served and contributed to the interests of Gibraltar and its people in an exceptional manner that is particularly worthy of special recognition by Parliament on behalf of the people of Gibraltar; and**
- 2. APPROVES the use of the post nominal letters ‘GMH’ by persons on whom the Gibraltar Medallion of Honour has been bestowed.”**

Mr Speaker, this is a short and simple motion. The effect of which is that people that have been bestowed the Medallion of Honour, which is the highest award that this Parliament can bestow on anybody, should be allowed to use the word “GMH” as others might use MBE or OBE or any other post nomenclature for an award after their name and this will be a way of people in Gibraltar always acknowledging and recognising that their Parliament have bestowed the highest award possible on the recipients. I commend the motion to the House.

Question proposed.

**HON F R PICARDO:**

Mr Speaker, we will be supporting the motion.

Question put.                      The House voted.

The motion was carried unanimously.

**HON CHIEF MINISTER:**

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

**“THIS HOUSE:-**

- 1. Notes that the tenure of office as Mayor of Mr Anthony Lombard ends on the 31<sup>st</sup> day of July 2011, and thanks Mr Lombard for his work and commitment in the discharge of the functions of that Office;**
- 2. Notes that Mr Julio J Alcantara, Mr Speaker, who has been awarded an MBE and I would like to**

**just amend the motion to insert the post nomenclature MBE after his name, presently the Deputy Mayor, will assume the Office of Mayor on the 1<sup>st</sup> day of August 2011, until the 31<sup>st</sup> day of July 2012;**

- 3. Appoints Mr Anthony D Lima MBE RD to be Deputy Mayor of Gibraltar, with effect from the 1<sup>st</sup> day of August 2011 to assist and support the Mayor, and to substitute for the Mayor in the discharge of Mayoral duties; and**
- 4. Appoints the said Mr Anthony D Lima MBE RD Mayor of Gibraltar from the 1<sup>st</sup> day of August 2012 to 31<sup>st</sup> July 2013.”**

Mr Speaker, I think that the House will acknowledge and wish to recognise and thank Mr Tony Lombard. Each Mayor brings his or her own personal style to the discharge of the Office. Indeed, that was the intention of the change in giving ordinary citizens the opportunity to be Mayor. I think we all agree that Mr Momy Levy certainly brought his own distinct personal style to it. Mrs Olga Zammit who followed him brought her own and that Tony Lombard has brought his own and in their own different ways, they have each ensured that the Office of Mayor preserves its significance which is a civic embodiment of the community as a whole. I think he has brought to the Mayoralty, as he calls it, the continuation in its dignity and seriousness of role within our community which I certainly, the Government had in mind when it created this system and proposed him for appointment to it. Mr Speaker, the current Deputy Mayor, Mr Julio Alcantara, takes over on the 1<sup>st</sup> August 2011 and we have no doubt, from what we knew of him, when we proposed him and what we have seen of him from the way that he has assisted the outgoing Mayor in the exercise of his duties, that it will be yet another successful appointment. He will bring his own distinctive style to the discharge of the Office and the Government wishes him well in that. Mr Speaker, the Government is proposing to succeed and

to now act as Deputy in support of Mr Alcantara as of 1<sup>st</sup> August, Mr Anthony Lima, who I think is well known to all Members of this House. Mr Speaker, Mr Lima, Tony to all those of us who know him, Tony Lima and with his leave I will now refer to him as that, has a distinguished career of public service. He entered the Civil Service into what was then the City Council as a Grade II Clerk in January 1962 and he saw service at that time in the Lands and Works Department, the internal audit, the wages and accounts section. In May 1996, he became Clerk in the Town Clerks Department and I mention that only because it was the Clerk in the Town Clerks Department who was the Clerk in support of the then Mayor. So it was the Clerk, Tony Lima, in that position who was detailed to perform the duties of what is now the Personal Assistant to the Mayor. So he goes from Personal Assistant to the Mayor back in 1996 to Mayor himself, well Deputy Mayor himself this year, and Mayor himself next year. In 1974, he became Personal Assistant to the then Chief Minister, the late Sir Joshua Hassan. He has also been Assistant to the Administrative Secretary and has acted as Clerk to the Council of Ministers and to the Gibraltar Council. In June 1989 he became the Personnel Manager of the Government of Gibraltar and Secretary to the Public Service Commission. Between 1997 and 2001, he was the Collector of Customs in Gibraltar from which position he retired from the public service. But that is not all that he has done. He is, as some members of the House may know, was a member of HMS Calpe, the Royal Navy Reserve between 1969 and 1993. He was appointed its Commanding Officer in 1988 where he served as Commanding Officer until the disbandment of HMS Calpe, much to the regret of many in Gibraltar, in 1993. He was awarded the MBE in its military division in June 1993 by Her Majesty the Queen for services to the Royal Navy Reserve. Mr Speaker, that is not all that he has done. He was Chairman of GBC between 2004 and 2006. He has been a Director of Gibraltar Community Care Limited between 2004 and 2008. In 2008 he became its Chairman which he continues to be. He became a Board Member of the Gibraltar Electricity Authority in 2003 and remains so. He has been a member of the GHA Independent

Review Panel since 2004. He has been a member of the Housing Tribunal since 2008. So he has already served Gibraltar in many and various important capacities. He is well suited to the Office of Mayor, not just because of his distinguished service and his clear abilities, but also because as a keen member of the DSA Old Time and Modern Sequence Dance Club he will have no difficulty oiling his way around the dance floor on the many occasions in which he is bound to be invited to events, where his dancing prowess and that of his good wife, Carmen, will serve him in good stead. Indeed, he has been on the organising committee of that dance club for many years, three of which as its chairman. Mr Speaker, I think that Tony Lima is an eminently suitable citizen to hold the Office of Deputy Mayor for one year and of Mayor for another and I hope that our nomination will enjoy the support of the whole House. I commend the motion to the House.

Question proposed.

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

Mr Speaker, it is with great pleasure that I rise to support this motion. First of all, I want to record the Opposition's gratitude to Mr Anthony Lombard for the work that he has done in discharging the civic functions of the role of Mayor of our nation, of our City. It has been a delight to attend functions over which he has presided and in which he has spoken on behalf of all of us. He has imbued the Mayoralty with a sense of history and purpose that we all knew he would bring to it. He has not let any of us down and he has certainly relished to role and enjoyed it with gusto. Like Momy Levy and Olga Zammit before him, Mr Lombard has stepped up to the plate and done this House proud for the unanimous appointment of him as Mayor. I am sure that I speak for the whole community, Mr Speaker, when I say that we will be sad to see him go. But nonetheless, I am equally confident that Mr Alcantara will also bring his own style and highly regarded abilities to the role and that this time next year,

we will be equally happy to congratulate him on an excellent performance in the discharge of his civic functions and sad to see him go too. Well known to many generations of Gibraltarians both in his role as Scout Leader and in the public service he has given to education. I myself recall him as the first Director of Education with whom I had contact in my time as a student. Mr Alcantara is also clearly somebody who enjoys the confidence of the community and its respect also. We pull him, Mr Speaker, out of retirement to ask him to give the community another year of public service and we must all graciously thank him for accepting the nomination and also stepping up to the plate. Like so many Gibraltarians before him, when Gibraltar asks, none of us are found wanting. A collective thank you therefore from the Members on my side of the House and I am sure also the Government's side, for him accepting the nomination. I know that this will also mean that Mr Alcantara's charming wife Paddy, will also be pulled out of a well deserved retirement and our thanks must also extend to her for the work she will no doubt be required to do, standing side by side with Julio, as we all affectionately know him. Mr Speaker, I am also happy to have the opportunity to say to the House today that we are delighted to indicate our support also for the appointment of Mr Tony Lima as Deputy Mayor this year and Mayor next year. Mr Lima is a man well known for many years of public service. I had an opportunity to consult him on occasions both when he was in the Human Resources Department of the Government and in his final post before retirement as Collector of Customs. Always cordial. Always pleasant. Always happy to assist and a man well known to all for his exquisite Courtesy and professionalism in equal measure. I should mention that I also had the pleasure of working with Carmen, his delightful wife, who was for many years the secretary of a man whose name is no stranger to this place, namely, the father of the Gibraltarians as is often described, the late and Honourable Sir Joshua Hassan. To Carmen and to Mr Lima's son, Adrian, our thank you for lending us, the public of Gibraltar, their precious Tony for another two years. We will be supporting the motion, Mr Speaker.

**HON CHIEF MINISTER:**

Mr Speaker, on this occasion, the mover does wish to reply.

**MR SPEAKER:**

I do apologise. The Hon the Chief Minister.

**HON CHIEF MINISTER:**

Mr Speaker, only to note, for the record, that this motion does not appoint Mr Julio Alcantara nor drag his charming wife out of retirement to accompany him. It simply notes it. We actually appointed him and eulogised him this time last year. This motion does not appoint him. It only appoints Mr Lima as Deputy and appoints Mr Lima, as we did Mr Alcantara this time last year, as Mayor in August 2012. So the motion simply notes that the appointment of Mr Alcantara, that we made last year, is going to come into effect now. But it is not an appointment and I just did not want anybody to fail to notice that, given some of the remarks that have now been made.

Question put.           The House voted.

The motion was carried unanimously.

**ADJOURNMENT**

**HON CHIEF MINISTER:**

I have the honour to move that the House do now adjourn to Friday 29<sup>th</sup> July 2011 at 10.00 a.m.

**HON F R PICARDO:**

Mr Speaker, only to inform the House, as I know the hon Gentleman is aware, that I will not be in Gibraltar on that day and, therefore, I will not be available in the House.

**MR SPEAKER:**

The hon Member will be missed.

**HON F R PICARDO:**

Thank you very much, Mr Speaker.

Question put.           Agreed to.

The adjournment of the House was taken at 5.05 p.m. on Thursday 7<sup>th</sup> July 2011.

**FRIDAY 29<sup>TH</sup> JULY 2011**

The House resumed at 10.00 a.m.

**PRESENT:**

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

**GOVERNMENT:**

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

**OPPOSITION:**

The Hon J J Bossano  
The Hon Dr J J Garcia  
The Hon G H Licudi  
The Hon N F Costa  
The Hon S E Linares

**ABSENT:**

The Hon J J Holliday – Minister for Enterprise, Development,  
Technology and Transport and Deputy Chief Minister  
The Hon E J Reyes – Minister for Culture, Heritage, Sport and  
Leisure

The Hon F R Picardo – Leader of the Opposition  
The Hon C A Bruzon

**IN ATTENDANCE:**

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

**SUSPENSION OF STANDING ORDERS**

**HON CHIEF MINISTER:**

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

Question put.                      Agreed to.

**DOCUMENTS LAID**

**HON CHIEF MINISTER:**

I have the honour to lay on the Table the Audited Accounts of  
the Gibraltar Regulatory Authority for the year ended 31<sup>st</sup> March  
2011.

Ordered to lie.

## **BILLS**

### **FIRST AND SECOND READINGS**

#### **THE NATURE PROTECTION (AMENDMENT) ACT 2011**

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

I have the honour to move that a Bill for an Act to amend the Nature Protection Act 1991, be read a first time.

Question put.                      Agreed to.

#### **SECOND READING**

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

I have the honour to move that the Bill be now read a second time. Mr Speaker, this Bill amends the Nature Protection Act 1991 in a number of ways and revokes the Upper Rock (Nature Reserve) Regulations 2001, an amended version of these regulations becoming a tenth Schedule to the Nature Protection Act. Since the latter part of 2010 and, more particularly, as from February of this year, there has been a rise in the number of persons entering or attempting to enter the Upper Rock Nature Reserve without the payment of the relevant fee payable under the main Act. Due to this, it has been decided that it is necessary to strengthen, in two ways, the legislative basis for the charging of fees. The first of these is to bring the Upper Rock (Nature Reserve) Regulations 2001 into the main Act. The second is to create a number of specific offences regarding entry into a nature conservation area and allowing for the issuing of exclusion orders in relation to specific cases where there is reasonable cause to believe that the holder of a public

service vehicle licence has been conveying persons into a nature conservation area without payment of the relevant fee.

The new section 24A sets out that the fees payable to Government for entry will be those set out in paragraph 1(1) of the new Schedule 10. The second subsection makes it clear that the fee for entry under that paragraph includes entry into all the tourist sites within the area. Section 24B makes provision for a separate fee for entry into the tourist sites which will only be relevant in exceptional circumstances, for example, if a person enters as a walker and then decides to enter a tourist site. Section 24C allows the Minister to exempt particular persons et cetera. This is for occasions where, for example, press or VIP tours are arranged. Section 24D allows the Minister by Order in the Gazette to set terms and conditions of entry into the areas. Under Section 24E(3), a breach of such terms and conditions will be a summary criminal offence liable to a fine at level 3 on the standard scale. Section 24E contains other offences. Subsection (1) is a very specific offence of conveying persons in a public service vehicle into a nature conservation area without payment of the relevant fee. On a first conviction, the fine will be at level 3 on the standard scale and on a second or subsequent conviction at level 4. Furthermore, after a third conviction, the person will become ineligible to hold a road service licence, a licence to drive a public service vehicle or to act as a conductor of the same for twelve months and any licence he or she holds will be revoked by the Transport Commission. Subsection (4) creates an offence of entering a tourist site without having paid the relevant fee. Section 24F creates a new form of Order to be issued by the Minister for Transport called an Exclusion Order. This Order bans particular holders of public service vehicle licences from entering a nature conservation area for up to three months if the Minister is satisfied that such person has conveyed others into a nature conservation area without payment of the relevant fee. The Order must be served and an appeal on law lies to the Supreme Court. Breaching an Order is an offence subject to a fine at level 5. The new Schedule 10 replicates the current



regulations with a few amendments reflecting current practice. The current regulations are revoked by clause 3 of this Bill which also makes provision regarding fees already collected. I commend the Bill to the House.

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

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

Mr Speaker, just to say that the Opposition will be voting in favour of this Bill after the explanation the Minister has given.

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 GAMBLING (AMENDMENT) ACT 2011**

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

I have the honour to move that a Bill for an Act to amend the Gambling 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. Mr Speaker, the Government announced a few months ago that cruise ships would be allowed to open their on board casinos and shops for passengers after 6.00 p.m. so as to provide an incentive to them to remain alongside until the early hours of the following morning. This will encourage cruise ships to extend their calls at Gibraltar by staying later into the evenings. Up until now, ships have usually sailed at around 5.00 p.m. in order to reach international waters and thus be able to open their on board revenue raising streams even though their next port of call may just be around the corner. So they just leave Gibraltar to get into international waters so that they can open their casino to their passengers which is an important revenue stream, even if the next port is Cadiz, and they spend the night circling around in the waters of the Strait or just in the entrance to the Atlantic. My Hon Friend the Minister for Transport and the Port discussed the idea with major cruise lines during a visit to Miami prior to the Cruise Shipping Miami Convention in March and the initiative was greatly welcomed by them.

Moving onto the legislation itself, a new section 14A is inserted to the Gambling Act. The new section provides that the provisions of section 11 to 13 of the Gambling Act ... Well, I should also add, before I move on to the details of the legislation, that one of the great advantages which is mutual is not just that they can open their casinos to their passengers and their other on board things, but that the passengers and the crew then have the option to spend longer ashore and visit restaurants ashore, businesses ashore and things of that sort. The new Act provides that section 11 to 13 of the Gambling Act, which deals with the requirements to have a gaming operator's licence to provide gaming facilities and to operate gaming establishments and the prohibition to play in unlicensed gaming

establishments, do not apply to gaming which takes place between 6.00 p.m. and 8.00 a.m. the following day on a cruise ship moored at or within the port of Gibraltar if the following three conditions are met. The first is that the participants in the gaming consist wholly of persons who are passengers or crew members of that cruise ship. The second condition is that the ship is expected to depart from Gibraltar within twelve hours of the commencement of the gaming and not to return within the following 24 hours, and the third condition is that the gaming is of a kind normally available on that ship when she is not in port.

Mr Speaker, this initiative as I say will give both passengers and off duty crew the opportunity of going ashore in the evenings resulting in additional business opportunities for local traders. It will also enable local tour operators to offer a wider range of shore excursions for passengers who will have more time to see what Gibraltar has to offer both on tour and independently. I commend the Bill to the House.

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

**HON DR J J GARCIA:**

Mr Speaker, 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 AVIATION SECURITY (EU COMMON RULES) ACT 2011**

**HON CHIEF MINISTER:**

I have the honour to move that a Bill for an Act to make provision for the regulation of aviation security and, more particularly, to give effect to Regulation (EC) No. 300/2008 of the European Parliament and of the Council of 11 March 2008 on common rules in the field of civil aviation security and repealing Regulation (EC) No 2320/2002; to give effect to supporting EU Regulations; and for connected purposes, be read a first time.

Question put.                      Agreed to.

**SECOND READING**

**HON CHIEF MINISTER:**

I have the honour to move that the Bill be now read a second time. Mr Speaker, this Bill constitutes the second of the two legislative pieces of domestic legislation that result in the Gibraltar Government being able to regulate civil aviation in Gibraltar. The other piece was the Civil Aviation Act which we adopted, as the House will recall, in 2009. In a nutshell, the Civil Aviation Act deals mainly with aviation safety, whereas this deals with aviation security.

The Bill is the product of discussions with the TRANSEC, which is the area ... the part of the Department for Transport in the United Kingdom, which deals with aviation security. These have been going on for some time and it is a Bill which is agreed between us both that allows the Gibraltar Government to take responsibility for those aspects of civil aviation which, under the

2006 Constitution, have become the competence of this Parliament and of the Gibraltar Government whilst at the same time allowing the Governor such input as his responsibility for internal security requires and entitles him to. It is actually the first time that this House has legislated on aviation security. The House may be aware that all previous legislation in Gibraltar relating to aviation security has been contained in an Order in Council and, as indeed it is, for the other Overseas Territories. One of the things that we have had to grapple with, the United Kingdom TRANSEC and ourselves, is that, unlike all the other Overseas Territories, Gibraltar is subject to European Union legislation on aviation security of which there is now a large raft. So, it was very difficult for Gibraltar just to be included in the Overseas Territories Order in Council because we would constantly have to be changing it, the Order in Council, in its application to Gibraltar only to reflect EU Aviation Security measures that did not apply to the other Overseas Territories, they not being in the European Union as we are. So that was the second reason why Gibraltar legislation was indicated in this area. Central to the Bill then, is the adoption of EC Regulation 300/2008 of the 11<sup>th</sup> March 2008 as the long title has already been read out and shown on three occasions. The repealed regulation contained, that is to say the regulation that we are today transposing in this Act, repealed an old EU regulation. That old EU regulation contained the standard clause suspending its application to Gibraltar airport pursuant to all the suspensions of aviation measures. But the new regulation was adopted after the Cordoba Airport Agreement and, therefore, the Gibraltar suspension clause was dropped as required by the Cordoba Agreement in accordance with that agreement, thereby permitting Gibraltar to participate in this extremely important area of EU legislation and indeed cooperation.

The Bill itself, Mr Speaker, the early clauses are structured in the usual way.

Clause 1, title and commencement, provides that the Act shall be cited as the Aviation Security (EU Common Rules) Act 2011

and the Government shall appoint the day on which the Act comes into operation.

Clause 2 is the interpretation section which sets out the definition of the central terms. Indeed, many of the terms have the same meaning as they have in the Civil Aviation Act 2009 so that the language terminology and defined terms used in all Gibraltar's aviation related legislation is the same.

Clause 3 makes it clear, that is the application clause, it makes it clear that the Act shall apply to the Civil Airport and it also applies to those parts of RAF Gibraltar that are used for civil aviation purposes. Subsection (3) provides various derogations for certain aircraft and type of flights.

Clause 4 provides for the basic standards of aviation security that are to be applied for safeguarding civil aviation against acts of unlawful interference that jeopardise the security of civil aviation and those are the ones that are laid down from time to time by the European Union in Annex 1 to EC Regulation 300/2008. The standards that shall be applied at the Gibraltar airport will therefore be, as a minimum, the same as those applied across the European Union.

Clause 6 provides for the introduction of more stringent measures and that clause allows the Government to apply more stringent measures than the basic standards referred to in clause 4 and sets out the procedure that the Government would have to comply with in order to apply more stringent measures if it is thought that those were necessary or desirable.

Clause 5 deals with the subject of security costs and in subsection (1) it empowers the Minister for Finance to adopt regulations specifying the circumstances and the extent to which the costs of security measures will be borne by any one or more of the persons referred to in subsection (2). Such persons include the Government, the operator of the civil airport, the air carriers or indeed the users.

Clause 7 deals with security measures required by third countries and requires the Minister to ensure that the European Commission is informed of measures that may be required by a non-EU country if those measures differ from the basic standards referred to in clause 4 in respect of flights from the Gibraltar airport to or over that non-EU country.

Part III deals with aviation security programmes in clauses 8 to 12 and these are security programmes that have to be adopted and maintained in relation to the civil airport.

Clause 8 concerns the Civil Aviation Security Programme. This is the overarching security programme. It will define responsibilities for the implementation of the common basic standards and describe the measures required by operators and entities for this purpose.

Clause 9 deals with the Quality Control Programme. This programme will enable the Minister to check the quality of civil aviation security in order to monitor compliance with both EC Regulation 300/2008 and with the Civil Aviation Security Programme for Gibraltar. The specifications for the Quality Control Programme shall be those set out in Annex 2 to the EC Regulation. The programme will allow for the swift detection and correction of deficiencies. It will also provide that the civil airport, operators and entities responsible for the implementation of aviation security standards that are located in Gibraltar, shall themselves be regularly monitored directly by or under the supervision of the Minister. By the way, the Minister, other than in the clause about cost, is the Minister for Aviation.

Clause 10 concerns that the Airport Security Programmes. That is the third kind of security programme that I have alluded to. This particular programme will be drawn up by the operator of the civil airport and it deals with more day to day things. It shall describe the methods and procedures which are to be followed by the operator in order to comply with both EC Regulation 300/2008 and with the Civil Aviation Security Programme for

Gibraltar. The programme shall include internal quality control provisions, describing how compliance with these methods and procedures is to be monitored by the airport operator. It is important to bear in mind that the airport operator ... that these security programmes do not apply just to airlines. It applies to anybody that operates within the airport. It could be a retail outlet. It could be a restaurant. It could be a ground handler. It could be the air terminal manager itself. So, the definition of operators ... the definition of parties responsible, operators and entities responsible for implementation of the Aviation Security Standards extends really to everyone and every company and every individual that functions in whatever capacity within the secure areas of the airport.

Clause 11 concerns the fourth type of programme. The Air Carrier Security Programme. This programme shall be drawn up by every air carrier using the civil airport. It shall describe the methods and procedures which are to be followed by the air carrier in order to comply with both the EU Regulation and the Civil Aviation Security Programme of, in our case, Gibraltar. That was the first programme I referred to. The programme will include internal quality control provisions, describing how compliance with such methods and procedures is to be monitored by the air carrier. Subsection (4) provides that where a community air carrier security programme has been validated by the appropriate authority of the Member State granting the operating licence, the air carrier shall be recognised by the Minister as having fulfilled the requirement set out in this section, a form of air carrier security programme passporting. That recognition is without prejudice to the Minister's right to request from any air carrier details of its implementation of any more stringent measures that the Government may have applied over and above the basic standards and any other procedures that are applicable at the civil airport uniquely.

Clause 12 concerns the Entity Security Programme. This programme will be drawn up by every entity which, under the Civil Aviation Security Programme for Gibraltar, is required to

apply aviation security standards. The programme shall describe the methods and procedures which are to be followed by the entity in order to comply with the civil aviation security programme for Gibraltar in respect of its operations in Gibraltar and shall include internal quality control provisions describing how compliance with these methods and procedures is to be monitored by the entity itself.

Part IV deals with the administration of the Act and clauses 13 to 17.

Clause 13 deals with the Civil Aviation Security Regulator and provides for the appointment of the Civil Aviation Security Regulator. By virtue of subsection (1), the Director of Civil Aviation has been appointed as Civil Aviation Security Regulator. The Regulator is responsible to the Minister for the discharge of his duties and functions under the Act. Subsections (3) to (7) contain various provisions applicable to the appointment which mirror the equivalent provisions under the Civil Aviation Act 2009.

Clause 14 deals with inspections and provides for a person authorised by the Minister to inspect any aircraft in Gibraltar or any part of Gibraltar airport or relevant land outside the airport in order to ensure that the Act or any EU requirement is being complied with and for the purpose of assisting the European Commission in carrying out any inspections in accordance with Article 13 of the European Regulation.

Clause 15 provides a regulation making power.

Clause 16 empowers the Minister to issue directions in order to ensure compliance with the Act or any condition, obligation or requirement which has been imposed on any person pursuant to the Act.

Clause 17 are administrative provisions concerning the manner in which documents have to be served and includes provisions

on the service of documents in electronic form and on the timing and location of things done electronically. They apply the provisions of sections 21 to 23 of the Civil Aviation Act 2009.

Finally, Part V at clauses 18 to 26 deal with a variety of miscellaneous and general matters. They provide for various offences under the Act including making false statements relating to baggage and cargo et cetera. That is clause 19. Making false statements in connection with identity documents. That is clause 20. The unauthorised presence in a security restricted area. That is clause 21. The unauthorised presence on board an aircraft. That is clause 22. As well as the standard clauses on offences committed by a body corporate. That is clause 23. Offences by other persons, clause 24. Summary proceedings, clause 25 and civil proceedings, clause 26. Clause 27 safeguards the Governor's constitutional responsibilities. In subsection (1), it is confirmed that nothing in the Act shall derogate from the responsibility of the Governor under the Constitution for defence, internal security or any other matter for which the Governor has responsibility under the Constitution. The Governor's constitutional responsibilities are also recognised in subsection (2) which provides that the Government shall consult the Governor in relation to any matter for which the Governor has responsibility under the Constitution.

Mr Speaker, the coming into operation of this Act will be accompanied by the signing of a Memorandum of Understanding between the Government of Gibraltar and the security section, the specialist security Department of the UK's department for Transport, which is called TRANSEC, by virtue of which we will continue, as we have been doing already for some years, to contract in their experts and officials to advise us and to help us conduct audits of these very specialist security requirements, to ensure that we are keeping up and ensuring that the Gibraltar airport is as safe or safer even than other airports around the European Union. I commend the Bill to the House.

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

**HON DR J J GARCIA:**

Mr Speaker, 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 MEDICAL AND HEALTH (AMENDMENT) ACT 2011**

**HON MRS Y DEL AGUA:**

I have the honour to move that a Bill for an Act to amend the Medical and Health Act, 1997 so as to allow certain persons to prescribe and administer certain drugs, be read a first time.

Question put.            Agreed to.

**SECOND READING**

**HON MRS Y DEL AGUA:**

I have the honour to move that the Bill be now read a second time. Mr Speaker, this short Bill contains an amendment to the regulation making power contained in the Medical and Health Act 1997. The power is extended to allow for the making of regulations which will provide that certain nurses who have undertaken approved relevant training may have prescribing rights appropriate to such training in relation to repeat prescriptions for the management of specified chronic diseases where the original therapy has been initiated or is followed by the GHA employed medical practitioner or visiting consultant contracted to provide clinical services. It also provides that Optometrists who have undertaken approved relevant training may have prescribing rights appropriate to such training in relation to specified medications. By way of example, some of the chronic illnesses which Nurse Practitioners will be able to both manage and prescribe for, include diabetes, chronic congested heart failure, asthma, chronic obstructed lung disease and pain management in palliative care patients. Furthermore, this will reduce the pressure on the primary care doctors and will assist in the repeat prescribing process of patients with chronic conditions. In the case of optometrists, it will award them the full prescribing capability that they have in the United Kingdom and elsewhere for chronic eye conditions such as ocular infection, glaucoma and others. Those practitioners who will be entitled to prescribe will first need to prove their competence by producing a certificate of training in the field of prescribing. They will undergo ongoing mentoring by the doctor and regular assessments such as evaluation of competence and audit of the clinical practice. The net effect of this Bill is to improve the access and quality of care of patients by giving more disciplines the ability to prescribe in a very safe and controlled way. It will also improve the scope of practice of those disciplines that will be allowed to prescribe. I commend the Bill to the House.

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

**HON N F COSTA:**

Yes, Mr Speaker, as the hon Lady opposite knows, this is one of the areas in which I have questioned her in the past. An area in which we have pressed her, not least for the very reason that she gave, which should be a measure to be able to alleviate congestion in the Primary Care Centre and because it does make sense that qualified nurses should be able to give repeat prescriptions for things like asthma and, therefore, the Opposition will be voting in favour of the Bill.

Question put.                      Agreed to.

The Bill was read a second time.

**HON MRS Y DEL AGUA:**

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

Question put.                      Agreed to.

**THE CRIMINAL PROCEDURE AND EVIDENCE ACT 2011**

**HON D A FEETHAM:**

I have the honour to move that a Bill for an Act to make fresh provision in relation to the powers and duties of the police, the treatment of persons in police detention, and evidence and procedure in criminal cases; and for connected purposes, be read a first time.

Question put.                      Agreed to.

**SECOND READING**

**HON D A FEETHAM:**

I have the honour to move that the Bill for the Criminal Procedure and Evidence Act 2011 be read a second time. Mr Speaker, I have absolutely no doubt that this Bill together with the Crimes Bill which will be taking later on today, represent the single most important reforms in the area of criminal law for decades and that they will constitute the foundation and corner stone of our criminal justice system for decades to come. Work on these Bills, as hon Members know from my Budget speeches, commenced in 2007. They are extremely substantial pieces of work as hon Members can see and they have also been subject to very extensive consultation. The individual parts of the draft Bills have been considered by members of the AG's Chambers and by the Royal Gibraltar Police. The Bills were also sent to the Bar Council over a year ago and also to the judiciary. Our current laws on evidence and procedure derive mainly from the Criminal Procedure Act. This is now over fifty years old and although it has been amended a few times, it is woefully out of date. Some of the principles underlying criminal procedure internationally have changed significantly in the last half century. Many new practices and procedures have emerged and the language of legislation has changed significantly. This Bill now provides a comprehensive modern statement of the rules on criminal procedure and evidence. I have no doubt, Mr Speaker, that some of those archaic rules in the Criminal Procedure Act are contributing substantially to the delays currently being experienced by our Courts. Gibraltar cannot afford to have a reputation as a jurisdiction where justice is delayed. One of the policy aims of this Bill therefore is to ensure that serious cases reach the Supreme Court far quicker than they are at present and that, once there, new provisions on, for example, disclosure and the right to silence, will encourage a

more realistic prospect, on both sides of the adversarial process, at a far earlier juncture in the proceedings. Mr Speaker, it is a stark statistic that between June 15<sup>th</sup> last year and June 15<sup>th</sup> this year, a total of twenty eight cases had been set down for trial and half were cancelled at the last minute because of late guilty pleas being entered into. I know that there have been some concerns by, it has to be said, a minority of defence barristers in relation to changes, for example, on long committals. But the Government has a responsibility, Mr Speaker, to ensure that the system runs fairly, not only to defence counsel but also to vulnerable victims of crime and also efficiently. We are not prepared on this side of the House, Mr Speaker, to see Gibraltar become a defence lawyer's paradise at the expense of the overall administration of justice. The Bill also implements all relevant EU Directives on criminal procedures and consolidates measures such as the Criminal Procedures (Juries) Act and the Crimes (Vulnerable Witnesses) Act which were introduced over this Parliamentary term. The Bill does not include provisions on extradition or letters of request which will continue to be dealt with under separate legislation. But otherwise, the Bill is a fully comprehensive source or resource for legal practitioners, judges and the police and all concerned with criminal procedure and evidence in Gibraltar. The Explanatory Notes set out in detail the effect of each clause. Due to the complexity of the subject matter, I have ensured that the Explanatory Memorandum is far more detailed than usual. Where I do not deal with any provisions in my speech, I would then obviously refer hon Members to those notes. Neither do I intend to speak on the merits of parts which consolidate pieces of legislation which have already been introduced during this Parliamentary term. I was tempted, Mr Speaker, to confine my speech to the more controversial areas. I know that my very good and Hon Friend, Mr Costa, expressed certain very strong views about the loss of long committal and also the right of silence on the internet's equivalent of the Scarlet Pimpernel, the Mark Ashbey and now his defunct blog, Mr Speaker. But, Mr Speaker, to restrict my speech to a few areas is not to do the Bill justice and hon Members opposite, of course, must suffer an element of

penance for their policy of non-recognition of the Ministry of Justice.

The Bill has thirty parts, seven hundred and two clauses and thirteen Schedules. It will also have one hundred and eighty pages of Codes of Practice to supplement what are commonly referred to as the PACE (Police And Criminal Evidence Act) provisions. The Schedules set out the rules on certain provisions and can be amended by the Minister by order. All such orders, however, will be laid on the Table before this House and will be subject to a negative resolution procedure. Powers given to the Secretary of State in the United Kingdom are to be exercised by the Minister and not, of course, by the Governor. The Bill includes several powers given to the Minister of Justice. Occasionally, the reference is to the Minister for Finance. Codes of Practice will also need to be published before or at the time that the Act comes into force. The PACE provisions of the Bill contemplates that free legal advice will be available to persons in custody or at a police station for questioning. This will require that the provision of a duty solicitor scheme which is to be dealt with in detail in our legal aid reforms. Codes of Practice also refer to the right to legal representation at a police station. The Care Agency is given various responsibilities in relation to juveniles, including supervision, taking parental responsibility and providing accommodation. These are consistent with similar obligations placed on the Care Agency in the Children Act 2009 and, in fact, we will come to it during the course of my speech which hon Members will see that in relation to some of the provisions in relation to juveniles on, where parents are placed under an obligation by the Courts to ensure that juveniles comply with certain Court Orders, the Agency is also placed in exactly the same position. Mr Speaker, I intend to move amendments to the Bill. In order for Members to follow those amendments, I have asked the Clerk to distribute a table showing the amendments and the reasons on the right hand column for those amendments. I do not intend to speak to the amendments



during the course of this speech save perhaps for one or two ... I will be doing so in detail during the Third Reading.

Turning to the clauses of the Bill. Clause 1 is the standard commencement provision and it is the intention of the Government to delay commencement of the Act until October of this year. That will give practitioners and all those with a stake in these matters to become fully familiar with the Bill. In this regard, the Government is funding a training course for judges, lawyers and the RGP to be conducted in October of this year over a period of a week. In addition, of course, we hope to be in a position to publish our extensive legal aid reforms and the Codes of Conduct pursuant to this Bill.

Clause 4 is an important clause and deals with the application of English rules of Court and practice directions. Unless specifically ousted by the rules locally, the practice in procedure will be that of the criminal courts in England and Wales. Clause 4(2) specifically incorporates the English Criminal Procedure Rules, as enacted from time to time, into our law. This is the equivalent of the Civil Procedure Rules in civil litigation. So, practitioners will not only be expected to familiarise themselves with this Bill and, of course, the Codes of Conduct, but also with the Criminal Procedure Rules. Mr Speaker, if the Civil Procedure Rules represented, as the Lord Chancellor at the time described them in the UK, a sea change in the way civil litigation was conducted, this Bill and the rules, I have no doubt, will represent a veritable tsunami.

Parts 2 to 6 of the Bill are based on the UK PACE Act, with local modifications which governs police activity up to the stage where a person is charged and taken to Court. Provisions also include rules about arrest with and without warrant. They also deal with the taking and retention of intimate samples and the retention of DNA profiles. Not only are they immensely important, Mr Speaker, in order to ensure that police officers do their job properly, but likewise that citizens are properly protected against an abuse of powers on the part of those that

have those powers, in this particular case, the police. For example, Part 2 deals with the police powers to stop and search people of vehicles and to enter and search premises.

Clause 5 confers powers on police officers to stop and search persons and vehicles for stolen or prohibited articles if they reasonably suspect they will find such articles. Prohibited articles are offensive weapons and articles intended for use in burglaries et cetera. There are limitations in respect of private premises which require judicial sanction before there can be a search. Thus, if the vehicle, for example, is to be searched, is found in someone's private dwelling, the issue is whether the vehicle belongs to the occupier of the dwelling. If it does, then it cannot be searched under these rules without the consent of the occupier or, alternatively, a court order.

Clauses 7 and 8 confer powers on police officers to stop and search persons or vehicles in anticipation of, or after, violence. These are general authorisations and not specific to anyone or to any one vehicle. The authorisation has to be given by an officer of the rank of Inspector and must not only last a period of twenty four hours, but can be extended for another twenty four hours by a Chief Inspector. These are powers that we hope will be very rarely exercised in a place like Gibraltar, but they are included because there may well arise a situation where, for example, a general authorisation of this nature may be needed. Just to give you an example. There is a murder in Gibraltar and the suspect is not apprehended. It may justify invoking a general authorisation of this nature in order to search vehicles exiting Gibraltar, for example. Officers are to keep a record of searches made under this Part, which of course is important, inter alia, for the purposes of verification that that officer has complied with his duty under the Act and the Commissioner of Police is also required actually, generally, to file a report annually. Not only in relation to this power but in other similar powers within the Act as to how many searches were conducted and how many road checks were actually conducted throughout Gibraltar. That is an important provision in terms of both

transparency and also keeping in check any ... the exercise of these powers and that they are exercised properly. This Part also introduces the concept of items subject to legal professional privileges, excluding material or special procedure material, in relation to searches. These terms are defined in clauses 14, 15 and 80. Item subject to legal privilege is defined as communications between a legal representative or his client and associated items. The term "legal representative" is defined in clause 2 and there is an amendment to that clause. Because if you look at clause 2, the way that "legal representative" is actually defined is by reference to a practitioner in, to somebody who practices in Gibraltar. Now that may be fine in relation to all the other aspects of the Bill but, specifically, in relation to clause 14, which is where the amendment arises, you may have a situation where police officers search premises or search a vehicle and that vehicle and those premises actually belong to somebody that, although having residence here, may also have a house somewhere else, may be a national or some other country, France, for example, and within the papers, the police find an advice from a French lawyer. So, as currently drafted, the definition of "legal representative", of course, that communication would not be caught. So we are amending clause 14 to ensure that communications of that sort are also caught by the Act in relation to clause 14. "Excluded material" means personal records created in the course of a trade, profession or business or created in an unpaid office and held in confidence. "Special procedure material" means personal records and journalistic material that are not excluded material but are still held in confidence. An example would be material acquired by an employee from his employer. Access to excluded material or special material is restricted and the test for access hon Members will find in Schedule 1 of the Bill.

Part 3 confers on police officers the powers to seize property in a person's possession on or in premises, including a ship or aircraft. See the definition of "premises" in clause 2.

Clause 25 confers on a police officer, who is lawfully on premises, the power to seize anything on the premises which the officer reasonably believes has been obtained by an offence, or evidence in relation to an offence, or that needs to be seized to prevent it being hidden, lost, damaged, altered or destroyed. The power does not extend to items that are subject to legal privilege. It also empowers, however, a police officer to require any information stored in electronic form to be produced in a form which can be taken away and read. In other words, it can require a police officer to acquire the owner of that electronic equipment to print out something that is actually stored on the computer. An important safeguard is that the officer must give the occupier of the premises, or the owner of the thing, a record of what was seized and to allow him access to it for the purpose of making a copy. In other words, you have got to tell the person that this is what we are taking, the list, plus also allow the person access for the purposes of making a copy. However, there is no duty to grant access to material to allow copying of it if, to do so, would prejudice the investigation or any resulting criminal proceeding. Anything that has been seized may be retained for as long as is necessary but it cannot be retained if the person, from whom it was seized, is released without charge. Nor can a thing be retained as evidence if a photograph of it would suffice as evidence.

Clauses 29 and 30 are additional powers of seizure that might be useful in certain circumstances. They both allow for police officers to seize things found on premises or a person that are being searched under powers in Part 2, in order to ascertain whether they might be or contain something that can be seized under clause 25. These additional powers include anything which, or on which, the suspect item is found, if the suspect item cannot be readily separated from it, in order to check whether the suspect item is something that can be seized. Again, written notice must be given to the occupier of the premises or the person about anything that has been seized under the additional powers in clauses 29 and 30. The notice must tell the person about the right to be present at an examination of the thing and

the right to apply to the Magistrates' Court for its return. That examination must be carried out as soon as possible and any item not suspect, that is, an item that cannot be seized under clause 25, must be separated from the suspect item, if that is reasonably practicable, and returned. If there is an obligation to return the property, it must be returned to the person from whom it was seized or the occupier of the premises if it was seized from the premises, unless some other person appears to have a better right to the property, and what you would then have is some form of *[inaudible]* proceedings obviously between the two rival claimants.

Clauses 39 and 40 impose an obligation to ensure that property that has been seized is made secure. The duty to secure means to ensure that the property cannot be examined, copied, or put to unauthorised use by any person other than the applicant or in accordance with directions of the Court. This is so that, for example, commercial advantage cannot be taken of the seizure of property or it cannot become a security risk to the company, if it is a company from whom it was seized.

Part 4 confers powers of arrest without warrant on police officers and other persons. It replaces all other statutory powers of arrest without warrant except those listed in Schedule 2. So the only ones that will survive are those listed in Schedule 2 such as powers in the Immigration, Asylum and Refugee Act, Mental Health Act, the Prison Act, the Traffic Act 2005 and the Imports and Exports Act 1986. Although the powers of arrest on warrant contained in those various enactments are not affected, the procedure in police detention, after such an arrest, is governed by Part 5 of the Bill. Under these provisions, a police officer can arrest without warrant a person who is about to commit an offence, is committing an offence, or whom the officer reasonably suspects is about to commit an offence. The power is however limited to situations where the officer reasonably believes the arrest is necessary for one of a number of purposes specified in the provisions.

Clause 43 empowers persons other than police officers, in other words, ordinary members of the public, to arrest without a warrant, but the grounds are narrower. We are talking about a citizens arrest here. The offence that is about to be committed must be an indictable offence and the jurisdictions are limited to preventing the person from causing or suffering injury, causing loss or damage to property and making off, that is, running or driving away before a police officer can take charge. That is a classic citizens arrest. It excludes, however, Mr Speaker, offences under sections 99 to 104 of the Crimes Bill 2011, which are offences of stirring up racial or religious hatred. This is to avoid a situation of inflaming racial or religious tension by removing the right of the public to obviously arrest somebody for, for example, a race hate related speech and it is a sensible approach to take. Otherwise, Mr Speaker, ordinary members of the public can get into all sorts of trouble if they hear something that they believe is caught under the race hate provisions of the Crimes Bill.

Mr Speaker, a person who is arrested must be told that he is under arrest and given the reason for it, even if the fact of arrest and the reason for it are obvious. The rule does not apply, however, if the person escapes from arrest before being told the reason.

Under clause 47, a person who attends voluntarily at a police station to assist an investigation must be allowed to leave unless arrested. A person who has been arrested elsewhere than at a police station, must be taken to a designated police station within six hours and released if there are no grounds for keeping him. A designated police station is one that has been designated for the detention of arrested persons under section 56 as having the necessary facilities to comply with other parts of the Act. This will mean New Mole police station, initially. There is a power given to the Minister to amend the Schedule in order to add new police stations, once those police stations are obviously equipped and I am moving an amendment to the

provisions relating to this and I will speak to the merits of that during the Third Reading of the Bill.

Clauses 49 to 52 enable bail to be given by police officers elsewhere than at a police station. For example, at the scene of a crime or in hospital. The only condition that can be attached to such bail is a condition to attend a specified police station.

Part 5 deals with police detention which is distinct, obviously, from detention by the Court. The first clause in this part, clause 55, limits on police detention, sets out the general rule that such detention may only take place in strict accordance with this Part. The second subsection places a positive duty on the custody officer, if at any time he or she becomes aware that the original reasons for the detention of someone by the police have ceased and there are no grounds for continued detention, to order that person's immediate release. This, together with the content of subsection 3 which states that a person in custody may not be released without the authority of the custody officer, ensures that there is one person in whom the custody and care of a person is vested, ensuring clarity and continuity in the decision making process throughout. A custody officer appointed under these provisions must be of at least the rank of Sergeant. In fact, the only person that can appoint a custody officer is the Commissioner of Police unless that duty is delegated to a Superintendent, and there must be at least one custody officer appointed per designated police station. Once a suspect has been arrested and taken to a police station, there are strict rules about the length of time they may be held. The general rule is that the police may detain a person for twenty four hours. After this, the police may detain a suspect for a further twelve hours making it a total of thirty six hours, but only with the permission of a senior officer, Superintendent or above. For ordinary arrestable offences, a suspect must then be charged or released. However, with serious arrestable offences, a suspect can be detained for a further period if the police apply to the Magistrates' Court. The Magistrates' can order the suspect to be detained for a maximum of ninety six hours. During a

suspect's detention, it is the duty of the custody officer, it is his responsibility, to review the suspect's detention on a regular basis. The first review must not be more than six hours after the suspect was first detained. Then the custody officer must review the detention at intervals of not more than nine hours. If at any point the custody officer believes there are no grounds to detain the suspect, then he or she is under a duty to release the suspect. Whilst detained, the custody officer must keep a record of events that occur, for example, interviews and also visits to cells by a police officer which is phenomenally important, Mr Speaker, in order to prevent situations such as deaths in custody in relation to ..., in particular, people that may well be intoxicated, for example.

Part 6 deals with questioning another treatment by the police of persons detained at a police station. The part also regulates the taking of intimate and non-intimate samples, including body fluids and finger prints, the taking of photographs and the retention of DNA samples and profiles. It is a sensitive and important part of the Bill which seeks to balance the rights of the individual and the presumption of innocence against the rights of society as a whole to be protected from criminal behaviour. The Part involves two Schedules to the Bill, Schedule 4 which is about attendances at a police station for the taking of fingerprints and Schedule 5 which is a list of trigger offences for certain powers. Once the Bill is enacted, I will be issuing a Code of Practice about the questioning of suspects including the caution that must be given and I will come back to that in a moment or later on. There will also be a Code of Practice about the taking of samples and retention of DNA based on ones used by police forces in the United Kingdom.

Clause 77 defines various terms used in the Part that are not defined in clause 2 of the Bill or in the Interpretation and General Clauses Act. "Intimate sample" is defined to include a sample of blood, semen, urine and pubic hair and a dental impression, or a swab taken from genitals or some orifice other than the mouth. A non-intimate sample is a sample of hair other than pubic hair,

a nail clipping, a mouth swab, saliva and a skin impression. The clause also explains what is meant by insufficient sample, a term that is used and is relevant to justify taking further samples from a person who has already given one.

Clauses 81 and 82 enable a police officer of the rank of Inspector or above to authorise an intimate search of a person or to take x-rays or ultra sound scans if it believes that person might have concealed or swallowed drugs or other things that could be used to cause injury to himself or others. Intimate searches can only be carried out at a police station or a medical establishment. People who are searched must be given reasons and the nature of the search and anything found must be carefully recorded. An adverse influence can be drawn from failure to consent. The Commissioner of Police must also, Mr Speaker, as I explained earlier in relation to searches, make an annual report about intimate searches and scans made under these sections.

Clause 83 provides that a person who is arrested has the right to have a person informed of the arrest. Delay in informing a person is permitted if telling someone might lead to interference with or harm to evidence, interference with or physical injury to other persons, alerting an accomplice or hindering the recovery of property or, in the case of a drugs offence or money laundering, of the proceeds of the criminal conduct.

Clause 85 provides that an arrested person is entitled to have access to legal advice if he so requests and I am going to be moving, Mr Speaker, an amendment to delete subsections (2) to (8) of clause 85 which, if hon members have a look at that, they will see that the primary right to legal representation is in subsection (1) and then it is limited by subsections (2) to (8). And having reconsidered, we believe that that does not actually comply with the Constitution and, therefore, we are deleting sub clauses (2) to (8) of clause 85. Mr Speaker, as I explained during my introduction, the right to legal representation can obviously be achieved and we expect it to be achieved by the

creation of a Duty Solicitor Scheme as part and parcel of a package of Legal Aid and Legal Assistance proposals that are now being completed and we hope to be in a position to publish shortly.

Clauses 86 to 90 deal with the taking of fingerprints and footwear impressions, intimate and non-intimate samples. These four clauses all provide that samples must not be taken from people without their consent, except to complete an existing record which is unsatisfactory or if they have been convicted of a recordable offence or if authority is given by a senior police officer because the sample is needed for the prevention or detection of crime. The person must be told of the reasons for taking the sample and that it might be used for a speculative search as described in clause 90. This means comparing those samples with similar evidence taken previously in Gibraltar by other public authorities or taken by equivalent authorities outside Gibraltar. As hon Members and members of the public will know, a lot of the crime that is actually solved in the United Kingdom and elsewhere, but the pioneers of this were the United States and the United Kingdom, the United States first, then the United Kingdom, is actually solved by comparing DNA samples, for example, with those already on records or indeed by comparing them with records of jurisdictions kept by organisations and jurisdictions elsewhere.

Clause 91 provides additional powers for the taking of urine samples or non-intimate samples from a person who is suspected to having a Class A or Class B drug in his body and who has been charged with a trigger offence. A trigger offence is one listed in Schedule 5. The search is for evidence of a Class A or Class B drug in the person's body and the offences are those that tend to be associated with misuse of drugs. The term Class A drug and Class B drug are defined in the Crimes Bill 2011, which in turn consolidates the Misuse of Drugs Act. That subsumes within it an existing statute that is already in our statute books and is well known to Members opposite.

Clauses 92 to 106 are based on sections 64 to 64ZB and section 64ZD to section 64ZN of the UK PACE Act inserted by the Crimes and Security Act 2010. They require fingerprints, footwear impressions, samples and DNA profiles to be destroyed after six years if the person from whom they were taken is not convicted. However, such material can be retained if a person is convicted. Copies and computer records must also be destroyed or rendered inaccessible.

Mr Speaker, hon Members must make a note in relation to this because there has been a case in the European Court of Human Rights, involving similar provisions in Scotland, and the UK, as I understand it, is actively reconsidering these provisions. Not in terms of completely altering the provisions but thinking of whether to reduce this six year time frame, from six years to perhaps five years. Now, the legislation has not been enacted in the United Kingdom at the moment and I just flag it up for the future because it may well be something that we might have to come back in future.

Part 7 regulates the granting of bail in criminal proceedings up to the point of conviction. The principles stated to apply to the grant of bail by Court and by a custody officer at a police station are set out in clause 68. They do not apply to police officers arresting a person elsewhere than at a police station as to which, see clauses 49 to 52 in Part 4, which we have already considered. Mr Speaker, in the UK, the power to extend bail under clause 68 has recently come under review in the Hookway case. I am not sure whether Members opposite actually saw the programme on the BBC about this, but it is also on the BBC website for the 30<sup>th</sup> June of this year and in that case, basically, the Court held that the police could not grant bail for a longer period than four days. Now, that has spurred up and enormous amount of concern in the United Kingdom because, habitually, police officers were bailing for longer periods of time. That is also the position here in Gibraltar under the Criminal Procedure Act. Now, as a matter of ... the UK have now introduced emergency legislation to correct that. We have

been in contact with the Ministry of Justice in the UK. We have now incorporated those amendments that the UK have introduced into this Bill. I will be moving amendments at Committee stage. The UK, in addition to making amendments to deal with this question of extending the bail after a period of four years, what they have also done is they have included a deeming provision, basically deeming that effectively, all those cases of bail granted by the police for the last twenty years, have all been lawful. Now, it is a moot point. In fact, the advice from the Attorney General's Chambers is that the position under the Criminal Procedure Act is different and, therefore, we do not have the same problem. But out of an abundance of caution, having spoken to the Attorney General, or the drafters in the LSU having spoken to somebody from the Attorney General's Chambers, we have decided that we should include a deeming provision in this Act, basically deeming that anything that has been done under the Criminal Procedure Act has also been lawful. Now, Mr Speaker, the general rule is that a person who is brought before the Court must be granted bail up to the point where the person is convicted, except as provided in this Part. There are exceptions for cases involving treason and murder and offences involving misuse of drugs. The grounds for bail are also well known to lawyers within the House.

Clause 115 deals with bail in relation to juveniles. They must be granted bail unless the case is one of treason, murder, manslaughter, rape or other grave crimes, in which case clauses 129 and 130 apply, or there are other compelling reasons for refusing it as set out in subsection (7). A parent or guardian who consents may be required to stand as surety for a juvenile.

Part 8 replaces and updates most of Part 6 of the Criminal Procedure Act which deals with proceedings in the Magistrates' Court. It does not, however, deal with committal or sending for trial which are dealt with separately in Part 9, nor does the Part deal with committals for sentence, which is obviously different, which is dealt with in Part 10. So, under the current rules and we are continuing over onto this Bill, there are rules about ...

somebody is found guilty in the Magistrates' Court and then they are committed to the Supreme Court for sentencing. The Explanatory Memorandum, Mr Speaker, provides a detailed account clause by clause in relation to Part 8, and I would draw hon Members attention to it.

Part 9 is an important part and provides two methods of sending cases for trial to the Supreme Court from the Magistrates' Court and it needs to be read in conjunction with clauses 140 to 157 which regulate the decision on venue in relation to offences triable either way. In introducing this new system, notice has been taken of the current practice in the United Kingdom. We have ignored what have been pilot schemes that have been launched in the United Kingdom in relation to further amendments, further alterations to the way that cases are sent to the High Court. We have ignored those because they are just simply pilot schemes in specific regions of the United Kingdom. But we have taken notice of the system that applies in the United Kingdom generally. What we have done is adopt a simple procedure for sending to the Supreme Court. These are what are defined as relevant offences in clause 198. They are indictable only offences, those involving complex financial issues and those involving child witnesses. Mr Speaker, certainly on this side of the House, we firmly believe that it is wrong to require a child in a sexual abuse case to give evidence twice, one in the Magistrates' Court, and again in the Supreme Court so that barristers can then test the child's evidence, have two bites of the cherry, when the evidence, Mr Speaker, can, as we will see, can still be challenged in the Supreme Court before the Chief Justice or the Puisne Judge once the case has actually been transferred up to the Supreme Court. Mr Speaker, we believe that is wrong and we are changing it in these rules that we are introducing in this Part. This Part provides that such cases will be dealt with under a new sending procedure which is set out in clauses 195 to 199. Effectively, where it is a relevant offence, he must be sent to a Supreme Court for trial forthwith. A relevant offence, a financial crime, child witnesses and indictable only offences. This then ensures that the Supreme

Court, which is after all the appropriate Court, has control over the proceedings at the earliest possible opportunity. It is noteworthy that clause 201 allows for a person committed or sent to trial to the Supreme Court, to apply to the Supreme Court for the charge to be dismissed and the charged must be dismissed if the judge finds that the evidence against the defendant would not be sufficient for a jury to properly convict him. In other words, there is a possibility to apply to the judge in the Supreme Court in an application of, that there is effectively no case to answer against that defendant. Other cases that are to be tried in the Supreme Court will continue to be committed under clauses 184 to 194. These reflect the existing practice of committals, either with or without consideration of the evidence, with a number of modifications. The most important of these is that witnesses will no longer be called on committals as the evidence will consist only of statements and other documents. You will see that there is another amendment that I am moving to delete a particular clause that refers to the giving of evidence in relation to these committals. That has just slipped in. It was never the intention. The intention has always been that there are two separate sets of ways in which you send up to the Supreme Court. The sending procedure, which are those three types of offences that I have described, and the triable either way under this type of committal. The distinction, obviously, is the inability now to cross examine witnesses in the committal process. Mr Speaker, just in relation to that, I was not a criminal lawyer when I was practising, but I have been to committal proceedings and it just strikes me the futility of it because the witness is giving evidence, Mr Speaker, the witness is giving evidence and you have the Court Clerk who is taking verbatim dictation style in long hand every single word that is uttered by the witness. The statement is then read out to the witness. The witness then has to read it, has to sign it. Mr Speaker, it is a totally archaic way of dealing with this type of procedure, and, Mr Speaker, it was done away by the United Kingdom long ago and it is right and proper and it is about time that we do away with it here in Gibraltar as we are doing in this Bill.

Clause 184 ensures that committal proceedings are held in open Court unless there is express provisions elsewhere to the contrary or it appears to the magistrates that the ends of justice would not be served by sitting in open Court. The general rule is that evidence must be given in the presence of the defendant. Subsection (3) allows for evidence to be taken in the absence of the defendant in cases where he is disorderly or is absent on the grounds of ill health, is legally represented or he has consented.

Clause 186 sets out what evidence is admissible in these proceedings. They are written statements complying with section 187. Documents and exhibits referred to therein. Depositions complying with section 188 and documents and exhibits referred to therein. Statements complying with sections 189 and documents falling within section 190. For a written statement to be admissible, it must be signed, contain a declaration of truth and a copy of it must have been given to each and every defendant. In certain circumstances, there are further conditions regarding the age of the person making the statement having to be included, if under 18, and the procedure, if made by a person who cannot read it, with regards to documentary exhibits referred to therein. Subsection (4) deals with the procedure at Court once the statement is submitted with a requirement that it be read out aloud in most cases subject to section 193. Similar provision is also made for depositions.

Clause 192 requires the examining magistrates to decide either to commit the defendant for trial, or discharge a defendant, depending on whether, in their opinion, there is sufficient evidence to put the defendant on trial before a jury or not. The defendant may be committed in custody or subject to Part 7 on bail by taking a recognisance from him, with or without sureties.

Part 10 replaces section 63 of the Criminal Procedure Act dealing with committals for sentence. It is a small Part, Mr Speaker, and I refer hon Members to the Explanatory Memorandum.

Part 11 deals with the control of the prosecution process. It is derived from and replaces Part 5 of the Criminal Procedure Act 1961, but has additional material from the UK Prosecution Offences Act 1985, amongst others. The Part, for example, provides, and this is quite important, for the first time in our law, for references to the Court of Appeal by the prosecution for review of unduly lenient sentences by that Court. So now, the prosecution, Mr Speaker, will be able to effectively appeal an unduly lenient sentence. There is nothing useful that I can add, Mr Speaker, to the Explanatory Memorandum in relation to this Part.

Part 12 introduces new important procedures into the criminal law of Gibraltar. The aim of the provisions is to reduce the possibility of either side in the adversarial process springing surprises that might cause an application to be made for an adjournment or might have the appearance of unfairness. We also hope that they will lead to a more realistic view of the merits of the case on either side of the process, and I emphasise on either side of the process, at a far earlier juncture and, therefore, reduce last minute guilty pleas to a minimum which, of course, has an adverse effect on the administration of justice as a whole by creating a backlog in cases. Effectively, a prosecutor has an initial duty to disclose to the defendant any prosecution material which has not previously been disclosed and which might reasonably be considered capable of undermining the case for the prosecution against the defendant, or of assisting the case for the defendant, or give to the defendant a written notice that there is no such material. Disclosure must be made as soon as is reasonably practicable taking into account the nature and volume of the material and subject to the making of an application under clause 239(7) for refusal to disclose on public interest grounds. These provisions also introduce a duty on the defence, in certain circumstances, to provide a defence statement to the prosecution. It must contain the nature of the defence or defences to be relied upon. Matters of fact in dispute, matters of fact on which the defence intends to rely.



Points of law that may be raised and if it contains an indication of there being an alibi, details of the witnesses he will rely on. A Code of Practice regulating the interviewing of defence witnesses by police will also be published and is obviously relevant to this under Part 29.

Clauses 244 to 247 go further into disclosure by the defendant. In relation to the updating of a defence statement or making an indication that there is no change required to it, notification of defence witnesses to be called, disclosure of experts instructed by the defence. Clause 247 makes provision for deeming of defence statements to have been made with the authority of the defendant and the possibility of such a statement being put before a jury. In other words, you are not going to have a situation where the defendant says, "That is not my document". If the document is being produced by a lawyer instructed on behalf of the defendant, it is the defendant's document and there are provisions for that document to be disclosed to the jury.

Clause 248 sets out the prosecutions ongoing duty to disclose material after initial disclosure, either independently or in response to defence disclosure.

Clause 249 allows for the defendant to apply for further disclosure where he believes the prosecution has failed to comply with its duty to respond to the defence statement.

Clause 250 deals with the failure by the prosecutor to abide by time limits on disclosure. It is no per se grounds for a stay of proceedings but does constitute such grounds if the delay is such that the defendant is denied a fair trial.

Clause 251 sets out the effect of faults in disclosure by the defendant. In cases set out in detail in subsection (2), (3) and (4), the Court or the other party may make appropriate comments and the Court or the jury may draw appropriate inferences in deciding whether the defendant is guilty of the

offence concerned, although it may not be the only reason for the conviction.

Clauses 253 to 254 provide for review of decisions that material is not to be disclosed for reasons of public interest.

Part 13 replaces Part 14 of the Criminal Procedure Act which deals with appeals from the Magistrates' Court to the Supreme Court. It makes fresh provisions for such appeals, including appeals by way of case stated for the opinion of the Supreme Court. In doing so, it updates the language of the Criminal Procedure Act but also incorporates some new provisions from other jurisdictions.

Part 14 replaces Part VII of the Criminal Procedure Act on proceedings of the Supreme Court in its original jurisdiction. See also Part 28 for provisions about findings of fitness to be tried et cetera, and Part 7 for rules about granting of bail. Again, the Explanatory Memorandum deals with an analysis of the clauses in a satisfactory way.

Part 15 introduces a new procedure into Gibraltar's criminal law. It provides for retrial of certain serious offences where there has been an acquittal on indictment but the Court of Appeal considers that there is new and compelling evidence which, in the interests of justice, should be put before a jury. This is different from the power of the Supreme Court to order a retrial where an acquittal is suspected of being tainted, which is provided for in Part 14. The Government of Gibraltar, Mr Speaker, certainly believes that the power to order a retrial on new evidence in these types of cases is a justified departure from the principle that no one should be tried twice for the same offence. The offences that can be the subject of a retrial application are listed in Schedule 7 which can be amended by the Minister from time to time. The list of cases to which it applies includes the most serious offences against the person such as murder, manslaughter and kidnapping, and the most serious sexual offences such as rape, assault by penetration

and sexual assault of a child. Class A drugs offences, criminal damage, offences where there is an endangerment to life and crimes against humanity.

Mr Speaker, following the murder of Stephen Lawrence, the Macpherson Report in the United Kingdom suggested that double jeopardy rule should be abrogated where fresh and viable new evidence came to light and the Law Commission recommended in 2001 that it should be possible to subject an acquitted murder suspect to a second trial. The Parliament of the United Kingdom implemented these recommendations by passing the Criminal Justice Act which came into operation in April of 2005. It has been used very sparingly in the UK and just to give the House an example of the type of cases we are dealing with: On the 11<sup>th</sup> September 2006, William Dunlop became the first person to be convicted of murder after having been previously been acquitted. Twice he was tried for the murder of Julie Hogg, which is a very well known case in the UK, in Billingham in 1989, but two juries failed to reach a verdict and he was formally acquitted in 1991. Some years later, he confessed to the crime and was convicted of perjury. The case was then reinvestigated in early 2005, when the new laws came into effect, and his case was referred to the Court of Appeal in November 2005 for permission for a new trial, which was granted. Dunlop then pleaded guilty to murdering Julie Hogg and raping her dead body repeatedly and the sentence was life imprisonment, with a recommendation he serve no less than seventeen years. That is the type of case where the provisions are going to be applicable, Mr Speaker. Very, very serious cases indeed. The Court of Appeal must be satisfied that there is new and compelling evidence and that it would be in the interests of justice to make the order. Otherwise, it must dismiss the application.

Clause 315 defines new and compelling evidence. Evidence is new if it is not adduced at the original proceedings. Evidence is compelling if it reliable, substantial and, in the context of the

outstanding issues, it appears highly probative of the case against the acquitted person.

Clause 316 sets out the interests of justice test. The Court needs to consider whether a fair trial is likely, the length of time the offence was allegedly committed, whether the new evidence was available at the time of the original trial but for failure by the police or the prosecutor and whether, since then, the police and/or prosecutors have acted with due diligence.

Part 16 brings together a number of rules relating to the admission and reception of evidence in criminal proceedings. Some of them are derived from the Criminal Procedure Act modernised, some of them are new. For example, clauses 339 to 348 are provisions on competence and compellability of witnesses. The general rule is that all persons, regardless of age, are competent to give evidence at every stage of criminal proceedings. Persons who cannot understand questions put to them or give understandable answers to such questions, are not competent. As far as the determination of competence, it is for the party calling the witness to satisfy the Court that, on the balance of probabilities, the witness was competent. There are special rules in relation to the competence of spouses and their compellability to give evidence. In relation to competence, the general rule is that in relation to a person charged with an offence, the spouse of the person so charged is a competent witness for the defence at every stage of the proceedings. A spouse may not be called as a witness, except at the application of a person charged, unless specifically provided for in this Part and nothing in this Part can compel a spouse to disclose any communication made during the marriage by his or her spouse. In relation to compellability, a defendant's spouse is compellable to give evidence on behalf of the defendant, unless the spouse is also a co-defendant. The spouse is also compellable on behalf of the co-defendant or the prosecution if the evidence is with regard to specified offences. These are offences which are defined in clause 345 as offences which involve an assault on, or injury, or threat of injury to the spouse, or a person under the

age of sixteen, or it is a sexual offence committed against a person under the age of sixteen. So the exception, effectively, is sexual offence cases against children, or cases of violence against the spouse.

Clause 346 deals with ex-spouses who are, Mr Speaker, to be treated as if they had never been married to the defendant.

Clause 348 relates to the limitation of the rule against self incrimination. In civil proceedings for the recovery of property, they cannot refuse to answer questions simply because to answer questions may incriminate them in relation to future criminal proceedings, but any statement that is made during the course of the civil proceedings will not be admissible in evidence in proceedings for that offence.

Clauses 356 to 358 relate to confessions. The basic principle is that, in any proceedings, a confession made by a defendant may be given in evidence against him in so far as it is relevant to any matter in issue of the proceedings as long as it is not excluded by the Court under this section. The first exception is with regards to confessions which are obtained by oppression or in consequence of something said or done in circumstances which may render them unreliable. The exclusion of a confession does not render anything discovered as a result of it inadmissible and parts of it may still be used for particular purposes. For example, such as to prove that the defendant expressed himself in a particular way.

Clause 358 deals with particular problems surrounding confessions made by mentally handicapped people. Special care must be taken by the Court if it is the only evidence against the person. The clause requires a particular direction to be given to the jury if the confession was not made in the presence of an independent person. An independent person is somebody who is not a police officer or not connected to a police officer for those purposes. They might have been employed by the police for those purposes.

Turning to the right to silence, and I know my Hon Friend Mr Costa is very interested in this. Clauses 359 to 364 make new provisions regarding adverse influences that can be made from a person's silence.

Clause 359 states that in any proceedings against a person for an offence, if evidence is given that the person on being questioned failed to mention any fact relied on in the defence in those proceedings or, on being charged, failed to mention any such fact and the fact is one which, in the circumstances existing at the time, the defendant could reasonably have been expected to mention when so questioned, the Court including the jury may draw such inferences from the failure as appear proper.

Clause 360 then deals with the defendant's right to silence at trial. Again, should the defendant decide not to give evidence then proper inferences may be drawn.

Clauses 361 and 362 make specific provision for proper inferences to be drawn in cases where the defendant has failed or refused to account for objects, substances or marks on his person, in his possession or at any place at which he was arrested et cetera and for his failure or refusal to account for his presence at a particular place. As hon Members can see therefore, the Act attempts to salvage the primary right to silence by expressly preserving the accused right not to testify or answer questions. To that extent, therefore, the right to silence is untouched. The qualification is that its exercise may result in the drawing of an adverse inference. Now, Mr Speaker, the Government believes that where a person remains silent, for example, throughout the process and then springs an explanation at the very last moment which he could have provided earlier on when he was questioned by the police, it is right and proper for a tribunal to be able, if it believes appropriate, to draw appropriate inferences from that person's failure to answer questions at an earlier juncture and then provide the explanations that he did at a later juncture.

Complementing the above changes, a new caution will be introduced in the Codes which will state as follows: "You do not have to say anything but it may harm your defence if you do not mention, when questioned, something which you later rely on in Court. Anything you do say may be given in evidence." And that is the new caution.

Clauses 365 to 379 relate to evidence about bad character of a defendant or a witness. The old common law rules governing the admissibility of evidence of bad character are abolished. Bad character is defined in the statute as evidence of or of a disposition towards misconduct other than that in the alleged facts of the offence charged or in connection with the investigation or prosecution of that offence. In the case of persons other than the defendant, it will be admissible if it is important explanatory evidence, it has substantive probative value, or all the parties agree to it being admitted. That is in relation to a person other than the defendant. If it relates to the defendant, in order to be admissible, a number of disjunctive triggers must be satisfied. All the parties need to agree or the evidence must be adduced by the defendant himself or it must be important explanatory evidence or relevant to an important matter in issue, have substantive probative value in relation to a matter at issue between the defendant and co-defendant or be evidence to correct a false impression given by the defendant or be as a result of an attack made by the defendant on another person's character. Some of these are a codification of the common law rules in relation to bad character. The factors that are evaluated upon, in considering all these disjunctive triggers, are set out in clauses 370 to 374. This part also contains special provisions for the admitting of evidence of offences committed by a defendant as a child. The general rule is that if the conviction is in relation to an offence committed when the defendant was under fourteen and the defendant is over the age of twenty one, the evidence may only be admitted if both offences were indictable only and the Court is satisfied that it is in the interests of justice to require that the evidence be admitted.

Part 17 sets out the rules which allow evidence other than first hand oral evidence to be given in criminal proceedings. The two main categories are hearsay evidence and documentary evidence but within those categories there are various types of evidence including evidence given by sign language, video camera evidence and so on. Hearsay evidence is not, in general, admissible but it can be admitted if all the parties agree or if the Court is satisfied that it is in the interests of justice to admit the evidence. The test for the interests of justice is set out in clause 389(2).

Clause 391 deals with cases whereby hearsay evidence is called because witnesses are not available. The grounds are restricted to a witness being unavailable because he is dead or unfit to attend Court, being outside Gibraltar and it is not reasonably practical to secure his attendance, he cannot be found after taking reasonable steps to find him or he is kept from giving evidence, perhaps by criminal associates of the defendant. The Court must consider the interests of justice, having regard to the risk or to any risk that excluding the statement would result in unfairness to any party and having regard to the possibility of special measures being available to protect the witness. So, in relation ... yes, Mr Speaker, the special measures directions relates to ... for instance, whether any evidence can be given by a video camera or behind the screen, those types of measures. Hon Members will note that the rule about evidence of foreign police officers not giving evidence in the Courts of Gibraltar is in clause 391(6). This provides that the fact that a person has been ordered not to attend Court in Gibraltar, by authorities outside Gibraltar, is not itself a sufficient reason to justify his evidence being admitted under the hearsay rule.

Clause 393 preserves existing common law categories of admissible hearsay, for example, public information and records generally, statements made in the course of a common enterprise. Detailed provisions on these categories are set out in Part 16.

Part 18 makes provision for the use of television and other forms of live link in criminal proceedings. Most of them are special measures directions as I outlined a few moments ago. Other rules about the use of live links and to protect witnesses are in Part 19 on vulnerable witnesses. Rules about the use of video recordings as evidence are in Part 17 on documentary evidence. This has already been debated, Mr Speaker, in the House last year as has Part 19 on vulnerable witnesses and there is no intention on my part to deal with that any further.

Part 20 deals with the general principles of sentencing including deferment of sentences and powers of punishment generally. It has to be considered in conjunction with Part 21 which deals with custodial sentences and Part 22 which deals with non-custodial sentences, fines, community sentences et cetera. This Part codifies principles of sentencing that have long been adopted in our Courts.

Clause 479 states the purpose of sentencing to be punishment of the offender, reduction of crime, reform and rehabilitation of offenders and making of reparation by offenders. However, these principles do not necessarily apply to young offenders to sentences fixed by law, for example, life imprisonment or detention under the Mental Health Act.

Clause 480 provides that the seriousness of offence is to be determined having regard to the offenders culpability and any harm which the offence caused, or was intended to cause, or might foreseeably have caused. As is now the position, the Court is entitled to regard previous convictions, aggravating factors, including convictions outside Gibraltar. The fact that an offence was committed whilst on bail is also again an aggravating factor.

Clause 484 empowers the Chief Justice to publish sentencing guidelines. In the absence of guidelines published by the Chief Justice, the UK guidelines, as amended from time to time, will apply in Gibraltar. We would hope, Mr Speaker, that in time we

would have our own sentencing guidelines and I say that, Mr Speaker, because one of the topics that has, for instance, been of a particular ... has been topical recently in the press in the sentences being dished out for possession with intent to supply in relation to cocaine cases which are pretty severe sentences. Well, we are taking that position here in Gibraltar in relation to possession with intent to supply cocaine. In the United Kingdom and in Spain, for example, they are actually reducing sentences for possession with intent to supply cocaine. I was recently at a conference on money laundering and I was told by the judges there that they were reducing the sentences because their prisons were overflowing with prisoners and that, on those grounds, they decided to reduce. So, I would hope that, in the future, the Chief Justice, in consultation with other relevant stakeholders, will issue our own guidelines on sentencing practice here in Gibraltar.

Following on from Part 20, which makes provision about sentencing generally, Part 21 makes provision about imposing of custodial sentences, that is, sentences of imprisonment and of detention.

Clauses 497 and 498 provides for calculating the duration of a custodial sentence. Note that the commencement of a sentence is regulated by clause 486 in Part 20, that is, from the date it is imposed.

Under clause 497, time spent in custody or in a police station before conviction counts towards a sentence. Time in custody before a probation order or conditional discharge or suspended sentence which results in a custodial sentence does not count towards the sentence.

Under clause 498, time spent in custody, pending an appeal, counts towards a sentence unless the Courts otherwise directs.

Clauses 499 to 513 imposes restrictions on the imposition of custodial sentences in various circumstances.

Clause 499 imposes a general restriction on the imposition of a custodial sentence unless the offence is so serious that a fine or a community sentence or a combination of both, do not suffice. A failure to agree a community service order or a pre sentence drug testing order would suffice or justify to impose a custodial sentence.

Clause 501 says that in the absence of a period specified in relation to an offence, the power to impose a sentence of imprisonment is limited to a maximum of two years. We have undertaken the exercise throughout the Crimes Bill, but there may well be statutes out there that do not actually say what the maximum is, and in the absence of that maximum it is two years.

Under clause 502, there is a limit of twelve months on the powers of imprisonment of the Magistrates' Court but the Court can impose consecutive sentences, as to which see clause 506, and an additional sentence for non-payment of a fine.

Under clause 503, a child must not be imprisoned and a child is defined as anybody under the age of fourteen. A juvenile is anybody under the age of eighteen. A child under the age of fourteen and a young person is anybody fourteen up to eighteen. A child must not be imprisoned for any offence or to be committed to prison in default of payment of a fine, damages or cost. A young person must not be imprisoned for more than two years. There are separate provisions about detention of juveniles in Part 27 which I shall come to later.

Clauses 505 and 506 provide for consecutive sentences. Where a person is already imprisoned for an offence, a later sentence could be made to run consecutively. This is distinct from the principle that sentences of imprisonment imposed at the same time can be made to run concurrently or consecutively which is a common law rule, not a statutory one. The power of the Magistrates' Court is limited to impose consecutive sentences to a total of twelve months, unless two or more of the

sentences are in respect of indictable offences, in which case the total is twenty four months.

Clauses 507 to 509 empower the Court to continue the practice of imposing suspended sentences in appropriate cases. The existing system in sections 179 to 181 of the Criminal Procedure Act, which is far simpler than the UK Act, is continued except that clause 509 gives the power to activate a suspended sentence to any judge of the Supreme Court, not just the Chief Justice as is presently the position.

At the top end of the scale, clauses 513 to 515 regulate the imposition of a mandatory life sentence. Under clause 513, the Supreme Court may recommend a minimum term of imprisonment when imposing a mandatory life sentence by reference to a starting point. For a very serious offence, premeditated murder of two or more people involving abduction, murder of a juvenile involving abduction or sexual motivation, murder for political or religious reasons or murder by a convicted murderer, the starting point is life. Small consolation if any [*inaudible*] of murder, I have to say, but ... For a less serious but still serious offence, the starting point is thirty years. Examples are murder of a police or prison officer, murder with a firearm or explosive, murder done for gain and murder that would be the highest category, but is committed by a person under the age of twenty one. For other types of murder, the starting point is fifteen years, unless the offender was under the age of eighteen, in which case it is twelve years.

Under clause 514, the Court, having chosen a starting point, must then take into account aggravating or mitigating factors to fix a recommended minimum term the person must serve. Aggravating factors include the amount of planning, the vulnerability of victims, the abuse of position of trust, threats to the person or whether the victim was providing a public service. The Court is required to state its reasons for deciding on the order made. Hon Members will note that these clauses do not provide for early release, but life prisoners can apply to the

Parole Board for release on licence and any recommendation made by the Court under clause 513 would be one of the factors considered by the Board because issues of parole and release on licence are dealt with under the Prison Act, which we debated earlier on, I think it was this year.

Part 22 makes provision for two types of non-custodial sentence, other than a fine, that a Court can impose on a conviction for a criminal offence. They are a discharge and a community sentence. Both types of sentence still count as a conviction. Separate provision is made in the Bill in relation to mentally disordered offenders in Part 28. The provision about discharge are in clauses 517 to 520. The Criminal Procedure Act had provisions about discharge but the ones in this part are more modern provisions. A discharge may be absolute or may have conditions attached to it. If the conditions are breached, the offender can be dealt with for the original offence in any way in which the Court could have dealt with it on conviction. The provisions about community sentence are in clauses 525 to 537 and replace the provisions in the Criminal Procedure Act about probation and community service orders. A community sentence may be a community order or a youth rehabilitation order, depending on the age of the offender. The age threshold is eighteen.

Part 23 regulates the imposition of fines and sentences for criminal offences and the enforcement of the payment of fines and of recognizances taken for bail or binding over purposes. Fines and recognizances have a long history in the common law and are useful to for magistrates in particular. The Gibraltar regime differs in many respects from that in the UK and is contained in the Criminal Procedure Act in sections 188 to 202. Much of that material is restated in modern form in this Part because the UK procedures are far too complicated and cumbersome. They were not appropriate for Gibraltar. One of the new provisions, however, in this Part, is clause 568 which empowers a Court, before sentencing a convicted person, to make a financial circumstances order which requires the person

to give the Court a statement of his financial circumstances for that purpose.

Clause 570 prescribes the standard scale of fines for summary offences which is referred to frequently in the Crimes Bill. The scale is contained in Part A of Schedule 9 and ranges from £200 to £10,000. A reference in a law to a statutory maximum fine is therefore a reference to a fine up to £10,000. Under clause 587, the Minister can, by order, vary the rates in Schedule 9.

Clause 571 requires a Court to enquire into the personal circumstances before fining him. That then relates back to clause 568 in the making of the financial circumstances order. If the person does not cooperate in providing the information, then the Court can make any determination that it thinks fit.

Clause 575 to 578 are about fines on persons up to the age of eighteen. The maximum fine that can be imposed on a child ... In other words, somebody under the age of fourteen, is £500, as shown in Part B of Schedule 9. The maximum fine that can be imposed on a young person, fourteen to eighteen, is £2,000 as is shown in Part C of that Schedule. These figures, again, can be varied by the Minister, by order and that is, again, subject to this negative resolution procedure in Parliament. It is noteworthy that the Court can order a parent or guardian to provide a financial circumstances statement, which I described before, and that then triggers the provisions relating to clause 568. It is the parent who will provide the financial circumstances statement and, if he does not provide it, then the same consequences will then follow. The general rule is that the Court must order a parent or guardian to pay a fine, costs or compensation ordered against a juvenile, unless the parent or guardian cannot be found or such an order would be unreasonable. If the offender is sixteen, or over, the Court has the power, but not the duty, to impose the fine on the parent or guardian. If a juvenile is in the care of the authority, the authority has the same responsibility and the same obligations as the parent or guardian. That is in section 577.

Clauses 579 to 586 deal with the enforcement of fines and recognizances. They require the Court, when imposing these, to fix the period of imprisonment to be served if the person fails to pay the fine or recognizance. The maximum period that can be imposed is prescribed in Schedule 10 and ranges from seven days for a fine of up to £200 to ten years for a fine exceeding £1 million. The Magistrates' Court is also given the power if a fine is not paid, instead of committing the person to prison, to appoint someone to supervise the payment of the fine. This must be done in a case of a juvenile which is an all encompassing term to describe both the child and also a young person. The language of the clause leaves room for flexibility as to who is to be appointed to supervise. But, of course, in the majority of cases, no doubt it will be the Probation Officer, but it does not necessarily have to be the Probation Officer that supervises the payment of the fine.

Part 24 deals with a number of ancillary issues that arise at the end of a criminal case. They include the award of costs, compensation to victims of crime, restitution orders, return of property, forfeiture of property and rewards. Reparation is dealt with in Part 27 if the offence is by a juvenile. Reparation can also be an aspect of a community sentence under Part 22.

Clauses 595 to 599 empower a Court to order a convicted person to pay compensation for any personal injury, loss or damage resulting from the offence or any offence taken into consideration. A Court can also order the person to make payment for funeral expenses or bereavement in respect of death resulting from an offence. A Court is also empowered to order a person in possession or in control of stolen goods, to restore them to the person entitled to recover them. If the goods have been sold, the Court can order the value of the stolen goods to be paid out of the money of the person convicted taken out of his possession on his arrest.

Clauses 604 to 606 empower the Court to order the forfeiture of property taken from a convicted person or which is in his

possession or control if it has been used for the purpose of committing or facilitating the commission of any offence or was intended by him to be used for that purpose. For example, clause 605 enables the Court to order the proceeds of forfeited property to be paid to the victim of the offence instead of making a compensation order. Clause 606 requires the forfeited items to be sold or disposed of by the Court as the Court directs and the proceeds to be applied as if they were a fine or they could be applied to pay the victim of crime.

Part 25 introduces new provisions into the criminal justice system. They are intended to promote the rehabilitation of persons who have been convicted of crime. The Part provides that after a certain period and subject to certain conditions, a conviction should be regarded as spent for all purposes and the person should be treated as rehabilitated in the respect of the conviction.

Mr Speaker, when Mr Picardo, the Leader of the Opposition, gave his interview on GBC in May of this year, he was asked a question about this and his answer was that the Opposition, when elected into administration, would make it a priority to introduce provisions about rehabilitation of offenders. Now, I do not know whether Mr Picardo had actually read the Bill, because, of course, the Bill had already been published when he gave that commitment, on behalf of the Opposition, during his interview. Or perhaps, Mr Speaker, the Opposition intend to go further than the provisions that are included in this Part, I do not know. Certainly, no doubt, Mr Licudi, who has been left to lead the line on the Bill today, will explain the Opposition's position in relation to this. If not, Mr Speaker, possibly he had not read the Bill and the Opposition, no doubt, will support it wholeheartedly.

Clause 610 sets out the basic principle but attaches a number of conditions. They include the person not being sentenced to imprisonment for life or for more than thirteen months or to detention during Her Majesty's pleasure. That means that only



sentences of up to two and a half years can be treated as spent under this Part. That is exactly the position in the UK. That is why I am querying whether the Leader of the Opposition had in mind increasing this from two and a half, I do not know, to three and a half, four and a half or five years, and rehabilitating criminals in those circumstances. A subsequent conviction does not prevent the original conviction being the subject of rehabilitation. Nor does non-payment of a fine or failure to comply with the conditions of a sentence mean the person cannot become rehabilitated.

Clause 611 sets out the consequences of a conviction being spent. No evidence is admissible in Court to prove that the person has committed, or being charged with, or prosecuted for, or convicted of the offence, and the person must not be asked, and if asked, is not required to answer any question relating to his past which cannot be answered without acknowledging or referring to a spent conviction. The rule also applies to non-Court proceedings so that, for example, a prospective employer cannot ask about such convictions and a person questioned must not be prejudiced because of his failure to acknowledge or disclose a spent conviction. Mr Speaker, I get a lot of people that come in through my door in my office, virtually on a monthly basis, who are in desperate straits simply because they have obviously been imprisoned. They have served a criminal sentence and that then makes it almost impossible for them to actually find a job because their record taints their future prospects. Now, there may well be cases where, of course, it is appropriate that that continues to be the case but for sentences up to a period of two and a half years, the Government, and I hope that the Opposition support this, is of the view that people after a period of time should be able to wipe clean the slate and not have mistakes that they may have committed in the past, hanging over them permanently and affecting their ability to earn a living for themselves and also for their families.

Clause 613 prescribes the rehabilitation periods, that is, time from the conviction which must pass before the conviction can

be treated as spent. The periods are as set out in Schedule 11. For example, the rehabilitation period for a sentence of between six and thirty months is ten years for an adult and five years for a juvenile at the date of conviction. The Schedule includes probation orders imposed under the Criminal Procedure Act which will be repealed on enactment of this Bill. The Minister can amend Schedule 11 by substituting different periods, terms or ages for any of the periods, terms or ages mentioned in it. So, indeed, it may well be possible in the future for those periods to effectively be reduced and it would not require primary legislation. What it would require would be an amendment by order which would be subject to the negative resolution procedure before this House.

Clause 614 contains detailed provisions on the calculation of the rehabilitation period, including the effect of a further conviction during the period. Generally, the period in relation to the first conviction is extended to the end of the period in relation to the latter conviction. The clause also deals with the effect of a breach of a conditional discharge or probation order made under the Criminal Procedure Act.

Clause 619 makes it an offence for a person who, in the course of his official duties, has custody of, or access to, any official record or information about spent convictions and then discloses that information to another person. There are exceptions and those exceptions are set out in the Schedule. But the general rule is that there is an obligation on non-disclosure.

Clause 620 says that a Court and those who appear in them should not refer to a spent conviction if it can reasonably be avoided. That reference should not be made in open Court to a spent conviction without the authority of the presiding officer and that a person when passing sentence should not refer to spent convictions unless it is necessary to explain the sentence. No offence is obviously created by breach of clause 620, which would be breached by either the Court or somebody associated with the Court.

Schedule 12 contains more detailed exceptions to the right to rehabilitation. It lists accepted professions, offices, occupations, licences, questioners and, again, the Minister can amend Schedule 12 under clause 696.

Part 26 deals with anti-social behaviour orders. This is a short Part which empowers magistrates to impose a new type of order to control anti-social behaviour. It is not a sentence or a criminal sanction but a breach of it could result in a criminal conviction and a criminal sentence. It can be imposed on any person aged ten or over. Ten, as you will see with the Crimes Bill, will be the new age of criminal responsibility in Gibraltar. It is eight at present and we are raising it to ten. Mr Speaker, anti-social behaviour from vandalism and graffiti to harassment can have a huge impact on the quality of life of ordinary people. Everyone has a right to feel safe in their homes and in their neighbourhood. That is why reducing anti-social behaviour is a priority for the RGP and, indeed, is a priority for this Government. We have already seen the introduction of CCTV cameras in key areas and these provisions are an extension of our work in this area. A lot has been said, Mr Speaker, recently, about this aspect of the Bill. People have questioned the fact that we are introducing anti-social behaviour orders at a time when, they say, the United Kingdom is abolishing them. That we are slavishly following the UK legislation. That this is some kind of ideological trip on my part because I was a member of the Labour Party in the United Kingdom and that I admired Tony Blair. Well, it is in the newspaper that supports the hon Members opposite. Well, I am not sure whether they supported the Labour Party in the United Kingdom because, of course, they are divided. Part of the Opposition benches being Liberal and part of them supposedly being Socialists. But, Mr Speaker, it is all very amusing, but it is well off the mark. The reality, Mr Speaker, is that it has been a conscious decision on the part of the Government to introduce anti-social behaviour orders because we feel that they will work in the context of Gibraltar. In any event, we do not agree with the assessment that ASBOs are about to be replaced in the United Kingdom. I happen to

respectfully agree with the assessment, if not the underlying reasons for that assessment, of some human rights groups that the UK is merely repackaging ASBOs under a different name and that they are not doing away with them altogether. In any event, there are clearly many examples in the United Kingdom where these tools helped law enforcement officers to protect victims and communities. That does not mean, Mr Speaker, that we will not keep a close eye on developments abroad, as we always do. But at the moment our assessment is that anti-social behaviour orders have been a useful tool in tackling anti-social behaviour in the UK. They are a useful tool in Gibraltar and that the embryonic proposals postulated by the Government of the United Kingdom do not, with respect, fundamentally change the nature of ASBOs. There are two types of order created by this part, the ASBO which is imposed without a conviction and the CRASBO which is imposed as a consequence of a conviction. An ASBO, clause 621, can be applied for by the Attorney General on a complaint at any time whether the person is being before the Court for an offence or not. A CRASBO, in clause 622, can be imposed as an additional order on conviction of an offence. It can be imposed by the Court of its own motion or on the application of the Attorney General at trial. An ASBO made on complaint can be imposed for any period but not less than six months in the first instance. It can be varied or discharged on the application of a person on whom it is made, or of the Attorney General, but it cannot be discharged earlier than six months after it was made except by consent of both parties. The definition of anti-social behaviour is set out in clause 621(1)(a). That is to say, "acting in a manner that caused or is likely to cause harassment, alarm or distress to anyone or more persons not of the same household as himself". It includes a wide range of nuisances, disorders and crime that affect people's lives on a daily basis. Examples are vandalism, graffiti and other deliberate damage to property or vehicles. If the Magistrates' Court finds that the behaviour is anti-social, the Magistrates have the power to deal with the problem before them by giving them the ability to impose restrictions on the offending individuals future activities and movements to prevent

further anti-social behaviour in the future. These powers also give the police the means, for example, to address the cumulative impact of an individual's ongoing behaviour, whereas traditional criminal sanctions tended to focus on punishment for a specific offence. In cases of sustained harassment, where individual offences may appear relatively minor, but the behaviour has a huge impact on the victim's quality of life, this, in our view, gives front line police officers a useful new capability in dealing with anti-social behaviour.

Part 27 replaces Part XIII of the Criminal Procedure Act, which is special provisions relating to children and young persons. It also replaces sections of that Act relating to imprisonment of children, crimes committed by juveniles and the mode of charging offences and limitation of time in relation to children. The sentences available to a Court in respect of a juvenile are a fine, a youth rehabilitation order, an absolute or conditional discharge or imprisonment. This Part regulates imprisonment. Part 23, which we dealt with, deals with rehabilitation orders and Part 22 with discharges.

Clauses 625 to 628 provide for the constitution, procedure and jurisdiction of the juvenile Court which, of course, continues to be the Magistrates' Court.

Clauses 629 to 633 make provision about imprisonment of young offenders and remitting cases to the juvenile Court. Juveniles convicted of any offence which carries life imprisonment as a punishment must be detained at Her Majesty's pleasure. The place of detention pursuant to those clauses is the prison, unless the Minister by order directs that a person should be detained in some other place for purposes connected with those clauses. So, there is a possibility, God forbid that we have, for example, here in Gibraltar a Jamie Bulger situation and you have a sentence of life imprisonment imposed, effectively, on children. There is a possibility of, rather than have them in the prison, transfer them to somewhere else out of the jurisdiction. That is a possibility. At the moment ... I

am not suggesting that is the policy but it is a possibility with these provisions because the Minister has the power to order that they be detained elsewhere.

Clauses 634 to 639 empower the Court to make reparation orders on juveniles. These are not available where the Court proposes to pass a custodial sentence or a youth rehabilitation order. Before making a reparation order, the Court must explain the effect of the order and its consequences on the offender in plain language. A reparation order cannot be made without the consent of the person to whom reparation is made and any work imposed as part of the order cannot exceed twenty four hours in aggregate. Effectively, what this clause does is, just to give hon Members an example, if there is somebody who is convicted of criminal damage to private property because he has painted graffiti over private property. It allows the Court to order that that person make a reparation order which involves that person painting the facade of the wall, rather than, effectively, fine the person or dealing with them in a different way. It must also, however, not conflict with an offenders religious beliefs and any interference with the child's schooling.

Clauses 641 and 642 enable the Court to bind over the parents or guardians of the juvenile in the interests of preventing the commission of further offences by him. They include ordering a parent or guardian, where he consents, to enter into recognizance to take proper care and control of the offender or, if they are unreasonably refused, consent to pay a fine. If there has been a community sentence, then the Court can include in the recognizance a provision that the parent or guardian ensure that the offender complies with its terms. Again, that would apply to the agency.

Part 28 replaces Part XII of the Criminal Procedure Act on special provisions relating to persons suffering from mental disorder. The term "medical practitioner" is defined in clause 2 to mean a person registered under the Medical and Health Act. There is no requirement for one of the two medical practitioners

who signs a certificate for a hospital order to be employed at a public hospital, or to be approved for the purpose.

Clauses 658 to 663 deal with the issue of fitness to be tried, previously called, fitness to plead. They provide for a special finding on that issue to be made by the Magistrates' Court or by the Supreme Court without a jury at any stage of the proceedings. Importantly, it is the Court that initiates any medical examinations for these purposes. So it is not the GHA. It is not the prosecution. It is not the defence. It is actually the Court that initiates any medical examination for the purposes of finding whether somebody is effectively fit to be tried or not fit to be tried. By virtue of section 660, even where a finding of unfitness to be tried is made, the jury still has to decide whether on the evidence, the defendant did the act or made the omission charged against him. Alternatively, clause 661 provides that for a special verdict of acquittal on grounds of mental disorder which replaces the old verdict of not guilty by reason of insanity. So what we have is, not fit to be tried, or this special verdict of acquittal on grounds of mental disorder. If you have a situation where somebody is not fit to be tried, the jury will still deliver a verdict on whether that person did the act that led to the original charge, even if he is unfit to be tried. There are then later provisions that then provide that if the person is unfit to be tried at that stage, but then becomes fit to be tried at a later stage, he can then be brought back to Court and he can then stand trial. Clause 662 provides that if there are findings that a person is unfit to be tried and did the act or if a person is acquitted on the grounds of mental disorder, the Court must make a an interim hospital order, or a supervision order, or grant an absolute discharge unless the sentence is fixed by law.

Clauses 664 to 667 enable a Court to remand an accused person to hospital at any time to enable medical reports to be made of his mental condition.

Clauses 668 to 670 provide for the making of a hospital order or interim hospital order in certain circumstances. A hospital order

activates, indeed, any hospital order under this Part, activates Part III of the Mental Health Act and those are the Parts about a person detained in a hospital, as defined in the Act. The Act defines it as a criminal person of unsound mind. Now there is an amendment that I am going to be making in due course to insert a clause into this Part to allow the Minister ... Effectively, if on the advice of the superintendent, or the medical advice is, look we have somebody who we just simply cannot cope with in the system here in Gibraltar and he has to be sent elsewhere, then the Minister can effectively make that order. Now, at the moment, that power does exist but it is in the Mental Health Act and the power is vested in the Government. When we did all this, we decided that we were not going to be amending the Mental Health Act because there was a review that was being conducted by my Hon Friend the Minister for Health in relation to the Mental Health Act, and we did not want to just simply take out bits and leave bits in. So, effectively, the regime on persons of unsound mind, in terms of, for example, ultimate release of that person, or transfer that person out of the jurisdiction to the United Kingdom, for example, that is still in the Mental Health Act and the person who exercises that power is the Governor. Now, it is inconceivable that the Governor is going to be exercising that power, really, unless it is the Government that actually asks the Governor to do so. What I have done is I have inserted a similar power to the one the Governor has in relation to transfer out of the jurisdiction into this Bill by way of amendment.

Clauses 671 to 676 provide for the transfer to hospital of prisoners who are suffering from mental disorder. They are also able to be detained, again, under Part III of the Mental Health Act.

Clause 684 provides that if a defence on the charge of murder seeks to establish mental disorder or diminished responsibility owing to abnormality of the mind, the prosecution can adduce evidence to the contrary and it repeats section 89 of the Criminal

Procedure Act but using the term “mental disorder” instead of “insanity”.

Part 29 provides that the Minister may issue Codes of Practice to supplement the provisions in other parts of this Act. They are really relevant in relation to the PACE provisions of this Act. Mr Speaker, there are nine codes that have been drafted and will be issued under this Part, once the Bill is enacted, and they are all actually in relation to PACE. There are other codes of conduct that need to be drafted in relation to the Crimes Bill but that relate to interception of electronic communications.

Clause 690 requires a Code of Practice to be published in draft, revised if necessary, and submitted to Parliament. If Parliament does not pass the motion disapproving of the code within thirty days of commencement of the next sitting, after it has been submitted, it will be deemed to be approved and may be issued by the Minister. So, hon Members opposite will have the opportunity, once the codes are published, to actually publish a motion saying, well we do not agree with these codes for this, this and that reason and it can be debated then in Parliament. It is then published in the Gazette and comes into force on the day appointed by the Minister. There is no requirement for consultation with any particular person or body.

Clause 691 provides that a Code of Practice is admissible in evidence in all criminal proceedings and is to be taken into account in deciding any question. Failure to observe a Code of Practice by a police officer or any other person to whom it applies, does not invalidate the action taken, but a provision or failure may be taken into account in deciding any question. Failure by a police officer to observe a provision of a code can also amount to a disciplinary offence.

Clause 692 is a transitional provision which saves investigations conducted under common law rules.

Part 30 then contains miscellaneous provisions including repeal of the Criminal Procedure Act and transitional provisions and also consequential provisions. Mr Speaker, to conclude, and having been satisfied that everybody has served due penance and that we have explored the new meaning to the term purgatory, the Bill is a pioneering work, Mr Speaker, among Commonwealth jurisdictions and Overseas Territories. If enacted, it will provide Gibraltar with a coherent set of laws on criminal procedure and evidence that will last for many, many years to come. I know that legal practitioners and judges will welcome this Bill and I hope that hon Members opposite will do so as well. I commend the Bill to the House.

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

#### **HON G H LICUDI:**

Mr Speaker, we are grateful for the explanations that have been given by the hon Member opposite in relation to this Bill. I hate to be controversial from the outset, but contrary to the view that he expressed initially and now, this was not penance at all. This is legislation that required detailed and adequate explanations to be given and those explanations are ...

#### **HON D A FEETHAM:**

My speech is penance, Mr Speaker, my speech.

#### **HON G H LICUDI:**

Well, the speech necessarily entailed the explanations which were required for the purposes of this major piece of legislation. There is one aspect of the explanations on which we will say he

has fallen [*inaudible*] short and I will address that in a moment. But this is, we would agree, the introduction of a major piece of legislation in connection with the criminal justice system. It is a major overhaul of the system and in respect of many provisions included in this Bill, these have been a long time coming.

The hon Member and other Members will know some of the provisions that we are looking at in this Bill which relate to rights of suspects, detentions, time limits, et cetera. Those originate from the Police and Criminal Evidence Act, which goes back to 1984 and these are matters that perhaps ought to have been considered at an earlier stage, but, better late than never. There are also a number of new provisions included here which clearly we support and are most welcome, including the provisions on the possibility of a retrial in certain cases and in very serious cases, subject to a number of safeguards. We, of course, welcome the provisions on rehabilitation of offenders. The hon Member has noted that this was part of our policy.

As regards to the issue that the hon Member has raised, whether it goes far enough, we believe that the balance is just about right, but it is a matter that is going to be new to Gibraltar, which will have to be considered once it is implemented in practice and may have to be periodically reviewed as to its operation.

There are also new provisions, for example, in relation to ASBOs that the hon Member has commented on. The hon Member has also mentioned possible concerns, if not a complete change in policy in the UK, but certainly concerns about the workings, operations and effectiveness of these type of orders in Gibraltar. The hon Member has explained why he considers that these orders are appropriate in Gibraltar. We are grateful for that explanation and we agree. We agree, subject to the caveat, that once the legislation is in place and once we see how they actually operate in practice, we will see whether the sort of issues and difficulties that have arisen in the UK, actually operate in Gibraltar, and whether there will be a need for

tweaking, or for refinement, or for a change, or maybe an abandoning of the policy altogether and replacing with a new system. But certainly, we agree that anti-social behaviour needs to be stamped out and adequate facilities need to be available.

We also welcome the introduction of the proposed change to this Bill in relation to the bail which may be set by the police, and as the hon Member has indicated, this arises from a recent decision in the UK which has led to emergency legislation. Not sure that we quite agree with the interpretation of the decision that the hon Member gave in the Hookway case, where the hon Member said that police bail cannot be given for more than four days. As I understand the decision, police bail actually counts towards the period of detention and given that the maximum period of detention is four days, ninety six hours, bail plus the period of detention, which may have already happened, cannot exceed ninety six hours. So, if somebody has been detained for a day, he cannot then be released for more than three days on police bail, because that would count towards the period of detention, and that was something that needed to be clarified. It has been clarified in the emergency legislation in the UK and it is a necessary amendment to this. We actually go further than the hon Member in the secondary comment he made on this, in that it was a moot point whether there was a need to amend the current legislation as opposed to the Bill currently before the House. We take the view that this was absolutely necessary. That it is not a mooted point at all and the view we take is for this reason. Although the decision in Hookway talks about the ninety six hour period of detention, which is contained in PACE and which will be contained in this Act once it becomes law, we believe that the implications of that decision are certainly wider. What the Court was actually saying is that the period of police bail cannot exceed the maximum period that the police is empowered to detain a person for, and there is a proposed amendment to section 42 of the Criminal Procedure Act and in that section, there is a period of twenty four hours which is referred to, and we would have even more serious issue in Gibraltar given that the time limit is much more restricted than is

currently in the UK and is proposed in this Bill. So we believe that the amendment is necessary, not just from the point of view of a deeming provision in terms of past provisions of bail by the police to render them lawful but in respect of the current state of the law which raises the issue as to when this is going to be implemented because we certainly agree that there needs to be time for training the police, the professionals that are going to be involved, the Court system and we note that it is proposed to have a commencement in October. But in the meantime, there will be a continuation of the current system under section 42 of the Criminal Procedure Act with bail being given by the police on the occasional case and there is a need for certainty, and therefore, we would urge that that provision, that amendment to the Criminal Procedure Act, be put in place immediately, or as soon as practicable rather than having to wait until October because once you wait until October, certainly the deeming provision is effective in terms of past actions, but not in respect of actions between now and October. Well, they will be caught by the deeming provisions but rather than have the possibility of unlawful acts being committed now which are going to be rendered lawful in October, it is better that the acts are not unlawful at all.

Mr Speaker, having said all that, all those positive aspects of the Bill, there is one issue in particular, subject to certain other comments that my Learned and Hon Colleague Mr Costa will raise, on which we take serious, serious exception and that is the abolition of the right to silence and the privilege against self incrimination. And I say abolition, Mr Speaker, and I use the word advisably, and I note that the hon Member has said the right to silence is untouched. We fundamentally disagree. This amounts to the abolition of a right. A right which exists but where, if exercised, adverse consequences arise, is not a right at all, and this Bill brings about possible pain of punishment or adverse consequences if that right is exercised. So it is no good saying, you have the right, but if you exercise the right, you will be severely prejudiced, or inferences will be drawn, or you will be put in jail. That is the abolition of the right and by way of

analogy, Mr Speaker, if someone is told, well you have the right to stand in the lobby of Parliament, but if you do, the Clerk will come out and may call the police and have you arrested. Well, that means you do not have the right at all. Saying you have the right, subject to adverse consequences, is not having that right at all, and we believe that these particular provisions are a step too far in that regard and it does amount to the abolition of the right to silence, and for that reason, Mr Speaker, this is not a Bill that we are able to support or vote in favour, because there is this particular aspect, in particular sections 359 to 362 which we are very much opposed to.

It is worth noting the explanations and I have commended the hon Member for the explanations and the time he has taken to explain the Bill. What is noteworthy, Mr Speaker, is the lack of any explanation for the introduction of these provisions. This is what the hon Member had to say, with these provisions the right to silence is untouched. It is right and proper for a tribunal to draw inferences from silences, or words to that effect. That is his explanation. That is the Government's explanation for changing something that has existed in Gibraltar and it is a fundamental right which citizens have had for many, many years. It is right and proper. Well, why is it right and proper, Mr Speaker, is it right and proper because one day the hon Member got up and said, hang on a second, let us change what has been in Gibraltar for a hundred years, or two hundred years, or three hundred years. Is it right and proper because somebody came along and said, would it not be a good idea to do this? Is it right and proper because there has been a proper analysis of the effect of the right to silence in cases in Gibraltar? For example, Mr Speaker, has the Government considered, over a period of time, say, the last five years, all cases that have come to trial and have resulted either in a conviction or acquittal, and which of those cases has the Government considered, in all those cases, in which of those cases the right to silence has been enjoyed or has been applied by the defendant in question? Has the Government considered in those circumstances, where that has been applied by the defendant, either the right to

silence for questioning or the right not to give evidence at a trial? How has that had an impact on the trial process? Has it had a positive impact? Have we seen guilty people being acquitted? Have we seen innocent people being convicted? What sort of analysis and considerations have been made in respect of the situation in Gibraltar because it is no good to say, well this has been done in UK, therefore, it is right and proper that we should do it in Gibraltar? It requires proper analysis and consideration of the circumstances which apply in Gibraltar. Why is it that in Gibraltar there is a need to tell people, when arrested, that they have the right to remain silent, but if they do not mention a particular fact, that will harm what may harm their defence and an inference can be drawn from that? Why is it right and proper? Those explanations simply have not been forthcoming, and the explanations can only arise after a proper analysis and, possibly, independent review of the situation in Gibraltar as has happened and is, in fact, happening also, for example now in Scotland, where it is actively being considered. It has happened in the UK with the Royal Commission set up in the early 1990s under Viscount Runciman which reported to Parliament in 1993 that the right to silence should be preserved, and in 1994 the Major Government went and did exactly the opposite. Why? Because it was right and proper? Because it was politically expedient? Because there was a battle between the Conservatives and the Labour Party in England as to which one was tougher on crime, and despite the recommendation of a Royal Commission in England, the Major Government went against that recommendation and introduced this legislation in 1994. Why, it might have been right and proper for the Major Government to take that politically expedient decision at the time, in the UK, in the face of a contrary recommendation by a Royal Commission and I will come to what they actually said in a moment. But why is it right and proper in Gibraltar? What sort of enquiry has been done? What sort of review? Has there been an independent body that has looked at the relevant cases? Has there been advice given to the Government by anybody? We suspect not, otherwise we would have been given these explanations by the hon Member as part of his

presentation of the Bill. In looking at this issue, Mr Speaker, it is important to understand why we believe that this is a fundamental right which ought to be preserved and it might be relevant just to briefly delve into the history of the right of silence and how it originates. There were in England, in UK, serious concerns during the course of the 17<sup>th</sup> Century, Mr Speaker, about the workings and the abuse of the Star Chamber. In the case of interrogations of suspects, where suspects were obliged to answer, locked away if they refused to answer, contempt of Court if they did not get adequate explanations, and there was essentially parliamentary revolution against those abuses and that led, in due course, to a principle emerging which was pronounced by a US Jurist, John Henry Wigmore, in this way, that no man is bound to incriminate himself on any charge no matter how properly installed or in any Court not [*inaudible*] the ecclesiastical or Star Chamber tribunals. That was the response to the abuses that were taking place in those interrogations in England. Over the next two hundred years, there were developments which actually went the other way. Went completely the opposite way and by the 19<sup>th</sup> Century, in the UK, defendants were not allowed to give evidence in their favour. So what was set out as a privilege against self-incrimination and a possible right not to say things which might harm you, turned out not just as a right to silence, but an obligation to silence so the defendants were obliged to be silent even in their own trial and that clearly went a bit too far the other way. Eventually, we saw the emergence of the Judges Rules in 1912 which enshrined the right to silence.

It is regarded, Mr Speaker, generally, as one of the most important safeguards which protect citizens from arbitrary acts of the state. It is also recognised in international documents. The right to silence is recognised in, for example, the International Covenant on Civil and Political Rights. It has also been the subject of jurisprudence and comments on a number of occasions by the European Court of Human Rights. Although the jurisprudence has developed, going back to 1996, and although the right is not actually enshrined in the Convention



itself, the European Court in the case of Murray against the UK had this to say: "The right to remain silent under police questioning and the privilege against self-incrimination are generally recognised international standards which lie at the heart of the notion of a fair procedure under Article 6" and under Article 6, as you will know, Mr Speaker, is the right to a fair trial. So the European Court made a pronouncement which went as far as talking of generally recognised international standards which lie at the heart of fair procedure and that is why the right has been enshrined in Constitutions all over the world and recognised in many countries including Gibraltar. It has changed recently in England, but just as an example, Mr Speaker, as to how other countries view this right. In Australia, the right to silence is generally recognised under common law. In Canada, the right to silence is protected under the Canadian Charter of rights and freedoms. In France, the French Criminal Code makes it compulsory for an investigating judge to warn him that he has the right to remain silent. So it is not just common law countries, civil law countries, as well, have enshrined this principle. In Germany, the Criminal Procedure Code provides that a suspect has to be informed before any interrogation about their right to remain silent and it is not allowed to draw any inference from complete silence. In Hong Kong it is protected under common law. In India, the privilege against self-incrimination and right to silence is generally recognised by case law. In Holland ...

**HON CHIEF MINISTER:**

Mr Speaker, I hate to have to interrupt the hon Member on a Point of Order. Could he give me an indication of whether he has long to go or indeed whether he would welcome or not welcome an interruption to his address so that we can start planning the time of the luncheon adjournment. We are entirely happy to play it whichever way he prefers. Either stop or not, depending on where he is in his own contribution.

**HON G H LICUDI:**

Mr Speaker, I do have a while to go. When I say a while, probably may be twenty minutes, half an hour. It is in the hon Members hands. If he wants to adjourn now and we carry on, I am happy for that to happen.

**HON CHIEF MINISTER:**

I do not want to rush him or make him feel that he has to keep to that time limit. We are quite happy to continue until about half past one or even a few minutes later to give him the opportunity to finish without interruption.

**HON G H LICUDI:**

Obliged. Mr Speaker, as I said, there are countries all over the world, and I have mentioned Constitutions of some countries. I would also go as far as Pakistan, the Constitution recognises that. South Africa, the Constitution recognises that and it is well known that it is a corner stone of American jurisprudence where in the US the well recognised Fifth Amendment or as some people say, taking the Fifth, is exercising the right to silence and what is called the Miranda warnings, which have to be given, is essentially in terms that you have the right to remain silent but anything you say may be given in evidence. There is no warning that if you remain silent it may be held against you, so it is fundamentally enshrined in Constitutions all over the world. It has been changed in the UK for what we believe are politically expedient reasons and there is no reason to follow suit in the Gibraltar.

This is a right, Mr Speaker, that is very much linked to the defendant's right to be presumed innocent until proven guilty. Together with the privilege of self-incrimination, the right of not saying anything and placing the onus fairly and squarely on the

shoulders of the prosecution is a right that we have enjoyed for many years, and it is not a right that simply arises for the sake of it. It is simply there to protect the innocent. To protect the vulnerable. To protect those who might otherwise say things that they perhaps ought not to say under the pressure of police questioning or because of the situation. It is a right which has been recognised repeatedly and identified as crucial in many pronouncements including, Mr Speaker, the famous pronouncement by Lord Mustill in the case of Smith against the Serious Fraud Office, where he had these remarks to say on the right to silence, "the right to silence arouses strong but unfocussed feelings. In truth it does not denote any single right but, rather, refers to a desperate group of immunities which differ in nature, origin, incidence and importance and also by the extent in which they have been encroached upon by statute", and he identified six different meanings for the right to silence. (1) A general immunity possessed by all persons and bodies from being compelled on pain of punishment to answer questions posed by other bodies or persons. (2) A general immunity possessed by all persons and bodies from being compelled on pain of punishment to answer questions, the answers to which may incriminate them. (3) A specific immunity possessed by all persons under suspicion of criminal responsibility, whilst being interviewed by police officers or others in a similar position of authority, from being compelled on pain of punishment to answer questions of any kind. (4) A specific immunity possessed by accused persons undergoing trial from being compelled to give evidence and from being compelled to answer questions put to them in the dock. (5) A specific immunity possessed by persons who have been charged with a criminal offence from having questions material to the offence addressed to them by police officers or persons in similar position of authority. (6) A specific immunity, at least in some circumstances, possessed by accused persons undergoing trial from having adverse comment made on any failure, (a) to answer questions before the trial or (b) to give evidence at the trial. And that is precisely, that last specific

immunity, is what is being eroded, undermined, we say abolished in Gibraltar.

I mentioned earlier, Mr Speaker, that it is important to get to grips with the need to make this change in Gibraltar, whether there is that need at all. I mentioned the Royal Commission on Criminal Justice which was established in England in 1991 and reported to Parliament in July 1993. It is useful to recall, Mr Speaker, the arguments which were presented to the Commission and which the Commission considered both for and against retaining the right to silence. The Commission summarised the arguments for abolishing or amending the right to silence in this way. These are the arguments for. (1) In a significant number of cases, it is impossible for police to carry out an effective investigation without, at an early stage, asking a suspect to explain the conduct which brought them under suspicion. (2) The police regard it as important that in such cases, innocent people should provide explanations for the facts alleged against them as soon as practicable. (3) This is to enable suspects both to exonerate themselves and to direct attention towards the guilty. (4) Police are seriously impeded in their investigations where a significant number of suspects refuse to answer questions. (5) Criminals are, in view of the police, taking advantage of a feature of the criminal justice system left over from the past era when there were far fewer safeguards to protect the defendant than there are today. And they also summarise the arguments in favour of retaining the right to silence. (1) The circumstances of police interrogation are such that there can be no justification for requiring a suspect to answer questions when he or she may be unclear about both the nature of the offence which he or she is alleged to have committed and about the legal definitions of intent, dishonesty et cetera, upon which an indictment may turn. (2) Innocent suspects' reasons for remaining silent may include, for example, protection of family or friends, a sense of bewilderment, embarrassment or outrage or a reasoned decision to wait until the allegation against them has been set out in detail and they have the benefit of considered legal advice. (3) Members of

ethnic or other minority groups may have particular reasons of their own for fearing that any answers they give will be unfairly used against them. (4) There is a risk that if the police were allowed to warn suspects who decline to answer their questions that they face the prospect of adverse comment at trial, such a power would sometimes be abused. (5) It is now well established that certain people, including some who are not mentally ill or handicapped, will confess to offences they did not commit. (6) The threat of adverse comment at trial may increase the risk of confused or vulnerable suspects making false confessions.

In our view, Mr Speaker, the reasons set out to the Commission against any change to the right of silence are compelling. Contrast that with the reasons for amending or abolishing the right to silence and they simply boil down to one thing. The police would like to have these powers to make sure that people are more forthcoming at interview. Is that the position in Gibraltar? Is that the analysis that has been made in Gibraltar? When the Commission was told that police are seriously impeded in their investigations, where a significant number of suspects refuse to answer questions, is that the case in Gibraltar? In how many cases has this arisen? We believe that the Commission was right. They considered all relevant matters and they had this to say in conclusion, Mr Speaker, of the report. They said this, "In the light of all the evidence put before us, we have had to weigh against each other two conflicting considerations. One is the prospect, if adverse comment at trial were to be permissible, of an increase in the number of convictions of guilty defendants who have refused to answer police questions. The other is the risk of an increase in the number of innocent defendants who are convicted because they have made admissions prejudicial to themselves through the fear of adverse comment at trial or whose silence has been taken by the jury to add sufficient weight to the prosecution case to turn a not guilty verdict into one of guilty. The majority of us, however, believe that the possibility of an increase in the convictions of the guilty is outweighed by the risk that the extra

pressure on suspects to talk in the police station, and the adverse inferences invited if they do not, may result in more convictions of the innocent. We recommend retaining the present caution and trial direction un-amended." That was the recommendation of the Royal Commission which was set up in England, specifically, to address this particular issue.

They heard the evidence. They heard the arguments. They made a recommendation. The fact that the recommendation was not followed by the Government for whatever reason, does not undermine the force of the argument. In particular, issues of the reasons why people may speak when questioned, particularly, when they are told that adverse comment may be made against them if they stay silent. Issues of fear as we have heard. Issues of bewilderment. Issues of people being confused. People being anxious. People not having been in that situation before and finding it hard to deal with. There are many, many reasons and it is well established that people in certain situations make confessions against themselves which turn out to be false. We have seen that in a number of miscarriages of justice in England, and it is as a result of those miscarriages of justice that these enquiries and these Commissions were set out.

We have said that these are matters that need to be properly considered and analysed. I have given the example of a Royal Commission set up in England. The same was true in Western Australia where there was a Law Reform Commission of Western Australia that looked at the right to silence. Their first and main proposal was the maintenance of the existing prohibition on any adverse comment at trial upon an accused's exercise of the right to silence under police questioning. The UK and Australia are not the only countries that have carried out reviews in relation to rights of silence.

There is a review, as I mentioned earlier, currently ongoing in Scotland. It is headed by Lord Carloway. It is known as the Carloway Review. This was established in October last year

following a decision by the UK Supreme Court in the case of Cadder and the review issued a consultation document in April of this year. The consultation period has now finished and one of the terms of reference of that is to consider the criminal law of evidence in so far as there are implications arising from the detention and the questioning of suspects, in particular, the requirement for corroboration and the suspect's right to silence. So the right to silence is something which is at the heart of the Carloway Review which is currently ongoing in Scotland. It is worth noting that in Scotland the position is different to what it is in England. As the consultation document in the Carloway Review has indicated, no adverse inference can be drawn at trial from a suspect's silence when questioned or charged by the police. Inferences from silence during police interview are prohibited, especially, where a suspect has been cautioned. The terms of caution deprive a failure to respond of any evidential value. This Review has been set up as a result of a decision by the UK Supreme Court. The BBC has reported that decision, the Cadder case, in this particular way which is something that also has to be considered in terms of possible implications for Gibraltar. According to the BBC report, the UK Supreme Court has made a ruling that Scottish police, where the right to silence currently exists, can no longer question suspects without their lawyer. The decision was made after judges in London upheld an appeal by a teenager Peter Cadder, whose assault conviction was based on evidence gained before he spoke to his lawyer. His lawyers argued this was in breach of his human rights. In 2009, he was convicted in Glasgow of two assaults and the decision was overruled by the Supreme Court on a constitutional issue because of the need to consider human rights legislation which has been written into the Scotland Act. And the specific European jurisprudence that was considered by the Court there, was the decision by the European Court in Salduz against Turkey, I understand, where the Court said this, "The Court finds that in order for the right to a fair trial to remain sufficiently practical and effective, article 6(1) requires that, as a rule, access to a lawyer should be provided from the first interrogation of a suspect by the police,

unless it is demonstrated in the light of particular circumstances of each case that there are compelling reasons to restrict this right. Even where compelling reasons may justify denial of access to a lawyer without restriction, whatever its justification, that must not unduly prejudice the rights of the accused under article 6. The rights of the defence will, in principle, be irretrievably prejudiced when incriminating statements made during police interrogation without access to a lawyer are used for a conviction". The case specifically concerns statements made without having had prior access to a lawyer, but it is particularly relevant, and it is a reason as I understand it why the right to silence, in the context of that case, is also being considered by Lord Carloway. It is particularly relevant where someone is informed that he does not have to say anything, but it may harm his defence if he does not mention a material fact. He may consider that those are circumstances which require him to provide explanations and those explanations may be given without access to a lawyer and, when I say without access, I mean without actually having spoken to a lawyer because a person in those circumstances may consider, at that stage, he does not need a lawyer. He might make comments which he believes are innocent and innocuous and provide explanations, and those may be held against him. The European Court has said that that is not permissible. What is interesting is that in the present legislation, we do have provisions for access to a lawyer. In clause 85, as the hon Member has indicated, there is a provision for access to legal advice and we certainly welcome the fact that it is proposed to remove the qualifications which restricted that access under sub clauses 2 to 8. So we have the absolute right to consult a lawyer, and it is also interesting to note, and we do not lose the fact that the relevant clauses that we are looking at, sections 359 to 362, about inferences being drawn, inferences can only be drawn where there has been an opportunity given to someone to consult a lawyer. But that is precisely what happened in the Cadder case, Mr Speaker. In Cadder, as set out in the judgement of the UK Supreme Court, in fact, the opinion of Lord Hope, he said, "Cadder was asked whether he

wished a solicitor to be contacted and he replied that he did not. At no time while he was being questioned did he request access to a solicitor". So he was offered the opportunity of access to legal advice. He declined the opportunity and the UK Supreme Court, following a decision of the European Court, has held that any questions, any answers arising from that questioning could, in fact, severely prejudice the unfair trial.

Ultimately, Mr Speaker, we have serious, serious concerns about the operation of these particular provisions. It is certainly also welcome that there is going to be introduced a Duty Solicitor Scheme, and it is, in fact, an issue which called out for comment where someone has the right to access to a lawyer. He has to be given that opportunity. Inferences cannot be drawn. The way it operates in the UK is in conjunction with the Duty Solicitor Scheme. So it is certainly welcome that that is something that is going to be introduced and that is something that must go hand in hand, so as not to undermine the rights even more. But in our view, and in conclusion, Mr Speaker, this is something that needs to be properly reviewed. We have seen Independent Commissions, Royal Commissions, independent reviews set up in order to specifically advise the Government and to consider all the possible implications. That has not happened in Gibraltar. We have had, as the hon Member has said, consultation with the Bill being sent to a number of bodies, including the Bar Council. That is not the same as carrying out a review of something which is part of the corner stone of the criminal justice system in Gibraltar and a review needs to be carried out independently with advice and recommendations given to the Government. In the absence of that review, we say that these particular provisions should not be implemented. It is clearly a matter for the Government how they will proceed, but we would urge the Government to rethink and reconsider, having regard to the issues which I have raised. Having regard to the fact that we see the right to silence being upheld and recommendations made for its continuation in a number of countries where reviews have been carried out. It is constitutionally protected in many Commonwealth countries and

other countries around the world. Just because the UK decided to go down a particular route in 1994, against the recommendation of a Royal Commission, is not a good reason why we should now implement this change in Gibraltar. It does amount, we say, to the abolition of a fundamental right. We are fundamentally opposed to that, and therefore, we cannot support this Bill.

**MR SPEAKER:**

Was there not mention of a recess, or are we going to carry on?

**HON D A FEETHAM:**

Mr Speaker, if the Hon Mr Costa has a contribution that will take ten minutes, then we could adjourn at half past two.

**HON N F COSTA:**

Yes, Mr Speaker, in the first place I would like to echo the sentiments that my Learned and Hon Friend has expressed in commending parts of the Bill which are, in fact, a welcome reform of our criminal justice system. In order not to repeat myself in the ten minutes that I have, I simply associate myself with my Learned and Hon Friend's comments.

But against those welcome reforms which were due, it struck us as being, perhaps, the single most, retrograde step in respect of the corner stone of a criminal justice system which is, as my Learned and Hon Friend has said, in effect, the abolition of the right to silence for all of the reasons that he has said, and for that reason alone, Mr Speaker, we cannot support this Bill. In addition to all of the reasons that my Learned and Hon Friend has made, as to the abolition of the right to silence, and the reasons why we should not be abolishing it, and the reasons

why the Hon the Minister for Justice and indeed the Government should actually consider investigating this independently, with proper recommendations being made to the Government ... It is also interesting that the Hon Minister for Justice should be doing this at a time when there is a general election looming because as my Learned and Hon Friend alluded to, basically, the change made by the Criminal Justice and Public Order Act, by the John Major Government in 1994, was, when one looks at history and debate in Parliament objectively, nothing more than a naked, political move in order to appear at the time tougher than labour on crime, which was in the ascendancy. It may be indeed prophetic and interesting from the Hon the Minister of Justice to note that, notwithstanding the Conservatives absolute rush and need to try to appear tougher than labour, Labour won the election in any event. So political expediency, Mr Speaker, should not be the reason why we should be abolishing what has been a fundamental right and a fundamental, now human right, of persons accused with crimes, because as the Hon Mr Licudi did say, people may not say things at the time of interrogation for many, many reasons and he cited those reasons, and for those reasons alone it would be, as I said before, the single most retrograde step to abolish effectively that right.

Mr Speaker, the Hon the Minister for Justice did also specifically mention me by saying that committal proceedings, long committal proceedings, which is when the defence lawyer has the opportunity to test the evidence of the prosecution in Court, should be abolished and part of the reason that he gave was because it would ... there is a delay in hearing proceedings, there is a backlog and there is a blocking of the system. But in our view, Mr Speaker, the reason why we would, in fact, put a case for long committal is precisely because the defence lawyer takes the view that even on the face of the papers, even taking the evidence or the prosecution at its highest, there is no case to answer. As the Hon the Minister for Justice knows, the test at long committal is whether there is a case on the face of it. In other words, a lawyer professionally trained will know that, if there is evidence on the papers itself, he would not choose long

committal. So, therefore, it would go directly committed to the Supreme Court. But the whole purpose of the long committal, Mr Speaker, as practising lawyers in this House will know, is precisely because of the opinion of the defence lawyer, there is not even a case in the papers, the Magistrate at that point can deal with the matter by dismissing the charges, thereby, de-clogging the system of cases where there is no evidence to be able to successfully prosecute the defendant after a jury trial. So the reason that the hon Member gives, unfortunately for him, is not at all convincing. He further tries to buttress that, in my view, non-premise, non-starter, by saying that it would be, in his view, unfair to submit witnesses or child witnesses, who have been abused from having to give testimony twice, and absolutely, it may be unfair, but that is the point of the other part of his Bill which relates to the vulnerable witnesses. In that part, in section 433, there are directions precisely to deal with child witnesses and section 433 deals precisely with the concern that the Hon Minister has about child witnesses, and there are, within those provisions, ample and, we say, sufficient sections, to be able to deal with that concern which he addresses. So that there is no need to abolish a mechanism by which the system may be de-clogged for that reason alone because, in fact, there are mechanisms to protect and safeguard the right of young, vulnerable people who may have to give evidence twice. So it is not as the hon Member said that this is a defence lawyer's paradise or that there is futility in this system. If there is futility in the system and this was the third reason that the hon Member gave, which, in fact, I agree with. The procedure is cumbersome and the procedure does take a long time because there has to be a verbatim note by the learned Clerk which is then read back. That is indeed ... that should be part of the nineteen hundreds. But, surely Mr Speaker, there is no need to abolish what is an essential part of the criminal justice system. An important safeguard of the criminal defendant and, in fact, a way of de-clogging the system by nipping them in the bud before they are committed to the Supreme Court, by simply revamping and updating the technology available at the Magistrates' Court to be able to make a record. Instead of making a verbatim

record, let us have a tape and then the tape will record word by word what is being said. So with all due respect to my Learned and Hon Friend the Minister for Justice, he has not made at all, neither a convincing nor a compelling argument to remove the long committal stage and proceedings from the criminal justice, from this procedure. Yes. Yes, and this is part of the argument that, if he wants to be able to de-clog this system, the only way to do this now, is whilst the case is being committed to the Supreme Court, but for the reasons that I gave before, on the evidence of certain cases, those may be removed from this system at the committal stage.

My one last comment, but this is more by way of clarification. We understand, given the comments that the Hon the Minister for Justice made recently in the press about the scourge and concern of drugs, and he does talk about section 91 ... there is talk about testing for drugs, for Class A drugs and Class B drugs and I understood him to say that the reason for that testing was because those were in relation to crimes which would be associated with a consumption of a Class A or a Class B drug. Say, theft, or burglary, or going equipped for burglary and, indeed, those at Schedule 5, it says, that any offence which may give rise to testing for drugs would be theft, robbery, burglary, aggravated burglary and, indeed, there is logic and sense in testing a suspect for those drugs in some of those trigger offences. But, perhaps, the hon Member can give an explanation why he thinks that cases of fraud ... Fraud by abuse of position, false accounting would be associated or in any way linked with the consumption of Class A drugs because certainly, in my experience, those trigger offences tend to be committed or alleged against company directors and other people who, I would dare say, are not ordinarily, in the normal course of things, under suspicion of being connected with either Class A, Class B, Class C or any drug at all. So, perhaps, the hon Member can give an explanation why these particular offences appear in that Schedule.

**HON D A FEETHAM:**

Mr Speaker, if we can adjourn now to half past two and I will reply at half past two.

The House recessed at 1.25 pm.

The House resumed at 2.30 p.m.

**HON D A FEETHAM:**

Mr Speaker, we are just debating here. Of course, there are five on this side and there are five on that side of the House. I thought that I had heard the hon Members say that they were going to vote against the Bill. So, if they vote against the Bill, rather than abstain, then we have got to wait for others to arrive. Otherwise, we can continue.

**MR SPEAKER:**

You could speak for a long time in reply, filibuster.

**HON G H LICUDI:**

Mr Speaker, just to clarify, I said we would not be supporting the Bill. For the large part of the Bill we are actually very supportive, except for the issues that we have raised. So we will be abstaining on this Bill as long as it is recorded that we are opposed to the provisions that we have spoken on, but we support the other provisions, but, for those reasons we will be abstaining.

**MR SPEAKER:**

Well, at the Second Reading we would just take the whole Bill as read a second time or not read a second time. The individual details will be considered at Committee Stage, which is a different matter.

**HON G H LICUDI:**

*[Inaudible]*.

**HON D A FEETHAM:**

*[Inaudible]*.

**MR SPEAKER:**

Well, exactly. I think the hon ...

**HON D A FEETHAM:**

I am very grateful for my Learned Friend's indication that they are going to be abstaining. Then the problem does not arise and we can just continue.

Mr Speaker, dealing with the non-controversial points first. My hon Friend made a remark about the PACE provisions having been introduced in 1984, and I think that he said, well ..., it was not a full blown criticism, but I think that the point that he made was, well, actually it is 1984, it is long due and it could have been done by this Government earlier. I remind the hon Member that, of course, in 1994, it was ten years after the PACE provisions. Nothing was done in 1994. In 1996 it was twelve years and nothing was done in 1996 and no indication was

made that, certainly, the party opposite had any intention of introducing any PACE provisions.

The reality of the situation is that a lot of the legal reforms that are being introduced, certainly by my Ministry, actually stem from the fact that we have had, for the very first time, a Ministry of Justice that can take a global view of all these issues and that, of course, stems from the new Constitution. The new Constitution that was, obviously, supported by this side of the House and was supported, initially, by that side of the House, until, of course, they changed their view at the last moment on the referendum, but anyway, it stems from the new Constitution.

In terms of rehabilitation, the hon Member was ...

**HON G H LICUDI:**

Mr Speaker, just on that point, if the hon Member will give way. My comments were not intended to be a criticism of the Government. It was simply a statement of fact that these provisions, perhaps, certainly in the view of the profession, ought to have been introduced a long time ago. It is not a question of attributing blame, whether it is our fault or their fault, but these provisions have been a long time coming and we welcome the fact that they have been introduced now.

**HON D A FEETHAM:**

Well, Mr Speaker, I am grateful. I cannot usefully add to what I have said. In terms of rehabilitation of offenders, the hon Member was kind enough to say that the provisions strike the right balance. Actually, when I mentioned that I had heard the Leader of the Opposition talk in an interview and answer a question about this, partly I was in jest, but partly there was a serious point to it. That perhaps, I thought that hon Members opposite might suggest an extension of the actual time periods



in terms of, that is not the case, because the hon Member said it strikes the right balance. I happen to believe, actually, that this is one of the areas that we need to be keeping under review and it may well be that during the next few years, taking into account feedback that we received from the Probation Service, also from the Parole Board and the Prison Board and all those associated with the rehabilitation of prisoners, increasing the periods from two and a half years, perhaps, to three years or three and a half years, may not actually be unreasonable. This is one of the areas, certainly, that I would have expected the Government and anybody in my position to keep an eye out on.

In relation to ASBOs, the hon Gentleman said that they may need tweaking. Yes, I agree. As I have said during the course of my speech, it is something that, of course, the Government is going to keep under review, particularly in the light of developments in the United Kingdom. I am not even sure, Mr Speaker, that the proposals in the United Kingdom are actually going to see the light of day, but anyway, the jury is out in relation to that one.

In relation to the Hookway case, I agree with the hon Gentleman's analysis of the case. When I outlined the issue in my speech on the introduction of the Bill, I purposely truncated the analysis, but the analysis of the hon Member is absolutely right.

In relation to the deeming provision, however, the Attorney General takes the view that the deeming provisions are not strictly necessary because our legislation in Gibraltar is different from the legislation in the United Kingdom. It is the view of the Government, and the Attorney General concurs, that, out of an abundance of caution, we ought to introduce the deeming provision in order to obviate any potential problems in the future, but I express no view, and certainly, for the avoidance of any doubt, I have not agreed with the analysis of the hon Gentleman in terms of our legislation on the deeming provision, because I think he goes further than me. He said, no, no, I think that we

specifically need the deeming provision which, obviously, has consequences for any application that may be made in the Courts in relation to this. It is certainly a point that I am going to be considering as to whether we ought to introduce the deeming provisions and I will do that next week with the drafters, as to whether the deeming provisions can be accelerated and that we can make those effective, certainly immediately, to obviate any potential applications that may be made in the future.

Mr Speaker, in relation to the right to silence, the hon Gentleman makes some very reasonable points, but with respect, as usual, he also over extends and over reaches his arguments, and that, in my respectful view, actually spoils the contribution that the hon Gentleman has actually made. There are five points that he, if I may summarise them, that he makes. He says, well look this does not amount to a curtailment. This is an abolition of the right to silence. In fact, it is not even a preservation of the right to silence, as I expressed it, the principle of the right to silence. He says it is an abolition. Secondly, he says, it affects a person's right to a fair trial. Thirdly, he says, there is a propensity for injustice, particularly, in relation to mentally ill people. Fourthly, he says, well there has been no review in any event. Fifthly, I think he mentioned it, but really the *coup de grace* in relation to this particular point is by my Hon and Learned Friend, Mr Costa. He says, actually this is some form of election gimmick showing, as the Conservatives did in 1994, the Government being tough with crime. I think it was the way that Mr Costa describes it. Dealing with all those points in turn. Mr Speaker, patently, the primary right to silence is still there. An accused does not have to say anything, at any stage in the proceedings. From the moment that he is questioned by police officers to the moment that he has to give evidence in Court, he does not have to say anything. The provision and the scheme of the Act is that the Act leaves it to the Courts to decide when it is proper to draw an adverse inference in any of the circumstances set out in the provisions. Now, Mr Speaker, personally, I have absolute confidence in the judiciary here in Gibraltar that they will not seek to direct the jury

or seek to draw adverse inferences in circumstances where it is patently inappropriate for the Court to draw adverse inferences. It does not follow the point I make. It does not follow that simply because it allows the tribunal to draw adverse inferences, that adverse inferences have to be drawn in every single case. It does not follow at all, Mr Speaker, and therefore, on a proper analysis of both the retention of the primary right to silence but also the fact that the Court has a discretion of whether to draw an adverse inference or not, this is patently not an abolition of the right to silence, Mr Speaker, and the hon Gentleman is wrong when he says that it is.

Mr Speaker, a key issue, therefore, is how the Courts will exercise their discretion in this regard. My Learned Friend referred to a number of cases and I would like to refer to Murray against the United Kingdom, which is a case of the European Court of Human Rights, which actually shows how the Courts approach the particular problem of the inter play between the preservation of a right to silence and also the adverse inference. The case involved the exercise by the trial judge of his discretion to draw adverse inference, it is his discretion, it does not follow, from the exercise of the right to silence under the Criminal Evidence Northern Ireland Order 1988. Now, in Northern Ireland because of terrorism, these provisions that were introduced in 1994 were introduced earlier. So it is an earlier ... In 1988. Now, Murray was arrested on the 7<sup>th</sup> January 1990 in a house in which a provisional IRA informer had been held captive. The trial judge do an adverse inference from the fact that Murray had failed to offer an explanation for his presence at the House and had remained silent during the trial. Thus the right to silence pre trial and trial where at issue. Because there are various ways in which this particular point can be an issue at the trial. The European Court of Human Rights had decided, in Funke against France, that the general fair trial guarantee in Article 6(1) of the European Convention on Human Rights, implicitly protected the right to silence and the privilege against self-incrimination. That was in Funke. That interpretation was confirmed in Saunders against the United Kingdom. A case

concerning the powers of the Department of Trade and Industry investigators under the UK Company's Act 1985, and the Court is reported to have stressed, and I quote, "the right not to incriminate oneself, like the right to silence, was a generally recognised international standard which lay at the heart of the notion of the fair procedure under Article 6 of the Convention. Those were the two previous cases in this area.

However, the Court, in Murray, also accepted that in Funke, the Court in Funke had said the right may not be unqualified and this was the key issue in Murray. In Murray the Court found that the right to silence was not absolute in nature. It accepted at one extreme that a conviction could not be based solely or mainly on the accused right to silence. That is particularly important in relation to these provisions. If that is the main strand of the case against the defendant, that case is going to fail, but said, that at the other end of the spectrum, the right should not prevent the accused silence in situations, and this is really what these changes are dealing with and getting at, which clearly called for an explanation from him be taken into account, in assessing the persuasiveness of the evidence adduced by the prosecution. In appropriate circumstances, therefore, silence could be taken into account in assessing the weight of other evidence. Murray was a case in point. Here the Court noted that drawing of an adverse inference from silence, could involve indirect pressure to give evidence, but added, that on the other side, the scheme under the 1988 Order was subject to an important series of safeguards, and then it went through the safeguards. The sting in Murray, which we are not going to have in our regime here, is that under the Northern Ireland regime, under the 1988 Order, there was not a Duty Solicitor Scheme. So, of course, if you have a situation where you say to somebody, you have the right to remain silent, that an adverse inference can be drawn from the fact that you remain silent and do not provide an explanation when you provide it down the road, but you do not provide that person with access to legal advice, that then impacts on that person's right to a fair trial, but, in the scheme of the entire Act, has to be taken into account and

here in Gibraltar, what we are actually doing is, not only introducing these provisions, but also introducing a Duty Solicitor Scheme.

So, Mr Speaker, patently, not only do we have a situation where the right to silence is not abolished, because it is not abolished, but, Mr Speaker, the hon Gentleman is also wrong in the second point that he makes that this somehow affects a person's right to a fair trial. He comes perilously close, Mr Speaker, in our viewing, that these provisions are unconstitutional. They cannot be so, because of course, not only are they being introduced in the UK, they have been considered by the European Court of Human Rights and, Mr Speaker, I should also emphasise that the Bill was sent to the Bar Council. In fact, early versions of the Bill were sent to the Bar Council over two years ago and they were sent to the judiciary over two years ago and nobody has actually come back to me and said, hang on a minute, because these provisions of the right to silence are unconstitutional. They are not unconstitutional, and, Mr Speaker, to the extent ... No, no, but to the extent ... I said he comes perilously close...

**HON G H LICUDI:**

Will the hon Member accept that we have not said that these provisions are unconstitutional. We have made primarily points of principle rather than ... Although we have referred to some decisions which talk about the right to a fair hearing, at no stage do we say that it is unlawful, in any way, shape or form, to introduce these provisions, but we think that they are fundamentally wrong in principle.

**HON D A FEETHAM:**

Yes, Mr Speaker, of course, he cannot say they are unconstitutional. To say that they are unconstitutional would be a ridiculous statement to make, but actually what I have said ...

What I am saying is that he comes perilously close to arguing that they are unconstitutional because his own premise ... The premise of his argument is that it affects a person's right to a fair trial, Mr Speaker. That cannot be right for this reason, because if in any individual case, and bearing in mind that judges are given a discretion as to whether to draw an adverse inference or not ... If any particular case, taking the circumstances of that case into account globally, a person's right to a fair trial is being affected by the drawing of adverse inference, clearly the Court cannot and should not draw that adverse inference from the failure to answer questions. So, really, it is a circular argument by the Hon and Learned Friend, and it does not stand up to closer scrutiny.

Mr Speaker, the third point that he made ...

**HON N F COSTA:**

It is not a question of ... [*inaudible*].

**HON G H LICUDI:**

The rest of the world [*inaudible*].

**MR SPEAKER:**

Order. Order.

**HON D A FEETHAM:**

Mr Speaker, when the hon Gentleman talks about the rest of the world, what does he mean? Because, of course, in the United Kingdom these provisions have been introduced in the United

Kingdom since 1994, Mr Speaker. So he cannot talk about the rest of the world.

**HON G H LICUDI:**

Against the recommendation of the Commission.

**MR SPEAKER:**

Order. Order.

**HON F COSTA:**

Talk about the [*inaudible*].

**HON MR SPEAKER:**

Order. Order. The Hon Minister is responding to the debate.

**HON D A FEETHAM:**

Mr Speaker, my Learned Friend then went on to make a third point, the propensity for injustice, particularly in relation to mentally ill defendants. But has the hon Member not read the provisions carefully, and has he, in particular, not read section 360(1)(b). May I take him to it? Section 360(1)(b). "At the trial of any person for an offence, subsections (3) and (4) apply, unless (b) it appears to the Court that the physical or mental condition of the defendant makes it undesirable for him to give evidence." Mr Speaker, if you are dealing with somebody who has a mental condition, the Court is not going to, under its discretion, anyway make any comments about adverse inferences to be drawn because obviously it would patently be

wrong for the Court to do so, but there are specific guarantees well within the statute itself in relation to that aspect and that particular point ...

**HON G H LICUDI:**

Evidence in a trial.

**HON D A FEETHAM:**

Evidence in a trial because the right ...

**HON G H LICUDI:**

[*Inaudible*].

**HON D A FEETHAM:**

Mr Speaker, because the right to silence is exercisable at different stages. This is at trial. I accept that. But the point I also make, in addition to that point, is the fact that because the drawing of adverse inferences is discretionary on the judge, no judge worth his salt is ever going to ask the jury to draw an adverse inference or if the Magistrate is going to draw an adverse inference, if a chap is mentally ill, Mr Speaker. It is just patently and utterly inappropriate in the circumstances.

**HON G H LICUDI:**

If the hon Member will give way. I have not said that the concern that we have is particularly in relation to mentally ill people. The list that I read, Mr Speaker, was about situations where, for example, someone remains silent for the protection of

family or friends, a sense of bewilderment, embarrassment or outrage, a reasoned decision to await until an allegation has been made later and with the benefit of considered legal advice, and then, I said about the threat of adverse comment at trial may increase the risk of confused or vulnerable suspects making confessions. Those were my words. Not mentally ill people. Confused or vulnerable suspects and there is that risk as has been recognised in a number of investigations which have been carried out before.

**HON D A FEETHAM:**

Mr Speaker, he did mention specifically mentally ill ... In any event, Mr Speaker, the answer to that point is very simple and it is the point that the hon Gentleman unfortunately is not understanding about the scheme of the Act. It is not an abolition of the right to silence. The right to silence is preserved and the judge has the discretion as to whether to direct a jury that it is proper, in the circumstances, to draw an adverse inference or whether if he is the tribunal of both law and fact, whether he draws an adverse inference in the circumstances. And in those circumstances, if there is some reasonable explanation for somebody not answering a particular line of questioning or he remains silent at the point at which the police were interviewing him, but comes up with an explanation later on and that person is a vulnerable person, as the hon Gentleman describes him, then, of course, it is patently and utterly wrong for a judge to draw any adverse inference in those circumstances. As I say, Mr Speaker, I certainly have faith in our judges that they will apply the law as fairly as possible in all the circumstances of the case.

Mr Speaker, the fourth point was that there had been no review. Mr Speaker, this is a project that has actually been ongoing since 2007 when I took up office in October of 2007. Mr Speaker, I specifically formed a committee composed of barristers, of judges, of police officers, of prison officers in order

to specifically consider all aspects of our criminal evidence and criminal procedure. One of the points, in fact, that was, of course, debated and debated in detail was this particular point. So, Mr Speaker, it is wrong for the hon Gentleman to say there has been no review. In fact, there has been an extensive review. If the hon Gentleman says, has there been an analysis of cases in which people have exercised the right to silence, that information is, unfortunately, not available in any meaningful form here in Gibraltar. It is not. But to say that we have not undertaken a review is wrong. There has been a review. There has been extensive consultation of every important stake holder in the justice system and this is the result, Mr Speaker. As I say, the hon Gentlemen have taken a strong position of principle on this particular point but, of course, this Bill and versions of it were sent to the Bar Council. This Bill was sent to the Bar Council over a year ago and earlier versions of this were sent to the Bar Council over two years ago and nobody has made any point about the right to silence to me. Mr Speaker ...

**HON XXX:**

[Inaudible].

**HON D A FEETHAM:**

No. But the point, Mr Speaker, that he makes is, and people listening outside could be forgiven for be confused about this, that the Government has not undertaken a review in this area and the reality of the situation is that we have conducted an extensive review, an extensive review and consultation process.

Mr Speaker, finally, what I describe as a *coup de grâce*, was this point by my Hon Friend Mr Costa that this is the Government introducing this at a very late stage in order to show how tough the Government is on crime. Well, certainly the Government ... This particular point, yes. The Government is certainly tough on

crime and, you know, we make no apologies for that at all. But, Mr Speaker, he ignores, for example, when he draws the analogy with the Conservative Party in the United Kingdom, that although the Conservative Party introduced this in 1994, and he may say they introduced these provisions in order to appear tough on crime in 1994, the Labour Party was in power in the United Kingdom for eleven years and they never decided to amend their statutes in order to get rid of these provisions, Mr Speaker, and they had eleven years to consider and to listen to representations from people on the point. Mr Speaker, it also ignores the point that work on this particular project started in 2007 and the drafts, as I have explained, were circulated two years ago and also last year. So it just does not stand up to closer scrutiny, to any kind of scrutiny, to possibly suggest, Mr Speaker, that the Government is somehow introducing these provisions for electoral effect in order to appear tough on crime, although we are, Mr Speaker, tough on crime.

Mr Speaker, the last point I think Mr Costa made was the point about long committals. Mr Speaker, the sending procedure only applies in cases of indictable offences only. In other words, those are cases that are just simply not appropriate for the Magistrates' Court. It would not be dealt with in the Magistrates' Court anyway. Your fraud cases, financial crime cases, and vulnerable cases involving children and sex and the like. We are talking about extremely serious cases. We are talking about, not only extremely serious cases that would be dealt with by the Supreme Court in any event, but also in the case, for example, of financial crime, do not lend themselves to the long committal process that we have presently here in Gibraltar. In relation to children and sexual offences cases, well, Mr Speaker, we make no apologies for the fact that this Government does not believe in putting children through the ordeal of having to give evidence twice, once before the Magistrates' Court, once before the Supreme Court, in many cases, Mr Speaker, simply so that defence barristers can test the evidence of the child both at the Magistrates' Court and in the Supreme Court just in case they make inconsistent statements at an early juncture. Mr

Speaker, that is wrong. It is wrong and the Government stands by its opinion that it is wrong.

**HON N F COSTA:**

But, Mr Speaker, on a Point of Order. What I asked him was to explain why then there is a section that deals specifically with special directions for vulnerable witnesses?

**MR SPEAKER:**

That is not a Point of Order.

**HON N F COSTA:**

[*Inaudible*].

**HON D A FEETHAM:**

Mr Speaker, I can answer him. It is obvious, he is referring to something completely different. The fact that you place a child behind a screen so that child does not have to look at the defendant in the face, does not in any way, I hope he is not suggesting otherwise, ameliorate, make better the ordeal that that child has to go through in giving evidence, albeit behind a screen, Mr Speaker. At all.

**HON G H LICUDI:**

What if he is lying? What about the [*inaudible*].

**HON D A FEETHAM:**

If he is lying ... Well, Mr Speaker, if the child is lying, there is a procedure under section 201, I think it is, for the ... Mr Speaker, the defence lawyers can still apply no case to answer in the Supreme Court. They can do that at that stage but not in the Magistrates' Court.

**HON G H LICUDI:**

[Inaudible].

**MR SPEAKER:**

Order. Order.

**HON D A FEETHAM:**

Mr Speaker, finally, Mr Costa made the point about the list of trigger offences and he astutely, if I may say so, pointed out that they involve financial gain and, therefore, he then asked the question, well what do financial gain offences have to do with Class A and Class B drugs. This is an amendment that was introduced in the United Kingdom in 2006 and became effective in 2007. Effectively, it relates to offences where there has been financial gain but there has been an element ... what we are talking about is an element of drugs fuelling those kinds of crimes. That is why the United Kingdom amended to include those crimes within it and then linked it back to Class A and Class B drugs and that is precisely what we have done in Gibraltar.

Mr Speaker, unless I can assist any further, that is all I have to say.

Question put.

The House voted.

For the Ayes:

The Hon C G Beltran  
The Hon Lt-Col E M Britto  
The Hon Mrs Y Del Agua  
The Hon D A Feetham  
The Hon L Montiel  
The Hon J J Netto  
The Hon F J Vinet

Abstained:

The Hon J J Bossano  
The Hon N F Costa  
The Hon Dr J J Garcia  
The Hon G H Licudi  
The Hon S E Linares

Absent from the Chamber: The Hon P R Caruana

The Bill was read a second time.

**HON D A FEETHAM:**

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

Question put.

Agreed to.

**SUSPENSION OF STANDING ORDERS**

**HON J J NETTO:**

Mr Speaker, normally it is the Leader of the House who stands to suspend Standing Orders but, obviously, he is otherwise occupied and it gives me great pleasure to beg to move under Standing Order 7(3) to suspend Standing Order 7(1) in order to proceed with two Government motions. I would also like to give

my thanks to the hon Members of the Opposition because, although my motions do not have the specified five days notice, they have been gracious enough to allow the motions to proceed. So, grateful to Members opposite.

Question put.                      Agreed to.

## GOVERNMENT MOTIONS

### HON J J NETTO:

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

**“That this House approve by Resolution, pursuant to section 18 of the Social Security (Non-Contributory Benefits and Unemployment Insurance) Act, the making of the Social Security (Non-Contributory Benefits and Unemployment Insurance) (Amendment of Schedule 3) Order 2011”.**

Mr Speaker, as hon Members are aware, from the Government Budget measures recently announced, the Unemployment Benefit has been increased by ten per cent, effective from the 1<sup>st</sup> July 2011. Therefore, the new order reflects such an increase.

Question proposed.

Question put.                      The House voted.

The motion was carried unanimously.

### HON J J NETTO:

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

**“That this House approve by Resolution, pursuant to section 46 of the Social Security (Open Long-Term Benefits Scheme) Act 1997, the making of the Social Security (Open Long-Term Benefits Scheme) (Amendment of Benefits) Order 2011”.**

Again, Mr Speaker, as hon Members are aware, the Old Age pension was increased on the 1<sup>st</sup> July 2011 retrospectively to the 1<sup>st</sup> April 2011. Therefore, the 3.5 per cent increase has now been effected and the consequential retrospective payment has also been made available to recipients. For the sake of clarity, the order further increases at the same rate the benefit to widows and guardians.

Question proposed.

Question put.                      The House voted.

The motion was carried unanimously.



## **BILLS**

### **FIRST AND SECOND READINGS**

#### **THE CRIMES ACT 2011**

##### **HON D A FEETHAM:**

I have the honour to move that a Bill for an Act to amend and further consolidate the law relating to certain criminal offences; and for connected purposes, be read a first time.

Question put.                      Agreed to.

#### **SECOND READING**

##### **HON D A FEETHAM:**

I have the honour to move that a Bill for the Crimes Act 2011 be read a second time. Mr Speaker, this House has debated the merits of the Criminal Procedure and Evidence Bill 2011 which deals with the technical rules and procedures involved in the criminal justice process. The Crimes Bill, on the other hand, is very much the public face of the criminal justice system. It will be the piece of legislation by which citizens, the professionals and the judiciary will be informed of, and have access to, the majority of the norms that will demarcate criminal conduct in our society.

The Crimes Bill will replace the Criminal Offences Act. That Act was assented to fifty one years ago to this month. It is an Act that is very much a product of its era. The terms in which it is cast are not only out of date but actually are offensive to many. The Act talks about persons as being incorrigible rogues, idiots and imbeciles. It presupposes that sexual offences are

perpetrated by men on young girls but that boys do not need to be protected from deviant behaviour. Gay men suffer greater restrictions than lesbian women. It is true that in the fifty one years during which the Act has graced our statute books it has been amended a number of times, but even a cursory look at the Act reveals that the Act has never had any significant overhaul or attempt to bring it into modern times. This Bill, Mr Speaker, does precisely that. The Bill comprises six hundred and two clauses in twenty seven Parts and ten Schedules. As a result of its length, I have ensured that the Explanatory Memorandum at the end of the Bill, provides more detail than might otherwise be the case. In so doing, I hope the House does not feel that I have to take it through each and every clause, but I can be persuaded if hon Members want to. Instead, I propose speaking to the relevant Parts and only condescend to detail where it is of value, I hope. In any event, I will be more than happy to provide any clarification if requested.

Mr Speaker, again, as with the Criminal Procedure and Evidence Bill, I have amendments to make to this Bill. I am not going to be speaking on the merits of those amendments and I will deal with them at the Committee Stage.

As with the Criminal Procedure and Evidence Bill, adults, young persons, juveniles, child, are all defined in exactly the same terms.

The age of criminal responsibility in Gibraltar is now raised to ten. That means that a child who is under ten years old will not be held criminally liable for his or her actions. Under the Criminal Offences Act, at the moment, it is eight years of age. The Government and I hope that hon Members opposite will agree that that is too low and that, therefore, it is right to raise it to ten years old.

Clause 19 abrogates the common law requirement for corroboration in relation to evidence of the complainant in a sexual offence case or the evidence of a child. It makes savings

in relation to other warnings to the jury about other types of evidence. The clause applies equally to summary trials.

Mr Speaker, the common law required corroboration warnings to be given by trial judges to juries in respect of the evidence of both sexual assault complainants and child witnesses. The common law corroboration warning has two components. Firstly, the corroboration component, the caution that, as it is dangerous to convict on a child or sexual assault complainants uncorroborated evidence, and the reliability component, the caution that, as children and sexual assault complainants each are of a class of witness that are unreliable, the evidence of a particular child or complainant had to be treated with care. Those were the two. The corroboration component and the reliability component. So, in a sex case, involving a child, quite apart from expecting a child to go through the mill of a trial, the jury was warned twice about the dangers to convict on that evidence. That is wrong, Mr Speaker, and I hope that on this particular point, the House joins me in welcoming this change.

Clause 20 abolishes the offence of sedition and seditious libel, defamatory libel and obscene libel.

Part 3 deals with topics of attempts, conspiracy, encouraging or assisting offences and accessories.

Clauses 36 to 46 create the new offence of encouraging or assisting offences. They abolish the common law offence of incitement and in its place create three new offences in clause 36. One, intentionally encouraging or assisting an offence. Two, encouraging or assisting an offence believing it will be committed, and three, encouraging or assisting offences believing that one or more will be committed. For the first offence, a person must do an act capable of encouraging or assisting the commission of an offence and intend to encourage or assist in its commission. Sub clause (2) makes it clear that foresight of consequences is not sufficient. The second offence is committed if a person does an act capable of encouraging or

assisting an offence and believes both that the offence will be committed and that his act will encourage or assist its commission. For a third offence, a person must do an act capable of encouraging or assisting one or more offences believing that one or more offences will be committed and that his act will encourage or assist one or more of them.

Clause 40 provides the rules that will govern jurisdiction over the offences in section 36. A person may be convicted of the offence in section 36 regardless of his own location, if he knew or believed that the act which would amount to the commission of an offence, would take place, at least in part, in Gibraltar. If it is not possible to establish circumstances required for jurisdiction to arise under subsection (1), it may be possible to convict a person of an offence under section 36 if the facts fall under any of the criteria set out in section 41.

Part 4 replaces the provisions in Part VII of the Criminal Offences Act which state the statute and common law offences of treason and sedition as applied to Gibraltar. As sedition has been abolished, see clause 20 above, the Part only has four clauses relating to treason. They cover treason itself, treasonable offences, formerly called treason felonies, and hon Members will be glad to hear, assaults on Her Majesty. They are all governed by ancient statutes dating back to the Treason Act of 1351.

Part 5 replaces Part VIII of the Criminal Offences Act. There has been some comment, Mr Speaker, on the powers of the police in relation to public processions and assemblies which require more detailed examination on my part. I have explained, Mr Speaker, the effect of these sections both to the Voice of Gibraltar Group and also to other groups and they have indicated to me that they are satisfied with the explanation that I have provided.

Clauses 62 to 73 effectively replaces sections 31 to 36 of the Criminal Offences Act. Clause 62 requires written notice to be

given of the intention to hold a public procession. Not a meeting, a procession, intended to demonstrate, publicise a case or campaign or to mark or commemorate an event. It does not apply by virtue of subsection (2) to processions commonly or customarily held in Gibraltar.

Under section 63, once notified, the Commissioner of Police, having regard to the time or place, the route or any other circumstances, may give directions imposing on persons organising or taking part such conditions as he considers necessary to prevent disorder, disruption or intimidation. The section here does not apply unless the Commissioner of Police, on reasonable grounds, believes that that procession may result in serious public disorder, serious damage to property or serious disruption to the life of the community, or the purpose of the person organising it is the intimidation of others with a view to compelling them not to do an act they have a right to do, or to do an act that they have a right not to do.

Section 64 then extends those powers to a total prohibition. So, section 63 is about imposition of conditions by the Commissioner of Police. Section 64 is about a total prohibition. If the Commissioner of Police believes that the powers in section 63 will be insufficient to prevent any of the potential incidents triggering that section, but the Commissioner of Police has to make an application to the Chief Minister. Now, hon Members will note that in the UK, the application is made to the Secretary of State, the application in the UK. In fact, section 65 and section 66 then replicate sections 63 and 64 as far as public assemblies are concerned.

Mr Speaker, these provisions actually mirror but are far more coherent in nature than existing provisions in the Criminal Offences Act. Hon Members will note that the equivalent section to clause 64 is found in section 31(2) but the power is vested in the Government. In other words, at the moment, the Commissioner of Police can apply to the Governor to effectively stop a public procession altogether. So what we have done is,

we have rationalised the provisions and now the application is to be made to the Chief Minister rather than to the Governor. In relation to public meetings or assemblies, the powers vested in the Commissioner of Police and the Governor under section 32 of the Criminal Offences Act are much wider actually. So they are much wider under the present law, in both the terms of application and scope, than the powers contained in this Bill. For example, the definition of a public meeting under the Criminal Offences Act is not limited by reference to numbers, but under these provisions a public assembly means an assembly of more than twenty people and there is no requirement to give notice. So, Mr Speaker, a small demonstration, for example, by the Voice of Gibraltar outside the Convent or No. 6 Convent Place, if it is less than twenty people, then it is not subject to these provisions and, in any event, for a meeting to take place as opposed to a procession, there is no requirement as to notice within the Bill.

Part 6 on the protection from harassment and has no equivalent in the Criminal Offences Act. Under the Criminal Offences Act, the conduct would either have to be tantamount to an assault or a breach of the peace in order that it be capable of prosecution. Conduct which constitutes harassment will invariably fall between these two and, therefore, the intention in this Part is to ensure that there are sufficient powers to prosecute such conduct. The Bill, therefore, seeks to protect people from, amongst other things, abusive neighbours, from hate mail or racial insults, or even, Mr Speaker, excessive adulation.

Clause 88 makes it an offence for a person, with intent to cause harassment, alarm or distress, to use threatening, abusive or insulting words or behaviour or disorderly behaviour, or to display any writing or sign which is threatening, abusive or insulting, if the conduct causes another person harassment, alarm or distress.

Clause 89 creates a stricter offence which does not depend on intention, but for which there is a defence of reasonableness.

Both offences require the harassing effect to be outside a building, although the conduct may be inside. Clause 90 specifies the mental element involved in the clause 89 offence. The clause 88 offence has its own specific intent rule.

Clauses 91 and 92 create an offence of pursuing a course of conduct which amounts to harassment. The term 'course of conduct' means on at least two occasions – see the definition in clause 87.

Clause 93 provides for civil redress for a victim. Under this clause, a victim of harassment is able to pursue a claim for damages from the perpetrator. The damages could be for anxiety and for any financial loss suffered as a result of the harassment. There is also a power for the Court to grant an injunction with a view to restraining the defendant from pursuing such conduct.

Clause 94 creates the offence of pursuing a course of conduct which puts people in fear of violence. It carries a maximum penalty of five years imprisonment on indictment.

In addition to the powers available to the victim under clause 95, it is possible for the Court to impose a restraining order on a person convicted who has been convicted of an offence under clauses 92 or 94. In fact, if the hon Gentlemen follow the football pages of the newspapers, this was exactly the clause that was invoked by way of Ferdinand against the lady that was apparently stalking him. In this regard, the power is additional to any sentence which it may have imposed as a result of the breaches of clauses 92 or 94.

Clause 96 reflects the modern context in which the offensive behaviour may manifest itself. Accordingly, whilst the offence of sending letters intended to cause distress or anxiety is created, it extends to other forms of communication or article. Coupled with clause 97 which makes it an offence to send offensive, indecent, obscene, threatening or false messages by phone, fax

or over the internet. The Government believes that we have covered modern ways in which harassment can actually take place in Gibraltar today.

Mr Speaker, the introduction of Part 7 may, due to its title, be construed as pandering to a problem that does not exist in Gibraltar. As a collective, we the Gibraltarians are rightly proud of our cohesion and the fact that we are often held up by others as a beacon of racial and religious harmony. Whilst we should, and rightly celebrate this fact, the reality is that we should not take it for granted. In my conversations with the Royal Gibraltar Police, who are after all on the front line, on the coal face when it comes to upholding our way of life, they have noted that there has been an increase of cases where there has been an unwelcome racial dimension to some crime. I have also received representations from members of minority communities here in Gibraltar. Having been appraised of the facts, it is this Government's intention to send the clearest message that whilst no crime is acceptable, one with a religious or racial dimension is even more abhorrent. The introduction of legislation on this is, therefore, a message that this society values what it has and will not let any one threaten it.

Turning to the mechanics of the legislation, this Part introduces new offences dealing with the expression of racial or religious hatred. They are related to public order offences, as the purpose is to prevent public displays of racial or religious abuse which might lead to public disturbances. However, as the offences cover several topics, assaults, damage, public order and harassments, they are grouped together in one Part. The Part has two main groups of offences, racial or religious hatred offences and racially aggravated offences.

The first group, clauses 99 to 111, concern the commission of the offence through various forms of conduct, the publication of material or through public performances. It is important to note that in that very context it is not the intention that the legislation be used to suppress or in any way inhibit what are, after all, the

freedoms which are guaranteed by our Constitution and section 9 in particular, which safeguards the rights to freedom of conscience. Proselytizing per se is not an offence under this Part. What would fall under this Part is where there is an attempt to stir up hatred in others. The saving for freedom of religious expression is found at clause 111 and a key to understanding the extent of the application of the legislation lies in the term "what is reasonably justified in a democratic society".

The second group, clauses 112 to 117, concern offences where a racial element is present in the commission of the offence and, in terms of concepts, it is not difficult to envisage cases where the underlying offence is laced with racial overtones. The racially aggravated offences, clauses 112 to 117, appear at first sight to place the defendants in a double jeopardy situation for the same offence. However, Mr Speaker, as the penalties for aggravated offences are higher than those for the basic offence in each case, the legislative scheme is that a person can either be prosecuted for the 'basic' offence, that is, criminal damage, assault, public order or harassment, or for the aggravated offence. If the Court does not find the aggravated offence proved, it can, however, still convict on the 'basic' offence, see clause 117 on alternative verdicts.

Mr Speaker will forgive me when I say that Part 8 is a Part that is very close to my heart. I should also point out that much of the work on this Part was completed before my own personal circumstances were aligned to the issues dealt with in this Part and, in any event, I would also like to make it absolutely clear that they do not apply retrospectively. This Part replaces the provisions on offensive weapons that were in Part VIII (Public Order) of the Criminal Offences Act. It is with great regret that the subject of knife crime has become topical. Knife crime, whether it arises in the context of the commission of another offence or as a means of settling a dispute, has no place in a civilised society. The Government is determined to send out a clear message that knife crime will not be tolerated.

#### **MR SPEAKER:**

Order. Order. I am having great difficulty in following the ... Carry on please, the Hon Minister.

#### **HON D A FEETHAM:**

I think the hon Gentleman opposite is still on public processions and meetings. Mr Speaker, yes, I was saying that the Government is determined to send the clearest message that knife crime will not be tolerated but, of course, I hope that the Opposition will join us in sending that very clear message. The measures introduced by this Part are numerous and includes the power for the police to enter and search premises and persons on those premises. Another feature of the strategy to combat knife crime is the introduction of restrictions of their sale to persons under the age of eighteen. See clause 125. Other measures include prohibition on the marketing of knives in a way which encourages their use for combat and the prohibition of the publication of material that promotes knives for the purposes of combat.

Clauses 121 and 122 provide for the exemption of certain trades and for other defences. Under clause 121(3), the Minister may prescribe categories of knives that are exempt.

Clause 123 relates specifically to flick knives and preserves the position in the Criminal Offences Act, save that the penalty is increased from a maximum of three months and six months imprisonment for a first and subsequent offence to six months and nine months respectively.

Clause 125 includes powers of entry and seizure and retention similar to those in the Public Order Part. The word 'implement' is added to include items to which clauses 123(1) and 124(2) apply.

Clause 128 relates to the carrying of knives and other articles, with blades or points, in public places. Even if no other crime has been committed with the knife, the maximum penalty on indictment is four years imprisonment. The Government hopes that this will deter persons from carrying knives in the first instance.

Clause 131 contains a reverse onus provision so that a person, who in a public place has an offensive weapon, needs to prove that he had lawful authority or reasonable excuse.

Clause 132 prohibits dealing in offensive weapons. It is wider than clause 123 about knives but requires the Minister to make an order defining the weapons to which the section will apply.

Clauses 133 and 134 enable the Commissioner of Police to authorise officers to stop and search pedestrians and vehicles for weapons in anticipation of violence.

Mr Speaker, I hope this House will agree that these measures are a solid indication of the resolution of this entire House to stop knife crime in Gibraltar in its tracks.

Part 9 of the Criminal Offences Act has some provisions relating to explosive substances. There are provisions relating to explosive substances in the English Law (Application) Act which applies sections 1 to 8 of the UK Explosive Substances Act 1883, and in the Criminal Jurisdiction Act 1975, which replaced sections 2 and 3 of the 1883 Act. There are also local regulatory offences relating to storage of explosives in the Explosives Act. This Part brings together all those provisions into a single Part by repatriating what is applied to Gibraltar, by virtue of the English Law (Application) Act, and what is contained elsewhere.

Offences against the person are covered in Part 10 and range from genocide to common assault and include infanticide, wounding with intent, occasioning actual bodily harm, child

abduction, kidnapping and torture. It replaces Part XI of the Criminal Offences Act.

Clauses 149 to 153 restate in modern language the common law offences of murder and manslaughter. Provocation as a defence to murder is replaced by clause 152 which provides a partial defence of loss of control.

Clause 153 defines manslaughter and specifies the sentence of up to life imprisonment for that offence. The common law rules still determine the scope of the manslaughter.

Clauses 155 to 164 create other offences of causing or threatening death, including complicity in suicide, infanticide and child destruction.

Clauses 165 to 172 relate to activities that could endanger life, such as wounding with intent, or simple wounding. The use of 'complaint' in clauses 181 and 182 implies that the assault is only a civil action, which it is not, but it is sometimes brought by a private person so it is actually hybrid in nature.

Clause 183 creates the offence of causing or allowing the death of a child or vulnerable adult. Mr Speaker, this particular provision was introduced very recently in the United Kingdom as a consequence of the failure of juries to convict in murder cases involving the death of a child when it was obvious that either the mother or the father or the stepfather and ... two close family relatives actually committed the crime, but what you have was a situation where one blamed the other. They set up cut throat defences. So, effectively, the jury could not say that, beyond reasonable doubt, one or the other was actually responsible for the murder. So what you were getting were, actually, acquittals of murder cases in very serious cases. Now, this has been applied, Mr Speaker, for example, in the Baby P case. The Baby Peter case, in the United Kingdom. Now, in the United Kingdom the maximum sentence for that kind of offence is twelve years. We looked at this and we have taken a decision,

as a Government, that actually twelve years is insufficient. So what we have done is that we have changed that so that in Gibraltar the maximum sentence, it is a maximum so the Court can actually impose a lesser sentence, but the maximum is life imprisonment as indeed is the case with manslaughter. So the Court takes into account all the circumstances of the case and if it is a particularly nasty case, can actually impose a life sentence on both of the individuals or either one of them, which is not the position in the United Kingdom, where the maximum is twelve years. Clause 189 creates as statutory offences the common law offences of kidnapping and false imprisonment. The kidnapping offences are based on the common law offence in the Crown against D in 1984, Appeal Case 778 and false imprisonment offences are based on the common law offence in R against Rahman in 1985, 81 Criminal Appeals Review 349.

Clause 190 creates the offence of torture and is required by the extension to Gibraltar of the United Nations Convention against Torture and other Cruel, Inhumane or Degrading Treatment or Punishment.

Part 11 creates offences which are also new to Gibraltar. The policy behind the statutory offence of corporate manslaughter is the prosecution of corporate bodies. It covers cases where the death is caused by the way that the activities of a corporation are managed or organised, but where individuals cannot be singled out for prosecution. For the purposes of this Part, a corporation includes: (a) any Government department that is not exempt by the Minister under the power in clause 192(2); (b) the police force; (c) a partnership; (d) a trade union; or (e) an employers' association that is not a corporation. Any statutory provision about criminal proceedings applies in relation to proceedings under this Part against a corporation as so defined. The Part defines Crown to mean both the Gibraltar and the United Kingdom Governments as the UK Government also employs, Mr Speaker, Gibraltarians in a civilian capacity. There are instances where the nature of the work involved exposes persons to dangers and, therefore clause 196 excludes activities

of the armed forces and clauses 197 to 199 limit the application of the Part where certain policing or law enforcement, emergencies or child protection activities are concerned.

Clauses 201 to 203 state how the Part applies to certain other activities. Where a corporation is convicted under this Part, it faces an unlimited fine. In addition to the pecuniary sanction, clause 204 gives the Court a power to order a convicted corporation to take steps to remedy matters that gave rise to the death. In addition, clause 205 allows the Court to order that publicity be given to a corporation's conviction for an offence. In other words, name and shame a situation. Common law manslaughter by corporations and by gross negligence is abolished by this Part.

Part 12 replaces Part XII of the Criminal Offences Act and the Crimes (Indecent Photographs with Children) Act 2009. Mr Speaker, the House knows that the Government places much importance on the protection, in particular, of the young and vulnerable members of our society. For those reasons, the Government brought the Crimes (Indecent Photographs with Children) Bill which was passed into law in 2009. That measure was a stop gap measure. The House will recall that the Government had embarked on the process of reviewing our criminal laws but was not prepared to wait until the conclusion of that exercise before legislating. As it turns out, the Government was correct in its approach and the 2009 Act has already been used in our Courts. We take no comfort from the fact that the Act was needed and, less so, from the fact that it has had to be applied. It would, however, have been far more troubling if we had not acted when we did, with perhaps, pedophiles escaping prosecution or having more lenient sentences. A significant feature of the Part is that sex offences are now gender-neutral in that they can be committed by either sex on the other. The Part also reflects the decision of the Supreme Court in its recent judgement on the age of consent issue. So, therefore, it effectively sets the age of consent where the Court set it at

sixteen, where, in fact, those that supported the Private Members' Bill said that the Court was going to set ...

**HON G H LICUDI:**

[*Inaudible*].

**HON D A FEETHAM:**

Well, it did not include the Members opposite, that is why I [*inaudible*] but, Mr Speaker, so the age of consent is sixteen. These matters, although important, should not detract from the ultimate purpose of the legislation which is to protect those to whom harm may come. Victims will be victims, irrespective of gender or mental capacity and, therefore, the legislation is drafted in a manner that seeks to maximise the level of protection, rather than focus on individual characteristics, their sexuality or the gender of a particular group within society.

Clauses 213 to 215 create the main sexual offences against persons. They include rape, assault by penetration, sexual assault and causing a person to engage in sexual activity without consent.

Clauses 217 to 220 create the offences of rape, assault, et cetera, against a child under the age of thirteen.

Clauses 221 to 224 create offences in relation to all children under the age of sixteen. It will be an offence to penetrate or have other sexual relations with a child under thirteen, irrespective of consent. The existing offence of unlawful sexual intercourse is therefore expanded to include boys, to include sexual activity short of penetration, and to apply to children up to the age of sixteen if the offender is aged eighteen or over.

Clause 225 takes into account the possibility that both parties in a consensual sexual encounter may be legally incapable of giving consent. Whilst not condoning such indiscretion, it would not seem appropriate for the full weight of the law to be visited, on children, on a first such offence. Therefore, where the relevant conditions are met, the Court will be bound to make an order for a conditional discharge rather than look towards sentences involving imprisonment.

Clause 227 creates an offence which is in keeping with the times in which we live, and that is meeting of a child following sexual grooming. That was not a provision that existed in our legislation but it is something that we have introduced in this Act.

Clauses 226 and 227 includes an extra territorial element. That is, they relate to an intention to commit a crime anywhere in the world. The intended activity must be one that, whether or not it is a crime in the local jurisdiction, would be a crime in Gibraltar. So an intention to engage in, or arrange sexual activity with a child under thirteen in another country, would be caught because the activity would also be a crime in Gibraltar. So, for instance, if you have a situation where an adult living here in Gibraltar, manages to persuade a child to cross the frontier with him to Spain, where maybe the age of consent is lower, he is still committing an offence here in Gibraltar by virtue of these provisions. The converse is that a person who goes to another country to arrange sex in Gibraltar in relation to children between thirteen and sixteen, would be committing an offence in Gibraltar and could be prosecuted on their return, but might not be committing an offence in that country if the age of consent there is thirteen, which is obviously in Spain. It arises here because, of course, in Spain the age of consent is thirteen, whereas here in Gibraltar the age of consent is sixteen.

Clauses 228 to 233 create a number of offences where the key element is that a position of trust exists between the defendant and the child and the defendant indulges in sexual conduct that breaches that trust either because the sexual conduct involves



the child, or exposes the child to such conduct, that is, forcing a child to watch a sexual act. Given that it is lawful for persons to marry at sixteen, clause 234 provides an exception for a spouse in relation to certain offences which would otherwise be sanctionable. Where the relationship existed prior to the position of trust arising, clause 235 provides an exception, in the event the exception only applies if the sexual relationship was itself lawful at the time. So you may have a situation, of course, whereby somebody is *compos mentis*, is fine today, but is mentally ill tomorrow. The fact that, of course, that person now is in a position of trust, at a future date, and has had sexual relationships earlier when he or she was okay, that does not expose somebody who might be taking care of her or him, to proceedings at a later date.

Clauses 236 to 240 deal with sexual offences which are, regrettably, committed within what is supposed to be the safety net of the family. The offences are drafted so that the concept of the family is capable of being applied to non-blood relations such as step-parents, foster carers and guardians. Some of the terms used in this Part are taken from the Children Act 2009.

Mr Speaker, it gives me great pleasure to speak also to the following clauses despite the fact that the subject matter is so distasteful. I cannot imagine what a person who has been the victim of improper sexual conduct must feel like when the state, in other words, the authorities, then refer to that person as an idiot or an imbecile. I am, therefore, more than happy to take this opportunity to consign such pejorative language to the history books.

Clauses 241 to 244 therefore make it an offence for any person to engage in sexual activity with a person with a mental disability that impedes choice and clauses 245 to 248 create various other offences in relation to persons with a mental disorder, including offering inducements, et cetera, to procure sexual activity.

Clauses 249 to 252 make it an offence for a care worker to engage in sexual activity with a person with a mental disorder and create other sexual offences by care workers in relation to persons in their care. Clauses 253 to 255 are ancillary provisions.

Clauses 256 to 266 were originally enacted in the Crimes (Indecent Photographs with Children) Act 2009. So I am not going to say anything further about them because we debated those provisions when we dealt with that Act.

Clauses 267 to 274 create various offences relating to prostitution, such as causing or encouraging or assisting prostitution for gain, controlling prostitution for gain, paying for sexual services of a prostitute subjected to force and loitering or soliciting for the purposes of prostitution and the new offence of prostitution. This is a new offence, prostitution, by virtue of this Bill.

Clauses 280 to 286 create offences relating to sex trafficking into, within and out of Gibraltar. The definition of the 'relevant offence' in clause 283, limits the prohibited conduct to conduct which would be an offence if committed in Gibraltar. It does not include all conduct which is an offence in another country.

Part 13 is a new part that does not appear in the Criminal Offences Act. I hope that the whole House will be receptive to it for it provides for the creation of what is commonly known as a sex offenders register, though the term is not used in the Bill at all. It also introduces various types of orders that can be used to protect children from sex predators. The Part creates a notification regime for all sex offenders and empowers the Courts to impose notification orders, sexual offences prevention orders (SOPOs), foreign travel orders and risk of sexual harm orders (RSHOs) on certain offenders. The Part provides that offences committed outside Gibraltar and committed before the commencement of the Part, are to be taken into account. It provides that, in addition to sentences of fines or imprisonment,

community service orders for 120 hours or more, conditional discharges, probation orders and cautions are to be taken into account. Absolute discharges do not count as convictions for this Part, however. But I emphasise that they are retrospective. These provisions are retrospective, which means that somebody who has been convicted in the Courts in the past will be required to register under the sex offenders register.

Clauses 306 to 313 impose notification requirements on offenders in respect of all sexual offences committed in Gibraltar. They set out the requirements for notification, and what the notification must include. Notification must be given to the police after a conviction, and every year for the duration of the requirement. Notification must also be given of certain changes, and of any proposed travel outside Gibraltar. Persons who are subject to notification requirements are those who have been convicted of an offence listed in Schedule 3. Those are the offences that apply.

Clause 315 makes it an offence to fail to give notification when and as required. The details that are to be given in notification include the offenders name, date of birth, home address, social security number and, indeed, if there are changes to any of those details, there is an ongoing requirement for that notification to also be made, or notification of those changes to be made. In the case of young offenders, the notification must be given by a parent who can also apply for variation or discharge of the order.

Clause 307 specifies the period for which the notification requirement continues. Probation orders are not mentioned, so they would come under the last item, "a person of any other description". This would also include someone convicted but sentenced only to community service.

Clauses 321 to 325 provide for the making of notification orders in respect of sexual offences committed outside Gibraltar if the offender is in, or intends to come to, Gibraltar. They specify the

grounds on which a notification order can be sought, and its effect, and provides for interim notification orders and appeals. The effect of an order is that the notification requirements under the Part apply fully to that person that has come from outside to Gibraltar.

Clauses 326 to 332 empower a Court to make a sexual offences prevention order (SOPO) if the Court is satisfied that it is necessary to make such an order for the purpose of protecting the public or any particular members of the public from serious sexual harm from the person. A sexual offences prevention order (SOPO) prohibits the defendant from doing anything described in the order and has effect for not less than five years. The only prohibitions that may be included in the order are those necessary for the purpose of protecting the public or any particular member of the public from serious sexual harm from the defendant.

Clauses 333 to 339 empower a Court to make a foreign travel order on a qualifying offender, prohibiting the person from travelling outside Gibraltar. The Court must be satisfied that the defendant's behaviour makes it necessary to make the order for the purpose of protecting children generally and any child under sixteen from serious harm from the defendant outside Gibraltar. 'Sexual harm' means serious physical or psychological harm caused by the defendant doing, outside Gibraltar, anything which would constitute a sexual offence if done in Gibraltar.

Mr Speaker, I believe that clause 340 has no parallel in the UK statute book. In reviewing the measures that may be deployed for child protection in Gibraltar, it became evident that where there was intelligence to suggest that a foreign pedophile was intending to come to Gibraltar, there were no clear powers for preventing that person from entering Gibraltar where there might be a risk of harm to children. The Government was not in favour of trying to adapt existing immigration powers and, therefore, commissioned the drafting of this clause. Simply put, it enables a Court to test the evidence and, if appropriate, issue an order

which would bar that pedophile from entry. The difficulty here, of course, is that if you are dealing with Community nationals, it is difficult to prevent a Community national from actually entering Gibraltar. But, of course, if there is evidence of a risk of harm to children, the Government believes that rather than taking that risk and allowing that person to come to Gibraltar, that we should have the power for that to be tested in Court and for there to be a possibility of barring that person from coming to Gibraltar, be that person a Community national or not.

Clauses 341 to 347 empower the Court to make a risk of sexual harm order (RSHO) on a person in Gibraltar who has, on at least two occasions, engaged in sexual activity involving a child, or in the presence of a child, caused or encouraged or assisted a child to watch a person engage in sexual activity, or to look at a sexual moving or still image, giving a child anything that relates to sexual activity or contains a reference to such activity, or communicated with a child in a sexual manner. The Court must be satisfied that it is necessary to make the order for the purposes of protecting children generally, or any child, from physical or psychological harm caused by the defendant doing the acts mentioned. A person who has a risk of sexual harm order (RSHO) imposed on him is liable, or becomes liable, to the notification requirements of clauses 306 to 312. The Part is also supplemented, Mr Speaker, by Schedules 3 and 4.

Schedule 3 lists the sexual offences that attract the requirements for notification. They include offences under the Criminal Offences Act, repealed by this Bill, precisely because the Bill has retrospective effect in relation to this Part. Schedule 4 lists the other offences that are relevant for the making of protection orders under clauses 326 and 327.

Part 14 is a short Part on criminal damage. We have modernised the provisions that exist already under the Criminal Offences Act.

Part 15 was enacted in the Crimes (Computer Hacking) Act 2009 and, therefore, we have already dealt with the merits of those provisions.

Part 16 replaces Part XVI of the Criminal Offences Act on offences of dishonesty. As in the present Act, the theft provisions are based on the UK Theft Act. The fraud provisions are, however, new and are based on the Fraud Act 2006, the UK Fraud Act 2006, which was the result of a law commission report. They aim to conceptualise and generalise the offences, rather than having a number of offences relating to different types of service and different types of monetary transactions.

Clause 415 prescribes the maximum penalty for fraud under these clauses, which is ten years imprisonment on indictment, or twelve months on summary trial. The Explanatory Memorandum, Mr Speaker, deals really with the other provisions in an adequate way.

Part 17 contains two groups of offences. Forgery in clauses 433 to 441 and counterfeiting, including counterfeiting of currency notes, in clauses 442 to 449. Forgery does not relate to currency notes but counterfeiting includes coinage offences. Clause 441 now abolishes the offence of forgery at common law.

Clause 432 contains definitions that apply to the whole Part. A currency note is defined broadly. It means any note issued by the relevant authority in Gibraltar or elsewhere and customarily used as money. A protected coin is any coin used as money in any country specified in an order.

Moving to clause 436, hon Members will see that it states that the offence of forgery is committed by a person "A" who makes a false instrument with the intention that he or another "B" will use it to induce a further person "C" to accept it as genuine and thus do something to prejudice "C" or someone else "D". This sounds complicated and can involve four different persons, but I

am sure that the basic offence is well understood by hon Members.

Clauses 433 to 435 define the term used in the statement of the offence of forgery. Clause 433 defines 'instrument'. Clause 434 defines 'false' and 'making', and clause 435 defines 'prejudice' and 'induce'.

Clauses 437 to 439 create the offences of copying, using or using a copy of a false instrument with the same intention as the basic offence.

Clause 440 creates four offences relating to 'instruments'. The instruments are listed in sub clause (5) and include money orders, postage stamps, passports, ID cards, cheques, credit cards, debit cards and entries in the register of births, marriages and deaths. The offences are: having a false version of an instrument with the same intention as the basic forgery offence; having a false instrument knowing it to be false, with no specific intention; making or having equipment intended for making a false instrument with the intention of the basic forgery offence; or making or having equipment of that kind, without any specific intention at all.

Clauses 442 to 449 are the counterfeiting offences.

Clause 442 creates two offences of making a counterfeit of a currency note or a protected coin. The first offence is if a person intends that he or another will pass or tender it as genuine. The other, and lesser, offence consists of the making without any specific intention.

Clause 443 also creates two offences, passing or tendering a counterfeit note or coin with the intention mentioned in clause 442, and delivering a counterfeit note or coin to someone, intending that he will pass or tender it as genuine.

Clause 444 creates two more offences, having custody or control of a counterfeit note or coin with the intention mentioned in clause 442, and having such custody or control without that intention.

Clause 445 creates three new offences. Making or having custody of a thing intended for making a counterfeit note or coin, with the intention of passing the coin or note as genuine. Making or having such a thing without that intention. Making or having custody of an implement capable of giving anything the appearance of a protected coin. Note, Mr Speaker, that making and having in custody or control are shown as separate offences in each subsection. This puts the prosecution to its election as to which offence it chooses to charge a defendant with. The maximum penalty for most forgery and counterfeiting offences is ten years imprisonment on indictment or twelve months on summary conviction.

Part 18 replaces the provisions of Part XX of the Criminal Offences Act on perjury and false statements, and there is nothing useful that I can add to the Explanatory Memorandum on this Part.

Part 19 replaces Part XXI of the Criminal Offences Act, offences relating to the Court, and Part XXVI, which is untitled, but which relates to intimidation et cetera of witnesses, jurors and others. The provisions are combined into one Part as they are few in number, and relate to similar issues. The topic overlaps to some extent with the provisions in Part 19 of the Criminal Procedure and Evidence Bill about reporting of cases, vulnerable witnesses et cetera, but does not conflict with the provisions of that Part. In addition, this Part does not seek to codify the common law on perverting the course of justice, but it does deal with contempt of Court in clauses 479 to 485.

Part 20 relates to harmful and obscene publications. The two main groups of offences, harmful publications and obscene

publications. It also includes a new offence about indecent displays.

Clause 486 contains definitions. The definition of 'publication' includes 'article'. As defined, the term 'article' includes moving images so that video games will be covered by the definition of 'publication' and their importation can be prohibited under clause 487. There is no definition of 'indecent' but 'obscene' is defined by the test in clause 490. The term 'harmful publication' means a publication included in an order made under subsection (2). That subsection gives the Minister the power to declare a publication to be harmful and to prohibit the importation of it if he or she is of the opinion that the publication is of a kind likely to fall into the hands of children or young persons and consists wholly or mainly of stories told in pictures, with or without the addition of written matter, which portray the commission of crimes, acts of violence or cruelty, or incidents of a repulsive or horrible nature which might tend to corrupt a child or a young person.

Part 20 incorporates into the Crimes Bill the provisions of the Drugs (Misuse) Act, as I mentioned earlier. There is nothing that I want to say in relation to that as it is a consolidating measure.

Part 22 replaces Part XV of the Criminal Offences Act. It updates the provision of that Act relating to trespass, replaces the provisions relating to camping, and introduces new provisions about unlawful occupation of premises. These new provisions are at clauses 536 to 538 and are aimed at the problem of squatters in supposedly unoccupied houses. They are designed to protect displaced residential occupiers and intending residential occupiers, as defined in clauses 537 and 538 respectively. Mr Speaker, our present law actually draws a distinction. If you are dealing with public housing and you are a squatter, and you are asked to leave, you commit an offence if you do not. If you squat in private property, you do not actually

commit an offence in our present legislation and these new provisions aim to change that.

Clause 536 makes it an offence for a person in residential premises as a trespasser to refuse to leave after being asked to do so by a displaced residential occupier or intending residential occupier. An offence is only committed if the trespasser refuses to leave within forty eight hours after a notice is served, either in person or being affixed to the premises. The maximum penalty is twelve months imprisonment.

Clauses 539 to 541 deal with aggravated trespass.

Clause 539 creates the offence of aggravated trespass, which is when a person trespasses on land in a manner which intimidates the occupiers or obstructs or disrupts a lawful activity on the land.

Clause 540 gives a senior police officer the power to direct persons who are committing aggravated trespass to leave. If they fail, an additional offence is committed. The maximum penalty for both these offences is nine months imprisonment.

Clause 541 creates the offence of trespassing with a weapon. That means any article made or adapted for use for causing injury or intended for such use, as in the definition of 'offensive weapon' in clause 118, which I outlined a few moments ago. The maximum penalty is twelve months imprisonment.

Clauses 542 to 545 deal with unauthorised camping.

Clause 542 restates the offence of camping on Government land without authority. There is an exception for persons authorised to use the Governor's Lookout Scout Camp. This means that Schedule 2 of the Criminal Offences Act, which designated that as an approved site, is not needed. It is also an offence to camp on private land except with the permission of the owner. The maximum penalty is six months.

Clauses 543 and 544 introduce new provisions about the removal of unlawful campers and their vehicles, including caravans. Under clause 543, the Commissioner of Police can order persons living in a vehicle on a highway, on unoccupied land or on occupied land without the consent of the owner, to leave the land and remove the vehicle. Failure to leave as soon as practicable, unless because of illness or mechanical breakdown, is an offence. The maximum penalty is a fine at level 3.

Clause 546 is based on section 128 of the UK Serious Organized Crime and Police Act 2005 but, in this Bill, it is concerned more with the protection of the environment. The clause enables the Minister with responsibility for the environment to designate sites which must not be trespassed upon. The designation can only be of Crown land, or in the public interest. It is an offence to enter on designated land as a trespasser and the maximum penalty is twelve months imprisonment.

Part 24 is on bribery and replaces the provisions on corruption in the Criminal Offences Act. In order to partly comply with EU requirements, this Part includes provisions about bribery of foreign public officials. It also abolishes and therefore codifies into statute, the common law offence of bribery. The Part provides two general offences covering the offer, promise and giving of an advantage or the request agreeing to, or receiving or acceptance of an advantage. The formulation of these two offences abandons the traditional agent/principal relationship in favour of a model based on an intention to induce improper conduct. This Part also creates the offence of bribery of a foreign public official and a new offence of negligent failure of commercial organisations to prevent bribery.

Clause 576 sets out the penalties and the maximum sentence on indictment is ten years and twelve months on summary conviction.

Part 25 codifies, or consolidates I should say, into this Act, the provisions of the Dangerous Dogs Act 2003 as amended in 2006.

Part 26 replaces Part IX, offences relating to security, and Part X, offences relating to the Armed Forces and the Police, of the Criminal Offences Act. The provisions are combined into one part, and are modernised, as they are few in number and relate to similar issues. The provisions which are specific to the police are adequately covered in the Police Act 2006.

Part 27, Mr Speaker, deals with supplementary provisions.

Clause 598 enables the Minister to make regulations about forfeiture and disposal of items. It also requires any regulations or orders made under the Act to be laid before the Parliament at the next sitting after they have been made.

Clause 599 repeals the Criminal Offences Act and subsidiary legislation made under it. There are two extant items, the Criminal Offences (Disposal of Proceeds of Sale) Notice 1991, and the Counterfeiting of Euros Rules 2003. The substance of both these items has been included in the respective parts. See clauses 551, 454 and 455.

Section 34 of the Interpretation and General Clauses Act saves subsidiary legislation made under the repealed Act that could be made under the new Act, but it does not cover administrative acts and orders which leaves the position unclear and open to doubt. The position is therefore made clear in sub clauses (2) to (4).

Clause 599 consolidates various existing Acts into this Bill.

Clause 601 sets out the rules about criminal proceedings commenced before the commencement of this Act.

Mr Speaker, to conclude, again this is a pioneering piece of work and this Bill, I have absolutely no doubt, together with the Criminal Procedure Bill, will remain the foundation and corner stone of our criminal justice system for years to come. I commend this Bill to the House.

The House recessed at 4.15 p.m.

The House resumed at 4.30 p.m.

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

#### **HON G H LICUDI:**

Mr Speaker, this is, as the hon Member has indicated, the second piece of the jigsaw as it were, in relation to the reform of the criminal justice system. It does not clearly encompass the whole of all criminal legislation in Gibraltar, but it is a major part of it and it is part of the overhaul that the Government has been engaged in. As we said with the Criminal Procedure and Evidence Bill, the vast majority of the provisions contained in this Bill are to be welcomed. This is not just a codification of the existing law. It is the introduction, as well as codification, of new offences, including offences relating to harassment, corporate manslaughter and new sexual offences. It also introduces the sex offenders notification orders provisions and on all those matters, we agree with the Government that these are matters which enhance our system and give the necessary weapons, if I may put it in that way, to the law enforcement officers to make sure that crime is detected, crime is prevented and crime is prosecuted with all its force.

As a general point, Mr Speaker, because the hon Member has mentioned a couple of times in his contribution on a couple of issues that there is a message to be sent in clearest terms and that he hopes that this will be a message of the whole House,

and we certainly agree that messages need to be sent out. Not just on knife crime and that was one of the indications that ... or examples that the hon Member had given when he expressed a hope that the provisions on knife crime were an indication of the resolution of this House to stop crime. We certainly subscribe to that resolution and that idea and that the message has to be that knife crime will not be tolerated. The message, we say, has to go even further than that. That all crime needs to be considered intolerable. Clearly, it is a Utopian society that has no crime at all, but we must make every effort possible on both sides of the House, and I do not believe there is any disagreement on this, to strive as much as possible to have as little crime as possible in Gibraltar. All crime clearly is abhorrent. Although it is true that some crimes are more abhorrent than others, particularly, those crimes involving vulnerable victims or children. There is no issue, Mr Speaker, and I want to make this absolutely clear, between both sides of the House as to which side is tougher on crime than the other. This is not a contest of toughness. We are not saying, you need to be tougher and you need to do this and they are not saying, well we are tougher than you and that is why we are introducing all these matters. We are all on one side. We are on the side of the victims of crime and the hon Member's opposite can count on our resolve to assist as much as possible in combating all manner of crime in Gibraltar.

It may be important, Mr Speaker, that some comments made by the hon Member in relation to the previous Bill, which were picked up by the Hon Minister for Justice, are not misconstrued in terms of the reasons for this overhaul in legislation whether there were any electoral reasons attached. It is important to clarify this. We do not suggest, and Mr Costa did not suggest, that the reform of the criminal justice system, in the introduction of this Bill, is part of a process for electoral presentation purposes. This is an important overhaul that needed to be done. In fact, what Mr Costa was referring to was the political motivations in England, the battle that existed between the two sides, the Conservative and the Labour Party in England, and those considerations which apply in England, and which Mr

Costa clearly referred to ... He made the position clear, I would suggest, that those considerations do not apply in Gibraltar and, therefore, we are at one in the resolve to combat crime.

In Gibraltar there is no debate as to whether Gibraltar should be tougher or less tough on crime. Gibraltar needs to be as tough as it needs to be on crime. We have prided ourselves for many, many years on a tradition, generally, law abiding behaviour, good citizenship, and of living in a peaceful place. That is something which we hope will continue for many years. There has always been an element of crime and we have to be on the lookout for those criminal elements that may take advantage of new matters and new technology, such as the use of computer technology, particularly, in the field of sexual offences and those which affect children and, therefore, we certainly subscribe to and agree with all the provisions relating to that aspect of the Crimes Bill.

It is, nevertheless, a matter of concern that we have seen in recent times an increase in issues involving drugs. Only this week, we have had comments from the Court on the use of cocaine and, clearly, a message has been sent with a tough sentence being imposed in relation to possession, with intent to supply, of cocaine. The drugs problem is not just in our view limited to cocaine, it also includes, what are sometimes called, softer drugs, certainly hashish or marijuana and the implications which we are seeing are very wide ranging, particularly, when it involves teenagers. The implications for the teenagers concerned, for the families, the issues and the problems which these matters give rise to, are a matter of concern, and what we hope is that there will be a united approach and consensus between this, both sides of the House, and I hope that that expectation of consensus is not, in fact, spoilt by the comments I am about to make because ...

Mr Speaker, I could not help but feel disappointed by some of the comments I heard the Hon Minister for Justice say this week in an interview, particularly, in response to this issue on the

comments on the cocaine case. As I understood him to say, what he said was that the Government was doing everything possible. In a situation, Mr Speaker, where a particular type of crime is on the increase, it would, in fact, and I say this with the greatest of respect, if I am misconstruing him or misunderstood him, perhaps he can correct me, but to say that everything possible is being done, when things are getting out of hand, or the Court is saying this is a serious problem, and it is getting worse, it is almost a sense of recognition that there is nothing else that can be done. Why else would a Government say, well, we are doing everything possible. It is almost as if they are saying, well, our hands are tied. We cannot do anything else. We are doing everything we possibly can. And it almost sounded, and the hon Member will forgive me for using these words, but as an observer of the interview, and I do not know how it went down with other people, it almost sounded like not quite an admission of defeat, but a sense of that resignation, that look, everything possible is being done. Yes, the problem is there. It is getting worse. And almost as if there was nothing else that can be done. If the problem is there. If the problem is on the increase. If the problem is rife. It is self-evident that more can be done, and it is not enough, Mr Speaker, to say, well, Gibraltar is tough on crime because the Court imposes tough sentences. It is clearly not enough and I hope we agree on this, that leaving the matter in the hands of the Courts is never sufficient. There must be more that can and should be done as regards detection and prevention of this sort of crime, so that it does not get to the stage that we have to rely on our judges to send out these messages. These are the sort of messages that should be sent out by this House. By the legislature. By the people in law enforcement.

Ultimately, if all that fails, then clearly somebody has to go to Court, has to be convicted and has to be sentenced, and has to face the music, but that should not be the emphasis of the policy. And as I say, Mr Speaker, I am trying to be as positive as we can because we do want to have a constructive debate on this issue, a constructive approach. It is not intended to be a



criticism of what the Government is doing, but to the extent that the comments by the Hon Minister came across like that, certainly to me, I hope he will recognise that that is something that perhaps needs to be corrected if the impression that is being given is the wrong one.

Mr Speaker, on the specific provisions, I have already said that the vast majority of these including the new provisions are to be welcomed. I would ask him for clarification on one particular matter.

That is in relation to the offence of corporate manslaughter. Clause 201, Mr Speaker, deals with application to Government bodies which says, "An organisation that is servant or agent of the Crown is not by virtue of its status immune from prosecution under this Part", and under sub clause (2) will include every department of the Government of Gibraltar. There is a separate provision in clause 192(2) which says, "The Minister may by order exempt any department of the Government of Gibraltar from the operation of this Part, or from a provision of this Part specified in the order". So, on the one hand we have a provision that says, Government Departments can be liable, and on the other, the Minister can use a power of exemption, and I would ask him to clarify the circumstances in which it is intended, if at all, to use that power. Is it intended to be used as a matter of policy to say, right, the Income Tax Office is not going to be liable for corporate manslaughter. The Education Department is not going to be liable, or is this something that is going to be used on a case by case basis. If something happens, fire or an accident, or an issue in a particular Government Department, is the Government then intending to use that power of exemption to prevent a prosecution as the issue arises. If that is not the intention, when possibly is this power of exemption going to be used and how is it envisaged that it will operate in practice? I would be grateful for clarification of the Hon Minister.

There is, alas, despite the positive comments I have made, a sting in the tail, Mr Speaker, which causes us not to be able to

support this Bill, and that is the provisions which have been introduced which relate to the age of consent, whereby legislative provisions are brought into place which, in effect, bring the age of consent down from eighteen to sixteen. Not ... and I will qualify that. This is an issue which we have discussed at length in this House. We have debated in a motion and it has also been debated when a Private Members' Bill was brought by the hon Member the Minister for Justice. At that time, we voted against the Bill along with the Chief Minister and other Government Ministers. For our part, the reason that we voted against was not because we disagreed with the principle of equalisation. On the contrary, we believed that that provision was already a part of Gibraltar law in that the provision that we already had was discriminatory in nature, but because we felt there was a need for a consultation process as to the age that the limit should be set. That was the position that we set out then. That is the position that we have maintained throughout and there is no inconsistency at all. Be that as it may, the Chief Minister subsequently made public comments which actually agreed with the position that we had taken, and said that there was a need for a consultation process and he even speculated about the possibility of this matter being decided by referendum. At the same time, the option of going to Court for a declaration of incompatibility with the Constitution was adopted and, as a result of that decision, the provision which existed in the Criminal Offences Act which related to homosexual sex and having the provision set at eighteen years for that kind of sex, that was ruled incompatible with the Constitution. The Court declared that there could be no prosecutions under that and, in effect, although the Court did not set at that point the age at sixteen, the effect of the ruling was that Gibraltar law should be regarded as having an age of consent of sixteen. That is what in effect this Bill also does. So it brings legislative effect and we recognise that, having regard to the Court ruling, there is a need to put the legislation in order. The Hon Minister for Justice, commenting, I seem to recall, shortly after the publication of this Bill, said that the Government is still committed to consultation and, as I seem to recall, he said that possibly this would take

place after the next elections. The issue for us is why have steps not been taken to conclude the consultation process before bringing this into effect. For these reasons, because of the lack of consultation, we voted against the Private Members' Bill, but we recognised that there is a change in circumstances as a result of the Court ruling and for those reasons we are not voting against, we are merely abstaining, but we feel we cannot support this because our policy is that there should have been consultation. There should be consultation on this particular issue. We understood that that was also the policy of the Government and we do not understand why that has not happened. We certainly understand why these provisions are being brought in this way now as part of the overhaul of the criminal legislation but, for those reasons, we will be abstaining from this Bill.

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

Yes, Mr Speaker. Well, we on this side of the House welcome what the hon Member has had to say about consensus. Indeed, some of the bad legislation, although I would disagree about the example of bad legislation that he highlighted this morning in relation to the point that was then being debated about the abolition of the right to silence but, certainly, some of the worst legislation that is made is the result of political parties trying to be tougher than the other in areas of criminal law and law enforcement. That results in legislation that responds to political need, rather than to the need of the quality of legal administration. I think one of the things that we get right in our political system in Gibraltar, is that we do not over politicise things like this, to the extent, indeed, the criminal law, the powers of police, et cetera, which is very politicised in countries like the UK and indeed is one of the main political footballs. So we welcome what the hon Member has said about consensus. The important thing is to get it right, rather than to try to out toughen ones political opponents. Our approach, I think in Gibraltar, results in good law. The approach of trying to always

be tougher than your opponents, I think results in bad law, very often unnecessarily draconian law.

So we welcome that. Of course, it is all very well for the hon Member to say that, I mean, I did not think what the Hon Minister for Justice said was defeatist or that he intended it to be defeatist. I do not think anything that he said suggested that there was absolutely nothing more that could be done, but we are the executive and legislature. We have a constitutional system that rightly separates political Government from judicial, the administration of justice and law enforcement.

Our role is to make sure that judges and policemen have the necessary statutory tools at their disposal, in terms of Members of Parliament, but that is as much him as me, and in terms of being the Government, as many resources at their disposal as they can do, but having put the necessary legislation in place and given these necessary resources, there is no point looking to the Government. I think it is entirely dangerous to look to the Government for effectiveness of law enforcement because, in effect, what the hon Member is inviting us to do is to cross the constitutional line, engage in matters which are for the judges and for policemen, which is completely unconstitutional and rightly unconstitutional.

There are larger countries than us in Europe who profess a separation of powers, but actually have much less of it than they pretend in public. We have it both in the theory and in the practice, and one of the things that we have got to avoid the temptation of falling into in the same vein as the consensus point which I started by appreciating his views on, is that we have got to make sure that we adopt the same position in relation to the call for the need to do more.

The hon Member wants to say to the Government, the reason why the police is not more effective is that they lack resources, Government give them more resources. That would be a legitimate point. Or if he says, the reason why there is so much

drugs in Gibraltar is that judges cannot impose sufficiently tough deterrent sentences, and people think that it is worth trying to get away with drug smuggling and selling drugs. Let us toughen the law. Either of us can propose to do that. But beyond that, beyond the question of resources and beyond the question of legislation, there is a very limited area of action left to a Government in a constitutional system like ours, which separates the powers as [inaudible] has done so. For example, one of the areas where we continue to be able to work is in the schools and in the education process and trying to do things for the youth both in the schools and by other things that will likely keep them occupied, keep them busy, sports, culture, leisure, things that will motivate the youth to pick a lifestyle different to the one that goes down the drug abuse road, or even the drug use road. Now, I think the Government's record is quite good in all those areas. In sport, and leisure, and culture, and activity for the youth. So I am not saying that the hon Member was accusing us of any of that, I am just saying that this area forms part of the non-politicisation consensus point as does his original point about the content of legislation.

I do not think opposition parties in Gibraltar, whoever they are, should press governing parties in Gibraltar, whoever they are, to interest themselves and stray into the domain of law enforcement and judicial administration and, I am saying to you this myself, as somebody that is very close to the view that there is, in our system of separation of powers, very often a mismatch between power and responsibility.

So, for example, if judges were being too lenient on the punishment of a particular offence, burglaries or knife crime or ... whichever he wants to choose. Society does not blame the judges. Society says, what is the Government doing about it? So the Government, in effect, has responsibility in political governance, [inaudible] governance terms, without actually having the ability to reach down and fix it, except by one device which I like and the judiciary does not, and that is the question of mandatory sentencing.

So, for example, yes, that is one thing that the legislature can do. If the legislature is particularly worried about, for example, knife crime and this would be the next step. At the moment, we have got a [inaudible] balance and, I think, a much more robust and tough regime on knife crime in this Bill. But the next step beyond this, if it does not succeed in eradicating knife crime, is that I think this Parliament would have to consider the possibility of introducing a mandatory jail sentence. One strike or you are out, or two strikes ... however many strikes you want to allow, because at the end of the day most knife crime is spontaneous resorting to gratuitous violence, and I think that there are many parents in Gibraltar who worry about that when their children go out on a Friday and a Saturday night. Is he going to stare at somebody who is going to take umbrage. Is he going to pass some comment about somebody's girlfriend. Is he going to sort of knock somebody in a pub on the way through and this other chap is just going to reach for his pocket, pull out a knife and stick it in him. There are parents in Gibraltar who legitimately worry about that, and if this does not result ... If society does not find a way of sending a loud and clear message of deterrence about this, then we will continue collectively to suffer the consequences of it.

So, personally, whilst we are very happy with the balance of this Crimes Bill, I think it is possible to get tougher than that, but we need to, presumably, ... We also agree across the floor of the House that you should temper the ... you should try and fix the problem by the least draconian methods first, and if the less draconian methods fail, then you resort to the more draconian, rather than go straight to the more draconian methods.

So I think that there are lots of philosophical discussions that one could have about this issue of law enforcement. At the end of the day, it is always a balance between protecting the safety of the collective and individual on the one hand and civil liberties and rights and the law not being too draconian and too intrusive on the other. I very much welcome the approach that the hon Member brings to the debating of such issues, and even within

the desire to reach consensus, there is always room for disagreement, and there is always room for having different approaches and bringing different points of view to bear on the consideration of any question.

I am a little bit less sympathetic with the hon Member's observations about the age of consent which again, without wishing, as he did, not either to spoil the consensus that exists on this subject, sounds to me very much like the hon Member wanting to occupy all sides of an issue for fear of upsetting either those who are for, or those who are against the raising or the lowering of the age of consent. Well, Mr Speaker, this Bill which he has decided to abstain on, despite all the complementary things he had to say about all its other provisions, does not have the effect of changing the law as it stands today. All this Bill does is take this opportunity for the physical printed version of the Bill to say what the Supreme Court has already said the law is already in Gibraltar. Or did he think it would be legitimate ... Does the hon Member think it would be legitimate for the Government to have come to the House to bring a new Crimes Bill with age of consent at eighteen when the Court has already said that that is unconstitutional and has in effect changed the law to make it read sixteen. How can this House pass legislation today that reverses what the law is today. It is not this Bill that is reducing the age of consent to sixteen. It is the Supreme Court that reduced the age of consent to sixteen.

**HON G H LICUDI:**

Can the hon Member give way.

**HON CHIEF MINISTER:**

Of course.

**HON G H LICUDI:**

I do not believe I said that this Bill reduces ...

**HON CHIEF MINISTER:**

Alright. No, I know he did not.

**HON G H LICUDI:**

I also do not agree with the hon Member that the Supreme Court reduced anything because the Supreme Court made a declaratory judgement of what the law already was. It might be a philosophical argument as to what it did or not, but I ...

**HON CHIEF MINISTER:**

That is a misunderstanding ...

**HON G H LICUDI:**

But I can just say this. I did say that I acknowledge the reasons why this is being introduced as part of the Crimes Bill and although we took a particular position on the last occasion, we acknowledge that there has been that change of circumstances, and that is why we are abstaining, but the reason we are abstaining is quite simply because of the lack of a consultation process which has been promised.

**HON CHIEF MINISTER:**

But, Mr Speaker, and therein lies, if he does not mind my saying, the hon Member's contradiction. The Supreme Court

has said that it is unconstitutional for the ages of consent to be different and, in effect, has said it is not for me to raise it to eighteen, so I lower it to sixteen. That is what the Court has said. So, it would have been inconceivable, indeed unlawful, for the Government to have come to Parliament today with any piece of legislation, let alone one this thick, and had anything in it which meant eighteen instead of sixteen. It would have been unlawful, unconstitutional and illegal. Now, Mr Speaker, so this Bill ... I am not suggesting that the hon Member himself suggested that it was this Bill that was having the effect of lowering the age of consent. The argumentative forensic value of the point that I am making is that, therefore, there is no logic in him using that reason to not support the Bill, because there is nothing in this Bill that is anything other than a statement of the law as it already is today. He may say, well, I recognise that this Bill does nothing more than state what the law is, does not create new law on this question. I, Opposition spokesman on justice matters, think that the matter should be consulted. Go out to consultation and say, I am committing my party, if elected into Government, to consult and if the majority think it should be raised or lowered, do it. That would be a logical position, but not fail to support a Bill that he thinks is otherwise a good idea because he is implying, although he is not saying, that there is ... I mean, not supporting the Bill, abstaining on the Bill, suggests that there is something in the Bill which he is unable to support. There is not anything in the Bill that he is unable to support, because all that there is in the Bill, is what there has to be in the Bill to reflect the law as it already is today, and then, Mr Speaker, even if the hon Member were to adopt the more logical position that I am trying to describe to him. Mr Speaker, he is trying to occupy, he is sitting on a fence with a very sharp edge to it and is impaling himself on a very sharp object called democracy, yes. Look, Mr Speaker, it was not that long ago that the hon Members opposite were the champions of gay rights and their campaign for the lowering of the age of consent. Does he really think that, when he was supporting Mr Alvarez and the gay rights movement on the age of consent, the gay rights movement was welcoming their support, because the gay rights

movement thought that they were in danger of the GSLP raising the age of consent for everybody to eighteen? Is that what the hon Member thinks everybody in Gibraltar thought that they were supporting the gay rights movement, not because the gay right movement wanted their age of consent to be sixteen, but because they thought the gay right movement wanted the heterosexual age of consent to be ... Well look, Mr Speaker, you see, either the hon Members believe in the gay rights aspiration or they do not. Or they believe in the view, as I do, that it is not good for society. That we are much better off with a higher than a lower age of consent. That is my personal view. I do not impose it on anybody. That is my personal position, but I do not occupy both. I adopt that position and I defend it in the knowledge that there is a sector of society that thinks that I am a dinosaur for holding that view. I do not try to please both sides of the argument and every side of the argument all of the time, which is what I believe the hon Members do, when they dance on this pin head which is what they are doing. They are dancing on a pin head. They are withholding their support for this legislation on grounds that are irrelevant because the legislation does not do what the hon Members say they cannot support it for reason that it does it, and then, simply to be able to say that they want to consult. Have they got no view of their own? Do the hon Members not have a view of their own about whether the age of consent in this community should be sixteen or should be eighteen? This is implicit in the hon Member ... The hon Members are simply wanting to reach polling day at the next election having expressed no view to anybody. Both views to the two separate camps. I know that they go to the Evangelical Movement and tell them that they are all in favour of one view, and then they meet with the Gay Rights Society to tell them that they are of the other view, and then they come to tell the Parliament and say that they have got no view at all. It is the sole logical explanation for the hon Members position. Mr Speaker, I believe that it is perfectly legitimate for this community to have a debate about what the age of consent should be, but let us not mislead anybody. It is either sixteen for everybody. Seventeen for everybody. Eighteen for everybody.

Nineteen or fifty for everybody and we can have a debate about what the age of consent should be, but it has nothing to do with the content of this Bill. Nothing. Because when you have had that debate, you have analysed its results and you decide that the age of consent, perhaps, should not be sixteen, but sixteen and a half, or seventeen, or whatever age your consultation process, which the hon Member understands he will never be, in any time soon, in a position to conduct, you can always come back to Parliament and say, well now, now I am going to change the law. At the moment the age of consent is sixteen. I have consulted the people. The majority ... Presumably he will not want to do this anytime near an election for fear of offending the minority. If he carries on with the same attitude, he will probably do this immediately after an election with a view to not suffering the electoral consequences of offending the minority view in that referendum.

**HON G H LICUDI:**

That is what you said you need to do.

**HON CHIEF MINISTER:**

No, Mr Speaker ...

**HON G H LICUDI:**

[Inaudible] after the election. You said it.

**HON CHIEF MINISTER:**

No, no.

**HON D A FEETHAM:**

He did not say that.

**HON CHIEF MINISTER:**

I am not politicising the Bill. I am trying to say that the Bill has got nothing to do with this issue. The Bill has got nothing to do with the issue of debating or not debating, consulting or not consulting, changing or not changing the age of consent. What I am saying is that today already, without this Bill, the constitutional age of consent is effectively sixteen which is reflected in this Bill and the Bill, therefore, simply reflects what the law already is and, therefore, the fact that the hon Member believes that there should be a consultation to see if it should be raised, and he ought to tell everybody else and, of course, the effect of raising it is that it is now raised for heterosexuals. Right. Fine. But he can have that discussion, and that debate, and that consultation and separate it, if he wanted it to, from the question of the Bill. That is the only point I am seeking to make. It is clear that there are differences of views. Look there are differences of views on this side of the House about this whole question of age of consent. I am sure there may be people on that side of the House who may share some of my views or not on this particular question. This is very much an issue which does not necessarily follow party lines or ideological lines. Different people will have different views. So I am not here trying to persuade the hon Member of my view on the age of consent. The only point that I am making is that it does not require their abstention on this Bill because this Bill is not adjudicating on the question of the age of consent.

**HON J J BOSSANO:**

Well, not really on the general principles and merits of the Bill, but on the general principles and merits of the contribution of the

hon Member. The hon Member seems to have forgotten that I brought a motion to this House saying that the decision on changing the age of consent ought to be delayed and that a process of consultation should be carried out by him and that I was suggesting that this should happen before there was an election, and that the Government chose to defeat that motion. So, in fact, the position has not changed since then. What we are saying now is what we said when we moved the motion in the House, saying we should not proceed with this. It is very simple, whatever views we may have in this, this is too sensitive an issue for us only to be the people who decide it. It is as simple as that, because if people hold very strong views outside this room, we might find, for example, that everybody ...

**HON CHIEF MINISTER:**

*[Inaudible]*.

**HON J J BOSSANO:**

When the hon Member originally supported the introduction of a Private Member's Bill, he was, in fact, supporting that the decision should be taken by the people in Parliament in this room. Notwithstanding the fact that he was likely to be getting a result that is not what he wanted, and notwithstanding the fact that there may be a majority outside the Parliament that agree with him as opposed to a majority inside the Parliament that might agree with the person who was moving the Private Members' Bill. Therefore, in that context and in the strong views that had been expressed, we felt that this was something that should not be made a party political issue, but that the people who had a legitimate ground for saying, it is wrong that there should be different ages ... In fact, if the member can remember what I said at the time, I said we are committed to equalising the age, irrespective of what the legal view is. That is to say, if the Court had ruled in favour of the hon Member and, in fact, he

must have been confident that he had a chance of winning when he spent public money on going down the route of asking for a ruling in the Court. But if the Court had ruled in favour, our position would not be any different. We would still think that, even though the Court said there is no need to equalise, we, as a matter of policy, were committed to equalising. So, you know which pin is that that I am standing on at the moment. I would like to know.

**HON CHIEF MINISTER:**

No, Mr Speaker. If he will give way, will he? Well, Mr Speaker, I will tell him what the pin head is. I actually do not agree with the view that there are things too sensitive for this Parliament to decide. This Parliament decides many more sensitive things than this. But even if the hon Member was justified in his view, which in his own opinion he is, in thinking that this is too sensitive an issue for Parliament to decide, I do not know, as opposed to imposing or abolishing the death sentence, I suppose. I do not know why it is that it is more sensitive than many of the other things we decide. But leaving that discussion to one side, accepting just for a moment if we were to, that if this were too sensitive an issue, one thing is to say, it is too sensitive for Parliament to decide, but that does not mean that you do not have a view that you are willing to express. So you think it is too sensitive for Parliament to decide, but what is your view? Given that the Courts have said that they have got to be equalised, which was his policy, without the Court telling him that it had to be equalised, does he think it should stay equal at sixteen? Does he think ... even though the majority may not agree with him and the consultation may provide a different outcome? Presumably, he has a view and the party has a view about whether it should be sixteen, seventeen, eighteen or some other age.

**HON J J BOSSANO:**

Well, my view is that it can be sixteen, seventeen or any other age, whatever the age the majority wants. I do not see anything wrong with that. So I have no ... Well, Mr Speaker, why should it be mandatory that it has to be sixteen, or it has to be seventeen, or it has to be eighteen. It is not mandatory.

**HON CHIEF MINISTER:**

No, no, no. I am asking which. What is your view on it.

**HON J J BOSSANO:**

No. Well, the view is that what is wrong with the age of sixteen and the age of eighteen, are not the ages per se, because I personally think that there are people who may be sexually mature or mature in any other sense at the age of sixteen, and then other people may not at the age of twenty, because each of us is an individual. You cannot prescribe that ...

**HON CHIEF MINISTER:**

What I have said is it has got to be equal.

**HON J J BOSSANO:**

But that what is wrong is to say, in my judgement and in my philosophy, well, it is different if you are a man, if you are a woman, or if you are a homosexual. Why? Because that, in effect, means drawing a distinction like you would say, well look, it is alright for black people to have sex at sixteen, but whites must do it at eighteen. To me it is the same kind of discrimination on race, or on sex, or on sexual orientation, but

you remove the discrimination if there is no criteria that determines what the trigger is to give you the age, and since I personally think that it is wrong that the discrimination should exist, and he thought it was not wrong ...

**HON CHIEF MINISTER:**

But at what age [*inaudible*].

**HON J J BOSSANO:**

No no. Mr Speaker, the test of the Court as I understand it ... The hon Member did not go to Court to say to the judge, I want you to tell me whether it is right that it should be sixteen or right that it should be eighteen. That is, he did not say to the judge what he is saying to me. Well look, presumably, the judge, as an individual citizen, might want it to be sixteen, eighteen or not care whether it was one or the other, but what the judge was saying was, it has to be, according to the Constitution, one age for all. Right. Given the fact that there are people like him that feel very strongly that it should not be sixteen for homosexuals but it is okay for sixteen for heterosexuals, well I want to give him and the others in the community the opportunity clearly to find out whether in the majority in the electorate, even though there are in a minority in that side of the House ...

**HON CHIEF MINISTER:**

If he will agree to let me ... My view cannot prosper any more. My view has been rendered unlawful by the Court. Yes, my view is that it should have stayed as it was, and the Court has said, as it was it cannot stay. As it was it cannot stay because one age for one and one age for the other, it cannot be. It has got to be the same for both and because, I the judge, do not feel entitled ... It is a job for the legislature to raise it from sixteen up



for heterosexuals, the logical thing is to bring the homosexual one down so that I improve the homosexual right without worsening the right of the heterosexual. So, the hon Member has got to understand that any increase above the common age of sixteen which is the law today. Today the law is common age of sixteen. Any decision by this Parliament, or by him, when he makes a recommendation to the people of Gibraltar in this consultation that they like to do, to increase the common age above sixteen, necessarily involves increasing the age of consent for heterosexuals above the age that it has been since nineteen ... well, I do not know, since the law has been in place. All I am asking, I am not asking him to explain to me what the Court judgement meant. I know what it is. I lost it. I understood it. The age had to be equalised. What I am asking is, are the hon Members ... Do they have a view and if they have it, are they willing to state it. Look, it could be that they do not have a view and, therefore, cannot state it because they do not have it, or they have got a view but are not willing to state it to me here today. They can say that. My invitation to him, which he does not have to accept obviously, is, given that it has got to be equal and given that its presently equal at sixteen, does he have a view about what different level than sixteen, which is the present age, it should be? Now, and I am saying the hon Members will not say that because they do not want to offend either the gay community or the heterosexual community. That is the point that I am making.

**HON J J BOSSANO:**

I see. So the point is really that because we are not saying whether it should be sixteen, or seventeen, or eighteen ...

**HON CHIEF MINISTER:**

No, it is sixteen now.

**HON J J BOSSANO:**

Well, because we are not saying it should be sixteen, seventeen or eighteen. That is it should be sixteen. That means that he says, he imputes the motive for that being that we want to please both. Well, look, I do not know how he thinks we are going to please both by not saying an age. We will please people by saying one age or the other. That is to say, we will please the people who want it to stay at sixteen, if we say sixteen, and we will please the people who want it to go up to seventeen, if we say seventeen, and if we do not say which one it is, then everybody is unpleased. But the point is, of course, that that same dilemma presumably he had when he said he would support ... Immediately after he defeated the motion and we defeated the Bill, he went on television and he actually said he would go for a consultation without saying at what age he wanted to equalise, because the consultation was not as to whether we should or should not equalise. The consultation was as to whether we should go up from sixteen for those that were sixteen or down from eighteen for those that were eighteen. I, personally, feel from the people that I have talked to, that there is a stronger view in Gibraltar for moving up from sixteen than from coming down from eighteen. That is ... But I, personally, would not feel as strongly as he does, that it should be one or the other. Frankly, I would imagine that even though he did not get what he wanted which was not to touch it, he would prefer, since we have to equalise, that it would be equalised at seventeen or equalised at eighteen. I do not know, but I mean, given his strong views ...

**HON CHIEF MINISTER:**

Mr Speaker, this is a debate about an issue. I do not want to conflate the two points. Very interesting as is the debate, no doubt, it is for another day. The point, if he would give me the opportunity to repeat it, that I was originally intending to make to the Opposition spokesman is trying to persuade him that holding

those views that the ... I do not know what he is now, the acting Leader of the Opposition. No, no. He is not the acting Leader of the Opposition. The acting spokesman ... Well, the Hon Mr Bossano. Holding the views that the longest serving Member of the House has just explained and defending that position, however much we might disagree or criticise that position, but defending that position, does not require him to withhold support from this Bill. That is the only point that is relevant in terms of the debate on the legislation.

**HON G H LICUDI:**

Mr Speaker, if the hon Member will give way to me before he sits.

**HON CHIEF MINISTER:**

I will. I will.

**MR SPEAKER:**

We are still on the Hon Joe Bossano's reply.

**HON G H LICUDI:**

Yes. Giving way to the hon Member and the hon Member has given way to me. Surely, it does do precisely what the hon Member has said. If our policy is that there needs to be a consultation process to finally decide ...

**HON CHIEF MINISTER:**

[Inaudible].

**HON G H LICUDI:**

No no. We recognise that the law is as the Court has said and, therefore ...

**HON CHIEF MINISTER:**

Mr Speaker, but this is not for deciding anything.

**HON G H LICUDI:**

The law is as the Court has said and, therefore ...

**HON CHIEF MINISTER:**

[Inaudible]. In the judgement of the existing ...

**HON G H LICUDI:**

And that we recognise and that has to be respected. That is the law. Supporting this provision means supporting the legislation which gives effect ...

**HON CHIEF MINISTER:**

To what the Court has said.

**HON G H LICUDI:**

To what the Court ... Yes. But we already knew what the law was. As far as we were concerned, there had to be equalisation and we felt that the position was discriminatory. So the issue

which prevents us from supporting this Bill is that we still feel there is that need for consultation for the decision to be taken as to what it should be in the formal sense for legislative purposes. We recognise what the law is at the moment, but that might change having regard to the views of the people.

**HON CHIEF MINISTER:**

Okay. Let me just, if he will give way to me.

**MR SPEAKER:**

He does not have to.

**HON CHIEF MINISTER:**

Oh, he does not have to. I gave way to him.

**MR SPEAKER:**

*[Inaudible]*.

**HON CHIEF MINISTER:**

Let me say that if I thought that by ... I do not know if I can persuade him by telling him this. It is not that it matters to the Government whether they support the Bill or not. It is just in the interests of the consensus that we have spoken about before. Look, we have got a majority. This is going to be the law by the end of this process, whether the hon Members abstain or support it, but in the interests of the consensus, and given that he believes that everything else in the Bill is so much to be welcome, I am just trying to give him a political free option to

sign up to that consensus and to sign up to all the other bits of the Bill that he agrees with, without having to compromise his position on ... I do not know. Obviously, my powers of persuasion are not enough to persuade him. But look, if I thought that by supporting this Bill, I was supporting by my vote ... was bringing about a reduction of the age of consent, the homosexual sex to sixteen, I would not be voting in favour of this Bill today.

**HON J J BOSSANO:**

Well, I think we will just have to agree to disagree as to what we should be doing, but I think there is a way of reconciling the two positions. All that we need to do is to vote clause by clause. We will vote in favour of all the clauses except this one and we will vote against this one and he can vote with us.

**HON CHIEF MINISTER:**

No, Mr Speaker, he has missed the point. I ... No no, Mr Speaker, it is not necessary for me to vote against this clause, even this clause. No no no. It is not necessary for me to vote against this clause because this is not the clause that lowers the age of consent to sixteen. So, in supporting, in voting in favour of this clause, I am voting not to lower the age of consent to sixteen, but simply to acknowledge that the Court has found what it has found. It would not matter if we went clause by clause on ... but if it helps him to go clause by clause, fine. We will deem that to have happened without having to spend the whole evening here voting clause by clause.

**MR SPEAKER:**

Well, having debated the age of consent, does any hon Member wish to speak on the general principles and merits of the Bill. Strictly construed.

**HON D A FEETHAM:**

Yes, Mr Speaker, very briefly. I hold the Hon Gentleman Mr Licudi in the highest esteem, but I have to say that his contribution on this Bill today, on this particular Bill, I have found absolutely astonishing. Here we have a Bill that comprises six hundred and two clauses in twenty seven Parts, ten Schedules. It is a Bill that, as the hon Gentleman even in his own contribution has recognised, will be the corner stone and the foundations of the criminal justice system for many, many years to come, and what does he do, the only comments that he makes are limited to ... First of all, he elegantly corrects Mr Costa on the point that he made, and we are not suffering from hearing defects on this side of the House. A point very clearly that he made about the right to silence provisions being ...

**HON N F COSTA:**

On a Point of Order, Mr Speaker. I did not say that. What I said was that clearly if one considers the position in the UK in 1994, the Major Government, clearly for electoral purposes, to seem tougher than labour on crime, passed the section saying basically that adverse inference could be drawn from silence. And I said that, given that as my Hon and Learned Friend had commented at there being a Royal Commission, recommending against the introduction of that section for all of the reasons that are stated therein, the UK did that for those reasons and, therefore, it was not good to follow that example. Then my Hon and Learned Friend also said that Australia, Canada and the US had kept the absolute right to silence. So, all that we were

saying was that a section that essentially is copied from the Criminal Justice and Public Offences Act from 1994 was done for electioneering purposes, and it was not ... in the UK and it was not a good model to go by. Not that they were doing that.

**HON D A FEETHAM:**

Mr Speaker, he questioned whether, in fact, we were doing, so close to the election, exactly the same as the Conservative party was doing in 1994. But, Mr Speaker, I do not want to stray from the point.

His contribution is limited. First of all, he elegantly corrects Mr Costa on what Mr Costa said earlier. Then, he comments not on the Bill, but on something that I have said in an interview on GBC. Then he asks me, and we are talking about a Bill of six hundred and two clauses, twenty seven Parts, a question about corporate manslaughter and the circumstances in which ... whether the Government is devising policy for excluding any Government department from the scope of clause 201 and then he said, not commenting on any of the Bill, nothing, harassment, religious hatred, sexual offences Parts, the other Parts, the ...

**HON G H LICUDI:**

I supported all that.

**HON D A FEETHAM:**

Yes. He supports all that. He did, on the sexual offences Part he said we support it, but then he says, but we are abstaining because the age of consent in the Bill is sixteen years old when, as the Chief Minister has explained, and any reasonable lawyer listening to this debate, even non lawyers listening to this debate ... And it will be clear beyond peradventure that the position is

that you have a situation where the Court itself, which, actually, is the position that I outlined during my Private Members' Bill, because I said, look, I am bringing this Private Members' Bill because I believe that, actually, not only is this unlawful because it requires equalisation but, actually, the position is that the reason why I am brought it at sixteen was because a Court itself would, actually, reduce it from eighteen and sixteen, applying the blue pencil test, which is one of the arguments that I raised during the introduction of the Private Member's Bill, and that is precisely what the Supreme Court, actually, did with this case. So we have a situation where the age of consent now in Gibraltar is sixteen for everybody. This Bill merely restates what the position is and hon Members say, well, despite the fact that it is a brilliant piece of legislation, we cannot support it because, somehow, they say that we should have ... In fact, their position is this. They say, you should delay something like this, as important as this, but of course it is. You should delay at the very least the sexual offences Parts. In other words, the hon Gentleman ....

**HON G H LICUDI:**

*[Inaudible]*.

**HON D A FEETHAM:**

Of course, the position is that. The hon Gentleman would allow the position to remain in our statute books under the Criminal Offences Act for all those provisions about imbeciles and idiots. They are integral parts of the sexual offences Parts of the Criminal Offences Act. It would be impossible to just simply leave aside this question of the age of consent at sixteen and deal with that as well. It is impossible. We would have had to come to this House with a Bill that excluded completely from its scope, the sexual offences Parts. Indeed, that would have also meant that we would have had to exclude from its scope, the

sexual offences register, which the hon Gentleman has also agreed with and has welcomed. And all because he says that we should be consulting on whether ...

**HON G H LICUDI:**

You have said that yesterday.

**HON D A FEETHAM:**

No. You are saying we should not be taking this Bill today, or certainly, not bring these provisions today on restating what is the current position, that is, sixteen, because we should be consulting. Mr Speaker ...

**HON CHIEF MINISTER:**

Before we bring the Bill.

**HON D A FEETHAM:**

Absolutely, before we bring the Bill, which would have meant that all those provisions about idiots and imbeciles, all those woeful provisions about people who are in positions of trust that may abuse children. That may abuse the mentally incapacitated. All those provisions we would have had to delay simply to give the hon Gentleman opposite a "get out of jail card free" in terms of their electoral position at this forthcoming election. Mr Speaker, it is political dishonesty of the worst kind. That is what it is, Mr Speaker. That is what it is and, in fact ...

**HON G H LICUDI:**

Will the hon Member give way. What we see in ... I do not want to go into these recriminations, but it is not beyond the realms of imagination that this matter could have been dealt with at a practical level, leaving the law as it currently is, because we all recognise that it currently is in terms of the age of consent alone, and bringing in all the other provisions. That is perfectly possible. That is ...

**HON CHIEF MINISTER:**

Will the hon Member give way. So the hon Member thinks that we should bring a codification of a modern crimes code to this House, whilst leaving laws in place about idiots and imbeciles ...

**HON G H LICUDI:**

No.

**HON CHIEF MINISTER:**

Yes. He said, leaving in place ... You cannot ...

**HON G H LICUDI:**

*[Inaudible]*.

**HON CHIEF MINISTER:**

The hon Members have got to understand, you cannot tackle the sexual provisions in our existing criminal offences legislation without also tackling the age of consent. You cannot

disentangle the architecture of the current legislative provisions. It is just not that simple, and the hon Member, if he spent just half an hour doing it, would ... I hope he will accept from me, in an entirely non partisan almost professional way, across the floor of this House. I have no doubt that the hon Member, if he spent half an hour or an hour considering the practicalities and the viability of what he just suggested, would, as we have done, come to the conclusion that it is impossible to do so. It is impossible, and I am not making a political point here, I am not making to the hon Members a political point here. I am speaking to him as one lawyer to another. It is not possible to do what the hon Member suggests might have been a practical way out.

**HON G H LICUDI:**

Mr Speaker, this is the Government's justification for doing what they are doing. It is impossible to do anything else. We believe that with a little bit of ... You do not even need a lot of imagination. The two sections that we are primarily concerned with are sections 221, sexual activity with a child, and section 222. Now, these sections, which have to do with sexual activity with a child, have nothing to do with the other sections on idiots, imbeciles and all that. All that could have been reformed in any way, and it does not take a lot of imagination to leave the law as it was and the criticism that we have ...

**HON CHIEF MINISTER:**

But it does leave the law as it was.

**HON G H LICUDI:**

Yes, it does.

**HON CHIEF MINISTER:**

Do you not see that is the central point. This Bill does the leave the law as it was.

**HON G H LICUDI:**

Yes, and what we have said is that there should have been consultation before bringing this legislative provision, and what ...

**HON CHIEF MINISTER:**

Oh I see. So the hon Member is not supporting the Bill because it does not raise the age of consent.

**HON G H LICUDI:**

No, of course, not.

**HON CHIEF MINISTER:**

Well, it is the only logical explanation. He is not supporting it on the age of consent question, despite the fact that it leaves the age of consent where it is today. So, therefore, ergo, it is an inescapable conclusion and consequence of that, that he is not supporting it because there has not been before it a consultation to see if the majority wanted to raise it.

**HON XXX:**

Absolutely. There is no other ... Mr Speaker.

**HON G H LICUDI:**

No. I have got the floor.

**MR SPEAKER:**

Sorry. The floor is still with the Hon Gilbert Licudi because the Hon the Chief Minister asked him to give way. He will eventually conclude and the Hon the Minister for Justice will reply.

**HON G H LICUDI:**

Mr Speaker, I will conclude in one moment. On this one we simply have to agree to disagree. Supporting this is support for the existing law at sixteen.

**HON CHIEF MINISTER:**

Until it is changed.

**HON G H LICUDI:**

Until it is changed. Yes, and that is precisely our position. That there needs to be a consultation process to decide at what age that should be set.

**HON CHIEF MINISTER:**

Yes, but will he give way to me. Does he not understand that I can accept that position, intellectually, but he is not defending, he is not upholding that position by withholding the support for this Bill, because if he withholds the support from this Bill, whether he withholds the support from this Bill or supports it, the

position remains that the law remains at sixteen without it having been checked. So, whether by supporting the Bill, or whether by voting against it, or whether by abstaining against it, both result in exactly the same position. Namely, that the age of consent is supported, otherwise what he should do is move an amendment now. In all cases, the effect of his abstention, the effect of his voting against this Bill, or the effect of his voting in favour of this Bill, are all votes in favour of leaving the law at sixteen for both. That is the only point I am trying to make to him. So he cannot justify his decision to abstain because to vote in favour of it would be to support the status quo, because supporting the status quo is the result of all three possible votes open to him.

**HON G H LICUDI:**

Mr Speaker, if the hon Member is saying that supporting the status quo happens anyway. Why should he be concerned as to how we vote.

**HON CHIEF MINISTER:**

I will tell you why I am concerned. I told him ten minutes ago. It is not, because we need his vote. It is not because we need his vote. It is because if he is right in his judgement that all but one or two clauses of this are going to form, in his words, the corner stone of criminal jurisprudence in Gibraltar for the next several generations, and adding that remark to his own other statement about the importance of consensus in this area, it would be a jolly good thing if society got the message that it was the unanimous view of this House, that this should be the corner stone of our legal system for the next few years. And if either of us, after the next election or before the next election, depending on who wins or who does not, wants to test public opinion to see if the corner stone should be changed in relation to the age of consent, let us do that, but in order to do that, let us not unnecessarily deprive this corner stone of unanimity in this

House for ever. Because it will forever be said that this corner stone of criminal jurisprudence divided the House. In other words, it had the support only of one side of the House, and that is all I am trying to avoid. Nothing else. It is not necessary for the passing of the legislation. I have tried to persuade him to do it making it clear that doing it has no effect, negative effect on his political position on consultation, age of consent and all of that. He has asked me why it is important and I just thought that I would take the opportunity of ...

**HON G H LICUDI:**

Mr Speaker, we understand that, but I thought we had expressed that view already, and that the message that had to come out from this House in respect of this major piece of legislation was consensus, and that we wanted to adopt that approach. Now, if, and I understand the reasons that the hon Member is giving, and I hope he understands that there are issues of principle at stake in respect of those ...

**HON CHIEF MINISTER:**

I have tried to persuade him that those principles are not revoked.

**HON G H LICUDI:**

Well, we do not agree, but we will have to disagree, and the simplest way of doing this, Mr Speaker, would be simply to carve out sections 221 and 222 and say, we abstain on those two sections alone, and we support and vote in favour of everything else in the Bill. That would be the simplest way of doing it. Is that not good enough for the message that the hon Member wants to give?



**HON CHIEF MINISTER:**

No. I understand, Mr Speaker. If we were to take these offensive ... these sections, that he finds himself unable to support. If we were to take them out, or if we were to write them ...

**HON G H LICUDI:**

*[Inaudible]*.

**HON CHIEF MINISTER:**

No, no, no. Or if I were to send him a blank piece of green paper across the House, and say, you write these two sections, you write them in whatever language you want. How would that alter his predicament? Which is that until there is a consultation, whether it is by this legislation, or by the existing legislation as changed by the Court, until there is a consultation, the law is equality at sixteen, and that result is not altered by this Bill. This Bill is irrelevant to his view that there ought to be a consultation on the age of consent, because withholding support from these two offensive clauses means that the law remains as he thinks it should not be without a consultation. Yes. He says, we should not ratify the age of sixteen until we have given people, who may have a different view, the opportunity to express the view that it should be seventeen, eighteen or some other age. His inability to support these two clauses does not ratify that age. He is not saying by supporting these two clauses, I agree that it should be sixteen. He is saying, it is sixteen until this Parliament decides otherwise, and this Parliament should not decide otherwise until it has consulted the people. That is his position, and all I am trying to persuade him of is that that position is not prejudiced or diluted or in any way adversely affected by simply recognising that, implicit in that position, is that the law should remain as is, until the people have been consulted, and it

remains as is whether he supports this Bill or does not support this Bill. He is not voting in these two clauses. He is not voting by supporting these two clauses to say, I agree that it should be sixteen. He is saying by voting for these two clauses, I recognise that it is sixteen by decision of the Court, until such time as Parliament changes it, and Parliament should not change it without a consultation with the people. I wonder if we could settle this over a tea break because I can see that neither of us is going to want to ... I promise him I will not stand up again on this debate.

**MR SPEAKER:**

Do the hon Members want a short recess? Well, the suggestion is a ten minute ... Not necessary. The Hon Gilbert Licudi.

**HON G H LICUDI:**

Mr Speaker, all I can do is acknowledge the contribution of the hon Member. We understand his views. We respectfully disagree with his final analysis. We respectfully disagree and ...

**HON CHIEF MINISTER:**

I think the non Leader of the Opposition does not agree. The one who says he is not the Leader of the Opposition.

**HON G H LICUDI:**

... and the position is that there is unanimity and the force of unanimity and consensus in the major changes that this Bill brings about, and that, we fully endorse and support.

**HON D A FEETHAM:**

I thought that I was the one that gave way about half an hour ago, actually, to him, but ... yes. Mr Speaker, just one very small point in relation to this, I think the position, in fact, is even worse than what we have described because what the hon Gentleman really is advocating is a position where they vote for the entirety of the Bill, except for two clauses. The two clauses then, of course, remain ... the law, in relation in those two clauses, remains as is in the Criminal Offences Act, which is completely and utterly inadequate and antiquated, as amended by a judge, but the effect is still sixteen. So it is absolutely ridiculous position to hold, Mr Speaker. It really is, on any analysis, but, Mr Speaker, moving on.

The hon Gentleman also said that, commenting on what I had to say in the interview, and I have to say that probably the only person that has construed the interview as me being lenient on cocaine crime or defeatist, or anything like that, it is the hon Gentleman because I have been stopped by people down Main Street actually being told that, congratulating the Government for getting tough in relation to this area, and I have said, look the Government is doing what it can do in relation to this area, and Mr Speaker, but it is really ... It says a lot, actually, of the hon Gentleman's position that he does not actually say what more needs to be done in this area, at all. He does not say it.

**HON G H LICUDI:**

That is not the debate.

**HON D A FEETHAM:**

No, he does not. He says, or the only point that he made was, more could be done on detection. Actually, detection rates in the RGP are up in relation to this area. The reality of the

situation, Mr Speaker, is that, whereas in the United Kingdom and in Spain, where the United Kingdom and Spain are reducing sentences for possession of cocaine with intention to supply ... They are reducing them in Spain, I think they are reducing them from six years to three years. In Gibraltar, you have a situation where the judges are getting very tough with this type of crime, Mr Speaker, and we, certainly, as a Government do not have a policy where our sentencing policy is actually governed by the amount of people that are held in prison, as has motivated changes in both Spain and the United Kingdom.

So, Mr Speaker, it really is very little that the Government can actually do more in relation to this area that it is not doing, and, Mr Speaker, it is probably ... I say also that there is an inconsistency as well in the Opposition's policy in relation to this entire debate, because on the one hand they lambast, certainly lambast me in relation to the what I have said in the interview in GBC but, then, when it comes to the questions about the right to silence, for example, which does not allow a drug smuggler and a drug pusher to remain silent at a police station, and then, at the trial come up with an explanation and the Courts not being able to draw an adverse inference from the fact that he refused to answer reasonable questions from police officers.

**HON G H LICUDI:**

But lock up [*inaudible*] people in the process.

**HON D A FEETHAM:**

But, Mr Speaker, what we are doing is, we are introducing provisions in the Crimes Bill and in the Criminal Procedure Act that are getting tough, Mr Speaker, with people who deal with that kind of situation. Who choose not to answer questions and then may provide an explanation at the eleventh hour and expect for that explanation to be considered without the

prospect of any adverse inferences being drawn by the contribution.

**HON G H LICUDI:**

Can the hon Member give way. The hon Member says that this is an example of getting tough. Getting tough with suspects who are presumed to be innocent is a very different proposition to dealing with offenders. Offenders need to be dealt with properly and severely, but there must be safeguards. This has been a provision, a fundamental right that we have had for many, many years. Innocent until proven guilty, and you do not presume that they are guilty until they prove their innocence as is being suggested now.

**HON CHIEF MINISTER:**

He will give way to me. Eliminating the right to ... eliminating ... No, no, but unlike the phantom Leader of the Opposition, I am the Leader of this House. It is the hon Member who says he is not even the acting Leader of the Opposition anymore, and gives voting instructions to everybody sitting on both sides of him. Mr Speaker, eliminating the right, if we can get serious, these are interesting points to debate. Eliminating the right to remain silent is not eliminating the presumption of innocence. Why does he draw that distinction?

**HON XXX:**

[Inaudible].

**HON CHIEF MINISTER:**

Well, the United Kingdom that invented jurisprudence in this area does not think so, and the European Court of Justice does not think that it violates even the European Convention of Human Rights. Mr Speaker, most innocent people do not rely on silence to show their innocence. The only people who have ever benefitted, the only people that have ever benefitted from the right not to have inferences drawn from silence are guilty people who, therefore, get an undeserved opportunity to win on technicalities. They are the only people who ever rely on the right to silence. Now, I acknowledge that this is not a cut and dry debate. No, no. I am not saying that the only correct defensible point of view in this debate is in favour of the right of ... Well, look, if it was so why was it not abolished fifty years or thirty years ago. So, I am not challenging the hon Member's view that, in his opinion, it is preferable not to eliminate the right. It is as legitimate a view as the view that it should, on balance, be ... What I am saying is that he cannot equate, just as I do not find it necessary to disqualify his view, he must not disqualify ours, by suggesting, and the United Kingdom's, by suggesting that those of us who hold the view that we hold, do so, in the knowledge, or running the risk, or being willing to run the risk of altering the presumption of innocence until proven guilty, or even, eroding that right, which was Mr Costa's contribution from a sedentary position.

**HON N F COSTA:**

Mr Speaker, if the hon Gentleman may give way before ...

**MR SPEAKER:**

Order, order. I think we are in danger now of going back into the Bill which was passed. Well, at least the Second Reading which was completed. Very brief point.

**HON N F COSTA:**

I am very grateful. Mr Speaker, the hon Gentleman has said that the only people who have benefitted in the past from an unqualified right to silence are those who are necessarily guilty. But we disagree with that point fundamentally, because there are many reasons, but part of the reasons were, in fact, mentioned by my Hon and Learned Friend. Some people stay silent, not because they are guilty, but because maybe they are protecting a family member, and many other reasons.

**HON CHIEF MINISTER:**

A guilty family member.

**HON N F COSTA:**

No. Well, yes, but not the person who is accused with the crime, and there may be ethic, cultural and many other reasons why people exercise the right to remain silent and it is unfair and a misrepresentation to say that, as a matter of fact, only the guilty remain silent. That is not true, Mr Speaker.

**HON CHIEF MINISTER:**

It is alright, for cultural reasons, to protect a family member, even if they have been drug trafficking and passing drugs or guilty of gun crime, of all the knife crime. All the things that we have all been worried about this afternoon. The right to silence to protect a family member for cultural reasons, takes priority to all these things that we have all decided today we are right to want to get tough on.

**HON N F COSTA:**

We are talking about the rights of the accused.

**MR SPEAKER:**

The Hon Gilbert Licudi gave way, I will allow him to conclude his remarks, again, directly relevant to this Bill.

**HON G H LICUDI:**

Yes. Mr Speaker, it is a temptation to go back to matters that were debated this morning, but that is precisely the contribution that the Hon the Leader of the House has made. I simply invite him to consider the contribution that I made this morning and the various references because when the hon Member says that he disagrees with my view, and the UK disagrees with my view, I would remind him that there was a Royal Commission of Enquiry that actually recommended keeping the right to silence in 1993, and the political decision was taken not to accept that recommendation by the Major Government, by the Conservative Government in 1994. It is also the view that is prevalent all over the world in many countries as I illustrated with the many comments that I made this morning. So it is not just my view, there are fundamental issues at stake. There are issues of vulnerability. There are issues of pressure, not just protecting a family member. There are issues where the presumption of innocence and the fundamental right that somebody is innocent until proven guilty.

**HON CHIEF MINISTER:**

[Inaudible].

**HON G H LICUDI:**

That is eroded by any measures which put ... Well, shall I read ...

**MR SPEAKER:**

Well, no, no, no. We heard ...

**HON G H LICUDI:**

I can quote from the Commission which set out the arguments for and against. I am happy to do that.

**MR SPEAKER:**

Order, order. Let us not go back into the Criminal Procedure Act. Thank you. The Hon the Minister for Justice to conclude.

**HON D A FEETHAM:**

Yes. Mr Speaker, again, I was the one that gave way. Mr Speaker, next time I will not give way. Exactly. That is the point. But, Mr Speaker, the point that I was making is that the hon Member chastises me for making those comments but, then, he does not actually say which is, with respect, his practice. He does not say, well, actually, from the Opposition benches, this is what we would do, this is what we would do in this kind of situation. What I was saying is, look in these provisions in these Bills, there are provisions like limiting the right to silence. Well, preserving the right to silence but the ability for a Court to draw an adverse inference in certain circumstances. We include a provision as well to do away with long committals. I mean, look, those kinds of provisions are

going to be provisions that are obviously going to lead to, in my respectful view, more guilty people actually being convicted of crimes. Now that is at least the Government's position. They may criticise that position, but what he does not do, that is the point that I am making, is put forward, proffer, any alternative policy on their side as to what the Government ought to be doing in relation to the issue of drugs. That is the point, Mr Speaker.

**HON G H LICUDI:**

If he will give way, Mr Speaker.

**HON D A FEETHAM:**

No, no, no.

**MR SPEAKER:**

I now put the question. He is not giving way. He has finished with his remarks.

**HON G H LICUDI:**

He has not answered the point on corporate manslaughter.

**HON D A FEETHAM:**

Oh, I beg his pardon. The point on corporate manslaughter, which turns out to be the only substantive point that the hon Member makes of the Crimes Bill, on which they are abstaining, Mr Speaker. The point is that the UK provisions actually include a section that allows the Minister to exempt certain Government departments. When we looked at this, we looked at the

exemptions in the UK and none of the exemptions in the UK actually had any application to Gibraltar. So then, the decision was going to be, do we do away with section 192 altogether, and say, well, we are not going to exempt, or do we include section 192 because in the future there may be circumstances in which a Government of the day may wish to exempt a particular Government department from these provisions. We have left that [*inaudible*] in an abundance of caution ...

**HON G H LICUDI:**

What would those circumstances be?

**HON D A FEETHAM:**

Sorry.

**HON G H LICUDI:**

What would the circumstances be?

**HON D A FEETHAM:**

At the moment, the Government has made absolutely no decision in relation to, or has no intention to exempt any Government department. That is the present intention, but we do not know what the circumstances may be in the future. I do not know what the circumstances may be in the future. The choice was, do we include section 192, giving the power to the Government to exempt a Government department, or do we not. We have opted to include it, but there is no policy on the Government's part to exclude, at the present moment, any Government department.

**HON S E LINARES:**

Mr Speaker, if the hon Member will just give way. What type of department has the Minister identified in the UK law, more or less, so that we have an indication whether it is the tax office or any law enforcement departments which could be exempt?

**HON D A FEETHAM:**

We have no ... I think that what the hon Gentleman is saying is what is the position in the UK? Is it that? The departments in question are MOD related departments. That is why they are not relevant to Gibraltar.

Question put.                      The House voted.

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

Abstained:                          The Hon J J Bossano  
The Hon N F Costa  
The Hon Dr J J Garcia  
The Hon G H Licudi  
The Hon S E Linares

The Bill was read a second time.

**HON D A FEETHAM:**

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

Question put.            Agreed to.

**COMMITTEE STAGE**

**HON CHIEF MINISTER:**

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

1. The Gambling (Amendment) Bill 2011;
2. The Aviation Security (EU Common Rules) Bill 2011;
3. The Nature Protection (Amendment) Bill 2011;
4. The Medical and Health (Amendment) Bill 2011;
5. The Criminal Procedure and Evidence Bill 2011;
6. The Crimes Bill 2011.

**THE GAMBLING (AMENDMENT) BILL 2011**

**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 AVIATION SECURITY (EU COMMON RULES) BILL 2011**

**Clauses 1 to 27** – were agreed to and stood part of the Bill.

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

**THE NATURE PROTECTION (AMENDMENT) BILL 2011**

**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 MEDICAL AND HEALTH (AMENDMENT) BILL 2011**

**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 CRIMINAL PROCEDURE AND EVIDENCE BILL 2011**

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

**Clause 2**

**MR SPEAKER:**

There are three amendments proposed to the clause.

**HON D A FEETHAM:**

Mr Chairman, there is an amendment in clause 2. I provided a table and I think that we have all agreed that I am not going to speak on the merits because the reasons for the amendments are set out in the right hand column, unless anybody on the opposite benches wants me to elaborate on those reasons.

In clause 2(1), delete the definition of “Criminal Procedure Rules 2005” and replace with-

““Criminal Procedure Rules” means the Criminal Procedure Rules 2010 of England and Wales (S.I. 2010 No.60) made by the Criminal Rules Committee (as amended or replaced from time to time);”.

In clause 2(1), delete the definition of “legal representative” and replace with-

““legal representative” means a barrister or solicitor or any other person who is qualified to practise in the Courts of Gibraltar, and “legally represented” is to be construed accordingly. Provided that in section 14 “legal representative” means any professional legal advisor;”.

In clause 2(1), in the definition of “rules of Court” delete the figure “2005”.

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

**Clause 3** – was agreed to and stood part of the Bill.

**Clause 4**

**MR CHAIRMAN:**

Is that amendment agreed?

**HON CHIEF MINISTER:**

They are all agreed.

**MR CHAIRMAN:**

Are they all agreed?

**HON XXX:**

Yes.

**MR CHAIRMAN:**

In that case, perhaps the Clerk would call out the clause numbers in batches of ten and we can just go through it fairly quickly that way, or in batches of fifty. Until we come to the right to silence part. What is the clause on the right to silence.

**HON G H LICUDI:**

It is only section 221. It is the only one.

**MR CHAIRMAN:**

Section 221. Yes, but there is no objection ...

**HON S E LINARES:**

It is section 359.



**HON MR CHAIRMAN:**

Section 359. I think we can take this in batches of fifty.

The Hon the Minister for Justice moved the following amendments:

In clause 4(2)(a), 4(3), 4(4)(a) and the text after 4(4)(b) delete the figure “2005”.

In clause 4(3), in line 3, insert the word “to” before the words “be read”.

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

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

**Clause 7**

The Hon the Minister for Justice moved the following amendment:

In clause 7(7), delete the words “subsection (4)” and replace with the words “subsection (3)”.

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

**Clauses 8 to 18** – were agreed to and stood part of the Bill.

**Clause 19**

The Hon the Minister for Justice moved the following amendment:

In clause 19, sub clause “(8)” is renumbered as sub clause “(7)”.

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

**Clauses 20 to 38** – were agreed to and stood part of the Bill.

**Clause 39**

The Hon the Minister for Justice moved the following amendment:

In clause 39(1), in line 3, delete the words “section 38” and replace with the words “section 40”.

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

**Clauses 40 to 44** – were agreed to and stood part of the Bill.

**Clause 45**

The Hon the Minister for Justice moved the following amendment:

After clause 45(4), insert new sub clause (4A)-

“(4A) A person who without reasonable excuse fails to comply with a requirement under subsection (1) commits an offence and is liable on summary conviction to imprisonment for 12 months or to the statutory maximum fine or both.”.

Clause 45, as amended, was agreed to and stood part of the Bill.

**Clauses 46 to 51** – were agreed to and stood part of the Bill.

**Clause 52**

The Hon the Minister for Justice moved the following amendment:

After clause 52(3), insert new sub clause (4)-

- “(4) A person who without reasonable excuse fails to comply with a requirement under section 49 to attend the police station at the time specified in the requirement commits an offence and is liable on summary conviction to imprisonment for 12 months or to the statutory maximum fine or both.”.

Clause 52, as amended, was agreed to and stood part of the Bill.

**Clauses 53 and 54** – were agreed to and stood part of the Bill.

**Clause 55**

The Hon the Minister for Justice moved the following amendment:

In clause 55(7), delete the words “For the purpose of this Part, a person who–” and replace with the words “For the purposes of this Part, but subject to section 72(5), a person who–”.

Clause 55, as amended, was agreed to and stood part of the Bill.

**Clause 56**

The Hon the Minister for Justice moved the following amendments:

Clause “56” is renumbered clause “56(1)”.

After clause 56(1), insert new sub clause (2)-

- “(2) In an order made pursuant to section 698 amending Schedule 3 the Minister may make provision for the modification of the provisions of this Act in relation to any police station as appears to him to be necessary, expedient or desirable.”.

Clause 56, as amended, was agreed to and stood part of the Bill.

**Clauses 57 to 60** – were agreed to and stood part of the Bill.

**Clause 61**

The Hon the Minister for Justice moved the following amendments:

In clause 61(1)(a)(v) and (vi), in the last line of each sub paragraph, delete the word “of” and replace with the word “or”.

Delete clause 61(8) in its entirety and renumber clause 61(9) as clause 61(8).

Clause 61, as amended, was agreed to and stood part of the Bill.

**Clauses 62 to 64** – were agreed to and stood part of the Bill.

**Clause 65**

The Hon the Minister for Justice moved the following amendment:

In clause 65(4), in line 1, delete the word “a” before the words “police detention”.

Clause 65, as amended, was agreed to and stood part of the Bill.

**Clauses 66 to 71** – were agreed to and stood part of the Bill.

**Clause 72**

The Hon the Minister for Justice moved the following amendment:

In clause 72, delete the text in sub clause (5) and replace with the following new text-

“(5) If a person who has been granted bail under this Part and has either attended at a police station in accordance with the grant of bail or been arrested under section 71 is detained at a police station, any time during which he was in police detention prior to being granted bail is to be included as part of any period which falls to be calculated

under this Part, and any time during which he was on bail is not to be so included.”.

Clause 72, as amended, was agreed to and stood part of the Bill.

**Clauses 73 to 76** – were agreed to and stood part of the Bill.

**Clause 77**

The Hon the Minister for Justice moved the following amendment:

In clause 77(1), in the definition “drug offence search”, in the third line, delete the word “and”.

Clause 77, as amended, was agreed to and stood part of the Bill.

**Clauses 78 to 83** – were agreed to and stood part of the Bill.

**Clause 84**

The Hon the Minister for Justice moved the following amendment:

In clause 84(7), delete the words “section 78” and replace with the words “section 83”.

Clause 84, as amended, was agreed to and stood part of the Bill.

### **Clause 85**

The Hon the Minister for Justice moved the following amendments:

In clause 85, delete the text in sub clause (2) and replace with the following new text-

- “(2) A request under subsection (1), and the time of its making, must when it is made be recorded in the custody record unless it is made by a person while he is at a Court being charged with an offence.”.

Delete sub clauses (3) to (8).

Clause 85, as amended, was agreed to and stood part of the Bill.

### **Clause 86**

The Hon the Minister for Justice moved the following amendments:

In clause 86(12), delete the words “necessary consent” and replace with the words “appropriate consent”.

In clause 86(14)(a), in line 3, delete the word “Whether” and replace with the word “whether”.

Clause 86, as amended, was agreed to and stood part of the Bill.

**Clauses 87 and 88** – were agreed to and stood part of the Bill.

### **Clause 89**

The Hon the Minister for Justice moved the following amendment:

In clause 89(18), delete the words “subsection (15(b))” and replace with the words “subsection (15)(b)”.

Clause 89, as amended, was agreed to and stood part of the Bill.

### **Clause 90**

The Hon the Minister for Justice moved the following amendment:

After clause 90(11), insert the following new sub clauses-

- “(12) A person who without reasonable excuse fails to comply with a requirement under Schedule 4 commits an offence and is liable on summary conviction to imprisonment for 12 months or to the statutory maximum fine or both.
- (13) Any police officer may arrest without warrant a person who has failed to comply with a requirement under Schedule 4.”.

Clause 90, as amended, was agreed to and stood part of the Bill.

**Clauses 91 and 92** – were agreed to and stood part of the Bill.

### **Clause 93**

The Hon the Minister for Justice moved the following amendment:

In clause 93(3), in line 4, delete “)”.

Clause 93, as amended, was agreed to and stood part of the Bill.

**Clauses 94 to 99** – were agreed to and stood part of the Bill.

### **Clause 100**

The Hon the Minister for Justice moved the following amendment:

In clause 100(4)(b), after “if-” insert-

- “(i) the alleged offence is not a qualifying offence;  
and
- (ii) the person is aged under 18 at the time of the alleged offence,”.

Clause 100, as amended, was agreed to and stood part of the Bill.

**Clauses 101 to 118** – were agreed to and stood part of the Bill.

### **Clause 119**

The Hon the Minister for Justice moved the following amendment:

In clause 119(6), delete the words “subsection (5)” and replace with the words “subsection (4)”.

Clause 119, as amended, was agreed to and stood part of the Bill.

**Clauses 120 to 128** – were agreed to and stood part of the Bill.

### **Clause 129**

The Hon the Minister for Justice moved the following amendment:

In clause 129(3), delete paragraphs (c) and (d) and replace with the following-

- “(c) an offence under section 213 of the Crimes Act 2011 (rape);
- (d) an offence under section 213 of that Act (assault by penetration);
- (e) an offence under section 216 of that Act (causing a person to engage in sexual activity without consent), where the activity caused involved penetration within subsection (4)(a) to (d) of that section;
- (f) an offence under section 217 of that Act (rape of a child under 13);
- (g) an offence under section 218 of that Act (assault of a child under 13 by penetration);
- (h) an offence under section 220 of that Act (causing or inciting a child under 13 to engage in sexual activity),

where an activity involving penetration within subsection (2)(a) to (d) of that section was caused;

- (i) an offence under section 241 of that Act (sexual activity with a person with a mental disorder impeding choice), where the touching involved penetration within subsection (3)(a) to (d) of that section;
- (j) an offence under section 242 of that Act (causing or inciting a person, with a mental disorder impeding choice, to engage in sexual activity), where an activity involving penetration within subsection (3)(a) to (d) of that section was caused;
- (k) an attempt to commit an offence within any of paragraphs (c) to (j).”.

Clause 129, as amended, stood part of the Bill.

### **Clause 130**

The Hon the Minister for Justice moved the following amendment:

In clause 130(3)(b), in line 3, insert the word “the” before the word “person”.

Clause 130, as amended, was agreed to and stood part of the Bill.

**Clauses 131 to 142** – were agreed to and stood part of the Bill.

### **Clause 143**

The Hon the Minister for Justice moved the following amendment:

In clause 143(2), in line 3, insert the word “section” before the figure “149”.

Clause 143, as amended, was agreed to and stood part of the Bill.

**Clauses 144 to 149** – were agreed to and stood part of the Bill.

### **Clause 150**

The Hon the Minister for Justice moved the following amendment:

In clause 150, the heading is to appear in bold type.

Clause 150, as amended, was agreed to and stood part of the Bill.

### **Clause 151**

The Hon the Minister for Justice moved the following amendment:

In clause 151(7), in the last line, delete the word “section”.

Clause 151, as amended, was agreed to and stood part of the Bill.

**Clauses 152 to 166** – were agreed to and stood part of the Bill.

#### **Clause 167**

The Hon the Minister for Justice moved the following amendment:

In clause 167(1)(b)(i), insert the word “section” before the figure “169”.

Clause 167, as amended, was agreed to and stood part of the Bill.

**Clauses 168 to 183** – were agreed to and stood part of the Bill.

#### **Clause 184**

The Hon the Minister for Justice moved the following amendment:

In clause 184, delete the text in sub clause (2) and replace with the following new text-

“(2) Except as otherwise provided by any enactment, evidence given before examining magistrates must be given in the presence of the defendant.”.

Clause 184, as amended, was agreed to and stood part of the Bill.

**Clauses 185 and 186** – were agreed to and stood part of the Bill.

#### **Clause 187**

The Hon the Minister for Justice moved the following amendment:

In clause 187(4), delete the figure “194” and replace with the figure “193”.

Clause 187, as amended, was agreed to and stood part of the Bill.

#### **Clause 188**

The Hon the Minister for Justice moved the following amendment:

In clause 188(4) delete the figure “194” and replace with the figure “193”.

Clause 188, as amended, was agreed to and stood part of the Bill.

#### **Clause 189**

The Hon the Minister for Justice moved the following amendment:

In clause 189(4) delete the figure “194” and replace with the figure “193”.

Clause 189, as amended, was agreed to and stood part of the Bill.

#### **Clause 190**

The Hon the Minister for Justice moved the following amendment:

In clause 190(3), delete the figure “194” and replace with the figure “193”.

Clause 190, as amended, was agreed to and stood part of the Bill.

**Clauses 191 to 193** – were agreed to and stood part of the Bill.

#### **Clause 194**

The Hon the Minister for Justice moved the following amendments:

In clause 194(2), delete the words “section 204 and” and replace with the words “section 204,” and after the words in parenthesis insert the words “and section 469 (Witness anonymity orders)”.

In clause 194(4), in line 2, delete the word “section” before “184” and replace with the word “sections”.

Clause 194, as amended, was agreed to and stood part of the Bill.

**Clauses 195 to 197** – were agreed to and stood part of the Bill.

#### **Clause 198**

The Hon the Minister for Justice moved the following amendment:

In clause 198(1), in line 1, delete the word “section” before “195” and replace with the word “sections”.

Clause 198, as amended, was agreed to and stood part of the Bill.

#### **Clause 199**

The Hon the Minister for Justice moved the following amendment:

In clause 199(6)(b), insert the word “be” before the word “sent”.

Clause 199, as amended, was agreed to and stood part of the Bill.

**Clause 200** – was agreed to and stood part of the Bill.

#### **Clause 201**

The Hon the Minister for Justice moved the following amendments:

In clause 201(8)(c), delete the word “to” at the beginning.

In clause 201(8)(d), delete the word “to” at the beginning and replace with the word “the”.

Clause 201, as amended, was agreed to and stood part of the Bill.

**Clauses 202 to 204** – were agreed to and stood part of the Bill.



### **Clause 205**

The Hon the Minister for Justice moved the following amendment:

In clause 205(5)(a), in line 2, delete the word “section” before the word “subsection (7)”.

Clause 205, as amended, was agreed to and stood part of the Bill.

**Clauses 206 to 215** – were agreed to and stood part of the Bill.

### **Clause 216**

The Hon the Minister for Justice moved the following amendment:

In clause 216(1), in line 3, insert the word “if” after the figure “215”.

Clause 216, as amended, was agreed to and stood part of the Bill.

**Clauses 217 to 227** – were agreed to and stood part of the Bill.

### **Clause 228**

The Hon the Minister for Justice moved the following amendment:

In clause 228(11), in line 3, delete the word “be”.

Clause 228, as amended, was agreed to and stood part of the Bill.

**Clauses 229 to 234** – were agreed to and stood part of the Bill.

### **Clause 235**

The Hon the Minister for Justice moved the following amendment:

In clause 235(6), in line 1, delete the word “subsection” and replace with the word “subsections”.

Clause 235, as amended, was agreed to and stood part of the Bill.

**Clauses 236 to 306** – were agreed to and stood part of the Bill.

### **Clause 307**

The Hon the Minister for Justice moved the following amendment:

In clause 307(3), delete the words “Supreme Court” and replace with the words “Court of Appeal”.

Clause 307, as amended, was agreed to and stood part of the Bill.

### **Clause 308**

The Hon the Minister for Justice moved the following amendments:

In clause 308(1), delete the words “Supreme Court” and replace with the words “Court of Appeal”.

In clause 308(6), delete the figure “299(3)” and replace with the figure “307(3)”.

Clause 308, as amended, was agreed to and stood part of the Bill.

**Clauses 309 to 312** – were agreed to and stood part of the Bill.

### **Clause 313**

The Hon the Minister for Justice moved the following amendment:

In clause 313(3)(c), delete the figures and words “31 or 34 of the Treaty on European Union” and replace with the figure and words “Article 82 of the Treaty on the Functioning of the European Union”.

Clause 313, as amended, was agreed to and stood part of the Bill.

**Clauses 314 to 342** – were agreed to and stood part of the Bill.

### **Clause 343**

The Hon the Minister for Justice moved the following amendment:

In clause 343(1), in line 4, insert the symbol “)” after the figure “340”.

Clause 343, as amended, was agreed to and stood part of the Bill.

**Clauses 344 to 358** – were agreed to and stood part of the Bill.

### **Clauses 359 to 363**

**MR CHAIRMAN:**

Subject to the votes against, clause 359 stands part of the Bill.

**CLERK:**

So the Opposition have voted against clause 359 but in favour for the rest of the Bill.

**HON CHIEF MINISTER:**

This is the Committee Stage, Mr Chairman. They are not voting for or against, they are voting to the clause remaining in the Bill. Not for or against the merits of the clause. That is on the Second Reading or on the Third Reading. What he says is ‘stands part of the Bill’. Voting against means that you want the clause taken out of the Bill. But you do not want the clause taken out of the Bill. There has got to be a law about ... then you have got to vote also against the repeal clause, or do you not want sexual offences in Gibraltar.

**HON G H LICUDI:**

It is not sexual offences, it is the right to silence. We want those provisions out, yes. Mr Chairman, the position is that we are against these provisions, which we say abolish or undermine the

right to silence, being part of this Bill and therefore we are against these provisions being there at all.

**HON CHIEF MINISTER:**

I understand that. It is just that I had never interpreted not voting against a clause ... in Committee Stage we do not normally vote against things which underpin the reason for voting ... But it does not matter, look it does not turn either here nor there. Is it standing part of the Bill or not?

**MR CHAIRMAN:**

My understanding is that the clause has been raised in Committee, the Opposition in Committee, the Opposition have voted against that clause standing part of the Bill and I understand the majority voice and I rule that it stands part of the Bill.

**HON CHIEF MINISTER:**

Yes, alright.

**CLERK:**

Are you all voting against clauses 359 to 363?

**MR CHAIRMAN:**

Okay. Clauses 359 to 363 stand part of the Bill, notwithstanding the vote against.

**Clause 364**

**HON G H LICUDI:**

Just on clause 364, there is a reference, this is just a technical issue which probably makes no difference, but there is a reference in clause 364(1) to the Crimes Act 2011. So we are passing legislation which refers to legislation that has not actually been passed, but it is just a technical issue.

**HON CHIEF MINISTER:**

It is inevitable, it has happened before. They will be commenced together.

Clause 364, was agreed to and stood part of the Bill.

**Clauses 365 to 370** – were agreed to and stood part of the Bill.

**Clause 371**

The Hon the Minister for Justice moved the following amendment:

In clause 371(1), move the final two lines so that they become a part of paragraph (b).

Clause 371, as amended, was agreed to and stood part of the Bill.

**Clauses 372 to 385** – were agreed to and stood part of the Bill.

#### **Clause 386**

The Hon the Minister for Justice moved the following amendment:

In clause 386(3), delete the figure “2005”.

Clause 386, as amended, was agreed to and stood part of the Bill.

**Clauses 387 to 413** – were agreed to and stood part of the Bill.

#### **Clause 414**

The Hon the Minister for Justice moved the following amendment:

In clause 414, delete the text in paragraph (b) and replace with the following new text-

“(b) the document or a copy of it is produced  
as an exhibit,

the exhibit must not accompany the jury when they retire to consider their verdict unless-”.

Clause 414, as amended, was agreed to and stood part of the Bill.

**Clauses 415 to 432** – were agreed to and stood part of the Bill.

#### **Clause 433**

The Hon the Minister for Justice moved the following amendment:

In clause 433(6), in line 2, delete “subsection (4)(c)” and replace with “subsection (5)(c)”.

Clause 433, as amended, was agreed to and stood part of the Bill.

#### **Clause 434**

The Hon the Minister for Justice moved the following amendment:

In clause 434(4), delete “subsection (1)(b)(i)” and replace with “subsection (1)(b)”.

Clause 434, as amended, was agreed to and stood part of the Bill.

#### **Clause 435**

The Hon the Minister for Justice moved the following amendment:

In clause 435(5)(a), delete “to (8)” and replace with “and (7)”.

Clause 435, as amended, was agreed to and stood part of the Bill.

**Clauses 436 to 441** – were agreed to and stood part of the Bill.

#### **Clause 442**

The Hon the Minister for Justice moved the following amendment:

In clause 442(7), in line 5, delete the words “that section”, and replace with the words “that Part”.

Clause 442, as amended, was agreed to and stood part of the Bill.

**Clauses 443** – was agreed to and stood part of the Bill.

#### **Clause 444**

The Hon the Minister for Justice moved the following amendment:

In clause 444(5), in line 4, delete the words “that section”, and replace with the words “that Part”.

Clause 444, as amended, was agreed to and stood part of the Bill.

**Clauses 445 to 461** – were agreed to and stood part of the Bill.

#### **Clause 462**

The Hon the Minister for Justice moved the following amendment:

In clause 462(6)(b), in line 2, delete the word “defendant” and replace with the word “defendants”.

Clause 462, as amended, was agreed to and stood part of the Bill.

**Clauses 463 to 480** – were agreed to and stood part of the Bill.

#### **Clause 481**

The Hon the Minister for Justice moved the following amendment:

In clause 481, the word “account-” should appear after the word “into” in the third line of text.

Clause 481, as amended, was agreed to and stood part of the Bill.

**Clauses 482 to 484** – were agreed to and stood part of the Bill.

#### **Clause 485**

The Hon the Minister for Justice moved the following amendment:

In clause 485(3), the last sentence is renumbered as a separate sub clause “(4)”.

Clause 485, as amended, was agreed to and stood part of the Bill.

**Clauses 486 to 495** – were agreed to and stood part of the Bill.

#### **Clause 496**

The Hon the Minister for Justice moved the following amendment:

In clause 496(3)(c), in line 5, delete the words “conviction is” and replace with the words “a conviction are”.

Clause 496, as amended, was agreed to and stood part of the Bill.

**Clauses 497 to 511** – were agreed to and stood part of the Bill.

#### **Clause 512**

The Hon the Minister for Justice moved the following amendment:

In clause 512(1), delete the figures “581 and 582” and replace with the figures “581 or 582”.

Clause 512, as amended, was agreed to and stood part of the Bill.

**Clauses 513 to 519** – were agreed to and stood part of the Bill.

#### **Clause 520**

The Hon the Minister for Justice moved the following amendment:

In clause 520(1), in line 2, delete the words “to be”.

Clause 520, as amended, was agreed to and stood part of the Bill.

**Clauses 521 to 535** – were agreed to and stood part of the Bill.

#### **Clause 536**

The Hon the Minister for Justice moved the following amendment:

In clause 536(3)(c), in line 2, delete the word “qualification” and replace with the word “qualifications”.

Clause 536, as amended, was agreed to and stood part of the Bill.

**Clauses 537 to 549** – were agreed to and stood part of the Bill.

#### **Clause 550**

The Hon the Minister for Justice moved the following amendment:

In clause 550(3), in line 3, insert the word “section” before the figure “521(3)”.

Clause 550, as amended, was agreed to and stood part of the Bill.

**Clauses 551 to 558** – were agreed to and stood part of the Bill.

#### **Clause 559**

The Hon the Minister for Justice moved the following amendment:

In clause 559(1), in line 1, delete the word “paragraph” and replace with the word “section”.

Clause 559, as amended, was agreed to and stood part of the Bill.

**Clauses 560 to 612** – were agreed to and stood part of the Bill.

#### **Clause 613**

The Hon the Minister for Justice moved the following amendment:

In clause 613(4), delete the words “References in this section” and replace with the words “A reference in this Part”.

Clause 613, as amended, was agreed to and stood part of the Bill.

**Clause 614** – was agreed to and stood part of the Bill.

#### **Clause 615**

The Hon the Minister for Justice moved the following amendment:

In clause 615(4), delete the parenthesis at the end and replace with a full-stop.

Clause 615, as amended, was agreed to and stood part of the Bill.

#### **Clause 616**

The Hon the Minister for Justice moved the following amendment:

In clause 616(6)(b), delete the words “to have the status specified in the first column in relation to that person” and replace with the words “in respect of any of the services mentioned in paragraph 1 of that Part”.

Clause 616, as amended, was agreed to and stood part of the Bill.

**Clauses 617 to 678** – were agreed to and stood part of the Bill.

#### **Clause 679**

The Hon the Minister for Justice moved the following amendment:

In clause 679(2)(b), in line 3, delete the words “and treatment”.

Clause 679, as amended, was agreed to and stood part of the Bill.

**Clause 680** – was agreed to and stood part of the Bill.

### **Clause 681**

The Hon the Minister for Justice moved the following amendment:

In clause 681(7), in line 2, delete the word “revoking”.

Clause 681, as amended, was agreed to and stood part of the Bill.

**Clauses 682 to 694** – were agreed to and stood part of the Bill.

### **Clause 695**

The Hon the Minister for Justice moved the following amendments:

In the heading to clause 695, delete the words “public officers” and replace with the words “persons”.

Sub clauses “(3)” and “(4)” are renumbered “(4)” and “(5)” respectively.

After sub clause (2), insert new sub clause (3)-

“(3) Subject to subsection (6) the provisions relating to the investigation of offences, the searching, questioning and detention of suspects, the seizure of property and the retention of evidence apply to persons to whom section 78 of the Police Act 2006 apply when carrying out duties –

- (a) in such areas of Gibraltar as are in the possession and under the control of the Ministry of Defences;

- (b) in the immediate vicinity of the areas of Gibraltar described in (i) above in relation to the security of such areas.”.

After sub clause (5), insert new sub clause (6)-

“(6) The Minister with responsibility for justice may by order make such modifications to the manner in which provisions of this Act apply to persons by virtue of subsection (3).”.

Clause 695, as amended, was agreed to and stood part of the Bill.

### **Clause 696**

The Hon the Minister for Justice moved the following amendment:

In clause 696(2), delete the figure “2005”.

Clause 696, as amended, was agreed to and stood part of the Bill.

### **Clause 697**

The Hon the Minister for Justice moved the following amendment:

In clause 697(1), delete the words “European Community” and replace with the words “European Union”.

Clause 697, as amended, was agreed to and stood part of the Bill.



**Clauses 698 to 702** – were agreed to and stood part of the Bill.

**New clause 703**

The Hon the Minister for Justice moved the following amendment:

After clause 702, insert new clause 703-

**“Amendment of the Criminal Procedure Act (Police Detention).**

703. (1) In section 42 of the Criminal Procedure Act after subsection (2) insert-

“(2A) Any time during which a person is on bail pursuant to subsection shall not be included in the twenty four hour period referred to in subsection (1).”.

(2) The amendment made by subsection (1) is deemed always to have had effect.”.

New clause 703, was agreed to and stood part of the Bill.

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

**Schedule 4**

The Hon the Minister for Justice moved the following amendment:

In Schedule 4, delete paragraph 15.

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

**Schedules 5 to 10** – were agreed to and stood part of the Bill.

**Schedule 11**

The Hon the Minister for Justice moved the following amendment:

Delete the text in Schedule 11, and replace with the following new text-

**“SCHEDULE 11**

(Section 613)

**TABLE OF REHABILITATION PERIODS**

A sentence of imprisonment of more than 6 months but not more than 30 months	10 years for an adult, 5 years for a juvenile
A sentence of imprisonment of 6 months or less	7 years for an adult; 3 ½ years for a juvenile
A fine	5 years
A community sentence	5 years for an adult; 2 ½ years for a juvenile
A conditional discharge or binding over	The date on which the order or binding over ceases or 1 year, whichever is longer

A hospital order under the Mental Health Act	5 years from the date of conviction or 2 years after the order expires, whichever is longer
Disqualification and other orders imposing a disability, prohibition or other penalty	The date on which the order ceases to have effect
An absolute discharge or a caution	6 months
A probation order under the Criminal Procedure Act	5 years for an adult, 2 ½ years for a juvenile, or the date on which the order ceases, whichever is longer".

Schedule 11, as amended, was agreed to and stood part of the Bill.

**Schedules 12 and 13** – were agreed to and stood part of the Bill.

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

## **THE CRIMES BILL 2011**

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

### **Clause 2**

The Hon the Minister for Justice moved the following amendment:

In clause 2(1), in the definition of “Gibraltarian”, delete the words “British Overseas Territory Citizen” and replace with the words “British overseas territories citizen”.

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

**Clauses 3 and 4** – were agreed to and stood part of the Bill.

### **Clause 5**

The Hon the Minister for Justice moved the following amendment:

In clause 5(1), delete the words “A person” and replace with the words “Subject to section 2 of the Constitution, a person”.

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

**Clauses 6 to 16** – were agreed to and stood part of the Bill.

### **Clause 17**

The Hon the Minister for Justice moved the following amendment:

In clause 17(1), in the penultimate line, insert the word “to” before the word “do”.

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

**Clauses 18 to 36** – were agreed to and stood part of the Bill.

### **Clause 37**

The Hon the Minister for Justice moved the following amendments:

In clause 37(5)(b)(ii), insert the letter “D” before the words “was reckless”.

In clause 37(10)(a), delete the full stop after the word “but”.

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

**Clause 38** – was agreed to and stood part of the Bill.

### **Clause 39**

The Hon the Minister for Justice moved the following amendment:

In clause 39(3)(a) delete the text and replace with the following new text-

“(a) the seriousness of the anticipated offence or, in the case of an offence under section 36(4), the offences specified in the indictment;”.

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

### **Clause 40**

The Hon the Minister for Justice moved the following amendment:

In clause 40(3), in the first line, delete the word “paragraphs” and replace with the word “subsections”.

Clause 40, as amended, was agreed to and stood part of the Bill.

### **Clause 41**

The Hon the Minister for Justice moved the following amendment:

In clause 41(2), in the first line, delete the word “this” before the word “subsection”.

Clause 41, as amended, was agreed to and stood part of the Bill.

### **Clause 42**

The Hon the Minister for Justice moved the following amendment:

In clause 42(8)(a), in the last line, delete the words “Article 48 of the EEC Treaty” and replace with the words “Article 54 of the Treaty on the Functioning of the European Union”.

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

**Clauses 43 and 44** – were agreed to and stood part of the Bill.

#### **Clause 45**

The Hon the Minister for Justice moved the following amendment:

In clause 45(6)(a), in line 2, delete the word “anyone” and replace for the words “any one”.

Clause 45, as amended, was agreed to and stood part of the Bill.

**Clauses 46 to 48** – were agreed to and stood part of the Bill.

#### **Clause 49**

The Hon the Minister for Justice moved the following amendment:

In clause 49(3)(a), delete the colon after the word “offence”.

Clause 49, as amended, was agreed to and stood part of the Bill.

**Clauses 50 to 55** – were agreed to and stood part of the Bill.

#### **Clause 56**

The Hon the Minister for Justice moved the following amendment:

In clause 56(5)(b), at the end, delete the semi-colon and replace with a full stop.

Clause 56, as amended, was agreed to and stood part of the Bill.

#### **Clause 57**

The Hon the Minister for Justice moved the following amendment:

In clause 57(6)(b), at the end, delete the semi-colon and replace with a full stop.

Clause 57, as amended, was agreed to and stood part of the Bill.

**Clauses 58 to 61** – were agreed to and stood part of the Bill.

#### **Clause 62**

The Hon the Minister for Justice moved the following amendment:

In clause 62(8), delete the words “subsection (7)” and replace with the words “subsection (5)”.

Clause 62, as amended, was agreed to and stood part of the Bill.

**Clause 63** – was agreed to and stood part of the Bill.

#### **Clause 64**

The Hon the Minister for Justice moved the following amendment:

In clause 64(7), in line 2, insert the word “and” after the word “offence”.

Clause 64, as amended, was agreed to and stood part of the Bill.

#### **Clause 65**

The Hon the Minister for Justice moved the following amendment:

In clause 65(8), in line 2, delete the word “a” before the words “9 months”.

Clause 65, as amended, was agreed to and stood part of the Bill.

**Clauses 66 to 71** – were agreed to and stood part of the Bill.

#### **Clause 72**

The Hon the Minister for Justice moved the following amendment:

In clause 72(11), delete the words “section 70” and replace with the words “section 69”.

Clause 72, as amended, was agreed to and stood part of the Bill.

#### **Clause 73**

The Hon the Minister for Justice moved the following amendment:

In clause 73(6), at the end, delete the semi-colon and replace with a full stop.

Clause 73, as amended, was agreed to and stood part of the Bill.

**Clauses 74 to 76** – were agreed to and stood part of the Bill.

#### **Clause 77**

The Hon the Minister for Justice moved the following amendment:

In clause 77(4)(a), in line 1, delete the words “and to” and replace with the word “or”.

Clause 77, as amended, was agreed to and stood part of the Bill.

**Clauses 78 and 79** – were agreed to and stood part of the Bill.

#### **Clause 80**

The Hon the Minister for Justice moved the following amendments:

In clause 80(4), after the words “subsection (3)” insert the words “, or gives a false name and address”.

In clause 80(5), at the end, delete the semi-colon and replace with a full stop.

Clause 80, as amended, was agreed to and stood part of the Bill.

**Clause 81** – was agreed to and stood part of the Bill.

### **Clause 82**

The Hon the Minister for Justice moved the following amendment:

In clause 82, in the penultimate line, delete the word “and” and replace with the word “or” before the words “a fine”.

Clause 82, as amended, was agreed to and stood part of the Bill.

**Clauses 83 to 85** – were agreed to and stood part of the Bill.

### **Clause 86**

The Hon the Minister for Justice moved the following amendment:

In clause 86, in line 3, insert the word “is” before the word “liable”.

Clause 86, as amended, was agreed to and stood part of the Bill.

**Clauses 87 to 92** – were agreed to and stood part of the Bill.

### **Clause 93**

The Hon the Minister for Justice moved the following amendment:

In clause 93(1), delete the words “section 92” and replace with the words “section 91”.

Clause 93, as amended, was agreed to and stood part of the Bill.

**Clauses 94 to 110** – were agreed to and stood part of the Bill.

### **Clause 111**

The Hon the Minister for Justice moved the following amendment:

In clause 111(2)(b), delete the “,” at the end, and insert the following new paragraph (c)-

“,

- (c) the distribution of religious material based on material which has hitherto been commonly or customarily produced or distributed in Gibraltar.”.

Clause 111, as amended, was agreed to and stood part of the Bill.

**Clause 112** – was agreed to and stood part of the Bill.

### **Clause 113**

The Hon the Minister for Justice moved the following amendment:

In clause 113(3)(a), insert the word “the” before the word “statutory”.

Clause 113, as amended, was agreed to and stood part of the Bill.

**Clauses 114 to 118** – were agreed to and stood part of the Bill.

### **Clause 119**

The Hon the Minister for Justice moved the following amendment:

In clause 119(4)(a), delete the word “a” before the words “12 months”.

Clause 119, as amended, was agreed to and stood part of the Bill.

**Clauses 120 to 151** – were agreed to and stood part of the Bill.

### **Clause 152**

The Hon the Minister for Justice moved the following amendment:

In clause 152(9)(b)(ii), at the end, delete the full stop and replace with a semi-colon.

Clause 152, as amended, was agreed to and stood part of the Bill.

**Clauses 153 to 180** – were agreed to and stood part of the Bill.

### **Clause 181**

The Hon the Minister for Justice moved the following amendments:

In clause 181, delete the words “assault or battery”, the first time it appears, and replace with the words “an offence under section 175”.

In clause 181, delete the words “assault or battery”, the second time it appears, and replace with the word “act”.

Clause 181, as amended, was agreed to and stood part of the Bill.

### **Clause 182**

The Hon the Minister for Justice moved the following amendment:

In clause 182, delete the words “ of assault or battery” and replace with the words “under section 175”.

Clause 182, as amended, was agreed to and stood part of the Bill.

**Clauses 183 to 187** – were agreed to and stood part of the Bill.

### **Clause 188**

The Hon the Minister for Justice moved the following amendment:

In clause 188(2), delete the words “section 185” and replace with the words “section 186”.

Clause 188, as amended, was agreed to and stood part of the Bill.

**Clauses 189 to 220** – were agreed to and stood part of the Bill.

### **Clauses 221 and 222**

#### **MR CHAIRMAN:**

Clauses 221 and 222 stand part of the Bill, notwithstanding the objection there to vote against by the Opposition.

**Clauses 223 to 226** – were agreed to and stood part of the Bill.

### **Clause 227**

The Hon the Minister for Justice moved the following amendment:

In clause 227(1), delete paragraphs (b) and (c) and replace with the following new paragraphs-

- “(b) at the time, he intends to do anything to or in respect of B, during or after the meeting

and in any part of the world, which if done will involve the commission by A of a relevant offence;

- (c) B is under 16; and
- (d) A does not reasonably believe that B is 16 or over.”.

Clause 227, as amended, was agreed to and stood part of the Bill.

**Clauses 228 to 239** – were agreed to and stood part of the Bill.

### **Clause 240**

The Hon the Minister for Justice moved the following amendments:

In clause 240(2), delete “(1)(c)” and replace with “(1)(b)”.

In clause 240(3), delete “(1)(a) to (c)” and replace with “(1)(a) and (b)”.

Clause 240, as amended, was agreed to and stood part of the Bill.

### **Clauses 241 to 244**

#### **HON G H LICUDI:**

Just to point out, in answer to a point raised earlier, in clauses 241 to 244 which are the ones we are dealing with, talk about sexual activity with a person with a mental disorder impeding choice, which are the sections that replace the current sections



which talk of idiots and imbeciles. It is noteworthy, that in none of these sections is there a provision for an age. Therefore, they are totally unaffected by whether clauses 221 and 222 stay or do not stay as part of the Bill. Simply an observation for the hon Members.

**HON D A FEETHAM:**

Yes. But, of course, he is not looking at the Criminal Offences Act and the ability to just simply retain in the Criminal Offences Act three sections from that Act in isolation from all of this. Now, is he voting in favour or is he voting against these clauses?

**MR CHAIRMAN:**

He is just making the point.

Clauses 241 to 244, were agreed to and stood part of the Bill.

**Clauses 245 to 252** – were agreed to and stood part of the Bill.

**Clause 253**

The Hon the Minister for Justice moved the following amendment:

In clause 253(5), in line 2 of the definition of ““community home” and family centre”, delete the word “section” replace with the word “sections”.

Clause 253, as amended, was agreed to and stood part of the Bill.

**Clauses 254 to 259** – were agreed to and stood part of the Bill.

**Clause 260**

The Hon the Minister for Justice moved the following amendment:

In clause 260(3), delete the word “the” before the words “Schedule 1”.

Clause 260, as amended, was agreed to and stood part of the Bill.

**Clauses 261 to 288** – were agreed to and stood part of the Bill.

**Clause 289**

The Hon the Minister for Justice moved the following amendment:

In clause 289(3), at the end of paragraph (a), delete the full stop and replace with a semi-colon, and at the end of paragraph (b), delete the semi-colon and replace with a full stop.

Clause 289, as amended, was agreed to and stood part of the Bill.

**Clauses 290 to 306** – were agreed to and stood part of the Bill.

**Clause 307**

The Hon the Minister for Justice moved the following amendment:

In clause 307(2), in line 2, insert the word “to” before the words “a period”.

Clause 307, as amended, was agreed to and stood part of the Bill.

**Clauses 308 to 325** – were agreed to and stood part of the Bill.

**Clause 326**

The Hon the Minister for Justice moved the following amendment:

In clause 326(1), at the end of paragraph (a) delete the full stop and replace with a semi-colon, and at the end of paragraph (b), delete the semi-colon and replace with a full stop.

Clause 326, as amended, was agreed to and stood part of the Bill.

**Clauses 327 to 334** – were agreed to and stood part of the Bill.

**Clause 335**

The Hon the Minister for Justice moved the following amendment:

In clause 335(4), delete the words “subsection (4)” and replace with the words “subsection (3)”.

Clause 335, as amended, was agreed to and stood part of the Bill.

**Clauses 336 to 343** – were agreed to and stood part of the Bill.

**Clause 344**

The Hon the Minister for Justice moved the following amendment:

In clause 344(5), in line 2, delete the word “and” and replace with the word “an”.

Clause 344, as amended, was agreed to and stood part of the Bill.

**Clauses 345 to 372** – were agreed to and stood part of the Bill.

**Clause 373**

The Hon the Minister for Justice moved the following amendment:

In clause 373(2)(c), delete the words “section 362 or 368” and replace with the words “section 362 to 368”.

Clause 373, as amended, was agreed to and stood part of the Bill.

**Clauses 374 to 398** – were agreed to and stood part of the Bill.

**Clause 399**

The Hon the Minister for Justice moved the following amendment:

In clause 399(3), in line 2, delete the words “subsection (3)” and replace with the words “subsection (2)”.

Clause 399, as amended, was agreed to and stood part of the Bill.

**Clauses 400 and 401** – were agreed to and stood part of the Bill.

**Clause 402**

The Hon the Minister for Justice moved the following amendment:

In clause 402(1)(a), after the word “transmission” insert the words “to or from Gibraltar”.

Clause 402, as amended, was agreed to and stood part of the Bill.

**Clauses 403 to 408** – were agreed to and stood part of the Bill.

**Clause 409**

The Hon the Minister for Justice moved the following amendment:

In clause 409(4)(b), delete “2 years” and replace with “5 years”.

Clause 409, as amended, was agreed to and stood part of the Bill.

**Clause 410**

The Hon the Minister for Justice moved the following amendment:

In clause 410(1), in line 3, delete the words “or trailer” the second time it appears.

Clause 410, as amended, was agreed to and stood part of the Bill.

**Clauses 411 to 422** – were agreed to and stood part of the Bill.

**Clause 423**

The Hon the Minister for Justice moved the following amendment:

In clause 423(1), in the last line, delete the word “including” and replace with the word “(including”.

Clause 423, as amended, was agreed to and stood part of the Bill.

**Clauses 424 to 428** – were agreed to and stood part of the Bill.

**Clause 429**

The Hon the Minister for Justice moved the following amendment:

In clause 429(2), in line 2, delete the word “defendant” and replace with the word “defendants”.

Clause 429, as amended, was agreed to and stood part of the Bill.

**Clauses 430 to 439** – were agreed to and stood part of the Bill.

#### **Clause 440**

The Hon the Minister for Justice moved the following amendments:

In clause 440(3), in line 1, delete the word “to” before the word “has”.

In clause 440(5)(h), delete the semi-colon after the word “cheques”.

Clause 440, as amended, was agreed to and stood part of the Bill.

**Clauses 441 to 453** – were agreed to and stood part of the Bill.

#### **Clause 454**

The Hon the Minister for Justice moved the following amendments:

In clause 454, delete the words “*Counterfeiting of Euros*” which appears above the section heading.

In clause 454(3), delete the words “subsection (1)” and replace with the words “subsection (2)”.

Clause 454, as amended, was agreed to and stood part of the Bill.

#### **Clause 455**

The Hon the Minister for Justice moved the following amendment:

Insert, above the section heading to clause 455, the following words-

“*Counterfeiting of Euros*”

Clause 455, as amended, was agreed to and stood part of the Bill.

**Clauses 456 to 482** – were agreed to and stood part of the Bill.

#### **Clause 483**

The Hon the Minister for Justice moved the following amendment:

In clause 483(3), in line 4, delete the word “hast” and replace for the word “has”.

Clause 483, as amended, was agreed to and stood part of the Bill.

**Clauses 484 to 495** – were agreed to and stood part of the Bill.

#### **Clause 496**

The Hon the Minister for Justice moved the following amendment:

In clause 496(3)(b), in line 2, insert the word “is” before the word “not”.

Clause 496, as amended, was agreed to and stood part of the Bill.

#### **Clause 497**

The Hon the Minister for Justice moved the following amendment:

In clause 497(1), in line 2, delete the words “section 495” and replace with the words “section 491”.

Clause 497, as amended, was agreed to and stood part of the Bill.

**Clauses 498 to 508** – were agreed to and stood part of the Bill.

#### **Clause 509**

The Hon the Minister for Justice moved the following amendments:

In clause 509(5), in line 3, delete the word “drugs” and replace with the word “drug”.

In clause 509(6), in line 1, delete the word “subsection” and replace with the word “subsections”.

Clause 509, as amended, was agreed to and stood part of the Bill.

**Clauses 510 to 516** – were agreed to and stood part of the Bill.

#### **Clause 517**

The Hon the Minister for Justice moved the following amendment:

In clause 517(3)(a), at the beginning of line 1, delete the letter “o” and replace with the word “no”.

Clause 517, as amended, was agreed to and stood part of the Bill.

**Clauses 518 to 520** – were agreed to and stood part of the Bill.

#### **Clause 521**

The Hon the Minister for Justice moved the following amendments:

In clause 521(2), at the beginning of line 1, insert the word “It”.

In clause 521(3)(a), in line 2, delete the word “Particular” and replace with the word “particular”

Clause 521, as amended, was agreed to and stood part of the Bill.

**Clause 522** – was agreed to and stood part of the Bill.

#### **Clause 523**

The Hon the Minister for Justice moved the following amendment:

In clause 523(2)(b), in line 1, insert the words “or vessel” after the word “vehicle”.

Clause 523, as amended, was agreed to and stood part of the Bill.

**Clauses 524 to 526** – were agreed to and stood part of the Bill.

**Clause 527**

The Hon the Minister for Justice moved the following amendment:

In clause 527, in the last line, delete the word “it” after the word “Government”.

Clause 527, as amended, was agreed to and stood part of the Bill.

**Clauses 528 to 530** – were agreed to and stood part of the Bill.

**Clause 531**

The Hon the Minister for Justice moved the following amendment:

In clause 531(1), in line 2 of the definition of “premises”, delete the word “and” and replace with the word “land” before the word “ancillary”.

Clause 531, as amended, was agreed to and stood part of the Bill.

**Clauses 532 to 541** – were agreed to and stood part of the Bill.

**Clause 542**

The Hon the Minister for Justice moved the following amendments:

In clause 542(1)(a)(ii) delete the words “the Governor” and replace with the words “the Ministry of Defence”.

In clause 542, delete the text in sub clause (3) and replace with the words “Not used.”.

Clause 542, as amended, was agreed to and stood part of the Bill.

**Clauses 543 to 549** – were agreed to and stood part of the Bill.

**Clause 550**

The Hon the Minister for Justice moved the following amendments:

In clause 550(2), delete the word “good”.

In clause 550(3), in line 1, delete the words “be a good defence” and replace with the words “a defence”.

Clause 550, as amended, was agreed to and stood part of the Bill.

**Clauses 551 to 555** – were agreed to and stood part of the Bill.

**Clause 556**

The Hon the Minister for Justice moved the following amendment:

In clause 556(2)(a), delete the word “paragraphs” and replace with the word “paragraph”.

Clause 556, as amended, was agreed to and stood part of the Bill.

**Clauses 557 to 560** – were agreed to and stood part of the Bill.

**Clause 561**

The Hon the Minister for Justice moved the following amendment:

In clause 561(2), in line 1, insert the word “is” before the word “liable”.

Clause 561, as amended, was agreed to and stood part of the Bill.

**Clauses 562 to 564** – were agreed to and stood part of the Bill.

**Clause 565**

The Hon the Minister for Justice moved the following amendment:

In clause 565(2), delete the words “subsection 1” and replace with the words “subsection (1)”.

Clause 565, as amended, was agreed to and stood part of the Bill.

**Clauses 566 to 570** – were agreed to and stood part of the Bill.

**Clause 571**

The Hon the Minister for Justice moved the following amendment:

In clause 571(6), in line 1, delete the word “section” and replace with the word “subsection”.

Clause 571, as amended, was agreed to and stood part of the Bill.

**Clauses 572 to 584** – were agreed to and stood part of the Bill.

**Clause 585**

The Hon the Minister for Justice moved the following amendments:

In clause 585(3), in line 1, insert the words “export or” before the word “destruction”.

In clause 585(6), in line 1, delete the word “conviction” and replace with the word “convicting”.

Clause 585, as amended, was agreed to and stood part of the Bill.

**Clauses 586 to 592** – were agreed to and stood part of the Bill.

**Clause 593**

The Hon the Minister for Justice moved the following amendment:

In clause 593(2), in the last line, delete the word “of” and replace with the word “or” after the word “Community”.

Clause 593, as amended, was agreed to and stood part of the Bill.

**Clauses 594 to 602** – were agreed to and stood part of the Bill.

**Schedules 1 to 6** – were agreed to and stood part of the Bill.

### **Schedule 7**

The Hon the Minister for Justice moved the following amendment:

In Schedule 7, paragraph 2(4), at the end, delete the comma and replace with a full stop.

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

**Schedules 8 to 10** – 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 Gambling (Amendment) Bill 2011;
2. The Aviation Security (EU Common Rules) Bill 2011;
3. The Nature Protection (Amendment) Bill 2011;
4. The Medical and Health (Amendment) Bill 2011;
5. The Criminal Procedure and Evidence Bill 2011;
6. The Crimes Bill 2011,

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

Question put.

The Gambling (Amendment) Bill 2011;

The Aviation Security (EU Common Rules) Bill 2011;

The Nature Protection (Amendment) Bill 2011;

The Medical and Health (Amendment) Bill 2011,

were agreed to and read a third time and passed.

The Criminal Procedure and Evidence Bill 2011;

The Crimes Bill 2011.

The House voted.

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



The Hon D A Feetham  
The Hon L Montiel  
The Hon J J Netto  
The Hon F J Vinet

Abstained:

The Hon J J Bossano  
The Hon N F Costa  
The Hon Dr J J Garcia  
The Hon G H Licudi  
The Hon S E Linares

The Bills were read a third time and passed.

## **SUSPENSION OF STANDING ORDERS**

### **HON CHIEF MINISTER:**

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

Question put.           Agreed to.

## **GOVERNMENT MOTION**

### **HON CHIEF MINISTER:**

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

**“This House recalls its resolution dated 18<sup>th</sup> July 2008 establishing the Gibraltar Medallion of Honour Award, and now resolves to hereby establish a further Civic Award for the following purposes and on the following terms:**

#### **The Gibraltar Medallion of Distinction.**

**The Gibraltar Medallion of Distinction will be bestowed by Parliament, by Resolution, upon living or deceased persons who have attained distinction in any event, activity, aspect of life or subject matter and have thereby made an exceptional contribution to the community which Parliament considers worthy of special recognition.**

**The names of the recipients will be entered in a roll of recipients to be maintained by the Clerk to the Parliament in terms and manner to be specified by the Government by Notice in the Gazette, and which roll shall be published annually in December in the Gazette.**

**Persons upon whom the Gibraltar Medallion of Distinction has been bestowed shall be entitled to use the post nominal letters “GMD”. ”**

Mr Speaker, hon Members will notice that with the exception of the middle lines, with the first few lines of the first paragraph, this resolution follows very closely the one related to the Gibraltar Medallion of Honour. The reason for bringing this motion, which I have discussed with the Leader of the Opposition, is to give this House greater flexibility to recognise distinction in relation to a one off event or even distinction for a series of events, or achievements over a period of time, in a particular area of life, which nevertheless do not warrant the Medallion of Honour, which is really for a lifetimes contribution or somebody that has made a very significant mark in, sorry to use this over used cliché, our collective journey as a people, which is what the Medallion of Honour is more for.

There was an incidence, for example, where the Leader of the Opposition moved a motion or was giving me notice that he

intended to move a motion, rewarding by this process the policeman who recently rescued two injured persons from the top of the tank, whom I had described as heroic and the hon Member feels should be rewarded. Well, clearly, deserving of ... distinction is a word that covers bravery on a one off basis. You would not normally give the Gibraltar Medallion of Honour to somebody who has done one thing on one day. It is not what the script of the Medallion of Honour reads like, and this award would give us really more flexibility as a Parliament to recognise events such as the case that I have referred to and others, or perhaps people that have just achieved distinction but do not necessarily fit within the citation of the Gibraltar Medallion of Honour award.

So, we would end up being able to award a Gibraltar Medallion of Honour, GMH, or a Gibraltar Medallion of Distinction, GMD, and I think that that increases the flexibility available to this House to recognise people in all the circumstances in which the House may wish to do so. I therefore commend the motion to the House.

Question proposed.

**HON DR J J GARCIA:**

Mr Speaker, as agreed with the Leader of the Opposition, we will be voting in favour of the motion.

Question put.                    The House voted.  
The motion was carried unanimously.

## **ADJOURNMENT**

### **HON CHIEF MINISTER:**

I have the honour to move that this House do now adjourn to Monday 5<sup>th</sup> September 2011 at 10.30 a.m., if, of course, the House is not dissolved before then.

Question put.                    Agreed to.

The adjournment of the House was taken at 6.38 p.m. on Friday 29<sup>th</sup> July 2011.

## **MONDAY 5<sup>TH</sup> SEPTEMBER 2011**

The House resumed at 10.37 a.m.

### **PRESENT:**

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

### **GOVERNMENT:**

The Hon P R Caruana QC – Chief Minister  
The Hon J J Holliday – Minister for Enterprise, Development,  
Technology and Transport and Deputy Chief Minister  
The Hon Lt-Col E M Britto OBE, ED – Minister for the  
Environment and Tourism  
The Hon F J Vinet – Minister for Housing and Communications  
The Hon J J Netto – Minister for Family, Youth and Community  
Affairs

The Hon Mrs Y Del Agua – Minister for Health and Civil  
Protection  
The Hon D A Feetham – Minister for Justice  
The Hon L Montiel – Minister for Employment, Labour and  
Industrial Relations  
The Hon C G Beltran – Minister for Education and Training  
The Hon E J Reyes – Minister for Culture, Heritage, Sport and  
Leisure

**OPPOSITION:**

The Hon F R Picardo – Leader of the Opposition  
The Hon J J Bossano  
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 TOBACCO (AMENDMENT) ACT 2011**

**HON CHIEF MINISTER:**

I have the honour to move that a Bill for an Act to amend the Tobacco Act 1997 to make provision for the auction of cigarettes in defined circumstances, be read a first time.

Question put.                      Agreed to.

**SECOND READING**

**HON CHIEF MINISTER:**

I have the honour to the move that the Bill be now read a second time. Mr Speaker, the long standing tradition in Gibraltar and I suspect elsewhere is that when the Courts and/or the executive authority in the legislation gives them the power and authority to do so, seize illegal goods, drugs, the most obvious example, they are destroyed on the basis that there is nothing other than their destruction which would be an ongoing compliance with the law. Tobacco is not, per se, an illegal commodity. It may have been forfeited to the Crown or confiscated by the Court by reference to something illegal that has been done with the tobacco, but the tobacco, per se, is not illegal.

Now, hitherto, the practice has been, I understand, to destroy tobacco seized in these circumstances, because it was being handled by somebody without a licence, or an excess of the approved quantities, or whatever. I believe that this represents

a huge destruction of value, because this is still perfectly usable, perfectly in order tobacco stock that can be re-circulated lawfully. In other words, so long as it is sold, as the Bill suggests, to somebody that has a wholesale licence and can resell it, there is no reason to destroy perfectly valuable stocks of tobacco simply for whoever might have bought it from the Government, to simply import new stock from the supplier. This would represent a significant measure of revenue for the Government that could be ploughed back into law enforcement or anything else.

In other words, the purpose of this Bill is to allow the Government to auction, but on two conditions. First of all, only to people who may lawfully buy it and hold it. In other words, holders of wholesale licences on the one part and then the second condition, is that the Government must be satisfied that the stock is of merchantable quality. One of the problems in this and in other areas of retail and wholesale activity is the reputational damage to Gibraltar of the sale of degraded stock, as it is called. So, obviously, the Government would not want to be putting degraded stock back into the market circulation. So the two conditions are, purchaser must be the holder of a wholesale licence and the Government must be satisfied that the stock is of merchantable quality. In those circumstances, the provisions of the Bill are that the Government may conduct a public auction and the proceeds of such an auction, shall be paid directly into the Consolidated Fund.

Mr Speaker, that is the purpose of the Bill. The alternative would be to continue with the practice hitherto, which has just been to destroy stock. Literally to burn it, despite the fact that it is not an illegal commodity, and despite the fact that it simply gets replaced in the market by new *[inaudible]*. So the only people who profit in those circumstances are the manufacturers who sell more stock into the market, when there is already stock in Gibraltar, which is of perfectly merchantable quality. That is the logic and the thinking behind the Bill. Rather than destroy this value. Let it be a source of revenue to the Government,

given that it is not an unlawful commodity in itself. I commend the Bill to the House.

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

**HON F R PICARDO:**

Mr Speaker, there is much merit in what the hon Gentleman is saying and this will not be a Bill that will find opposition from this side of the House, but given that he has talked about the potential value of the tobacco that is being destroyed under the existing circumstances, can he give an estimate of what the value of tobacco that has been destroyed in the past financial years has been, if he has that, and if there is an average of tobacco that would have been destroyed, that now will not be destroyed in terms of value.

**HON CHIEF MINISTER:**

Mr Speaker, I do not have that information for the hon Member. What I can say is that this Bill is prompted by information coming to my office that there was now a significant stock which it was proposed to be burnt. So, I do not know, perhaps what they do is accumulate this stuff over a while, and then when there is a big enough load, they ... Yes. I am happy to give way to the hon Member again, but ... So I do not have statistics. I believe that stock has been burnt in the past, but I do not know what the value of it might be, but I am told that there is a significant stock now. I am happy to give way to him.

**HON F R PICARDO:**

I am grateful for the hon Gentleman giving way. Just to ask him whether, although without the statistic, does he know whether

we are talking about hundreds of thousands of pounds, or millions of pounds, potentially, and also to remind him, whilst I am on my feet, that he writes to give us an indication of a sum in respect of this particular commodity. He is aware of what that is and we have not yet received that information for some time. He indicated, when he was here the last time at Question Time, on a particular question in that respect which was withdrawn, that we would be receiving that information, which we have been receiving on a monthly basis, confidentially, and we have not yet, and could he perhaps ...

**HON CHIEF MINISTER:**

In respect of which months.

**HON F R PICARDO:**

Since April. Since I became the Leader of the Opposition.

**HON CHIEF MINISTER:**

Ah, have they not gone to where they always used to go?

**HON F R PICARDO:**

No. They have not gone anywhere.

**HON CHIEF MINISTER:**

So, somebody is obviously taking advantage of the change, to change the practice. That is the suspicion. Alright. Well, Mr Speaker, I am reluctant to accept chores of this sort across the floor of the House, only for fear that I will forget. If he could

email my office. No no. In relation to this information that he is asking now. No. The other one is a question of routine and I will find out why it has not happened during the summer months, but this one, he is now asking for some information, if he can have it, about historically burnt stock. If you could just email my office and I will have somebody see if that information is available.

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 PENSIONS (AMENDMENT) ACT 2011**

**HON CHIEF MINISTER:**

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

Question put.                      Agreed to.

## SECOND READING

### HON CHIEF MINISTER:

I have the honour to move that the Bill be now read a second time. Mr Speaker, as the House will be aware, the Pensions Act is the piece of legislation that deals not with old age pensions, but with the occupational pensions of retired civil servants. So this is, in effect, the Civil Service occupational pension scheme in legislative form, and the purpose of this Bill is to implement the measure that I announced in the Budget to the effect that anyone who enters the Civil Service after the 1<sup>st</sup> January or with effect from the 1<sup>st</sup> January will not enter on the basis of the current final salary scheme set out in this Act, but rather under a defined contributions scheme. A provident scheme as per the existing provident schemes, which are enjoyed by people who are employed in other parts of the public sector, such as, Government, the GDC, recent entrants into Government Agencies and Authorities and indeed employees of Government owned companies.

So that effect is achieved by the provision of the Bill that, and we are talking about clause 2 of the Bill, inserts after section 3 in the Act, a new section 3A(i) that says, "Notwithstanding any provision of this Act to the contrary the provisions of the other sections of this Act and of the Regulations contained in the Schedule shall not apply to any officer or other person referred to in subsection (2) below".

In other words, the Act is disapplied by subsection (1) to the categories of persons you find in subsection (2). Subsection (2) then defines that category of persons as, secondly, I will come back to firstly, secondly, the category that I have just described and that I announced in the Budget, namely, any person who enters the public service on or after the first day of January 2012, but firstly, to the existing staff of the Gibraltar Development Corporation that the Government is committed to transferring into the Civil Service. They will not, by virtue of the

fact that they are transferring before the 1<sup>st</sup> January, be entering the Civil Service with the benefit of final salary pension scheme, but rather with the benefit of their existing pension schemes, which are the same as everyone is going to get into the future. Well, the same, subject to enhancements of it, that we have agreed with the Unions. So the two categories of persons are, in the interim, GDC staff that will transfer into the Civil Service before the 1<sup>st</sup> January and, for the future, any direct entry into the Civil Service on or after the first day of January, effectively, the Pensions Act will not apply to them. So they will not enter the service with the benefit of a final salary scheme. Instead, subsection (3) provides that the Government, by regulations, may make for the benefit of persons referred to in subsection (2), in other words, the excluded persons, such defined contribution pension arrangements as the Government may deem appropriate. That is intentionally permissive. It says may because it is actually not necessary for there to be regulations. Indeed, there are no regulations regulating the pensions arrangements of GDC employees and employees of Government companies. It is just a contractual arrangement, but if a Government decides to give the provident scheme a statutory form for the benefit, this would allow them to do it by regulations, as many of the Pensions Act detail are currently contained in regulations made under the Pensions Act. So that is the thinking behind subsection (3).

Mr Speaker, purposefully perhaps I should not do this, I am not repeating what I said to the House in my Budget speech. The hon Members know that the Civil Service, the current Civil Service final salary pension scheme is entirely unfunded. That is to say, there is no pot of money to make good that liability and it is therefore paid on an annual basis as another item of annual Government expenditure. Civil servants retire on a pension of two thirds of their final salary and the annual cost of meeting this pension commitment is getting bigger and bigger as salaries rise. Effectively, because the salaries get higher and higher, what is happening is that the pensions liability of civil servants today is being left to tax payers at the date that they retire some

time in the future, and that this is, we believe, a contingent financial liability on future generations that we should remove from them. It is true that the economy of Gibraltar is doing very well today, and that there is, today, not a financial problem with meeting this liability. But I think, and the Government believes, that it is wrong to leave an unfunded liability to our future generations, our children and our grand children, which depends on the economy continuing to do well, when indeed it may stop doing well at some point in the future for reasons out of the control of any Gibraltar Government. The way to do that is to start having a pension scheme which is both more affordable and which forces the Government and the employee to start creating a pool of money every year so that we have a pension pot for every employee. This is not something that the Government does to save money now. Indeed, it increases public expenditure now, as I explained to Parliament at the time of the Budget, because until the last current civil servant has retired, the Government will have to fund both schemes at the same time. In other words, we have to continue to fund the present system of paying civil servants their gratuities and their pensions out of annual Government expenditure, and at the same time put in a pot a significant proportion of the pay of every new civil servant after the 1<sup>st</sup> January in order to start creating their pension pot. So this is a question of this Parliament acting responsibly now, at the expense of higher pressure on Government finances, now that the times are good and we can afford to pay for both, rather than continuing to leave an unfunded and escalating expenditure to our future generations. No one knows what the economy of Gibraltar may be. The ups and downs that it may experience in the future. I think the statistics speak for themselves. In 1988, the annual cost to the Government of funding the existing scheme was £3.8 million. By 1996, it had raised to £8.4 million. By 2000, it had gone up to £11.2 million. By 2005, to £15 million. By 2008, to £20 million and by 2011 to £26.6 million. In other words, up from £3.8 million in 1988 to £26.6 million in 2011. So, roughly speaking, every eight or nine years, the first eight years 1988 to 1996, roughly eight years worth, it went up by 121 per cent.

1996 to 2005, about nine years, it went up 80 per cent. 2005 to 2011, six years worth, an increase 77 per cent. This is an exponential rate of pension but which is, of course, finite, but it is exponential until it reaches its maximum cost which would be at the time that the last year ... It would continue to grow at this rate until the year in which all the retirees are current civil servants, and, thereafter, it will begin to decline as some of the civil servants that subsequently retire in subsequent years were originally engaged on the new basis.

Mr Speaker, in Western parliamentary democracies there has been a slight degradation of governance that have a four year election cycle to do things which may not be popular, but because they are good for future generations of the community. There is a short termism which has crept into Western European politics which is not good. There are some things that have to be done as a matter of responsibility for future generations. There may not be any votes in it today, but I think Governments have to construct both for the present and for the future, and I believe that this House should support this Bill on that basis. I commend the Bill to the House.

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

#### **HON J J BOSSANO:**

Mr Speaker, this must be the only occasion in fifteen years that the hon Member is doing something that is not for short termism and political gain round the corner. On that basis, and most certainly it is a Bill worth looking at very closely.

What the hon Member is saying, about how the cost of the pensions have increased over the years, is numerically and mathematically correct. But, of course, in terms of the philosophy of the Government, it is peculiar in that they have done a number of things that have actually increased that cost in

the fifteen years that they have been in. Some of those things, in my view, are very difficult to see how they are going to be reconciled with the new provisions that are being intended and, in particular, I am thinking that the hon Member settled a dispute with the Fire Service on very unusual terms. I do not think there is another public sector pay agreement of that nature where, in fact, the people involved in providing for the ambulance and that, I think, included almost everybody in the Fire Service, did not get paid for providing that facility during their working life but were recompensed at the end of their working life. That is to say, when they get to the age of fifty five in the Fire Service, by having their salary, I think it was, if my memory serves me right, increased by something of the order of twenty five per cent, twenty six per cent I am told, for the purpose of negotiating their final salary pension. So, you know, if on the one hand, we are alarmed at the exposure and on the other hand, we actually create a body of people who get, they finish their job and they get a twenty six per cent, rather than pay them while they are doing the job that they are doing, it is certainly a very unusual agreement and one that immediately raises the problem of what happens with the persons that come in now and have to do the ambulance and do not get a final salary pension. It creates a problem, I would have thought, in the instance of the Provident Fund, unless you say to them, well look whatever there is in the pot of the Provident Fund at the end of your working life, we will give you twenty five per cent more, or something of that sort.

The reality of it is that Governments do not, and Parliaments do not have the power to legislate in a way that subsequent Governments, or subsequent Parliaments, cannot change. So the idea that there are some things wrong in things being done which is only for the life of the Parliament, suggests that there is an option which is that you can actually require a successor Parliament or a successor Government to have the same policy as this Government and this Parliament and, therefore, make sure that they do not go in an opposite direction, and that is simply not true.

I accept what the hon Member says. That, in fact, the change that is being done and the one that has been going on for some time in all the Agencies and Authorities, is actually creating a cost on recurrent expenditure than is higher than would otherwise be the case, because while the two systems are running, he is paying, the Government, the public purse, not the Government really, it is all of us through our taxes, we are paying the historical pensions of those who have now retired, and at the same time contributing for the future pensions of those who have not yet retired.

I think the hon Member has, to some extent, clarified that clause 3 does not mean, as it appeared to mean when we looked at it, that no decision had yet been taken as to what was going to replace the existing pension. From what he has said, the position is that what has been made public, in terms of the enhancement, is what will apply both to those who join the Civil Service after the 1<sup>st</sup> January, and those who are already covered by the No. 2 Provident Fund in all the other Authorities and the Agencies. Of course, there is no need to legislate for that but I think it is a good thing that the Government should be doing something to enhance that because, in fact, it closes, to some degree, we are still a long way away but at least, to some degree, it closes the gap between what those who are fortunate to be working until the end of the year will be getting when they retire, and those who come after will be getting because, in fact, the improvement will mean that they will finish up with a better pot of money.

The hon Member knows that I have been, if not critical, at least hesitant about going down this road when he has mentioned it in a number of Budgets over a number of years. He knows also that this year the line I took was that if those, whose obligation it is to adopt a position on this on behalf of public servants, had not objected, who are we to say to them that they should object. I must say that I find it quite remarkable that there has been so little resistance to what people ... I think he was anticipating tougher resistance as well.



So, in effect, the logic is there, but I have to say that we are not entirely convinced that the arguments that have been put and the system that has been created is one that we should be supporting wholeheartedly and I think that it is a system that may well unravel in the future.

In my experience, over many years, what I have found is that people will accept something one day and then come back for more the next, and the hon Member may well find that those who come in after January, at some stage in the future, may decide after all that, notwithstanding that this Parliament was looking after future generations, their generation is the one that matters and it is somebody else's generation that should not. So I do not think it is something that is guaranteed a peaceful future, and I think it is something that may create problems. I think it is difficult ... The gap is quite big. Mr Speaker, the gap is quite big because we only need to think of the fact that we have been paying, since, I think it was, the 1974 Budget, a tax free gratuity of twenty five per cent of the salary to contract officers, on the basis that it was assumed to be the equivalent cost of a final salary pension and most of the people that have worked on these figures, at the time, thought that, in fact, it was probably higher than that. The real cost was higher than that. The actual average, from the figures that the hon Member gave me, is not, in fact, all that high, when he answered questions that I put to him as to the pensions that had been granted in the last financial year. The average was not all that high but, of course, the average means nothing. You can have a few people with very high pensions and lots of people with very low pensions, and that is an average that does not look very alarming. I think the other point is that, in terms of the people that come in in areas where salaries are quite high and pensions consequently are quite high, there will be, I believe in future, a level of friction and a level of demand for that gap to be closed and, therefore, we take what the hon member has said and the explanation that he has given us, the accuracy of it and the reality that this has been growing exponentially, but I think we have to say at this stage

that we are abstaining on this. We are not totally committed to this move that he is making.

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

Well, Mr Speaker, yes. The hon Member quite rightly says that the Unions, this was part of the agreement that we struck with the Unions, that they all signed up to, and put to their members. Well, one Union put it to their members in a ballot, but the leaderships of the Unions signed up to it, and I do not think they signed up to it because trade unionists exist to take benefits away from their members. I think they signed up to it because they understood and accepted the arguments, and the reasoning for it. I think also they understood that there was no point in grabbing and in keeping hold of a scheme which may put this community ... One cannot say for sure but the economy of Gibraltar may continue to prosper every year and to grow every year as it has been doing for the ... It may do. Who knows what the future holds for anybody in the world, let alone for us in Gibraltar, but that there is a risk there, and I think, there was also an analysis of the fact that there is no point in clinging to something which is theoretically more valuable when, in fact, it may become unaffordable and then nobody gets it and all you are doing is putting into jeopardy the ability of those who have already earned it to be paid it.

So there is, clearly, a lot of contingent relieving of cost to future generations of tax payer to relieve them of the possibility, which is not a certainty of the possibility, that future developments in the economy of Gibraltar and of the Western world may make this a big millstone around the necks of future generations of Gibraltarians. Certainly, it is growing exponentially. If the economy of Gibraltar continues to grow and our revenue generating sectors, like online gaming and others, continue to produce the goodies, then that is fine, but it is a risk, and it is a risk that I think is worth eliminating, and that no one is pretending that this is designed to deliver the same value as the

final salary scheme. So it is not a question of saying what percentage ... Clearly, there are people who prefer it. There are people who prefer it because at the moment the Civil Service final salary pension scheme is as generous in certain circumstances as it is ungenerous in others. So it is very generous if you live to the age of retirement and you then have a long and healthy retirement, but if you, sort of, die a day before you retire or a day after you retire, the reality of it is that your family is unprovided for, and the widow or widower of a civil servant can be one day looking forward to a comfortable retirement because the husband or the wife is going to get [inaudible] and then some tragedy strikes the family, there is an unexpected and sudden death, and the hon Member knows of certain high profile examples of this, and all of a sudden the widow or widower has nothing. From prosperity to poverty in one heart beat. Literally in one heart beat and that is not generous. That is ungenerous, except for the single remaining civil servant who we have the honour of having serving with us in this House, that has clung to his Widows and Orphan Pension Scheme. I think he is to be congratulated for his foresight, although there are others who have retired recently that also had the same foresight.

So it is true that there are circumstances in which the current final salary pension scheme is much more attractive than this, but there are also circumstances in which this is more attractive, because this ends up with a pot of money with the employees' name and address on it, so to speak, speaking figuratively, so that if he dies, whenever he dies, during service, after the termination of service, there is a pot of money there which belongs to him and his estate and to his family. That is a sense of security which is not granted by the existing final salary scheme and is a reason why many civil servants, particularly the younger ones, who still have time to accumulate a large pot, which is why, obviously for this and many other reasons, we have not interfered with the rights of existing civil servants. But if you are about to start a career and remember, now a career in the Civil Service is not thirty three and a third years necessarily

any more. Now with all these EU Directives, people can carry on working for much longer years. So if you are a young man or woman about to enter the Civil Service, you have got many years worth of contributions of the Governments and of your own, and how much will be in the pension pot is a product of many variables that cannot now be known for certain. For example, what happens to investment markets? What happens to interest rates. Things of this sort will have an impact on that. So, there are many civil servants who ... well, there are many, yes indeed, there are civil servants, because there have been some requests whether the Government would consider allowing civil servants to transfer to the new arrangements. So there are civil servants who do find this reconfiguration of the pension arrangements actually more attractive because it provides more stable financial security for their families in circumstances in which the present scheme does not.

Well, Mr Speaker, the hon Member says that this ... well, obviously, it is just an act of Parliament, it is not in the Constitution and, therefore, it does not bind future ... but that is true of every piece of legislation. Anything can be changed, and then he went on to say that this new arrangement is not guaranteed a peaceful future and, of course, the two comments could have a link. The two comments could have a link because the only thing that threatens the peaceful future of this is if political parties, in the future, engage in the sort of electoral ratcheting up at the expense it would be, by the way, of future generations of tax payers offering to restore and to return these arrangements.

Look, Mr Speaker, it is no coincidence that almost every Government in western Europe, as well as most profitable, prosperous, rich PLCs, are looking at their final salary schemes as a future contingent liability which is either unaffordable or may become unaffordable and, therefore, the risk of not doing something about it is too potentially threatening. I do not think in Gibraltar we can afford to be an exception to this general drift, and the electoral attractiveness of some future [inaudible], of

some future party contesting an election saying, if you vote for me, six or seven hundred newly recruited civil servants on this basis, vote for me and on this first day in office I will give you a final salary pension scheme, well, that would certainly be a threat to the peace, but I think, Mr Speaker, given that what we are doing, what other countries are doing, and I think it is worth pointing out that we are doing it much less aggressively than other countries. In the United Kingdom, as I keep on being reminded by civil servants in the foreign office, almost every time I go there, they are actually interfering with the pension entitlements of existing civil servants. Not future recruits. We are not doing anything of that. I think that because there is no present lack of affordability, I think there is no case for interfering and the Government has no intention of going down that road. So we are going down the same road as the rest of Europe, but we are doing so in a much more gentle and less aggressive form.

**HON J J BOSSANO:**

Mr Speaker, if the hon Member will give way.

**HON CHIEF MINISTER:**

Yes.

**HON J J BOSSANO:**

Because he has mentioned it twice and linking it. Let me say, I was not signalling an election campaign on the basis of restoring a final salary pension scheme. The threat that is more linked to what I told him, in my experience, happens when people sell the same tea break several times, with which he might be familiar.

**HON CHIEF MINISTER:**

Well, Mr Speaker, the hon Gentleman offers me an early opportunity to pay him back for his quip that this is the first time that I am not doing something for short-term electoral gain. Given the nature of his last three election campaigns, it is a matter of blessed relief that he is not going to do the same with this item of expenditure as he has done in all election campaigns before this, which is to offer everybody the moon and six pence in turn. We have both done something for the first time today, then. Well, let us just settle and call it a score draw, shall we. One all.

Mr Speaker, the hon Member is right in saying that there are one or two arrangements which are going to require imaginative handling in relation to this new regime, but we believe that that is perfectly duable. So, Mr Speaker, I am sorry we do not have the hon Member's support for this. I think future generations of tax payers in Gibraltar will look back on this day and be grateful to this House for having passed this piece of legislation, and I would have liked, therefore ... Given that it is a structural change for decades and decades to come, long after we have both ceased to be political opponents, it would have been nice to have done it with the unanimous approval of the House, but I will settle for their abstention if that is the best they feel able to yield to this excellent piece of legislation.

Question put.

The House voted.

For the Ayes:

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

The Hon F J Vinet

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

The Bill was read a second time.

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

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

Question put.           Agreed to.

#### **THE INSOLVENCY ACT 2011**

##### **HON D A FEETHAM:**

I have the honour to move that a Bill for an Act to provide for the administration, receivership and liquidation of companies and the bankruptcy of individuals, to enable companies and individuals to enter into arrangements with their creditors, to provide for the licensing of insolvency practitioners and to provide redress for malpractice in relation to insolvent persons, for the avoidance of certain transactions, cross-border insolvency and connected issues, be read a first time.

Question put.           Agreed to.

#### **SECOND READING**

##### **HON D A FEETHAM:**

I have the honour to move that the Bill for the Insolvency Act 2011 be read a second time. Mr Speaker, it is undoubtedly the case that the absence of a strong, comprehensive and modern insolvency legislation, creates difficulty for any international finance centre. Creditors of international companies, in particular, secured creditors, need to be satisfied that, in the event of insolvency, their rights are adequately protected and there is a regime in place to manage the insolvency. Furthermore, the insolvency regime plays a critical role in dealing with failed local businesses. If the legislation contains alternative insolvency procedures to liquidation or bankruptcy, it may even be possible to rescue failed businesses resulting in saved jobs and other benefits to the economy.

The current insolvency regime in Gibraltar is provided in relation to companies by the Companies Act, and in relation individuals by the Bankruptcy Act 1934. Both the corporate and individual insolvency regimes are based on UK legislation that has since long been repealed. The Companies Act provisions are based on the former UK Companies Act 1948 and the Bankruptcy Act on the former UK Bankruptcy Act 1914. There is, therefore, a clear need to modernise Gibraltar's insolvency legislation.

Some two years ago, I established a committee comprising members of the Government and the private sector to review and make recommendations on the options for new insolvency current legislation. The committee reviewed the current legislation together with legislation of a number of other jurisdictions. The legislation reviewed included the UK Insolvency Act 1986 and various Acts that have amended and supplemented it and the insolvency legislation of other jurisdictions such as the BVI, Isle of Man and Jersey. Mr Speaker, the Government is very grateful to the committee for the significant work that they have invested in the process of

finalising this Bill. In summary, the committee recommended that the Bankruptcy Act and the compulsory liquidation provisions in the Companies Act should be repealed and replaced by a completely new Insolvency Act covering both areas, both corporate and personal insolvency.

Mr Speaker, hon Members opposite will see that, actually, this particular Bill does not deal with any amendments, not does it deal with any transitional provisions. The intention of the Government is, actually, to bring a second Bill to Parliament that deals with consequential amendments to the Companies Act and also to the Bankruptcy legislation and deals as well with transitional provisions. Those are quite complex and we need some more time in order to do that. There is an additional reason as well. The Finance Centre Council has communicated to the Government that it is going to be providing the Government with a briefing paper in relation to amendments that they would like to see to the Companies Act. Now, I have been in communication with them because there are a number of points that they have raised in relation to the insolvency regime and the Companies Act in various provisions. So we have got to take those into account and they will be taken into account when we deal with the consequential amendments Bill.

The Bill, when enacted, will also be supported by Insolvency Rules, covering practice and procedure in relation to all types of insolvency proceedings. Insolvent Partnership Regulations, adapting the insolvency regime for partnerships. Insolvency Practitioners Regulations, providing for the licensing, regulation and business of insolvency practitioners and Administration of Insolvent Estates Regulations, adapting the insolvency regime for insolvency estates. In fact, the work in relation to this is very much advanced and I think that we should be in a position really to publish regulations, probably, some time in October.

Mr Speaker, turning to a detailed analysis of the Bill, Part 1 sets out the principal definitions of the Act. I will not review these in

any detail now, but I will refer to specific definitions and interpretive provisions as relevant to the other Parts.

The liquidation of a company, inevitably leads to a company's dissolution and the likely destruction of its business. Liquidation therefore should be regarded as a measure of last resort and Part 2 of the Bill creates a new regime for the very first time here in Gibraltar that enables a company to make a voluntary arrangement with its creditors in appropriate circumstances.

Clause 13(1) defines an arrangement as and I quote "a compromise between a company and its creditors or one or more classes of creditors, the implementation of which is supervised by a supervisor acting as trustee or otherwise". The definition of "arrangement" is deliberately drawn widely to give insolvent companies and their creditors as much freedom as possible to reach an agreement without the need for, a usually more costly, administration or liquidation. The essential elements of a CVA, a company voluntary arrangement, is as follows: an arrangement is always supervised by a supervisor who must be a licensed insolvency practitioner; an arrangement cannot affect the rights of a secured or preferential creditor, without the creditors agreement; an arrangement may provide, amongst other things, for a supervisor to carry on the business of the company or to realise its assets. This is broader than the equivalent provisions in the UK Insolvency Act; an arrangement may be proposed and entered into only by an insolvent company including a company that is in administration or liquidation, and, in fact, a company voluntary arrangement is often used as a method of actually exiting an administration process, or an administration of a company.

Clause 14 provides that an authorised person cannot enter into an arrangement without the written consent of the Financial Services Commission. Clause 2(1) provides that the term "authorised person" has the same meaning as in the Financial Services Commission Act 2007. An authorised person is

essentially a person licensed and supervised by the Commission.

Clauses 15 to 27 set out the procedure for entering into a company voluntary arrangement. In summary, clause 15 enables the directors or the administrator or liquidator of a company to make a proposal for an arrangement of the company's creditors. A proposal must nominate an eligible licensed insolvency practitioner as an interim supervisor. An eligible insolvency practitioner in relation to a company is an insolvency practitioner who is eligible to act as an insolvency practitioner in accordance with clause 485. In summary, to be eligible as an insolvency practitioner, the practitioner must be licensed as an insolvency practitioner. Must have consented to act. Must not be disqualified from acting as an insolvency practitioner. Must have provided security in accordance with the Insolvency Practitioners Regulations and must not have been the auditor or a director of the company at any time during the previous three years.

Clauses 16 to 20 set out the detailed requirements concerning proposals for an arrangement and the appointment of an interim supervisor.

Clause 21 provides that the interim supervisor must prepare a report for the creditors of the company and, where appointed by the directors, is responsible for monitoring the affairs of the company during the proposal period.

Clause 23(1) requires the interim supervisor to call a creditors' meeting by no later than twenty eight days after the appointment of the interim supervisor to consider the proposal, and clause 24 enables the interim supervisor to require directors and other officers of the company to attend the creditors' meeting.

Clause 26 provides that, at the meeting, the creditors may approve the proposal, with or without amendments, adjourn the meeting, or reject the proposal and that, if the creditors at the

meeting approve the proposal, a licensed insolvency practitioner, who may or may not be the interim supervisor, must be appointed a supervisor of the arrangement.

Clause 30 provides that once an arrangement is approved at a creditors' meeting, it is binding on the company, its members and all the creditors of the company. This is important as an arrangement would not be effective if creditors who voted against the approval of the arrangement, or were not at the meeting, were not bound by the arrangement.

Clause 31 provides that the supervisor has the functions and powers provided for in the arrangement and, where the supervisor was authorised to carry on business of the company, the supervisor is required to keep financial records and send creditors regular accounts and reports.

Mr Speaker, the Government is anxious to ensure that insolvency practitioners are fairly paid for the work that they do but also to ensure that remuneration is not excessive as the higher cost of an insolvency proceeding, the less that there is available to the creditors at the end of the day. In the case of a voluntary arrangement, the remuneration is primarily a matter for the creditors to agree. However, clause 38 of the Bill permits the Court to review and fix the remuneration and expenses of a supervisor, or interim supervisor, on the application of the supervisor or the company. In fixing the remuneration of the insolvency practitioner, in whatever capacity, the Court is required to apply the general principle specified in clause 466 of the Bill, which I will consider at a later stage.

Although a CVA procedure is a voluntary procedure that does not require the approval or intervention of the Court, clauses 39 to 41 enable various applications to be made to the Court. This is important, Mr Speaker, in order to maintain the integrity of the entire process.

Clause 39 thus enables the application to be made to a Court for the appointment of an eligible insolvency practitioner as supervisor, either in substitution for the existing supervisor, or the interim supervisor, or to fill a vacancy that has arisen.

Clause 40 gives the Court a wide power to give directions to a supervisor to confirm, reverse or modify any act or decision of the supervisor.

Clause 41 enables applications to be made to the Court on the grounds that the arrangement unfairly prejudices the interests of a member, creditor, surety, or co-debtor or that there has been a material regulatory at or in relation to a meeting at which an arrangement was approved. This is a theme that runs across the entire Bill and for Members opposite who are lawyers and have practised in the area of company law, these provisions, which, as I say, cut across a number of other relevant appointments, are very similar to the provisions in relation to unfair prejudice relating to companies, where minority shareholders can make an application in relation to unfair prejudice to the interests. The clause provides the Court with a wide range of powers to deal with unfair prejudice, or irregularity at meetings.

Finally, Mr Speaker, clause 43 creates the offence of making a false representation for the purposes of obtaining approval for an arrangement. The CVA procedure is entirely voluntary. It is noteworthy, therefore, that Part 2 does not prevent a company from, instead, using the Arrangements and Reconstruction provisions in sections 205 to 208 of the Companies Act, or even conducting a non-statutory arrangement or compromise with its creditors.

Mr Speaker, turning to administration. The Insolvency Bill establishes a completely new insolvency regime for companies, called "administration" as an alternative to liquidation. In appropriate cases, the Court can appoint an administrator of a company instead of a liquidator. So the Court of its motion can

do so. Whilst a liquidator's responsibility is to wind up the company, by selling its property and distributing the proceeds amongst its creditors, an administrator has the power to continue the business of the company. This may enable the company to be rescued as a going concern, saving jobs, or to enable its property to be sold at a higher price than would otherwise have been the case. In order to provide breathing space, the Act puts a moratorium in place on an application being made for an administration order to provide the company, and its administrator, with the necessary breathing space. The holder of a floating charge can also appoint an administrator instead of appointing an administrative receiver, and I will come back to that in due course, but that is important in relation to this jurisdiction, in particular. The Government anticipates that administration will be particularly useful in the cases of companies carrying on business in Gibraltar as, in many cases, administration will provide a better prospect for the rescue of the company's business, saving local jobs.

Mr Speaker, I will now turn to the procedure in more detail. An administrator, whether appointed by the Court or by the holder of a floating charge, has the statutory objectives specified in clause 46. This clause sets out the hierarchy of objectives for the administrator. The first objective is the rescue of the company as a going concern. It is only if this is not reasonably practicable, or a better result for the creditors can be achieved by pursuing another objective, that the second objective becomes relevant. The second objective is, "achieving a better result for the creditors than would be likely if the company were to enter into liquidation". If neither of the first two objectives are reasonably practical to achieve, the administrator may perform his functions for the purpose of the third objective, which is "realising property in order to make a distribution to one or more secured or preferential creditors."

These objectives may not be appropriate for all companies. For example, in relation to a utility company, a more appropriate objective may be to preserve the distribution structure of the

utility company, such as power lines used by the company. It is not possible, Mr Speaker, to provide for all the foreseeable objectives in the Bill. Therefore, clause 46(3) enables the Minister, by notice published in the Gazette, to add, or to vary, the objectives in the case of specific categories of companies and to provide for the priority of the new or varied objectives.

Clause 47 provides that an administrator may not be appointed in relation to a bank or an insurance company. The Government intends that these companies will be subject to their own regimes in the due course.

Mr Speaker, I indicated, and this is important, that the holder of a floating charge can appoint an administrator, without the need to apply to Court, instead of appointing an administrative receiver. However, this only applies if the floating charge specifically permits the appointment of an administrator. So the floating charge must envisage the appointment of the administrator. Notice of an appointment of the holder of a floating charge must be given to the Court under Clause 50.

Clauses 55 to 59 set out the process for applying to the Court for an administration order. Clause 57 provides that the Court can only make an administration order if it is satisfied that the company is insolvent, or likely to become insolvent and there is a reasonable prospect that the administration order will achieve one or more of the objectives set out in clause 46.

Mr Speaker, as I indicated at the start, a strong and appropriate insolvency regime is of significant importance to a sophisticated financial services centre. Although users of companies may not focus on insolvency when establishing a company, perhaps because they are naturally optimistic when starting a new venture, creditors and in particular, secured creditors, certainly do. Creditors need to be satisfied that, in the event of insolvency, the insolvency regime adequately protects their interests. In the case of companies that will carry on business in Gibraltar, there is no realistic alternative to the incorporation of

the company in Gibraltar. However, where Gibraltar is being considered as a jurisdiction for a company that will conduct business internationally, there is a wide choice of corporate domiciles. If banks and other secured creditors are not satisfied that the insolvency regime adequately protects their interests, they may require the company to be incorporated in another jurisdiction. I certainly know from talking to lawyers that from part of the committee that in relation to, or I have been told, that in relation to structured transactions, this argument is particularly cogent and important.

This is particularly important in relation to administration. Secured creditors with a floating charge traditionally appointed receivers/managers or administrative receivers to enforce their security. The administrative receiver acts for the secured creditor. An administrator, however, acts for all creditors. The Government believes that, if Gibraltar is to remain attractive for international business, it is important that rights of secured creditors with a floating charge are preserved. Therefore, although the power of a bank or other secured creditor to appoint an administrative receiver in relation to a company has largely been abolished in the UK, the new Bill retains this as a remedy for secured creditors, subject to important safeguards. In fact, that is also, hon Members may wish to know, the position in relation to the BVI, and we know that actually the BVI, shortly after the introduction of the Insolvency Act in the BVI, became a very attractive jurisdiction, and the evidence is that it was precisely because of the way that the Insolvency Act had been drafted. I say attractive in relation to certain transactions in relation to certain types of business. The safeguards that I referred include provisions that expressly set out the duties of an administrative receiver, balancing the rights of secured and unsecured creditors.

Clause 57 therefore enables a secured creditor to block the appointment of an administrator by appointing an administrative receiver. So, effectively the bank is given the choice, provided that the security documents provide that choice, whether to say,



right we are going down the administrator route, or we are appointing an administrative receiver.

However, whilst the Government expects that administrative receivership will be used by secured creditors of companies carrying on international business, it anticipates that secured creditors of companies carrying on business in Gibraltar will prefer the appointment of an administrator. This has been the experience in the United Kingdom.

A creditor could easily frustrate any potential administration by taking action after application has been made to Court for an administration order. Therefore, clauses 65 to 68 provide for a moratorium, or that a moratorium is in effect, from the making of an application for an administration order until the dismissal of the application, or the discharge of any administration order.

Whilst a moratorium is in force, clause 66 provides that, for example, the company may not be put into liquidation, no creditor may take action against the company, no secured creditor may enforce its security and no legal process may be commenced against the company, without the leave of the Court. The moratorium does not prevent the appointment of an administrative receiver prior to the making of an administration order. By way of exception, clause 68 enables the Court to allow the disposal of perishable assets for obvious reasons.

Clause 71 and Schedule 1 give the administrator all the powers necessary to fulfil his functions.

Mr Speaker, unlike the position under a liquidation, the directors of a company remain in office with an administration. However, their functions, powers and duties do not continue to the extent that they are inconsistent with the functions, powers and duties of the administrator, see clause 73.

The administrator has a duty to investigate the affairs of the company in administration. Clause 78 requires the administrator

to prepare a report for creditors. If the administrator considers that further investigations are necessary, he must also send the report to the Official Receiver.

Given the importance of protecting the reputation of the financial services sector, clause 79 requires the administrator to report to the Financial Services Commission if it appears that the company has carried on an unlicensed financial services business.

Given that administration has specific objectives, the administrator is required to prepare proposals as to how those objectives will be achieved. The administrator's report must be submitted to all the creditors, who have the right to request the administrator to call a meeting. The administrator must call a meeting if requested to do so by more than 10 per cent in the value of the company's creditors. The creditors, at their meeting, will decide whether to accept, or reject, or modify, the administrators' proposals.

Clauses 93 and 94 of the Bill contain important provisions designed to protect the interests of creditors and members. Creditors and members are particularly vulnerable during the period after the application has been made. In other words, when the application is filed for an administration order but before the administration order is actually made. This is because a moratorium is in force, protecting the company from any legal proceedings, but the company is still under the control of the directors, no administrator having been appointed obviously.

Clause 93 therefore allows certain persons, including creditors and members to apply to the Court for an order that will protect the assets of the company, restrain the directors or protecting the interests of one or more creditors.

Clause 94 enables a creditor or member to apply to the Court when an administration order is in force on the grounds that his interests are being unfairly prejudiced.

Finally, clause 95 requires the Financial Services Commission to be kept informed where the company in administration is or has been an authorised person and clause 95 requires the fact that a company is in administration, and the name of the administrator, to be stated on public documents.

Mr Speaker, Part 4 of the Bill provides for provisions applying to all types of receiver, whether receivers of income, receivers appointed in relation to specific assets or administrative receivers. The provisions in Part 4 are much more comprehensive than the existing provisions.

As I have indicated, receivership remains an important remedy for secured creditors and the Government considers it important to preserve the rights of secured creditors with a floating charge to appoint an administrative receiver. Formerly, it was called in our legislation receiver and manager.

Clauses 99 to 121 of the Bill apply to all receivers.

Clauses 122 to 124 apply only to receivers appointed out of Court and clauses 125 to 133 only to administrative receivers.

The Bill contains a considerable amount of procedural detail, which I do not intend obviously to cover today. Instead, I will outline the important policy issues covered by the Bill in this regard.

In relation to persons who may be appointed receiver, clause 99 specifies persons who may not be appointed as a receiver of a company. In summary, the list includes persons, such as directors and mortgagees who may have a conflict of interest, a person who is disqualified from holding a licence, bodies corporate and the Official Receiver.

In relation to the duties and liabilities of the receiver, the duties of a receiver are not actually specified in the UK Insolvency Act or indeed in any UK insolvency legislation. This has led to a

significant number of cases in Court. Commentators generally, Mr Speaker, including some judges, regard it as highly unsatisfactory that such a critical issue is not covered in legislation. Some other jurisdictions, actually, such as New Zealand, have put the duties of receivers on a statutory basis.

The Government considers that receivers' duties should be set out in statute and, in order to provide certainty, the common law duties of receivers have been codified in clauses 111 and 112 of the Bill. Given the potentially different interests of secured and unsecured creditors, the Government considers that it is important for the Bill to contain a clear statement of the duties of a receiver and for the duties to strike a fair balance between those conflicting interests.

In summary, clause 125 defines an administrative receiver as a receiver of the whole or substantially the whole of the business, undertaking and assets of a company, appointed, out of Court, by the holder of an instrument secured by a floating charge. The Court is also given the power under clause 126 to appoint a receiver as an administrative receiver. This is not provided for in the UK Insolvency Act leading to some confusion as to whether or not the Court has this power, and we have decided to make it expressly so in this Bill.

Mr Speaker, it is assumed by commentators that, under the UK regime, only one administrative receiver can be appointed at any given time. This results in a possible lacuna as, where two chargees are entitled to appoint an administrative receiver, once the appointment of the first receiver has come to an end, in the absence of another appointment, the surplus assets must be given back to the company. The Bill, therefore, provides in clause 125(2) that two or more administrative receivers may be appointed, but that only one, the administrative receiver appointed on behalf of the person whose security interest ranks highest in priority, can act at any time. But, obviously, when that debt is satisfied, then the second appointment actually bites.

An administrative receiver has broad statutory powers, although these may be limited in the instrument appointing him. These are set out in Schedule 1 and the same powers as those of an administrator.

However, an administrative receiver also has additional responsibilities to carry out a limited investigation and file a report of his receivership, and the events leading up to it, with the Registrar of Companies, see clause 132. Receivership, as it is a creditors enforcement action, is not a collective insolvency procedure for the purposes of the European Community insolvency regulation and is, therefore, excluded from the regulation. I do not know whether hon Members are aware of the regulation, but basically it focuses on the main centres of interest for any given company. If the main centre of interest is in the European Union, then the regulation applies, and what it does is, for example, a Gibraltar company is liquidated here in Gibraltar and it has assets, say for example, in France, it then allows the French Courts to assist the local Courts in the liquidation. It does not apply to receivership, because it only applies to collective insolvency proceedings and, of course, receivership, because the receiver, actually appointed by the creditor pursuant to a security, is not a collective insolvency precedent. In certain cases, therefore, it might be advantageous for a secured creditor to appoint an administrator in order to bring the proceedings within the regulations, where, for example, there are assets outside the jurisdiction somewhere in another Member State.

Part 5 of the Bill contains provisions applicable to both liquidations and bankruptcy. I do not intend to consider these at length. However, in summary, clauses 135 and 136 deal with insolvency set off. Whilst these are a feature of the current regime, the provisions in the Bill are updated in line with developments in the UK and elsewhere.

Clause 137 recognises agreements to subordinate debt. These are not expressly recognised in the UK Insolvency Act.

However, the Government considers that it should be open for creditors to, in effect, agree to a different priority than that provided for in the Bill. Now, that may be attractive, for example, to a situation where a company is in trouble and the main shareholder of that company decides to provide the company with a loan. Now, other creditors may only agree to provide the company with more time, if the shareholder agrees to subordinate that debt. In other words, to say, right, my debt is not going to rank *pari passu* with the rest of the debts of other creditors, but we will agree that we will only be satisfied once the other debts of the company are satisfied. It is not the position in the UK, but we decided to include it under this Bill.

Clauses 138 to 140 deal with the quantification of claims and interest on claims.

Clauses 141 to 143 provide for the service by a creditor of a statutory demand and the setting aside by the Court of a statutory demand. That is more important really in relation to bankruptcy, than in relation to liquidation, in my experience of it.

Mr Speaker, Part 6 of the Bill covers the liquidation of companies. Members will be familiar with liquidation as it has, for so long, been the principal manner for dealing with insolvent companies in Gibraltar. However, the liquidation regime established in Part 6 contains some significant differences as against both the existing liquidation regime in Gibraltar and the UK regime. I would like to explain some of the principal differences.

Both the Companies Act and the UK Insolvency Act provide for two different types of liquidation, compulsory liquidation, where the liquidator is appointed by the Court, and voluntary liquidation, where a liquidator is appointed by its members. There are different procedures for each and the voluntary liquidator does not have the same powers that a Court appointed liquidator has.

Rather than considering liquidation in this way, the Bill considers the appointment of a liquidator by the Court and the appointment of a liquidator by its members, of an insolvent company, we are talking about an insolvent company now, to be separate entry points into a single liquidation process, rather than keeping the process separate. This rationalises the procedure. Given that all liquidators, including voluntary liquidators of insolvent companies, will be required to be licensed insolvency practitioners, there seems no good reason, in our view, for requiring an application to Court to exercise certain powers.

Liquidations initiated by the members will be subject to the Insolvency Act, but solvent voluntary liquidations will continue to be subject to the Companies Act and, obviously, we will deal with that in due course.

Further, a further liquidation initiated by the members commences, and this is important, with the appointment of a liquidator, not with a resolution to wind up. Therefore, it will not be possible, as under the UK Act and the Companies Act, for the members to put the company into liquidation without appointing a liquidator. This is aimed at overcoming directly the abuses that can take place in those circumstances.

There are other positive consequences, in my view. Under the Companies Act, and the UK regime, the commencement of a compulsory liquidation relates back to the date of the filing of the application to wind up. This puts at risk every transaction undertaken by a company in the period between the filing of the application and the making of the winding up order, even those transactions that are undertaken in the normal course of the company's business. Again, lawyers on the opposite side of the House, indeed, also on this side of the House, would be aware that it is therefore necessary to apply for a validation to go to Court, to apply for a validation order, validating that expenditure on the part of the company. Of course, it is an expensive procedure and many commentators in the UK including, again, judges and also academics, have argued against this approach.

As there is no relation back period under this Bill, it will only be possible to attack transactions as voidable transactions. However, it should be noted that the time period for attacking a transaction, as a voidable transactions, goes back to the date of the application, as provided in the definition of "onset of insolvency" in clause 248 of the Bill. If the applicant has reason to be concerned that the company will dissipate its assets during the period before the application is heard, he can apply for the appointment of a provisional liquidator under clause 161.

Clause 150 sets out the list of persons who can apply for the appointment of a liquidator. This includes the Minister for Finance and the Financial Services Commission, with the consent of the Minister. The Minister can apply on the public interest ground and the Commission, in relation to an Authorised person or a former Authorised person, or a person carrying on, or who has carried on, unauthorised financial services business. The Commission can only apply on the grounds that the company is insolvent or on the public interest ground.

The Bill also provides for a route into liquidation from a CVA and from administration by permitting the supervisor, or administrator, to apply for the appointment of a liquidator.

There is no time limit for the hearing of a winding up petition under the existing regime. It is obviously extremely unsatisfactory for a company to have the hearing of an application for the appointment of a liquidator delayed. Clause 157 of the Bill therefore requires that an application is disposed of within a maximum period of six months after the application is filed. If there are special circumstances, the Court can extend the period for a further period of three months, provided that the application to extend is made before the period has expired.

Clause 158 restricts the company's ability to oppose an application for the appointment of a liquidator, where a statutory demand has been served against it and remains unpaid. The company requires the leave of the Court to oppose an

application on the ground that the company relied on, or could have relied on, for the purposes of having the statutory demand set aside. This is designed to prevent a company prolonging the process by re-arguing points, or by deliberately failing to argue points, at an earlier stage. It builds on the position that is taken by the Courts in England and elsewhere.

Subject to the significant differences that I have described above, much of Part 6 will be familiar to members and insolvency practitioners. Furthermore, many of the provisions are matters of procedural detail which I do not intend to describe in full today.

Mr Speaker, the procedure following the appointment, covered in clause 170 does contain some important differences as against the Companies Act regime.

As I indicated above, under the Bill, liquidation commences on the appointment of a liquidator, rather than on a resolution to wind-up or the making of the winding up order. Therefore, it is not possible for a company to be put into liquidation without a liquidator.

The Companies Act provides that, where appointed by the members, a meeting of creditors must be held on the same day, or the next day. This leaves open the practice that used to be known as “Centrebinding”, after the case that enabled it. This device enabled directors, by causing the company to breach the requirements to hold a creditors’ meeting on the same day, or the next day, as the members’ meeting, to dispose of the assets before the creditors’ meeting. Furthermore, if a creditors’ meeting is held the same day or the day following the member’s resolution, the creditors will not have the information required to make an informed decision. Although Centrebinding is unlikely to be such a significant problem where insolvency practitioners are licensed and regulated, the Government considers that it would not be prudent to continue the existing regime, as it does remain open to abuse. Clause 170 of the Bill, therefore,

requires a creditors’ meeting to be held within twenty one days of the appointment of the liquidator. The creditors may, at their first meeting, appoint another liquidator in the place of the liquidator appointed by the members. The liquidator’s powers are restricted during the period prior to the creditors’ meeting, see clause 170(2).

Mr Speaker, Part 7 is a very short Part that covers the appointment of a liquidator of an unregistered company. Clause 2(1) defines an unregistered company as including a company, or other corporation that is not incorporated under the Companies Act, and any association of persons. It is, therefore, a very broad definition. The liquidation of companies is not provided for satisfactorily under the Companies Act regime. Briefly, clause 229 sets out the grounds for the appointment of a liquidator of an unregistered company and clause 230 provides that Part 6 applies, subject to any modifications and exceptions in the Rules.

Part 8 includes a number of separate provisions that are applicable generally. These include the power of an office holder to obtain books and documents and information, the provisions of a statement of affairs by directors and others, the investigation of the affairs of insolvent companies and the examination by an office holder, or by an Official Receiver, or by the Court of directors and other persons.

Clause 247 also imposes restrictions on suppliers of utilities in relation to companies in administration, administrative receivership, or liquidation, or where a company voluntary arrangement has taken effect, or a provisional liquidator is appointed. In summary, a utilities company is not permitted to require payment of any arrears as a condition of continuing to supply the company. Without this clause, utility suppliers would be able to exploit their power to force a company out of business to obtain the payment of arrears in priority to other creditors and that, obviously, is not a very satisfactory state of affairs.

Mr Speaker, in order to prevent companies and individuals who know or believe that they are insolvent, or may become insolvent, from avoiding the consequences of insolvency by transferring property to other persons, Part 9 of the Bill includes provisions that enable an administrator or liquidator of a company to apply to the Court to set aside, or void, certain transactions that may have been undertaken by the company prior to administration or liquidation. As I have already indicated, these provisions are particularly important given the Bill abolishes the relation back period on commencement of a liquidation.

There are four types of voidable transaction. These are unfair preferences, where a creditor of a company is unfairly repaid, his or her debt, ahead of the other creditors, undervalue transactions, where the company makes a gift of its property to another person, or sells property at an undervalue, voidable floating charges, and extortionate credit transactions.

In these circumstances, the Court may order the transaction to be set aside. As in the UK regime, any recoveries are for the benefit of the entire body of creditors. In other words, the unsecured creditors. The policy behind that is, actually, that if the liquidator is going to take proceedings to avoid transactions, it does so with the assets of the company as a whole and, therefore, any recovery should be for the benefit of the general body of creditors, ranking *pari passu*, the general body of creditors as opposed to any secured creditor. Clause 256 provides that the remedies are not exclusive, therefore, other remedies may also be pursued.

Mr Speaker, the Government is determined to ensure that Gibraltar's reputation as a financial services centre is preserved. With this objective in mind, as well as other objectives of protecting persons dealing with companies doing business in Gibraltar, the Bill contains provisions that enable the Court to make orders in respect of various types of malpractice in relation to companies that have gone into insolvent liquidation.

Clause 258 provides a summary remedy against officers, liquidators and others, who have misapplied, or become accountable for the company's assets, or who have been guilty of any misfeasance or breach of fiduciary duty. The clause would give the Court the power to make a range of orders aimed at ensuring the repayment of monies, the restoration of property, and the payment of compensation.

Clause 259, fraudulent trading, enables the Court, on the application of the liquidator, to require a contribution to the assets of the company from a person who was knowingly a party to the carrying on of the business of the company with intent to defraud creditors of the company, or any other person, or for any fraudulent purpose.

It is always difficult, Mr Speaker, to establish fraudulent intent and clause 260, therefore, enables the Court to make an order against a director in respect of insolvent trading. The liquidator only needs to prove that, at the time before the commencement of the liquidation, the director knew, or ought to have concluded, that there was no reasonable prospect that the company would avoid going into insolvent liquidation. Where insolvent trading is established, the Court may order the director, or former director, to make a contribution to the company.

It is, obviously, not right that directors are penalised where they try and do the right thing. Therefore, clause 260(3) provides that the Court cannot make an order against a person, if it is satisfied that after he first knew, or ought to have concluded, that there was no reasonable prospect that the company would avoid going into insolvent liquidation, he took every step reasonably open to him to minimise the loss to the company's creditors. Again, as in relation to voidable transactions, any monies recovered in this Part are payable to the unsecured, not the secured creditors.

Finally, the Government is keen to prevent the practice whereby directors can simply liquidate a company and then, out of the

ashes of the old, start trading with another corporate vehicle, under a similar name, doing exactly the same business, the so-called phoenix companies. Clauses 264 and 265 deal with this by imposing strict restrictions on the reuse of the names of companies that have gone into insolvent liquidation. Clause 265 imposes personal liability on a person's involvement in the management of companies in breach of clause 264.

Mr Speaker, it is the directors of a company that have ultimate responsibility for the management of a company. The Government considers that it would be unfair to creditors to enable directors of companies that go into liquidation to escape the consequences of their actions, if they have acted improperly, by hiding behind the legal status of the company. Part 11 of the Bill, therefore, enables the Court to make a disqualification order against persons who have committed certain offences in relation to companies, who have been guilty of fraud, or misfeasance, or who are considered to be unfit to be concerned in the promotion, formation, or management of companies.

Where a disqualification order is made against a person, clause 267(3) provides that the person is prohibited from being a director of a company, acting as a voluntary liquidator of a company, and a range of other areas connected with a company. A disqualification order can be for a period of up to ten years.

Where a person wishes to avoid proceedings, for a disqualification order, clause 271 enables that person to provide the Official Receiver with, what is called, a disqualification undertaking. This operates exactly as a disqualification order, but is entered into on a voluntary basis.

Clause 275 provides that a person incurs personal liability for engaging in a prohibited activity, as a disqualified person, without leave of the Court.

Finally, clause 277 requires the Registrar to maintain a Register of Disqualification Orders and Undertakings.

Mr Speaker, I now turn to the provisions concerning individual insolvency. The affairs of an insolvent individual are wound up through bankruptcy. However, bankruptcy should be regarded as a measure of last resort. The bankruptcy of an individual will have significant future legal and practical consequences, for example, the individual's ability to obtain credit and carrying on his or her business. Part 12, therefore, establishes a regime that enables an individual to make a voluntary arrangement with his or her creditors, in appropriate circumstances. The provisions are very similar to those in Part 2, the company voluntary arrangements, and I do not intend to go through them again. However, there is one significant difference. As voluntary arrangements often lead to individual creditors taking action to enforce their debts, clauses 287 to 291 enable an individual to apply to the Court for a moratorium order, which would prevent any creditor taking action whilst the moratorium is in force. This will provide an individual debtor with a "breathing space" whilst a proposal is put together. The moratorium provisions are similar to those applicable in relation to companies that I have already described.

Mr Speaker, I now turn to the principal insolvency remedy, in relation to individuals' bankruptcy. There has been very little use of the Bankruptcy Act in Gibraltar. Certainly, in my experience, and I practice in this area, and the experience of others that practice in insolvency in Gibraltar. Nevertheless, it is important that there is a strong insolvency regime for individuals. This Part replaces the provisions in the Bankruptcy Act, which will be repealed in due course as I indicated earlier. The bankruptcy provisions in the Bill are based on the bankruptcy provisions in the UK Insolvency Act 1986, as amended.

A bankruptcy order may be made on the application of a creditor or the debtor himself. If an order is made, the bankruptcy trustee must be appointed.

Once an application for a bankruptcy order has been made, clause 334 enables the Court to appoint an interim receiver to protect the debtor's assets or books and documents.

As under the existing Act, on the making of a bankruptcy order, the assets in the bankrupt's estate vests in the trustee and becomes divisible amongst the bankrupt's creditors and, obviously, divisible as we will see in a moment. Anything that is personal to him that he can keep. Clause 341 excludes from the bankrupt's estate, assets that the bankrupt holds on trust and certain assets essential for the bankrupt to live or carry on his business.

In order to ensure that the bankrupt's continuing income, or a part of it, may also be made available to satisfy his debts, clause 350 enables the Court to make an income payment order, requiring that part of the bankrupt's income, that is subject to the order, to be paid to the trustee.

The Government understands that if a person becomes bankrupt, this can have a significant adverse effect on the bankrupt's spouse and members of the bankrupt's family. The Bill, therefore, contains a number of provisions in clauses 351 to 355 that seek to provide some protection in relation to the bankrupt's home and matrimonial home.

Clause 351 provides some protection to persons under the age of eighteen, children or the family who occupied the bankrupt's home to enable them to continue in occupation, notwithstanding the bankruptcy.

Clause 353 protects the trustee's interest in the bankrupt's matrimonial home, where it cannot be immediately realised, by imposing a charge in the trustee's favour on the property. In a situation where the bankrupt is married, effectively, the wife's share is protected and the trustee in bankruptcy then has a charge over the bankrupt's half, or share, in the property.

Clause 354 is intended to prevent a trustee deliberately not realising an interest in the home of the bankrupt, the bankrupt's spouse or the former spouse in the expectation that increases in the value of the property will result in an increase in the value of the trustee's share.

Many of the remaining provisions of the Part are largely procedural and I do not intend to repeat them because they do not involve significant policy issues. However, I should note that clause 409 provides for automatic discharge of a bankrupt from bankruptcy three years after the commencement of the bankruptcy, unless the bankrupt is ineligible for discharge under clause 408, or the bankrupt has previously been discharged from bankruptcy. Clause 408 provides that a bankrupt, is ineligible for automatic discharge if he has been an undischarged bankrupt at any time in the previous ten years, or has been convicted of a bankruptcy offence. Where automatic discharge does not apply, application to the Court may be made for discharge under clause 411.

Mr Speaker, Part 14 creates the following bankruptcy offences:

- (a) Non-disclosure;
- (b) Concealment of assets;
- (c) Concealment of assets and falsification;
- (d) The making of false statements;
- (e) The fraudulent disposal of assets;
- (f) Absconding;
- (g) Fraudulent dealing with asset obtained on credit;
- (h) Obtaining credit or engaging in business of an undischarged bankrupt, without disclosing the bankruptcy;
- (i) Failure to keep proper accounts; and
- (j) Gambling, where the gambling has materially contributed to, or increased the extent of, his bankruptcy.

Parts 15 and 16 are the direct equivalents, in relation to bankruptcy, of voidable transactions and directors'



disqualification orders and undertakings. In the circumstances, I do not intend to consider these Parts today.

Part 17 covers a number of matters of general application, including the establishment and functions of creditors' committees and the remuneration of administrators, liquidators and trustees in bankruptcy.

The only clause that I would refer members to is clause 466, which sets out the general principles to be applied by the Court in fixing remuneration. These factors are intended to ensure that insolvency practitioners are fairly, but not excessively, remunerated for their work.

Part 18 provides for the appointment of the Official Receiver and the Deputy Official Receiver by the Minister and the functions of the Official Receiver. It is a very short Part and I do not intend to consider it any further.

Part 19 deals with insolvency practitioners. The Insolvency Act, of course, places great reliance, and Members will have seen from what I have said, on persons who act as liquidator, administrator, receiver, and bankruptcy trustee under the Act. It is critical that such persons undertake their functions honestly and, obviously, with a good degree of competence. The Act, therefore, provides for the licensing and supervision of professional insolvency practitioners. Nobody will be able to undertake one of these functions under the Act, unless licensed as an insolvency practitioner.

Clauses 486 and 487 enable the Minister to make Insolvency Practitioner Regulations and issue an Insolvency Practitioners Code. The Regulations and Code will contain the detailed supervisory regime, and the supervisory regime will be dealt with by the Financial Services Commission.

Finally, Part 20 contains a number of miscellaneous provisions, principally the various regulation making provisions.

Mr Speaker, I commend this [*inaudible*] piece of legislation to the House.

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

#### **HON G H LICUDI:**

Mr Speaker, the existing legislation relating to insolvency and bankruptcy in Gibraltar clearly needed to be revamped and overhauled. There have been calls from the industry for some time. We are aware that the hon Member has consulted and a committee was formed in the last couple of years. But even before that, there have been calls throughout the industry for ... The pieces of legislation which we have and which had, essentially, gone out of date, although they did the job for some time, but that needed to be completely overhauled and revamped.

We note that in this particular piece of legislation this is not a consolidation of existing provisions, but it is a replacement of the current regimes. In some parts, more extensive replacement than in others but it is, nevertheless, the overhaul that was needed. We certainly will support the principles and merits which are contained in this Bill and we will vote in favour of the Second Reading of the Bill.

There was, however, on the First Reading of this Bill, something which really cried out, which was that there was no provision for repeals, and that was really, very, very noticeable. In a major piece of legislation which, essentially, replaces the Bankruptcy Act and replaces very large parts of the Companies Act, there was no provision for repeals of any of those provisions, which begs the question, well how could the two co-exist. There was, oddly, perhaps not oddly, having regard to what the hon Member has said this morning, the final clause in this Bill says, the Minister may by regulations provide for transitional

provisions. So transitional provisions can certainly be brought by regulations, but one thing is a transition from one scheme to the other, but the repeal of the previous scheme once that transition has been made, that cannot clearly be made by regulations providing for transitional provisions. That clearly needed primary legislation.

The hon Member has confirmed, this morning, what was suspected from this Bill, which was that a further piece of legislation was needed to bring this into effect. We must say that it is in some respects a matter of regret and disappointment that what the Government have done today is, essentially, brought an incomplete piece of legislation to this Parliament. One may wonder why is it that this Government has seen fit in September 2011 to bring an incomplete piece of legislation to the House.

**HON CHIEF MINISTER:**

What do you think?

**HON G H LICUDI:**

Well, I will say that in a minute. It is sometimes the case that legislation is brought to Parliament which requires further subsidiary legislation and some pieces of legislation which we have passed in this House, make provision for rules and regulations to be provided by Ministers, by order of the Minister, by notice in the Gazettes. And it is sometimes the case that those rules and regulations are not ready at the time that the legislation is in Parliament but, certainly, I do not recall having come across a piece of legislation which replaces something else, but there is no provision for that repeal or replacement in the legislation itself. I, certainly, do not recall in my time in this Parliament that having been done before and, as I said, it begs the question why is it being done now.

The answer, short of any other explanation from the Minister, is pretty obvious. The Government either believes, or knows today, that there is not going to be any further parliamentary time available to deal with the other piece of legislation which completes the jigsaw puzzle, which completes the picture. Because the hon Member has said that a second Bill needs to be brought, and work is being done, and I seem to recall he said, that work was quite advanced and it will probably be published in October. If the Bill is published in October, it will not be taken in Parliament until January of this year, unless the hon Member who is sitting in the middle there thinks of extending the life of this Parliament to next year, it will, we believe, probably fall to us to bring in those provisions which will, in fact, complete the whole cycle and the jigsaw puzzle, and for that opportunity we are grateful to the hon Members to allow us to do that. But it seems odd and the only explanation seems to be that the Government wants in its statute book this piece of legislation to say, that it has done it in its term of office but it is, of course, meaningless. To have a piece of legislation in the statute book, which cannot be given effect, is meaningless, because one thing is for us to pass this piece of legislation today, and for the Minister then to say, next week, or the week after, or the week after, to publish a notice in the Gazette, with a notice of commencement, but the Minister is simply not able to do that, because if he did that, although technically he can do that, if he did that, he would have in place two pieces of legislation, which contradict each other, and which co-exist, and that clearly, is not only unsatisfactory but, clearly, cannot happen, and we would not expect this Government to act in that particular way.

Having said that about our disappointment of and regret that this is an incomplete piece of legislation, which is being brought clearly for electoral purposes and for no other purposes at this time, because it could have been delayed if the hon Members were confident in their position. Clearly, they are not so confident as they might appear because they want this in the statute book before their defeat at the next General Elections.

Having said that, we have said that the principles and merits that are contained in this Bill is something that was needed and which we support. This encompasses a new scheme on insolvency with new provisions introduced which are much needed in the Finance Centre. Provisions, for example, in relation to the licensing of insolvency practitioners. A new regime in respect of administration and even the revamping that has been made in respect of insolvency proceedings themselves, although very much taking on the general principles which exist at the moment. That is done in a slightly different way, taking into account issues and difficulties that the commentators have picked up on in other jurisdictions.

There are a number of new provisions. There are provisions here which allow new applications, new sort of orders to be made by the Court. There are even provisions, as the hon Member has pointed out, which limit the time, which provide time limits for the determination of applications. That begs the question whether the Courts, given that this may result in an increased workload, are sufficiently resourced, and I would ask the Hon Minister for Justice to consider whether that is an aspect of this legislation which he has considered in terms of the increased workload, which will result to the Court Service and the judges, and what additional resources are proposed by this Government now, in terms of commitment, so that the Courts do have the facilities, the resources and the time available in order to deal with what is likely to be increased demands, given that the new regime allows for new orders with time limits on determination, as well.

On the Bill itself, I will say virtually nothing, except to ... simply because it does include, we are aware, the result of a consultation process with the industry and it does enjoy the support of the industry, in particular, the Finance Centre Council. So we do accept that this has been a properly thought out and researched exercise, and that the principles that are encapsulated here, are the ones that the Finance Centre in Gibraltar need.

Just a couple of very minor points which may well have to be taken in Committee, but I simply flag them at this stage. There are a number of references in the legislation, in the various clauses, to the Rules, including in clause 230, and then subsequently, towards the end of clauses 486, 491, 492, 493, 494. One assumes that these are references to the Insolvency Rules which are to be made under clause 495, which provides the Minister may make rules. Now, unless I have missed it somewhere within this legislation in ... there is not a provision, and the Minister may correct me if I am wrong, which says that Rules means rules made under section 495, in other words, the Insolvency Rules themselves. If there is not that provision, then perhaps that can be given some thought to, with a view to introducing that somewhere in the Bill, so that it is not simply a matter of assumption that where section refers to rules, you assume that it means the Insolvency Rules. It ought to be specifically provided for. And a very minor point again, possibly for Committee, is in clause 486 which deals with the other regulations, the Insolvency Practitioners Regulations, which provides that the Minister may make regulations generally for giving effect to this Part, and then some specific aspects, sub clause (3) refers to the Insolvency Regulations and sub clause (4) refers to the Insolvency Practitioners Regulations. It may be that it is simply a mistake in (3), rather than anything else, but I do not see anywhere that we are going to have Insolvency Rules, Insolvency Regulations and Insolvency Practitioners Regulations. There is probably a slight error in nomenclature in that, and, as I said, that is probably a matter for Committee, but perhaps the hon Member can give some thought to what the right terminology should be.

As I indicated earlier, Mr Speaker, this piece of legislation is welcomed by the industry and we support the principles and merits.

**HON CHIEF MINISTER:**

Not so welcome, Mr Speaker, that the hon Member was able to resist the temptation to accuse us of electioneering. I have to say that I had never thought of the Insolvency Bill as an electorally sexy piece of legislation, likely to drive citizens of Gibraltar in droves to vote for us. I have to say I missed that one. You are more astute at these things than that, but when I was persuaded to undertake this two year effort in this piece of very necessary, as he has generously recognised, legislation, of course, it never occurred to me to instruct the Minister to rush it to make sure that it was ready just in time for the elections, so that I could go on the hustings in Laguna Estate and Glacis Estate brandishing a copy of the Insolvency Bill, and saying, you see this is another reason why you should all vote for us.

Mr Speaker, the hon Members have made a virtue of thinking that everything that the Government does in the second half, or in the last quarter, or even in the last half of the last year of a term, is political opportunism. Mr Speaker, Parliaments are elected and Governments are elected for a four year term. The last day of the term is as legitimate a part as the first day of the term to implement the Government's policies and manifesto commitments. Indeed, whilst he criticises us now for doing this at this stage, presumably, he would also criticise us for those of our manifesto commitments that we do not have enough time to get round to doing before the election. It cannot be both. Either he recognises that the Government should do as much of its policy commitments during the term that it has under the Constitution as it can, or he does not, but he cannot criticise when we do and then criticise also when we do not.

He knows very well that this has been a huge project and that the Government ... He has already himself referred to the consultation process. There has been professional drafting. There have been policy discussions. There has been a whole ... This is not the sort of project ... Just like the housing, and the multi storey car parks, and all the things that ... Just because

they are ready towards the end of the term, the hon Members behave as if we had started the project, you know, sort of, three months before a General Election. Ignoring the fact that there is a, sort of, a two year, or two and a half year lead in period for the project.

So, Mr Speaker, I am glad for the hon Member's support for the Bill. My Hon Colleague, the Minister for Justice, will respond to the technical aspects. It is true that the Government continues with its legislative programme, notwithstanding the fact that there are elections imminent which, depending on their date, will determine how much of new legislation actually deploy. Mr Speaker, that is normal in every parliamentary process. I am not aware of any Government that stops deploying its legislative programme on the assumption that it is going to lose the next General election and not win it. Mr Speaker, only the hon Members opposite are confident that they are going to win the next General Election. We are similarly confident and, therefore, we proceed as all Governments do in democracies on the confident basis, but certainly not on the assumption, that we are going to win the next election and, therefore, it will be our job to continue to deploy the subsidiary ... It is common for primary legislation that requires subsidiary legislation to be legislated before the subsidiary legislation is ready. The only thing different here ...

**HON G H LICUDI:**

Will the hon Member give way?

**HON CHIEF MINISTER:**

Yes, of course.

**HON G H LICUDI:**

The fundamental difference here is this is not primary legislation which requires subsidiary legislation. This is primary legislation which requires further primary legislation, which the hon Member appears not to have had time for. That is the difference.

**HON CHIEF MINISTER:**

Well, it remains to be seen whether that is true. Certainly, the advice at present is that, and that is the basis upon which the ... In any case, Mr Speaker, it alters nothing. As far as we are concerned, this is a good piece of legislation. It takes Gibraltar's Finance Centre further down the road that it needs to be taken. The hon Members appear, the Member at least speaking for himself, presumably, speaking for the whole of the hon Members opposite, appear to agree with that proposition and the idea that we should suspend as a Parliament, that we should suspend work upon which to boot there is agreement across of Parliament, which is a rarity in itself, when to boot it is what we agreed the Finance Centre ... The idea that we should suspend such legislative progress, simply because there are elections somewhere on the horizon, I do not think is a way that recommends itself, at least to us, as the way that Government's and Parliaments should behave. So, Mr Speaker, I beg to differ from the hon Members criticism of that although, given the proximity of the elections and, therefore, the election fever that the hon Members appear to be already in, it is not surprising that he takes every possible opportunity to play the political card.

**HON D A FEETHAM:**

Mr Speaker, very briefly, because actually my friend the Hon the Chief Minister says he would allow me to deal with the technical points. I do not think that Mr Licudi has actually raised many

technical points and those that he has raised, in fact, will be dealt with adequately at Committee Stage.

Mr Speaker, if the best that the hon Member can do, or the hon Members collectively, is describe the most comprehensive piece of insolvency legislation, in more than a generation, as meaningless, and that is the kind of points that they are going to be making at the General Election, they are going to be spending another four years, Mr Speaker, on that side of the bench, but then again, Mr Speaker, being in Opposition ...

**HON G H LICUDI:**

If the hon Member will give way?

**HON D A FEE THAM:**

No. I am not going to give way. Not this time.

**HON N F COSTA:**

Election fever is ... [*inaudible*].

**HON G H LICUDI:**

If he misinterprets words and then not give way, it says something very serious about the debating style.

**MR SPEAKER:**

Order. Order.

**HON D A FEETHAM:**

Mr Speaker, a bit of excitement at last in the proceedings. Mr Speaker, but there again being in Opposition is, of course, in the best traditions of the party opposite. They spend in Opposition, I do not know how long is it, sixteen years and if the hon Member continues with the type of points that he has made in response to the Bill ...

**HON G H LICUDI:**

Point of Order.

**MR SPEAKER:**

Order. Order. A Point of Order, but it has to be a Point of Order.

**HON G H LICUDI:**

Mr Speaker, it is a Point of Order because the hon Member has misinterpreted what I said, either unwittingly or otherwise. I did not describe the legislation itself as meaningless, I described the introduction of this now, when it needs a second piece of legislation, as meaningless. Not the legislation itself.

**HON D A FEETHAM:**

The hon Gentleman does not need to get so nervous. Mr Speaker, I explained at the beginning. I took great care, Mr Speaker, in explaining at the beginning of my speech the reasons why this was actually going to be dealt with by way of a separate Bill. In fact, the approach that we have taken in relation to the consequential amendments, because this will

need amendments in relation to the Companies Act, may also impact on other pieces of legislation. I am told. The advice that we received for the best way of dealing with it, is in this particular way. In other words, to bring to Parliament a Consequential Amendments Bill. It does not mean the insolvency legislation is incomplete. The insolvency legislation is here. All that needs to be done is actually repeal the parts of the Companies Act that are obviously redundant, deal with certain other issues. There are a regulation making powers to deal with the transitionals. It may well be that we deal with the transitionals, as well, by way of primary legislation and, in fact, that was the approach, Mr Speaker, that was agreed upon with the committee that was also advising the Government. So there is no Machiavellian plot here for me to bring the insolvency, this piece of legislation to Parliament for a General Election. We have done it at this stage. This is not wasted time at all because we have debated the merits of this wonderful piece of legislation and, in the future, we will deal with issues of the consequential elements to the Companies Act.

I also said, and, obviously, the hon Gentleman was not listening when I was delivering my speech, which seems to be, unfortunately, a habit that he has fallen into recently, because the same thing happened as well with the debates in relation to the Crimes Bill and also the Criminal Procedure and Evidence Bill. I also said that, actually, I had received a communication from the Finance Centre Council that they were in the process of preparing a paper for the Government in relation to amendments that they felt ought to be made to the Companies Act, and there were a number of provisions that they were looking at that appeared to overlap with the task that we were undertaking, and we were keen to ensure, obviously, that some unified view could actually arise from discussions between us and them, and the paper they provided the Government. So, again, Mr Speaker, there is absolutely no Machiavellian plot at all, and if the hon Gentleman had been listening when I delivered my speech then, obviously, he would never have made the points that he made, but he obviously was not.

Mr Speaker, in relation to the technical points, I will deal with them during the Committee Stage.

**HON G H LICUDI:**

Will the hon Member give way?

**HON D A FEETHAM:**

When I finish.

**HON G H LICUDI:**

Before he finishes? He does not give way. It is somewhat surprising that he seems to be the only Member that does not give way. It does not encourage parliamentary debate.

**HON D A FEETHAM:**

I will give way.

**HON G H LICUDI:**

So be it, Mr Speaker, if the hon Member does not give way and will not entertain criticism of the Government, and will not entertain clarification. So be it.

**MR SPEAKER:**

Order. Order.

**HON D A FEETHAM:**

He is not listening.

**MR SPEAKER:**

Order. Order. I have called for order.

**HON D A FEETHAM:**

You are obviously not listening, again.

**MR SPEAKER:**

Order.

**HON XXX:**

Calm down, please.

**MR SPEAKER:**

I understood the Hon the Minister for Justice having finished his address. I cannot imagine anything else he wished to say. Now, with respect, for the hon Member to get up and say, will you give way, is a bit late in the day to seek way, when he had ...

**HON G H LICUDI:**

I had sought way before.

**MR SPEAKER:**

The context was very clear. I cannot imagine anything else he wished to say when he was almost on his seat. So, with respect, it is not a valid Point of Order or, in fact, a valid point at all.

**HON G H LICUDI:**

Well, Mr Speaker, that is correct in respect of the last point, but you will know that I did ask the hon Member to give way well before that. One would have expected that although he did not give way at the time, that before he sat down, he would have said, well, you wanted to say something, I will give way. That would only be a matter of parliamentary Courtesy, which perhaps is lacking on that side of the House.

**MR SPEAKER:**

Well ... Order. Order. Order. Yes, the Hon the Minister for Justice did not give way somewhere in the middle of his remarks, as he is entitled not to give way, but I do recall the hon Gentleman, the Hon Gilbert Licudi, did stand up and make a Point of Order, and got his point in. So, with respect that was a closed matter.

The last matter is very clear. The hon Member finished his address. There is nothing else I could imagine he wanted to say but he made it very clear he has nothing else to say. To be asked to give way at that point, really, is pointless.

**HON G H LICUDI:**

Well, it might be pointless, but it happens all the time.

**HON CHIEF MINSITER:**

May I make a small Point of Order, Mr Speaker, simply to ... Nothing to do with this Bill. I think it is a little bit harsh, and, certainly, not in keeping with the parliamentary traditions here and in the United Kingdom, to describe declining to give way as a lack of parliamentary courtesy. Parliamentarians often do not give way and I do not think anybody can properly read into that, a lack of courtesy. Usually, giving way or not giving way responds to one of two factors. Neither of which I think raises questions of courtesy. The first is whether the Speaker has just got on his feet, or is half way through a point, and does not want to be interrupted before he has finished making it, and the second is when tempers have flared to the point that cooperation is withdrawn from across the floor of the House. I think in this case, it is a case of the former, the Minister had just started addressing the point as I recall, but in any case, I think making it a matter of courtesy, I think is not what giving way raises, if it is declined.

**MR SPEAKER:**

I will allow that.

**HON G H LICUDI:**

Mr Speaker, if I may respond to that, briefly?

**MR SPEAKER:**

On the point of courtesy. Let us not go into [*inaudible*] debate.



**HON G H LICUDI:**

The general point that the hon Member makes it about giving way in parliamentary debate. I have looked at many debates in other parliaments, particularly in parliament in the UK, and there is a lot of interaction. There is a lot of debate, particularly in relation to introduction of Bills. It is not uncommon at all. Something which does not happen here, perhaps our fault, but it is not uncommon at all, even in Second Readings, and it is something ... when I was looking at the Crimes Bill and the issues which arose in that Bill. A debate that I looked at in parliamentary ... during the course of the Second Reading, the Minister had not gone through two sentences when he was already giving way, and throughout his speech he was giving way to different interventions. That makes for good parliamentary debate. That makes for good parliamentary discussions, and there may be occasions when there will be times when either Members of this side of the House, or Members on that side of the House, have to make headway in relation to the point that they are making, in relation to their prepared speech, and there comes a time when they must say, enough is enough, but it seems to us that that is not the practice that we enjoy so much in Gibraltar, and perhaps much more parliamentary discussion and debate ought to be alive to that point.

**HON CHIEF MINISTER:**

Well, Mr Speaker, with a great deal of respect, the hon Member shows his lack of parliamentary experience by the remarks that he has just made. Look, first of all, of course it is not uncommon to give way. Indeed, I have myself given way this morning several times on prior Bills, and all Members of the House often given way. The fact that it is common to often give way, does not make it discourteous on the occasions that you choose not to give way. Otherwise, all you are doing is enshrining effectively a right on the part of the Opposition and, indeed, of

the Government, because this is a parliamentary ... not a Government, Opposition thing. We could stand up every time you are in the middle of your address saying, will he give way, will he give way, will he give way, and, if you do not, you are being discourteous. Well, if this House accepts that it is being discourteous, since the rules of this House are not based on institutional discourtesy, to assume, and it is the only reason why I have stood up, because as Leader of the House, it is my responsibility not to allow bad practices to take hold. If we accept the principle that not giving way, when asked for, is discourteous, effectively, what we are saying is that it is compulsory, given that no Member wants to be discourteous to another, it is effectively compulsory to give way. If Parliament thought that that should be case, it would say so in Standing Orders and not leave it to different interpretations of what is courteous and what is discourteous, and if he has watched parliamentary debates with the frequency that he suggests, in the United Kingdom, he will have seen numerous occasions in which Ministers and Opposition Members in Westminster decline to give way for a variety of reasons. It is as common to give way, as it is not to give way. As to his point that it makes for better debate, the purpose of giving way is for ensuring that the debate takes place on the basis of clarity. That it does not proceed on the basis of misunderstanding. That all the facts are before the House. It is not to give the interruptor an opportunity to have another say, which the Standing Orders of this House do not permit, Mr Speaker. The Standing Orders of this House, which we can change whenever we want to, but as they stand, say that the rules for the debate are that the proposer speaks, then any other Member of the House may speak, and when all the other Members of the House have spoken, the mover replies. That is what we have all agreed historically between ourselves are the rules that make for "good debate". If we want to have different rules for "making for good debate" then we have got to amend the Standing Orders. We cannot do it by the side door, by the hon Member saying that whenever we do not give way on this House, that we are being discourteous, any more than we do not think they are being discourteous to us on

the occasions, in the past, when they have declined to give way. When I give way to him, as I have done twice today already, or to Members opposite, it is not because I am being courteous, it is because I am interested in the views that they may have to express on the subject matter, and it was appropriate in the stage of my contribution, where I was, to sit down without interruption of my train of thought, or of my argument, but it is neither courtesy to do it, nor discourtesy to withhold it.

**HON G H LICUDI:**

Will the hon Member give way.

**HON CHIEF MINISTER:**

I will.

**HON G H LICUDI:**

Obliged. The reason I raised the courtesy issue, Mr Speaker, was because I asked to give way to the hon Member when he twice accused me of not listening to what he had said, and that was a point that required, at least, clarification, because he even went further and said, well it is now ...

**HON CHIEF MINISTER:**

Mr Speaker, I am not addressing that part. I am addressing the question of ...

**HON G H LICUDI:**

That is why I asked ....

**HON CHIEF MINISTER:**

Yes, but I am addressing the question of courtesy and discourtesy. Whatever motivated him, even a passionate desire to remedy an injustice that he felt a Member on this side may have done him. Right. Even that, neither needs, nor justifies, nor requires him to describe generically, out of the context of this debate, the fact that the non giving of way equals discourtesy, because that has applications in all our debates, not just in the heat of this moment. What I am saying ... I am not addressing the circumstances in which it arose on this particular occasion.

**HON G H LICUDI:**

Mr Speaker, I naturally accept that, but I do wish to emphasise that the reason I raised this issue of courtesy was because I did feel that it was discourteous to accuse me twice of something, which I felt was not true, and not give way to allow me to answer that particular point. That is why I suggested that that was parliamentary discourtesy.

**MR SPEAKER:**

I think ...

**HON D A FEETHAM:**

Mr Speaker, may I?

**MR SPEAKER:**

I think the Hon Minister was on his feet first. So I will hear him.

**HON D A FEETHAM:**

Mr Speaker, the reality of the situation, actually, is that in every debate, and I have brought to Parliament large pieces of legislation, multi pieces of legislation, I have always given way when asked to give way, and I gave way considerably on numerous occasions in relation to the Crimes Bill and also in relation to the Criminal Procedure Bill. In relation to the hon Member, my experience, Mr Speaker, and it may be my experience, and I may be doing the hon Gentleman an injustice, but my experience is that, unlike the other colleagues on opposite benches where they ask for me to give way and I give way, the hon Gentleman habitually uses, that is my experience, the hon Gentleman habitually uses the technique of asking me to give way in order to interrupt my speech, and then get his own points across and, therefore, on this particular occasion, I took the view ...

**HON G H LICUDI:**

*[Inaudible]*.

**HON D A FEETHAM:**

I am not giving way to the hon Gentleman. Look, if the point that concerns the hon Gentleman is me saying to him, you are not listening, well if it is too much heat get out of the kitchen, I mean, he should not be a politician, because, I mean, I have been called far worse than not having listened to somebody, for goodness sakes, Mr Speaker. If that is the point at which the hon Gentleman takes offence, me telling him, you are not listening, or you have not listened. Mr Speaker, it is not surprising the Hon Gentleman Mr Picardo finds himself as Leader of the Opposition.

**MR SPEAKER:**

Order. Order. Order. Let me just make one point before ... There is no need, and this is in danger of becoming a debate on the Hon the Minister for Justice's conduct which, personally, I saw nothing discourteous about, but anyway. I will allow the Hon the Leader of the Opposition to have, hopefully, the last word on this.

**HON F R PICARDO:**

Mr Speaker, only to point this out. I think, frankly, it is a fool's errand for either side for the House to start saying who is more or less courteous. I think we all have our respective opinions on that but I think, to a great extent, we are pre-empting something else that is to come on the Order Paper, and I think this shows just how important it is that we have that debate.

**MR SPEAKER:**

Thank you. I think both sides really do know what the purpose of seeking the person on his feet to give way. I think both sides do know. What I do think should be made very clear to Members on all sides that one does not seek the person on his feet to give way, merely for the purpose of contradicting what he has to say. It has to be for either, seeking clarification on what he is saying, or, if there is a danger of one's own remarks having been misinterpreted, to point him in the right direction, but for no other purpose. Not intended as a means of contradicting, for the sake of contradicting.

Question put.                      Agreed to.

The Bill was read a second time.

**HON D A FEETHAM:**

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

Question put.                      Agreed to.

**HON CHIEF MINISTER:**

Mr Speaker, I beg to give notice that the House should now adjourn until 2.15 p.m.

**MR SPEAKER:**

Is that convenient? I think the Hon the Leader of the Opposition has sought a moment's pause in proceedings. I will hear the Hon the Leader of the Opposition.

**TRIBUTE TO AUGUSTUS V STAGNETTO QC**

**HON F R PICARDO:**

Mr Speaker, yes, on rising to reply to the hon Gentleman on the adjournment motion. Mr Speaker, Guy Stagnetto QC was a member of the Legislative Council, which was the predecessor of the House of Assembly and of this Parliament. His sad passing last month represents the death of another of the signatories to the statement on self-determination, which was signed by the then current and all previous members of the Legislative Council, as a reaction to the actions of Spain against us all in the 1960s. That statement was forwarded to the United Nations as representing the will of the people of Gibraltar. More recently, Guy, as well knew him in Gibraltar, addressed the Friends of Gibraltar on the sovereignty issue. Still as staunch in the defence of Gibraltar as he had been some forty years

previously, as a young man. I know that the hon Member opposite had occasion to include him in his Advisory Council on these issues at the time of the joint sovereignty issue. For those reasons, Mr Speaker, I would ask that, before we vote on this adjournment, we should pause in silence for a moment, to recall the contribution to politics of Mr Stagnetto, his contribution to the law and the Bar having already been remembered elsewhere.

**HON CHIEF MINISTER:**

Yes, Mr Speaker. It might have been appropriate for the Leader of the House to have had an inkling of this proposed motion on the adjournment, as I think the rules probably require, but it does not matter. It is something that we can easily subscribe to. I can subscribe to everything that the hon Member has said. My cousin Guy has been a leading citizen in Gibraltar all his adult life, not just as a professional lawyer and indeed a member of the Legislative Assembly in his past, but also in the political interest, not just in the practical political interest, but in the academic interest that he has taken on such things as sovereignty. On many occasions, he has prepared legalistic thesis for me on questions to do with the sovereignty, or this, or that right of Gibraltar which he felt was not being respected internationally. He is, undoubtedly, one of the leading citizens of this community in decades past, and it is entirely appropriate of him, as it is of all past members of our legislative assemblies and Council's, and things of that sort, that we should honour and remember him when they pass away. I have, therefore, for this side of the House, absolutely no hesitation in agreeing that we should stand in a moments silence, as proposed by the Hon the Leader of the Opposition.

**MR SPEAKER:**

I assume members are content to adjourn until 2.15 p.m. This House will adjourn until 2.15 p.m. this afternoon.

The House recessed at 1.00 p.m.

The House resumed at 2.15 p.m.

### **COMMITTEE STAGE**

#### **CHIEF MINISTER:**

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

1. The Tobacco (Amendment) Bill 2011;
2. The Pensions (Amendment) Bill 2011;
3. The Insolvency Bill 2011.

#### **THE TOBACCO (AMENDMENT) BILL 2011**

**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 PENSIONS (AMENDMENT) BILL 2011**

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

**The Long Title** – stood part of the Bill.

#### **THE INSOLVENCY BILL 2011**

**Clauses 1 to 229** – were agreed to and stood part of the Bill.

#### **Clause 230**

#### **HON D A FEETHAM:**

Mr Chairman, the term, “the Rules” is actually defined in the interpretation section. I think the reason why the hon Gentleman probably has not seen it is because he has looked for “Rules” and it is actually “the Rules”. So, it is under the “t” and that is the reason why he has not seen it, but it is defined. “The Rules” means the Insolvency Rules made under section 495, which is the section at the end of the Bill.

Clause 230, was agreed to and stood part of the Bill.

**Clauses 231 to 485** – were agreed to and stood part of the Bill.

#### **Clause 486**

#### **HON G H LICUDI:**

Mr Chairman, sub clause (3) refers to the Insolvency Regulations. Should that not refer to the Insolvency Practitioners Regulations?

#### **HON D A FEETHAM:**

No. Insolvency Practitioners Regulations are ...

**HON G H LICUDI:**

It is either the Rules, which we know as the Insolvency Rules, or the Insolvency Practitioners Regulations. I cannot see a reference to other Regulations.

**HON D A FEETHAM:**

The hon Gentleman is right. It is the Insolvency Practitioners Regulations. He is right.

**MR CHAIRMAN:**

So that is being amended. Does the Clerk have the amendment? Is that being amended?

**HON D A FEETHAM:**

Yes. To insert the word "Practitioners" in front of Regulations, the whole subsection (2), (3) and (4) relate to the Insolvency Practitioners Regulations. Clause 486, as amended, was agreed to and stood part of the bill.

**Clauses 487 to 499** – were agreed to stood part of the Bill.

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

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

### **THIRD READING**

**HON CHIEF MINISTER:**

I have the honour to report that:

1. The Tobacco (Amendment) Bill 2011;
2. The Pensions (Amendment) Bill 2011;
3. The Insolvency Bill 2011,

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

Question put.

The Tobacco (Amendment) Bill 2011;

The Insolvency Bill 2011,

were agreed to and read a third time and passed.  
The Pensions (Amendment) Bill.

The House voted.

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

The Hon F J Vinet

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

The Bill was read a third time and passed.

## **SUSPENSION OF STANDING ORDERS**

### **HON CHIEF MINISTER:**

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

Question put.            Agreed to.

## **GOVERNMENT MOTION**

### **HON CHIEF MINISTER:**

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

**“THIS HOUSE RESOLVES to convert the Select Committee on Parliamentary Reform into a Committee of the whole House, in manner that all Members of this House in Committee may discuss and consider the following principles to underpin a reform and modernisation of Parliament and its work:**

#### **1. Question Time**

**Each Minister should appear in Parliament at least once a month to answer questions about the areas of his/her Ministerial responsibility. The Chief Minister should answer questions once every two weeks. Standing Orders should limit the duration of each such monthly session and empower the Speaker to direct that questions which seek statistical information should be put down for written and not oral answer. Such a reform would enable the Opposition to question and hold to account Ministers on a much more frequent, regular and timely basis, in contrast to the present four annual opportunities to do so.**

## **2. Parliamentary Committees**

**Although our House is too small to permit of the widespread use of multiple Parliamentary Committees, as in other larger Parliaments, there should be at least one standing General Purposes Select Committee, chaired by a Member of the Opposition able to summons Ministers, officials and others in any policy area as in the case of Select Committees in the UK Parliament, in accordance with procedures and processes to be approved by Parliament and included in Standing Orders. The composition of such a Committee should be variable for different meetings depending on the subject matter to be considered. The enlargement of Parliament would enhance the work of Parliamentary Committees.**

### **3. Opposition Motions**

Opposition Members should have at least a monthly opportunity to bring Motions for debate in Parliament.

### **4. Broadcasting of Parliament**

Parliamentary meetings which are already broadcast on GBC radio should also be broadcast on GBC television.

### **5. Standing Orders**

Standing Orders should be reviewed and modernised, including as required to implement any changes approved by this Committee of the House.

### **6. Back benchers**

The new Constitution allows Parliament, acting by a two thirds majority, to increase the number of Members of Parliament. This House hereby approves that the number of MPs, but not the number of salaried Ministers and front bench Opposition spokesmen, be increased to 25 to allow “back benchers” on both sides of the House. Back benchers should receive only a nominal attendance allowance. The existence of back benchers will allow people who do not immediately aspire to

Ministerial Office to participate in legislative and other Parliamentary activity and to “cut their political teeth”. It will also allow Ministers to be demoted and replaced as happens in other Parliaments. This will enhance the work and accountability of Parliament and further improve the quality of our parliamentary democracy.

### **7. Public Consultation**

Political parties not represented in this House, Non Governmental Organisations and members of the general public are hereby invited to write to the Committee through the Clerk of the House, with any other Parliamentary Reform suggestions that they would like considered by the Committee.”

Mr Speaker, that is the text of the motion which stands in my name, and which I now move, and we could get bogged down during the course of the afternoon, and I am, of course, happy to respond to any issues that the hon Members may make in that respect on the issue of the existing Select Committee and why has it not met since it last met, and why it has become defunct, and why it has not become defunct, and there are, certainly, points that both sides of the House could make.

I have seen what the Hon the Leader of the Opposition has had to say publicly on that already, and I have responded publicly already. We acknowledge, on this side of the House, that the Committee could have met more frequently if the Government had so resolved. For reasons which I hope will not mar the whole of this afternoon’s debate, although I suspect views on it will have to be exchanged, the Government did not. As a combination of a view that this is an agenda that can only prosper if both sides of the House are enthusiastically signed up



to it, and that is not the sense that we got from the first meeting of the Committee. That, on the one hand, and other priorities always coming to the fore, on the other. We make no secret of the fact that our decision to, in a sense, put this back on the agenda and in a different form that will allow it to have a higher public profile and a more accelerated handling, is due almost entirely to the high profile and prominence that the debate conducted by those outside Parliament thought that parliamentary reform needed. It dawned on me that those outside this Parliament thought that the need for parliamentary reform was much more urgent. Whether we agree with them on the various issues that they expressed the view on, is another matter, but, certainly, there was a sense in which it became clear to the Government that the sense outside of Parliament that parliamentary reform ought to be more urgently dealt with, and was, indeed, more required than perhaps we inside this House and, certainly, on this side of this House, I am speaking only for ourselves, had thought, I think, was palpable.

Parliamentary reform is an important issue. We had not given it the degree of time priority that others outside Parliament gave it, and we believe that that agenda obtained a degree of momentum and, therefore, political profile and importance and urgency than perhaps we should have given it, and I make no secret that that is what has motivated ... We are not motivated, as I have read some of the hon Members either say or insinuate in the press, by any sense that we are poisoning the pill for an incoming new Government, for the simple reason that we do not think there is going to be an incoming new Government. We think that we will win the election and that we will find ourselves on this side of the House again, and, therefore, what we are doing are things which we will be perfectly content to live by in Government, as much as we would be content to live by in Opposition.

So, I am going to focus really, just having given that explanation, in the hope of displacing any idea that this is about poisoning the chalice, or bittering the pill. I acknowledge that the impetus

given to this debate by the Government, now, is the result of what we believe has been a clarion call. Not everybody in our community gets excited about political constitutional issues and, therefore, clarion calls cannot be measured by the extent to which they are rampant throughout all sectors of the community. But amongst those sectors of the community that are politically interested, without being politically involved, I think it is not possible to argue that there is a ground swell of opinion that believes that this Parliament needs to modernise itself and more quickly than, certainly, we, in the Government, had decided was required.

Parliamentary modernisation was always envisaged at the time of the new Constitution. Indeed, the new Constitution changed certain things that would require Parliament, in due course, to look at certain things about itself and its composition, and its organisation, and the way it did business, and what we are seeking to do by this motion is simply to accelerate the process.

Now, Mr Speaker, this is not about, at least for us, who is in Government today, and who is in Opposition tomorrow, or vice versa. We are talking about ... This sort of parliamentary reform takes place only once in a blue moon. It has got to be something that, as parliamentarians and regardless of any partisan instincts, we believe is good for Parliament, because in the context of the next twenty, thirty years, which is what these reforms will probably subsist to, the fortunes of any one of us in this House today is, frankly, a pretty insignificant aspect of the whole matter.

The starting point for the problem, as we see it, is that we have a system of parliamentary work which is based on this agenda, which starts with prayers, petitions, and statements, and then Opposition questions, and then Government Bills, or Government Motions, and once the train has passed, usually for the Opposition, because the Government is always able to suspend Standing Orders to do things whenever it wants to do them, ... So the Government is not really bound by this strict

agenda but, certainly, the Opposition is, and once the train has passed, you know, if today had been the occasion for parliamentary questions, or parliamentary motions, and tomorrow some huge political issue arises, you have got to wait until this parliamentary meeting finishes until I adjourn sine die, until I convene the next Parliament, and then you get to ask your questions. Well, there is no Parliament that works in that way. It is really the architecture of legislative assemblies, rather than the architecture of Parliament. Most Parliaments have a system not of agenda's with a beginning and an end, and then an adjournment sine die until the Leader of the House decides he wants another meeting of Parliament. Rather, there is a continuous sitting of Parliament. I do not mean by that, that we sit every day but that, in terms of the agenda, that Parliament is sitting all the time, unless it is in recess, in terms of the Easter recess, the summer recess, and then I think there is a short Christmas recess, and within that, the opportunities for legislation, for Government motions, or Opposition motions, for Opposition questions, are frequent. They are not one per meeting, as appears at the moment, and the structure of the Question Time ... At the moment, I understand the Opposition feels the need to ask several hundred questions, because they just do not know when the next opportunity for question time is going to be. Well, if you knew that you could cross examine the Chief Minister every fortnight, and that you could cross examine every Minister on their ministerial responsibilities once a month, then the need for all of this laborious Question Time ... Question Time would become much more political. They would become much more incisive. They would become much more holding to account, in a political sense, than is perhaps today possible. So that is what inspires the first point.

The second point, parliamentary committees. I know it is a subject that the Hon Mr Bossano and I have frequently, not frequently, but we have sometimes exchanged views on in the past. It is difficult in a Parliament, where there are no back benchers, and where there is only, sort of, a front bench team on both sides, to have a system of parliamentary committees

because, you know, at the end of the day, who on the Government's side is going to undermine its own Government et cetera, et cetera.

Well, that is another argument in favour of enlarging Parliament to have back benchers. You know what they say in Westminster, in other Parliaments, that really the most effective opposition to Governments, sometimes, very often comes from behind and not from in front because when they come from in front, the Government always has a majority, when they come from behind, that majority is necessarily put in doubt and into question. So the same would apply to a system of parliamentary committees. There ought to be some mechanism whereby, and I am now going to speak of Parliament, I am not going to speak of Government and Opposition, where members of Parliament can hold Ministers and Departments to account, in nitty gritty terms, much more so than would be appropriate in a normally structured and normally operated question time. It should not be once a year in the, sort of, Committee Stage of the Budget, that an appropriate looking opportunity arises to get stuck into the details of issues. So we believe that there is room for, at least, one Standing Committee of Parliament to serve that role.

Item 3, Opposition motions, is another example, like question times, like the first one of the reorganisation of Parliament. You eliminate this strict agenda business, and then we would write in a frequency of one a month, or whatever, in which Oppositions could table motions regardless of what other business the House is doing around that time. So it would not be a question of waiting for one type of business to expire before you could get stuck in to another.

The question of parliamentary broadcasting on GBC television is here for the sake of just adding everything that is out and about there. Technically speaking, we do not need to reform Parliament to do this, because this is not in any Standing Orders. It is not in any system. So the Government could have

done that unilaterally at any time. The Government would not have done that unilaterally. I think almost everything in relation to Parliament should emerge, to the greatest possible degree, by consensus but, I mean, there could have been a consensus about that and we might have been able to do that already.

The Standing Orders, changes to modernise and reflect it. There is a lot of stuff there and, certainly, almost everything else that is in this motion would require an amendment to Standing Orders.

Item 6, back benchers, is perhaps the most novel of the proposed amendments, which is not something that arises newly out of this motion. When we were negotiating the new Constitution with the United Kingdom, the Government specifically proposed and, I believe, that the representatives of the Opposition did not oppose, but it was not a three cornered negotiation, it was a two sided negotiation, and there was a Gibraltar delegation, and therefore ... But anyway, I noted no resistance from the Opposition representatives on the Gibraltar delegation to the Government's proposal put into that Constitution, giving itself the power to enlarge the size of Parliament and the reasons which we articulated at the time, where we thought it was important, which are the ones that are set out here, and which I have articulated already. The United Kingdom side of the negotiating forum was concerned that this should not open the door to simply expanding Parliament, so that the Government could get even bigger and there could be as many Ministers as there were MPs on the Government side, which is why the new Constitution can change the formula that it contains, about the relationship between the number of Ministers and the Opposition, to make it clear that any enlargement would be for back benchers, and that the Government could not then help itself to a greater number of Ministers, once the deed had been done.

Mr Speaker, I personally think, you know, and I am speaking as somebody that has served in this Parliament now for nearly

twenty years, and the last fifteen and a half of them as Chief Minister. I am certainly closer to the end of my political career than to the beginning of it, or to the middle of it. Well, the hon Member may applaud, but the electorate has not done so on four successive occasions, which just further emphasises the extent to which he is out of touch to what people in Gibraltar think.

**HON G H LICUDI:**

It may be closer than you think.

**HON CHIEF MINISTER:**

But anyway ... If I ... This is what you have been saying for the last three elections. Mr Speaker, if I, sort of, detached from the political cut and thrust of incumbency and Opposition politics. If I were to try and identify the specific regard in which our political, and parliamentary, and process in Gibraltar, was most seriously deficient, it is this question that it is in for Government or not in at all. In other words, soon, we shall have an election, and we shall all be putting together our slates, and we shall all be putting our slates, well, at least, the parties represented in the House, we will all be putting their slates together, with a serious, in our case more serious than yours, but, both, with a serious view that we are going for Government. That may not be true of other parties but, certainly, it is true of the main party.

Well, each person, therefore, that you invite on your slate ... In our case it is slightly different because we are incumbent, but each person that stands for election into this Parliament, now has to make the decision, given that everyone goes to win, not to lose. I mean, if I offer myself as a candidate, therefore, if I offer myself to Gibraltar, if I offer my abilities, my desire to participate in the political process, my desire to participate in the legislative process, in the debating process, in the work of this

Parliament, if I want to do that, I have got to be ready, should my party win the election, to give up whatever I now do in life, and dedicate myself full-time to being a Minister in Government. Well, I may not think I am yet experienced enough to be a Minister. I may not want to give up ... I may not want politics to be my profession. The fact that I want to participate in the political process, the fact that I want to participate in the legislative process, does not mean that I want to do it full-time to the exclusion of my legal profession, or my accountancy profession, or running of my business. Then, there are many people who would say, well look, yes, I am very interested in a career in politics, but I want to get the hang of it first. I want to decide before I have to give up ... You could be a young lawyer, just qualified, really asking such a person to interrupt their professional development, if they are elected a Minister, is not nothing. It does not happen in any other Parliament in the world, except this one. This is the only Parliament in the world in which, if you wish to stand as a Member of Parliament, you are, in effect, standing for the Cabinet, for Government. Not just as a Member of Parliament. There is no Parliament of which I am aware in any of the democratic world, where that is so. Therefore, what we are doing is that we are denying usually young people, but not exclusively young people, who want to cut their teeth. Who want to see whether politics is for them. Who want to contribute some proportion of their time, but not necessarily all of their time, to the opportunity to do so. I believe that the political process in Gibraltar would be thereby enriched and I believe that the people of Gibraltar should not be deprived of the service. Otherwise, all we are doing is attracting, into the political and parliamentary process in Gibraltar, people who have got nothing to lose because they are very wealthy. People who have got everything to gain because their earning powers in Parliament might be higher than their earning powers elsewhere, or people, into which category I like to place myself, willing to make a supreme financial sacrifice for public service. I do not see that it should be limited to those three options. I think there is a fourth option. People who have a lot to offer and should be allowed to tailor make the quantity of their time that

they make available to parliamentary and political life. That is why I believe that both sides of this House would benefit from having back benchers behind us both. There would be a back bench on both sides, and a front bench on both sides. People would step forward, if you are on the Government side, when invited into the Government by the Chief Minister, and on the Opposition side, ditto, and I do not need to teach my grandmother how to suck eggs, you all know how these parliamentary processes work. Mr Speaker, whilst the Government believes that this is the way forward, there is absolutely no reason why, other political parties not represented in this House, other non-governmental organisations, and indeed, members of the general public, should not express the view either on these proposals, or on proposals that they may have which are not included here, and therefore, the motion invites them to write to the Committee through the Clerk, with any other Parliamentary reform suggestions that they would like considered by this Committee.

Mr Speaker, we can be Jesuit here today, or non Jesuit. We can focus on form at the expense of substance, or we can focus on substance and pay less time to the form. The form of it is that we had a Select Committee which, for the reasons that I have gone through, did not meet after, I think it was, April 2009, I cannot remember the exact date, and that the Government, in response to what we believe is this consensus outside of this Parliament of the need for this, has decided to bring this motion, which is no more than a statement by Parliament of what the principles that it believes underpin the way forward. Many of these would need much more detailed work to actually be put into practice. So they are statements of principle, and it is not a blue print which is capable of being deployed tomorrow, except, of course, things like the broadcasting of Parliament, and things like that. So I commend the motion to the House.

Question proposed.

## HON F R PICARDO:

Mr Speaker, we are going to be constructive and positive in the way that we deal with this motion standing in the name of the Hon the Leader of the House. There is much that he has said that I associate myself with. I certainly agree that the workings of the House need to be reviewed. In fact, they need to be revamped and updated in many respects. I myself, since I was elected in 2003, have been convinced that allowing the cameras in and broadcasting the proceedings would be a useful way of opening up the business of this House to the general public, and to the electorate. We also believe, Mr Speaker, as I have also said outside the House, that there is a need to change many aspects of the way that politics is done in our community, generally, in order to improve it and update it, and that means, Mr Speaker, not stopping just at the procedures of this House.

Mr Speaker, therefore, the need to analyse and to reform goes beyond reforming just the procedures of Parliament, although that is certainly a part of what needs to be done, and many of the things which are in the hon Member's motion may be part of what it is that we need to do. Mr Speaker, I acknowledge, in the same way that the hon Gentleman has acknowledged that the Select Committee has not moved more quickly because they decided that it should not, and that therefore, that process became stuck, that it was the hon Members opposite who had this in their manifesto, and we did not have it in ours. But the fact is that the Select Committee was established for that reason and it has not reported back to the House, for the reasons that the hon Gentleman has told us, and is now presently adjourned, in effect, sine die, awaiting a report to it that did not come.

Mr Speaker, it was not until the 11th of May of this year, after I had become the Leader of the Opposition, that the hon Gentleman wrote to me to revive the issue. I wrote to him in reply to that letter, and advised that he should reconvene the Select Committee immediately, if he wanted to make progress. We have not had much contact after that. My concern, Mr

Speaker, is that it is now very late in the lifetime of this Parliament to make any meaningful progress, either in the Select Committee or by a Committee of this House, although I note that the hon Gentleman says that his motion is a really a statement of intent by the House as a whole. In fact, Mr Speaker, in respect of the parts of the motion which deal with electoral reform, the part that deals with back benchers, I think that we are certainly far too late in the lifetime of this Parliament, and too close to an election to advance that issue, in particular.

Nonetheless, Mr Speaker, our attitude is going to remain a positive one in bringing reform and changing not just the procedures of this Parliament, but the workings of our democracy and the way that we do democracy and that means electoral reform as well.

Mr Speaker, it is however necessary to analyse all of the aspects of the working in our democracy, and we cannot do that in isolation. I agree with much, but not all, of what the Government motion postulates, and in our view, Mr Speaker, that motion and all the aspects of reform that are necessary, require careful independent analysis.

For example, Mr Speaker, preventing Members from putting questions, which are statistical can actually prevent important issues from being raised in debate, and may involve curtailing the ability of Parliament to pursue the role of oversight to bring transparent scrutiny to Government business. There may be other ways of making reform to the Question Time process, and still allow such scrutiny. I note, Mr Speaker, that the motion suggests that whether or not statistical questions are allowed, should be a matter for the Speaker. I think that is already the case. I think that you already have that oversight but, in our view, Mr Speaker, it is too late in the life of this Parliament to determine those issues now. In fact, Mr Speaker, a lot of what is proposed by the hon Member's motion, and I think he has recognised this in the way that he has presented his motion, a lot of what may need to be done, does not actually require an

amendment to the Standing Orders, or to any legislation. For example, Mr Speaker, the hon Gentleman has said that sometimes we have to wait for months before we can put questions, and his motion refers to the four meetings of the House in any one year. Well, Mr Speaker, we have four meetings of the House. We have three meetings of the House, which is the minimum the Constitution requires, and we have had those three meetings every year since the new Constitution, because the hon Member wants us to have three meetings. We could have had twelve in each year. There is no law that prevents this Parliament from meeting on a monthly basis, and the hon Gentleman has said that he can understand why we might put hundreds of questions, because we meet so infrequently, and if we knew that we had the opportunity of grilling Ministers on a monthly basis, we might put less on a monthly basis. Well, Mr Speaker, that could have happened before the new Constitution, and after the new Constitution. It has always been up to the Leader of the House to convene and adjourn the House whenever they desired, in the time that I have been a Member of this Parliament. So, I do not want to get into the partisan political issues, all I am saying is, we do not need parliamentary reform in order to have a monthly meeting of this Parliament. There is no law that says that we have four meetings a year, or three meetings a year, that we need to amend. There is a Constitution that provides what the minimum number of meetings that we have is, but that is it.

Now, Mr Speaker, in terms of electoral reform and the issue of the adding of back benchers and how they are elected, on that issue, Mr Speaker, we think that we are, certainly, outside the time for doing anything meaningful whatsoever before the next General Election.

Mr Speaker, I think I agree with the hon Gentleman when he said, in relation to the Parliament (Amendment) Act 2007, when dealing with electoral reform then, he said this, that he had been advised that we were there, then so close to an election, that the sort of reform that would be needed to get these sections to say what they should say is too profound an electoral reform to

promote in an election year. Mr Speaker, that debate happened in June 2007 and the election was in October 2007. Now, the date of the election under any parliamentary system that we are likely to have in Gibraltar is always going to be a matter for the Chief Minister of Gibraltar, unless we have fixed terms, not something that I think is being promoted by the other side, and is unlikely to be promoted by us. But this year it is likely to be in less than five months and we agree, Mr Speaker, that if we are going to bring electoral reform, you should not be doing it at the last minute because it takes a long time for people to understand, for the principles to percolate through to the electorate, and a simple change, like offering each party fifteen instead of ten candidates, may not percolate through to the electorate for the reasons that the hon Gentleman himself put in the debate on the Parliament (Amendment) Act.

So, anyway, Mr Speaker, we are very positively looking at the reforms that need to be made to our democratic process as a whole and, as such, although we cannot support the motion as drafted, we will be moving an amendment to the motion to create an independent, or to propose that we create an Independent Commission for democratic and political reform, a parliamentary reform, to immediately commence its work with wide terms of reference and adequate resources. A wholesale review on how Gibraltar's democracy should work in these modern times. But, Mr Speaker, any reform and any review must be for greater transparency, not less, and it must also bring us, all of us, Mr Speaker, and whoever may be here after the election, closer to the general public, closer to the electorate than we are today, because many people see us as being remote, even if we do not see ourselves as being remote.

Mr Speaker, it is important that the process of analysis and review should be independent, not just in partisan terms. In other words, it should not just be independent of the GSD, and of the GSLP, and of the Liberal Party, Mr Speaker, it should be independent to an extent of all of us. It should be independent of politicians, because it should not be just politicians who

should decide how politicians behave, and what is expected of us here and outside of this place. And, in so far as the issues are partisan, then, Mr Speaker, they should also involve parties that do not have parliamentary representation in the process of considering that reform as the hon Gentleman has himself indicated that his proposed motion, or his proposal in his motion, would do. That is why, Mr Speaker, we believe that it is important to devolve the process of reform to an independent analysis that can take evidence from the wider community and should report to the next Parliament within twelve months. Twelve months, Mr Speaker, so that it is not an open ended process, like this process has been, which we have not been able to see reach a conclusion during the lifetime of this Parliament, but one which has a clear destination in time and in place. The report of that Independent Commission should be to this Parliament, and Mr Speaker, perhaps it should be to this Parliament in a Committee of the whole Parliament, as the hon Gentleman has suggested, rather than to the Select Committee, but that is an issue that we can look at.

Mr Speaker, I have asked Mr Licudi to draft and present the proposed amendment, and to explain to the Parliament the detail of it as it has been conceived by us on this side of the House. I urge the Government to consider our amendment in a positive light that can deliver reform that is acceptable to the whole community and not just the reform that we choose as this is not just for us, but for future parliamentarians who will fill these seats as the hon Gentleman has said.

That is not to say, Mr Speaker, that it will not be parliamentarians, whoever may be here after the election, that will make the decisions on what is reformed because, as elected representatives of the people, we are the ones who are elected to make those choices, but we should not do that, Mr Speaker, without an Independent Commission that goes out, not headed by politicians, to obtain the information, or to hear the views of the general public, and to bring to the House those views. What could bring us closer, Mr Speaker, to the public that considers

us remote in many instances, or consider some of us remote, than that.

Mr Speaker, I also think that this is something that should be done on a tight but deliverable timetable, so that any reform we adopt can be incorporated into law and can result in amendments to Standing Orders, et cetera, as soon as is reasonably possible, and, in any event, within eighteen months of the beginning of the life of the next Parliament.

Mr Speaker, I have asked Mr Licudi to draft and present to the Parliament the terms of this amended motion which would create the commission, establish its terms of reference, and set out a proposed timetable that I will allow him to speak on more closely. Before I do, Mr Speaker, I will say this. We need to be constructive with each other on these issues, constructing the most genuinely deliverable, widely acceptable reform that improves our democracy for the whole of the community. That is why we are making this constructive and positive proposal now, and I would ask the hon Gentleman not to be Jesuitical about form, to look at the substance of what we are proposing, to see how it can bring an added element of independence to the whole process, and how, in my view, in our view, on this side of the House, we can, in that way, understand, not just the things that we might think need to happen in this Parliament, we are the ones who most intimately acquainted with how it works today ... For us, there is a lot that is no longer a mystery within three or four months of being elected, and we understand how things work, and there may be people out there who think that we have to change things that actually work. But if there are people out there who think that we have to change things that actually work, we need to understand why it is that people seem to think that even the things that work in Parliament, do not work.

Mr Speaker, that means going well outside those of us who are politicians in the established parties represented in this House, beyond even those who aspire to be represented in this House,

into the community as a whole, and looking, not just at how the House of Assembly, the Parliament works, but also how we do politics in Gibraltar.

**HON G H LICUDI:**

Mr Speaker, I understand that I got up before the hon Member, and I am proposing an amendment. It is up to him, if he wants to speak before the amendment.

**MR SPEAKER:**

With respect, in fairness I am required to alternate as far as possible. I am sure it will not make a big difference to the outcome of the debate, but the Hon Clive Beltran.

**HON C G BELTRAN:**

Mr Speaker, the Government's proposals for parliamentary reform, I believe, are broad, balanced and progressive, as presented by the Chief Minister, and they will add in no small measure to other advances already achieved by this Government in progressing transparency and accountability in, for example, the presentation of Estimates of Expenditure to this House, an area that was, for many years, a quagmire of opaque accounting procedures. That is an example of how this could be advanced.

Governments' proposals, Mr Speaker, aim to do a number of practical positive things. They aim to expedite the business of Government, for example. Statistical questions to be written and not oral in form. The experience of this House, certainly my experience of the last eight years, Mr Speaker, is that the majority of questions coming from the Opposition are statistical in nature, and they give rise to few supplementaries and few

exchanges of substance. So there is a lot of time wasted in the work done in this House. They also strengthen, Mr Speaker, these proposals, the calling of Government to account. Increasing the number of Question Times for Ministers and the Chief Minister is one example, and the Select Committee, as proposed, chaired by a Member of the Opposition, with powers to summon Ministers, officials and other people. It would certainly strengthen the calling of Government to account. It also strengthens the legislature's links with citizens in between elections, TV broadcasting being one of them, and I just want to mention, perhaps, a little anecdote. At the last CPA Conference that I attended in London recently, there was a particular discussion section of the conference on parliamentary reform, and I asked the chairman of that such discussion, Lord Norton of Louth, whether television coverage of House of Commons proceedings could be seen as a case of a measure of reform aimed at benefitting electors. That actual measure has ended up being more for the convenience of MPs, who develop skills that benefit them, rather than the electors. The reply from Lord Norton of Louth was that research carried out by Parliament, precisely on TV coverage, had had the result, amongst other things, of MPs using the word constituency much more than they had ever done before, but that, in general, it benefitted both the electorate as they can see what is going on, and also MPs who can deploy their skills, those who have them of course. That is, generally, a very positive step, and that was the message coming from a very experienced writer, in fact, on parliamentary reform.

I think that the proposals will also benefit the legislature as an institution. I think mention has already been made about back benchers and the role that they could play, and the process that could deliver people who learn the ropes, and are not thrown into the deep end, as either Ministers or Shadow Ministers. These Government proposals, therefore, Mr Speaker, are there, they are positive. They are useful. Of course, they can be amended, and also new proposals introduced. It is unfortunate,



as I see it, that once again the Opposition are not minded to participate meaningfully, and they are now talking about some ...

**HON XXX:**

*[Inaudible]*.

**HON C G BELTRAN:**

Well, that is how I perceive it, Mr Speaker, and they have now gone into other possibilities. All schemes in the world, Mr Speaker, would not be very meaningful unless Members of Parliament want them to happen. There must be the political will to carry out reform. The Government's proposals are now here, before this House, and so now is the time to act if the motion before us refers to principle. Even if the motion is there just as a matter of a set of principles, now is the time to act.

The GSLP/Liberal position on real, from my perspective, on real effective parliamentary reform is clearly non-existent. They make promises for the future, but are not prepared to actually do something now, when they are given the opportunity to do so, Mr Speaker. Well, this is it, they remind me ...

**HON XXX:**

*[Inaudible]*.

**HON C G BELTRAN:**

Yes. Yes. Well ...

**MR SPEAKER:**

Order. Order.

**HON C G BELTRAN:**

This Commission is something for the future. In fact, they remind me, Mr Speaker, of ...

**HON XXX:**

So is your motion. Read your motion.

**MR SPEAKER:**

Order.

**HON C G BELTRAN:**

They remind me, Mr Speaker, of words attributed, I think it was, to Mark Twain, when he said, talking about the weather, I think it was, when he said that "it is a subject, something that everyone talks about, and nobody does anything about". Well, I think, now is the time to do something about it, and be seen to be doing something about it. Right. Mr Speaker, despite now saying that he agrees with much that the Hon Leader of the Opposition has said, that he agrees with much of what the motion includes, Mr Picardo, nevertheless, very recently has spoken about this reform, and that reform, which now evolved into the idea of an Independent Commission, but he has said publicly that he is only prepared to do something about it if, and only if, people elect them into Government.

**HON F R PICARDO:**

On a Point of Order, Mr Speaker. I would like the hon Gentleman to justify his remark. That is not true.

**HON C G BELTRAN:**

Mr Speaker, it is true. I have been reading his comments in the Chronicle over the weekend.

**HON F R PICARDO:**

Mr Speaker, on a Point of Order. I have made no comments in the Chronicle over the weekend.

**HON C G BELTRAN:**

No. No.

**HON F R PICARDO:**

I gave an interview to the Gibraltar Chronicle some weeks ago, and I did not say that we would only bring reform if we were elected, and I would like to quote what he says I have said, Mr Speaker, because he is completely misrepresenting anything, anybody can pretend I have said to a newspaper. So, let him please read me what it is. I am sure it is there in the hon Gentleman's list of my utterances on the subject.

**HON C G BELTRAN:**

Mr Speaker, certainly not in my list, but he has misrepresented what I have said, just now. Over the weekend, I was reading, on

line, what the Chronicle has reported that you said about reforms, and you said, if elected, and that is why I am quoting that. That is what I have said. So, Mr Speaker, that is what he said. The new GSLP Leader, he may not like to hear what I am saying, but the new GSLP Leader, Mr Speaker, professes to be very different to Mr Bossano, and he is trying very hard to convince the electorate that he is a champion reformer. Today, he has spoken ...

**HON XXX:**

*[Inaudible]*.

**HON C G BELTRAN:**

Yes. Today, he has spoken ...

**HON XXX:**

*[Inaudible]*.

**HON C G BELTRAN:**

Let me finish what I have to say, and perhaps it will be clearer. Today, he has spoken of an Independent Commission but he has, very recently, Mr Speaker, made promises, he has very recently, publicly, made promises of a Code of Conduct for Ministers, and a Freedom of Information Act ...

**HON G H LICUDI:**

*[Inaudible]*.

**HON C G BELTRAN:**

Perhaps, that will jog his memory as to what he said, and this will be done if elected into Government. That he says will include ...

**HON XXX:**

*[Inaudible]*.

**HON C G BELTRAN:**

Well, yes, but that is what I am saying, Mr Speaker. That is all I am saying. That is all I am saying. Why does he take umbrage? There is nothing wrong with that then.

**HON F R PICARDO:**

No, Mr Speaker.

**HON C G BELTRAN:**

That he says he will include these things. Will include the right of citizens to investigate the behaviour not only of future Governments but most, interestingly, past Governments. But how far back is he prepared to go, Mr Speaker. 1988 perhaps.

**HON XXX:**

1988.

**HON C G BELTRAN:**

Or only since 1996.

**HON XXX:**

1988.

**MR SPEAKER:**

Order. Order.

**HON C G BELTRAN:**

Well, he says that now prompted by me.

**HON F R PICARDO:**

He has asked me a question.

**MR SPEAKER:**

Order. Order.

**HON C G BELTRAN:**

But he did not say that when he was making promises about the things he will do if elected.

**HON F R PICARDO:**

On a Point of Order, Mr Speaker.

**MR SPEAKER:**

Order.

**HON F R PICARDO:**

I did say that when I was making promises, as the hon Gentleman says. In the press conference that I held in relation to the Freedom of Information Act, I specifically said to all those present, that it would go back at the very least until 1988. So I hope he sits corrected.

**HON C G BELTRAN:**

Mr Speaker, it has not been reported as such, but I take his word that he said it there. I was not there. Mr Speaker, but then again, all these ideas that he has, the Hon the Leader of the Opposition, about Code of Conduct for Ministers, Freedom of Information Act, and so on. It is possible that this idea of Mr Picardo's will never see the light of day, and end up being judged by Mr Bossano as one of those, and I quote Mr Bossano, "crazy decisions" that Mr Bossano was afraid his successor would make. One thing will not change with, or without, the Freedom of Information Act, and that is that certain files, that were reportedly lost in the Housing Department just before the 1996 election, have to date not been found. So, perhaps, that Act might be able to jog people into requesting information that may not be found.

**HON XXX:**

[Inaudible].

**MR SPEAKER:**

Point of Order.

**HON J J BOSSANO:**

If the hon Member, in the guise of standing to support a motion in which we are supposed to stop behaving like politicians, and behave like parliamentarians, looking for the long-term future for the next thirty years for Gibraltar, stands up and accuses any member of my Government, or the Minister for Housing, for somehow shredding files in 1996 so that they would not see them, then I have to remind him that no Government is allowed to open the files of the preceding Government. And that if those are files, that he claims in 2011 had disappeared in 1996, belonging to people, then I think he is making a very serious accusation, it is totally irrelevant in the motion, and the accusation should be withdrawn or he should substantiate it.

**HON C G BELTRAN:**

Mr Speaker, I am making no such withdrawal ...

**HON N F COSTA:**

Shame.

**HON C G BELTRAN:**

Mr Speaker, I am making no such withdrawals. The Hon the former Leader of the Opposition is actually homing in on personal files which I have not mentioned. I have just said files that I, during my time as Minister for Housing, was informed by people who work in the Housing Department when, I cannot remember exactly and in what situation, certain files were required to find out information and they could never be found, and I was told that they had been missing for many years. That is why I have made this statement, based purely on my experience, Mr Speaker. That is all I am saying.

**HON XXX:**

*[Inaudible]*.

**HON C G BELTRAN:**

Mr Picardo's rhetoric on parliamentary reform, Mr Speaker, particularly in respect of Freedom of Information, seems to me to be nothing more than an act of expiation and exculpation for the way the GSLP mismanaged Gibraltar's affairs, including parliamentary procedures, from 1988 to 1996, when there were occasions when people were refused an answer to questions asked by those people. Mr Picardo's efforts are no more, in my

mind, than an attempt to clean up the image most people have of the GSLP. Otherwise, Mr Speaker, why would he be so very keen to make everyone believe he is not Mr Bossano. That is what he said the other day. I am not Mr Bossano. One thing is certain, Mr Speaker, not in a thousand years, I do not think, will Mr Bossano sit back and allow Mr Picardo's idea on the Freedom of Information Act, with retrospective powers, to prosper. Not if he is going to allow people to rake up the past.

Mr Speaker, the time for the GSLP to put their money where their mouth is, is now. Making promises about reforms, yet more promises, on the back of other promises made publicly. Now the Commission. Making promises about reforms they are only prepared to make if elected into Government are just not credible. The GSLP under Mr Picardo, to my mind, has no more appetite to introduce parliamentary reforms than they had under Mr Bossano. If they truly have this appetite, Mr Speaker, now is the time to vote for it.

**HON G H LICUDI:**

Mr Speaker, we have just been treated to the most extraordinary contribution of a party political nature and, clearly, with the elections just round the corner, rather than the hon Member focussing on and addressing the motion currently before Parliament. One would have thought, listening to what the Hon Chief Minister heard, subsequently, the Leader of the Opposition, that we would have some hope of today having some positive and constructive dialogue and debate on parliamentary reform, and wider reform if necessary. We might disagree on what reform might, or might not be necessary. That does not deter or detract from the fact that it might be possible, as responsible parliamentarians, to have a proper and constructive debate.

The hon Member has made every effort possible to try to derail that constructive and positive approach by both sides of the

House, but we will not be derailed, because our approach will continue to be positive and constructive as set out by the Hon the Leader of the Opposition. I will not indulge in name calling, false accusations, going back through a history lesson, because there are many, many recriminations, which I am sure those members of the House can make against us, previous Governments, and we can equally make those recriminations against them. Where does that take us in a motion on parliamentary reform, where do those recriminations take us? Absolutely nowhere and, therefore, hoping to put some parliamentary sense into the proceedings that we are embarked on today in the motion currently before the House, I beg to move, Mr Speaker, that the motion standing in the name of the Hon the Chief Minister be amended by removing the words after “Resolves” and replacing with what I am about to read, so that the motion reads as follows:

**This House resolves that:**

- 1. An Independent Commission to be known as the Gibraltar Commission on Democratic and Political Reform (“the Independent Commission”) be set up to consider and report to Parliament on all aspects of electoral and parliamentary reform;**

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

Mr Speaker, on a Point of Order, normally in this sort of situation the other side is offered a copy of ...

**MR SPEAKER:**

Do you have a copy ...

**HON G H LICUDI:**

I had intended to ...

**MR SPEAKER:**

The odd word may be amended orally but in a lengthy amendment ...

**HON G H LICUDI:**

I do have copies for the hon Members. I am grateful to the hon Member for reminding me of it. Mr Speaker, I will start again if I may.

**The House resolves that:**

- 1. An Independent Commission to be known as the Gibraltar Commission on Democratic and Political Reform (“the Independent Commission”) be set up to consider and report to Parliament on all aspects of electoral and parliamentary reform;**
- 2. The Independent Commission is to be made up of three persons to be appointed by this House who are independent of the political parties which are currently active in Gibraltar and which will include a person of high standing with extensive experience on parliamentary democracies who will act as chairman of the Independent Commission;**
- 3. The Independent Commission shall issue a consultation paper within three months of its establishment;**

4. The Independent Commission will invite representations from all persons and interested groups and will arrange to take oral submissions;
5. The Independent Commission is to report to Parliament (“the Report”) within twelve months after it issues its consultation paper and will make recommendations to Parliament on such reforms as the Independent Commission considers appropriate within its terms of reference;
6. Parliament will debate the Report within three months of it being submitted to Parliament and will consider what aspects of the Report (if any) should be submitted to a referendum;
7. If Parliament decides that a referendum be held, this is to take place within six months of Parliament’s decision;
8. Such recommendations made in the Report as are accepted by Parliament (or by referendum) will be implemented within the parliamentary term in which the Report is submitted to Parliament.
9. The terms of reference of the Independent Commission are to be as follows:
  - a. To consider and report to Parliament on all aspects of the electoral and parliamentary system in Gibraltar, to include consideration of the following matters:

#### Electoral Reform

- i. Whether the electoral system currently in place should be modified or reformed in any way;

- ii. Whether the number of candidates elected into Parliament should be increased;
- iii. Whether any candidates should be elected to represent any particular area of Gibraltar;
- iv. Whether candidates should be elected by or by an element of proportional representation and, if so, what such system should be;

#### Parliamentary Reform

- i. Whether the number of meetings of Parliament should be increased;
- ii. Whether the Chief Minister should appear in Parliament at regular intervals, what those intervals should be and what limits, if any, should be placed on the duration of such sessions and the type of questions which may be asked;
- iii. Whether other Ministers should appear in Parliament at regular intervals, what those intervals should be and what limits, if any, should be placed on the duration of such sessions and the type of questions which may be asked;
- iv. Whether Standing Orders should be modified or replaced and, if so, in what way;
- v. Whether Opposition Members should have the opportunity of bringing motions for debate at regular intervals and what those intervals should be;

- vi. Whether any Member of Parliament should be entitled to bring a motion on every daily adjournment of Parliament;**
- vii. Whether any permanent committees of Parliament should be established and what the purpose, composition and powers of such committees should be; in particular, whether there should be established a standing committee to be known as the General Purposes Select Committee to be chaired by a Member of the Opposition and be able to summons Ministers, officials and others in any area of policy;**
- viii. The desirability of back benchers in Parliament including their role and numbers;**
- ix. Whether parliamentary meetings should be broadcast on GBC television."**

Mr Speaker, as will be evident from the terms of the amended motion, what we are seeking to do is to incorporate all the proposals that the Government's own motion brings, and also widen the scope of the inquiry. The Hon the Leader of the Opposition has already indicated why we see that there is a need for wider democratic and political reform, rather than just looking solely at the workings and operations of Parliament. So, our proposal is that we should incorporate everything that the Government seeks to bring to this House, but in a wider and a different forum, subject to two fundamental differences with what the Government is proposing.

Firstly, as will be evident from the terms of the draft amendment, the terms of possible electoral reform are wider than envisaged in the Government motion. The Government's motion envisages the introduction of back benchers, possibly to a number of twenty five. That, in itself, brings an element of

electoral reform. Presumably, we will have fifteen on one side of the House, and ten in the other, or fourteen and eleven, or thirteen and twelve, and that will make a difference to the number of candidates that are put forward by each particular party and, indeed, the number of crosses that each member of the public, the electorate, will have. At the moment, a party puts forward ten, and there are ten crosses. Presumably, if there are fifteen candidates put forward by one party, which can sit on the Government benches, there would be fifteen crosses to be placed by the electorate.

So that is something that is required to be looked at in terms of the precise mechanics, and we also look at, not just the question of numbers, which is what the Government's motion does, but look at all aspects of electoral reform. We look at the numbers, the mechanism, and the system itself. It is right in Gibraltar that we should have a system such as the present, with a first past the post system for the first fifteen, or twenty five on the electoral ... by the number of votes. Should there be an element of proportional representation? Should there be a list system as there are in other countries? Which is, in fact, the best system for Gibraltar?

We consider that the priority in any system must be to elect a Government. There must be a fair system that elects a Government that is representative of the people, but also a system that produces a strong Government. In fact, one of the advantages of the present system is that, invariably, it has produced strong Government. Whether we agree with each other or not, we certainly agree that once the Government is elected, with the majority that it enjoys in this House, it will have the mandate to put forward its programme for Government, and generally will be able to carry its programme through. In any parliamentary system, in any electoral system, we believe that having a strong Government emerge at the end of the day is one of the hallmarks of a good and proper system. But some might disagree. We certainly believe that that is the best way to go forward. Others might disagree, and should be entitled to put



forward their own views on what that system should be to the Commission.

Having mentioned the Commission, the second fundamental difference to the proposal that the Government has made is the establishment of the Independent Commission to be known as the Gibraltar Commission on Democratic and Political Reform. These, Mr Speaker, are fundamental issues that are at stake and that we are addressing. We are not just talking of tinkering with the system. We believe that this requires independent and objective thought and analysis, and it is very difficult for the Government's proposal which, in effect, is that this House constitutes itself in a Committee, with each side having their own views, perhaps partisan views, to bring the element of objectivity, which is absolutely required to an analysis such as this, in terms of reforming, not just the parliamentary system, but also the electoral system. What we are seeking is that we should have a Commission as, in fact, has happened in other countries, Mr Speaker. When these sorts of issues arise, it is not uncommon for an Independent Commission to be established. In fact, there was one established in New Zealand. It was, in fact, a Royal Commission on the electoral system. That was established in 1985, and brought recommendations to Parliament. There was also, following the victory of the Labour Government in 1997 in England an Independent Commission on the voting system established in England, known as the Jenkins Commission, which made a series of twelve primary recommendations to Parliament. So the idea is that we have an Independent Commission that takes views from politicians and from members of the public and interested parties, and makes a series of recommendations, which it puts to Parliament, so that the Parliament can debate. What is important, and what shows the extent of our commitment on this exercise, is the timescale which we are proposing. This is not a motion which is unlimited in time, which simply sets out the Committee, for the Committee as and when it sees fit to meet and debate, and consider certain matters, without knowing what the outcome will be, or whether there will be an outcome within a particular term of office.

We are setting for this Parliament and for the Commission a very tight, but we believe, achievable timescale.

The Hon the Leader of the Opposition has mentioned a timescale of eighteen months. That is made up, as set out in the amended motion, on the basis of three months, initially, for the consultation paper to be issued. Twelve months for the Independent Commission to do its work, take all the necessary representations, take all submissions, and then submit the report, and three months for Parliament to consider and debate that reform. We have also added the possibility that there might be a need or a desire for a referendum. Not all recommendations may be appropriate for a referendum. If there was a recommendation and Parliament agrees that this be televised, we are certainly not suggesting that we go to a referendum for the electorate to decide whether there should be cameras in this Parliament. But if we are talking of more fundamental reform to the electoral system, it may be appropriate, and Parliament may consider it appropriate, in respect of that particular aspect or that particular recommendation, if one is made, then that should be submitted to a referendum and, even on that, we have set a timescale of six months.

So, in addition to the eighteen months that the Hon Leader of the Opposition mentioned, we have built in to our proposal the possibility of a referendum to be held within six months. Therefore, the maximum time is twenty four months, and that, we say, would take us just about to the mid-term of the next parliamentary session. It would give sufficient time for whatever parliamentary reform needs to take place, immediately, because all that would have been considered by the Commission, debated by Parliament and decided, and we would have half a term in which we would have the new reformed system of Parliament. It would also give sufficient time to bring any necessary changes to legislation, which might be required, if there are going to be more fundamental changes, particularly, to the electoral system, so that all those changes are in place, well

in time and for people to clearly understand what the implications are. Well in time for the following election.

So we have set ourselves the [*inaudible*] of what it is the objective should be. We have tried to be constructive by including every single question that the Government seeks, are considered in the Government's own motion, but we have sought to widen the scope because we believe that this is such a fundamental and important issue for Gibraltar. As the hon Member, the Chief Minister has said, it is not every day that we consider reforms of this nature. We need to get it right. We need to have people look at it who have considered the views of the wider public. We need to have proper and considered recommendations made to Parliament, and those recommendations need to be properly debated and decided on by this Parliament. We believe that our amendments to the motion achieve all of that and is the best way for Gibraltar. We show, with this amendment, how committed we are to reform of a fundamental nature of our democratic and political system in Gibraltar for many years to come. We very much express the hope and the desire that the Government will also show the same commitment by supporting this amendment.

**MR SPEAKER:**

I now propose the question in the terms of the amendment moved by the Hon G H Licudi.

**HON CHIEF MINISTER:**

I have to take my hat off to the hon Members opposite. It is a masterly, masterly act of sounding as if you want Christmas, whilst actually being a turkey. I have never heard a more persuasive, more well crafted attempt, to masquerade a lack of desire to be committed or to commit to reform in terms that

make you sound like the mother of all reformists. It is a masterful display of political obfuscation.

Mr Speaker, I do not think the hon Members are committed to parliamentary reform at all. Indeed, I think they fear that because they think that they might win the next elections, they do not want to be saddled with saying, yes, to the things that we are proposing today. So they resort to that well tried and well established device of kicking it into the long grass. In England, no politician that is serious about anything would suggest remitting it to a Royal Commission because that is shorthand for kicking it into the long grass, you are not serious about it.

**HON XXX:**

[*Inaudible*].

**HON CHIEF MINISTER:**

Mr Speaker, the ... No. He is wrong even about that, but I will come to that in a moment. I do not think the hon Member understands even the amendment to the motion that he has just himself moved. Plenty of time. We will get to all those details. He need not worry. Mr Speaker, the hon Members opposite, I believe, do this Parliament and this community a political disservice, and I will explain to him the sense and the ... We can disagree. Of course, we can disagree about particular parliamentary reforms. We can even disagree about the methodology for getting to those reforms. There is nothing wrong with that, but I believe that the hon Members do do, even in the context of that, a disservice to this community. Mr Speaker, I know and, of course, it is really a trap that they have laid for themselves and fallen into themselves. Yes, of course, if the hon Members confuse and mix up parliamentary reform with electoral reform, well, what might be appropriate for one, may not be appropriate for the other.

Mr Speaker, it may be appropriate to get some outside Commission report on electoral reform, lest the Government of the day should foist on the system some electoral system that suits it, but nobody else.

Mr Speaker, I honestly know of no precedent of any Parliament in any democracy, in any grown up democracy, that would remit outside of itself its own internal reform. Parliaments normally guard jealously the fact that they are sovereign. The last thing that any self respecting Parliament would do is go out to some "Independent Commission", which does not include any of the political parties, to tell Parliament how it should reform itself. Not voting reform. Not electoral reform, but parliamentary reform, which is about how this Parliament goes about its business, and so desperate are they to find some credible way that they can get away with the front page of tomorrow's Chronicle by appearing to be supportive of reform, and some justifiable reason for voting against this motion, or not having to support this motion, that they would go to the extent of suggesting that this Parliament should appoint an independent of itself, never mind independent of itself, independent of leading politicians. I do not know who we are going to ask. I suppose we could ask the taxi drivers or tour operators. I do not know who is going to be on this Commission, if it excludes the people involved in politics today. And not just that. Not just parliamentary reform, Independent Commission, but will include a person of high standing with extensive experience on parliamentary democracies who will act as chairman. Well, necessarily somebody from outside Gibraltar, because if all of us who are involved in politics, and may have some expertise, or extensive experience of parliamentary [inaudible], if we are all excluded because we are parliamentarians and not appropriate participants in this, we are going to bring a chairman from abroad to boot. So this is not going to be the only Parliament in the democratic world to get some Independent Commission to tell it how to go about its own internal business, paying absolutely no value to the concept of parliamentary sovereignty

and parliamentary independence, but also proposes to bring somebody from abroad to chair the process.

Well, Mr Speaker, this Government which has fought long and hard to advance Gibraltar's self-government, to advise the institutional, political and constitutional respect in which Gibraltar is held, is not about to put Gibraltar's constitutional and political clock back forty years by proceeding to parliamentary reform on these terms. This is the biggest falling of the hair out of the chest of the GSLP that I have seen since I have been in this Parliament. You have lost all the hairs on your chest in political terms. Well, there are no ladies on the other side, phew, I got away with that. Sorry.

I honestly, disagreements aside about the content, think it is an extraordinarily inept, unhelpful to Gibraltar position. Gibraltar is not Kosovo. We are not the transition authority in Libya. We are not some fledgling African democracy that needs to be told by outsiders how to reform our Question Times in Parliament, and how to reform, and how many MPs we should have. Why do the hon Members insist on this colonial retrograde, weevil, [inaudible] approach [inaudible] in Gibraltar? Why cannot they, just for once, behave as if Gibraltar is what it is, a grown up democracy able to decide the rules of its own democratic processes without anybody holding our hands through the journey.

Why are they obsessed in disqualifying the only people that the electorate of Gibraltar can hire and fire? It is the same thing, oh no, this is not for politicians. [inaudible]. Leave it to officials, or leave it to some independent ... Leave it to anybody who is not accountable to the people of Gibraltar, that is not hireable and fireable by the people of Gibraltar, and disqualifying from the task the only group of people whom the people of Gibraltar can fire if they get this wrong. We are apparently disqualified because we are not objective, and we are not independent of our own Parliament. Well, I do not want independence of process in respect of our Parliament. This is not a Parliament

until we can understand and accept between each other that we are more suited, and it is more appropriate for we, for us, obviously with consultation in our constituencies, and amongst our own people, but that is the process. The process is that reform is done of Parliament, by Parliament, in consultation with the people of Gibraltar, not by an Independent Commission shared by somebody sent out here by the UK to tell us all how we should reform. Gibraltar has moved beyond that, and look, I am the one who is normally criticised by the hon Members for bringing expertise to Gibraltar when we need it. So, when I bring somebody to head up the Health Authority or, to do this or to do ... It is normally them that are giving me the lecture that I am giving them now. Here is an area in which we do have the expertise and all of a sudden the boot is on the other foot, they cannot wait to rush to bring somebody else to tell them how to do things.

Well, Mr Speaker, we cannot accept that the degradation that this process of disqualifying our own parliamentarians from the process of reforming themselves, which is the essence of this amendment to the motion. Of course, our own motion acknowledges and calls for the fact that political parties not represented in this House, non-governmental organisations and members of the general public are hereby invited to write to the Committee through the Clerk of the House with any parliamentary reform. That is the way to do it. We decide on our own parliamentary reform, and we consult and give people, as we did, with our constitutional negotiating process, as we have done with so many other issues. So, for the position that Gibraltar was going to adopt on the new Constitution, which affects all aspects of life in Gibraltar, there was no need for an Independent Commission, chaired by somebody from abroad. There, we were grown up enough to decide what it is that we should want in our Constitution, but when it comes to deciding the structure of parliamentary meetings, and whether there should be seventeen or twenty five members of Parliament, whether there should be a back bench or not be a back bench, all of sudden, we are a Parliament ... we are not fit for the task,

and we need to have an expert from somewhere else chairing an independent body, excluding all political parties, to decide how politics in Gibraltar should be conducted, and all this is different to the question of voting systems.

It is a perfectly legitimate proposal to say that if there is to be a reform of the voting system, the voting system is not parliamentary process. Even in countries where Parliament's are sovereign and can decide what they like, there are some aspects that do involve, and properly can be thought to involve and require, a little bit of external ... because the voting system is how people are elected to get into the Parliament. But once they get into the Parliament, Parliament is sovereign, and Parliament and nobody else decides how it conducts its affairs, or goes about its own business, subject to consultation and subject to hearing views in Parliament. While the hon Member defends the proposition that this Commission's report is to be considered by Parliament, and accepted or rejected ... Well, Mr Speaker, if we have got the sovereignty to decide whether we accept or reject the proposals of the report, why do we not have the competence and the experience. We know what is wrong with this Parliament. We know what needs fixing. Who is there out there in Gibraltar that knows that? Who is out there in Gibraltar that is not involved in politics in Gibraltar, that knows even how this Parliament works, let alone how it can be fixed. If we are not fit to decide what needs to be done to fix it, why should we not be fit to decide whether to accept the recommendations that are made by the people who, they say, are better placed than us to make that judgement. If they think that these people are better placed to make the judgement, why reserve the right to accept or reject the report. He should have the courage of his conviction and commit to accepting the report. He cannot have it both ways.

Mr Speaker, the hon Member, the Leader of the Opposition, well, I will respond to him ... I am speaking to the amendment now. Mr Speaker, the Government's motion is not about electoral reform, it is about parliamentary reform. It does not

propose a change to the voting system. I said to the hon Members that this was about principles. It was about principles, and I said to him that there was detail in it that would need to be pursued. If the hon Member's motion spoke only about voting systems, I personally would have no great difficulty with accepting a proposition, because it does not affect the question of the sovereignty and the independence of Parliament. Voting systems can be decided internally by whoever has the majority in Parliament, or it can be subject to some more open, more transparent process, and I personally believe that the latter is better than the former. But, Mr Speaker, the hon Members have chosen to introduce all this business about electoral reform which is not in the Government's motion. The Government's motion calls only for issues to do with parliamentary reform and, therefore, all that he has said about widening ... He has widened it into an area into which the motion does not stray, and which are issues which are amenable to independent advice, and independent opinion expression. But he cannot colour, with that assessment, all the things that are in our motion, which are about parliamentary reform, which we believe are not appropriately the subject of the sort of process that the hon Member's amended motion would require us to subscribe.

At the end of the day, this Parliament is not only sovereign, in so far as its own internal processes are concerned, but it also needs to show leadership and commitment. This cannot be about kicking this into a committee, or into grass. It really reminds me a little bit about the position that the hon Members took in relation to both the Constitution debate, and also the age of consent debate. They profess to be terribly supportive. They profess to be terribly involved. They profess to be terribly committed, but, in the end, they found some device to not commit to anything, and it is usually called more consultation needed, commission, committee, this, that, referendum, this or that. It is all a pretext and a smokescreen for not having to commit yourself now. Not having to pin your colours to your mast now, and not committing to action.

When the hon Members ... on the age of consent, that their party's policy, their party's policy was what we know it to be in favour of the gay community. Now that is fine, and when we gave them the opportunity, because we had difficulty on this side of the House in getting to that position, but when the opportunity was given to allow the hon Members to be co-participants in bringing about the result that is more consistent with what they thought about the subject, they passed it down erecting, again, the argument that they thought that there was a greater need to consult. Mr Speaker, there was not a greater need to consult the people when they were writing their manifestos, and when they were making public statements in support of the Gay Rights Association. They did not feel a need to consult when they did that, and similarly with the Constitution debate, Mr Speaker. At the end of the day, this motion is not something that can be implemented. Our motion would not be something that could be implemented the day after tomorrow, at least not all of it, most of it not, only one or two of the things could be implemented tomorrow. It is a statement of principle, the Government wants Parliament to commit to the principles involved in this motion, and not to the exclusion of any other principle that may emerge, but Mr Speaker, it would be a significant step forward if all Members of this Parliament were to express a commitment to these principles, to which you say that you, in large measure, agree.

Mr Speaker, so the hon Members will have grasped the fact that we cannot, for the reasons which I have explained, support this amendment. Firstly, because we think it does a disservice to the maturity of our political system, and to our ability, right and freedom to behave as other Parliaments behave. Secondly, because we think it is a device to kick the matter indefinitely, despite the appearance, despite the incorrect appearance in the motion, that this guarantees the delivery of a result before the next elections after these ones coming. I will explain to the hon Member in a moment why that is not so. Nor, Mr Speaker, is the approach set out in this amendment consistent with what they have said in public statements until now. Look, their response

to my original press statement, and indeed to the publication of the motion, was not, no, no, the best way to do it is not that, it is to convene an Independent Commission. Their response was, why, we have already got a Parliamentary Select Committee, reconvene that and indeed the Leader of the Opposition has said so this afternoon. That he wrote to me inviting me to reconvene the Select Committee. Well, reconvening the Select Committee is the language of this Parliament getting on with its own business on parliamentary reform, it is not consistent with this independent, foreign chaired, overseas chaired, Commission that they are today proposing. So, I just cannot shake myself free of this impression that you have left me with. That this is a recently thought of device to make you look good in the press, whilst actually not committing to anything of substance, and I will illustrate that point further, when I respond to the Hon Leader of the Opposition's response to the Government's own motion.

Mr Speaker, the hon Member said that this assured a result from the Commission, et cetera, within the first half of the term and that we still had the second half of the term to do the legislation, and that you agree to put the pistol to our heads, in terms of what this required. Well, Mr Speaker, I honestly do not believe that there is any reading of the hon Member's motion which would justify the degree of confidence in what he has said that this commits them, that this is part of the obfuscation of the long grass. Look, Mr Speaker, the first thing that they want to do is to establish an Independent Commission, a Commission on democratic and political reform. That is a great message to send out for Gibraltar, you know. A Kosovo style Commission on democratic and political reform, as if we were some sort of democratic backwater. "The Independent Commission is to be made up", et cetera, et cetera, "who will act as Chairman of the Independent Commission", and then, in terms of timing, "The Independent Commission shall issue a consultation paper within three months of its establishment". Well, in three months of its establishment, now, when they are established is not set out here. Well, no no no, it says three months. It says that, "The

Independent Commission will issue a consultation paper within three months of its establishment". Now, so the clock starts ticking. That three month clock starts ticking on the date of the establishment of the Commission, with no commitment to establish by any date. "The Independent Commission will invite representations from all persons and interested groups, and will arrange to take oral submissions." Of course, it will take its time, but there is a constraint put there by saying, "The Independent Commission is to report within twelve months after the issue of its consultation paper and will make recommendations to Parliament on such reforms as the Independent Commission considers appropriate within its terms of reference". "Parliament will debate the report within three months of it being submitted to Parliament and will consider what aspects of the report should be submitted to a referendum". So appointment, open ended. Commission must issue a consultation document within three months of appointment. The Commission then has twelve months to take evidence, to take views and report back to Parliament. Parliament then debates the report within three months of it being submitted to Parliament. A debate. Nothing about a consider, and will consider, in the fullness of time, what aspects of the report, if any, should be submitted to a referendum. "If Parliament decides that a referendum be held", if it decides that a referendum be held, "this is to take place within six months of Parliament's decision". So, everything is open endedness, built on open endedness.

The hon Member's statement, well, yes, Mr Speaker, the hon Member can behave like somebody caught with his hand in the cookie jar, but he has been caught with his hand in the cookie jar, therefore, it is natural that he should behave like such a person. Mr Speaker, he has said that the chronology, set out in this statement, assures a decision with the first half of the term, leaving the second half of the term, and so all in time for the next election after one. Look, Mr Speaker, even if all that I had not said, no no, Mr Speaker, he should always not forget that I keep my most persuasive argument to last. Even if what I have so far said does not persuade the hon Members, on a simple

reading of the motion, that there is no established timetable here of the sort that he has described, the draftsman of this motion has given the game away, because paragraph 8 reads, "Such recommendations made in the report as are accepted by Parliament, or by referendum, will be implemented within the parliamentary term in which the report is submitted to Parliament". Well, if that means next term, why use eight words, when two words would have done. In other words, paragraph 8 fully envisages the fact that it may not be next term, because it says, next term or whatever term, the report is submitted to Parliament. Well, Mr Speaker, if I am going to make ... Well, Mr Speaker, the point is obvious. The point is obvious. For it to read, like the Hon Mr Licudi has given the impression or sought to give the impression, it reads, which it neither reads, nor means what Mr Licudi has said, but, certainly, it is a very strange choice of words to use. It does not say, and the recommendations will be implemented during the next term in time for the next elections after that. No no. That is what ... You would logically think that it would say, if we are to believe the sentiment, that the hon Members are moved by the sentiment that he has described. The fact that they are not moved by that sentiment and that the motion does not mean what he has said it means, is betrayed by the fact that the language has been carefully chosen to make it clear that it is envisaged that it may not be the next Parliamentary term. In whatever parliamentary term the report is submitted to Parliament. Well, Mr Speaker, it is self-evident what those mean. This is not the amendment of people committed to parliamentary reform. This is the commitment of people who think it is politically expedient and politically popular to declare that they are committed to parliamentary reform, but who speak with a forked tongue. To say it in a way which, as little as possible, commits them to actually doing it, because I suppose they fear that if they were to win the next election, the last thing that they want is to be held in a clamp by a more transparent accountable political system. Mr Speaker, that is the reality of it, because if it is not the reality of it, let us agree on the principles, now, set out in the Government's motion, now, with which the hon Member says he

is broadly content, and then we will move forward from there but, at least, we have got that in the bag and the people of Gibraltar know that the entirety of this Parliament are committed to these principles. No formula, however clever at first sight it might look, to appear as always to be running with the hares and hunting with the hounds, which is what the hon Members do systematically in almost every area of politics, will be enough to neutralise the fact that, by hook or by crook, for one reason or another, ducking as always, and diving as always, the bottom line nevertheless is that they sign up to nothing, now. They sign up to nothing, now. Everything is nice words, nice sounding words, but as far in to the future as I can possibly articulate here. That is the inescapable reality of the position that the hon Members have taken and is reflected in this unacceptable amendment, and it is unacceptable because it delays parliamentary reform for too long, and it is unacceptable because it does a disservice to this Parliament and to the political maturity of this community. I just think that the hon Members want to sound like reformers without actually committing to any reform. I, therefore, can inform the hon Members that the Government will not be approving their amendment, which we think operates against the interests of those in this community who want to see parliamentary reform as quickly as possible.

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

Speaking to the amendment Mr Speaker, I have not, in what I said originally on this motion, been partisan, and I believe that neither was Mr Licudi. We are very concerned to ensure that, in so far as possible, we spoke from the point of view of addressing these issues like parliamentarians, almost as if we were already in a Select Committee of the whole House looking at the detail of what is proposed, and I intend to attempt to continue to do that, Mr Speaker, in that vein, because these are issues that affect the whole community, not just those that are interested in parliamentary reform, not just those of us who are

in this Parliament today, and not just those who might be interested in politics. This is going to affect the whole community whichever way it goes.

Mr Speaker, I intend therefore, for now at least, to ignore the things that Mr Beltran has said. Mr Speaker, I must say, I am bereft. I have not seen, and I have to reply to the Chief Minister. I have not seen such intellectual dishonesty displayed in the manner of those who propose that they are the ones of virtue, until I have seen him this afternoon. He has got up and told us that he accepts that his motion is propelled by the fact that others wanted to go further than he was prepared to go on parliamentary reform.

**HON CHIEF MINISTER:**

Faster.

**HON F R PICARDO:**

Faster. I accept that. Faster than he was prepared to go. He accepts that he had the power, as the Leader of the House and the Chairman of the Select Committee, to have moved these things along more quickly. He tells us that, based on an assumption, he did not do that, and he says, that we are the turkeys who pretend not to be voting for Christmas. Mr Speaker, I have never seen the hon Gentleman, and he is good at it, do a pretend that we should do it as he says, but not as he does, as he has today. It is incredible to hear somebody say that we are proposing less and look in detail, in his prosecutorial style, at the timetable that is set out in our proposed amendment, and say, ah, but you see it is actually not the two year process. Ah, but you see this could actually take much longer, and hold on to his motion to pretend that it does anything other than lay down some principles. He has actually, in the

midst of what he says, and he said many things, said, sign up to this, because in doing so you are signing up to the principles.

Well, Mr Speaker, there are many things in this motion that I sign up to wholeheartedly. In fact, as the Hon Gentleman, Mr Licudi, said, when he introduced the motion, all of the things that the hon Gentleman has identified are set out in our motion as the things that we need to be dealing with and the things that we need to be analysing independently and as a Parliament, because, of course, everything comes back to the Parliament. But if one looks at the things that are contained in this motion, and what it is that the motion asks us to do, and I will try and stay ... Although the hon Gentleman hurls abuse. I will try not to. I have done so already by calling him intellectually dishonest, but I will try not to. What is it that his motion asks us to do, Mr Speaker? It says that we should resolve ourselves into a Committee, to discuss and consider the following principles. It says nothing else about when we should do any of the things that are set out here. Nothing else. There could be no more of a long grass style approach to parliamentary reform than the one contained in this motion, and I commend the hon Gentleman for accepting that he is only doing this, because he thinks there are votes in it. Because he thinks there are people who want to go faster than him. Because he thinks that this is an issue that is now prominent in our community. Because he knows it is an election year. He has told us, Mr Speaker, but he has told us under the veneer of him being the one that wants to achieve these things and us being the ones who are going to kick it into the long grass. Yet, Mr Speaker, there is not one timeframe in the motion that the hon Gentleman brings. I am perfectly happy, Mr Speaker, to sit down with him in the ante Chamber. To sit down with him here. To go to his office. Perhaps, if he answered my letters, perhaps I could concrete a date to do it to discuss and consider on my own with the Leader of the Liberal Party, with all my parliamentary team. Damn it, I am prepared to go with both executives to have this discussion to see whether we can discuss and consider the principles to underpin reform and modernisation of Parliament at work. But



what will that do? That we will agree that there should be monthly meetings of the Parliament. You know what? I agree that there should be parliamentary committees. It is not language that one can say, I agree, let us do it, because that is fuzzy language. That Opposition Members should have the opportunity to debate their motions once a month, well, if you have monthly meetings of the House, then you have monthly opportunities for Opposition Members to have motions. But you know what, I think there is a lot to be said for it. I think it is a good thing that Opposition Members should not just have to wait for months to put questions, but that Opposition Members might not know when an Opposition motion might be taken, because they are taken last on the Order Paper, and Opposition Members do not know when Parliament is going to adjourn sine die. In fact, I do not think Ministers these days know when Parliament is going to adjourn sine die.

The broadcasting of Parliament, Mr Speaker, even he will not suggest that this is something I will not sign up to, because in 2004, which was my first Budget in this Parliament, I said I believed we should be broadcasting it, and I said it many other Budgets after that. His own previous deputy, Mr Azopardi, said it before me, and I said I was agreeing with him. So I agree with point 4, but it is not that this is saying that we should start the broadcasting if we agree with it. He is just saying to us, let us sit down as a Select Committee of the whole House, to discuss and consider the principle. There you go. I agree we should broadcast it. Should we review Standing Orders? Look they have been there for forty years. Of course, they need a review. That we should have back benchers? Well, the hon Gentleman accepts that this paragraph does not say that we should, or should not, have back benchers. It is just something to discuss as a Parliament because we are sovereign, and that we should have a public consultation. Well, on that we are so obviously agreed, that there is no need I think for me to say anything. But, Mr Speaker, can it be, and I am just talking to the point of the period, the time, when such a reform would be brought in under his motion on our proposed amendment to his motion, can it be

that the only one of the two drafts, which sets out the time limits, is the one attacked for not providing a time when the reform will be brought. Well, Mr Speaker, it may be that he has not read it properly. It may be that, using his persecutorial style, he is actually right to say that, with those small points that he raised, there might have been wriggle room for a subsequent Parliament not to do things within the particular period. Look, let us look at it. I am prepared to move an amendment, Mr Speaker, if that will satisfy him, to include in the first paragraph that the establishment of the Commission should be from within a month hereof, today. So, within one month, the Commission should be established, and on his reading, Mr Speaker, then all the time limits will float from there, and the two year period will be no more than two years from next month. Mr Speaker, looking at paragraph 8, if we include, instead of the words "the parliamentary term", because, of course, the draftsman does not draft with that essential element that one requires to be successful in politics which is *mala leche*, as the hon Gentleman told Mr Bruzon some years ago. He drafts with goodwill, and he had not spotted the potential that it could have been in the parliamentary term, so let us deal with that. Let us deal with that. Let us, Mr Speaker, because the hon Gentleman, in his persecutorial style, has noticed that there is a potential wriggle room there. Let us say, "within six months of any referendum under paragraph 7 above or any other decision under paragraph 6 above". So, either within six months of the referendum, or if there is no need for a referendum, the decision being making Parliament. Parliament which is sovereign. Then, Mr Speaker, if there is a serious point in what the hon Gentleman was saying, about our motion not creating a fixed time limit when these things would happen, if that was a serious point, and it was not actually intellectual dishonesty, masquerading as virtue, then we should agree those time limits, and we will all know that within two years of next month, we will have parliamentary reform. Parliamentary reform which is what the people want, and which this Parliament, which is sovereign, and I will come to that in a moment, accept.

Unless, of course, Mr Speaker, that was not just a way of trying to get out of the fact that what our motion does is actually take his motion, which says just sign up to these principles, and says, okay, tell you what, we will sign up to the principles, we will investigate what they could do, we will look at it independently, we will take ourselves out of the equation because, in many ways, this is about the public, and about what the electorate must have, and what we as politicians must be providing for this community. Let us bring ourselves back into the equation in a fixed time limit, or those of us that are here after the election, and then let us legislate to deliver that reform.

If he is honest about wanting to achieve these things, let me shift him from his motion, because his motion must, given his analysis, be the sophistry for which he has become famous. Because there are absolutely no time limits whatsoever set out for doing the things that he provides with his motion. Or is it that he is telling us that if we vote in favour of his motion, there will be another meeting of the Parliament next month, before the General Election. That from the moment that we approve his motion, we will be having monthly meetings of this Parliament. That we will have the cameras from GBC. That we are going to establish a Parliamentary Commission. That we are going to vote for back benchers at the next election. Of course not, and that, Mr Speaker, the final one, the issue of the back benches, that is the one that really puts the hon Gentleman's speech into context, because he says of the draftsman, and I said, Mr Speaker, that I had asked Mr Licudi to draft it, so there is no question of not knowing who the draftsman is, and I think he has done a very good job, Mr Speaker. There is no question, whoever the draftsman is, Mr Speaker, of being able to have an election for back benchers at any time other than not in this election, but in the following one. Or is it that he is telling us, Mr Speaker, that we as a Parliament are going to be able to reform our Parliament Act, quite contrary to what he told us when he was dealing with the Parliament (Amendment) Act of 2007, in time for this election to have back benchers. Of course not, Mr Speaker. It must be a reform that comes during the next

Parliament for the election after that in respect of that issue, if it is approved by the Parliament. Of course it is, Mr Speaker. Then, Mr Speaker, to say that we are expanding, for the purposes of making it impossible to do, our review of these issues into an area that he has not raised of electoral reform, is to simply, Mr Speaker, fly in the face of what he said he is trying to do. Why? Because I have received, and I was very pleased to receive him, because he is, apart from a political opponent, also a friend, something which I wish, genuinely, I could say about more people in politics today, the Leader of the PDP, who he has also received, who was his deputy, and in whose presentation on the back benchers issue, raises himself, the issues of whether back benchers should be elected on the basis of proportional representation, and not first pass the post. So if it is true, Mr Speaker, if we are going to be intellectually honest, and if paragraph 7 of his motion, which is also a paragraph of our motion, is going to be relevant, and we are going to listen to what third parties and people out there are going to say, whether it is us initially and throughout, or whether it is us and an Independent Commission that we create, and then the recommendations of the Independent Commission. What he cannot do is to simply ignore, as he has, that the representations, that have already been put to him, raise the issue of a different type of electoral reform, and that that should be for the next Parliament, because it cannot be for this one.

Mr Speaker, I genuinely thought that this was going to be an issue where we might have been able to work together and I do not want to see the door closed on that. So, I offer the hon Gentleman, and I sincerely say that our amendment should be amended to include consideration of the points that he has made, whether he made them genuinely or not is a matter for him, because I am not going to impute motive as is constantly imputed to me. Whether he made them genuinely or not, those points that would set a finite fixed timetable so that, whoever becomes the next Government of Gibraltar, will have a period within which they must consider these issues in the Parliament, and they must justify turning down recommendations, or

adopting them, or changing them in a particular period. Because it is not, Mr Speaker, that we, who believe we will win the next election as much as they believe they will win the next election, do not want to be shackled to transparency or accountability. Because dealing just with one of the points that the Hon Mr Beltran has made, we are the ones talking about a Freedom of Information Act. I have carefully reviewed the manifestos that the hon Gentleman has prepared, all the way back to the one where he copied the personal message from the Leader of the Liberal Party in the UK, word for word, changing just Gibraltar for United Kingdom, and, in the one for 1996, they have freedom of information legislation set out in the manifesto. They do not say much. They just say that they will make more information available. They say that they are the Government that has provided more information across this floor of the House. Well, maybe it is because they also say we are the Opposition that asked the most questions about statistical issues. I am going beyond that, Mr Speaker, and I am happy to include in this motion a reference to freedom of information legislation, if he wants to include it. I think it is something that needs to be done, even sooner than that, and I do not think it is something about the Parliament. I think it is something about the way Government works, but, Mr Speaker, we are committing ourselves publicly to freedom of information legislation. How can it be that, if we win the next election, we want to be the Government that is not shackled by transparency. I actually think it is a very good thing. The sort of Government that I learnt about, when I was studying law, must be the same one that he studied, obviously, is shackled by transparency, because this brings me to the next point, Mr Speaker. The idea that Parliament is sovereign for any reason, other than because the people are sovereign, is something that, really, the hon Gentleman needs to think about. Because it is not that we are sovereign because we can do what we like for this community, on an issue like this. We are sovereign because we represent the community. We represent the people in this Parliament. Now, as to the Constitution of the Parliament, the way it works, and the hon Gentleman does not need a history lesson from me,

the way that Parliaments work have been shaped by people. Before, it used to be by cutting off the King's head, starting a Parliament and then cutting off the heads of parliamentarians who started to go too far. Now, I am not proposing in any way, other than figuratively, that people should have their heads cut off, but what I am saying is that the public in Gibraltar, those people who the hon Gentleman himself has said are the ones who have wanted to go faster than him, should have an influence in what we do, and it should not be an influence where they come to us and give us their ideas. It should not simply be an exercise of us receiving ideas from the people and then deciding what we do. It should be a different type of exercise, an independent third party body, that deals with that, and brings the recommendations to us, and then we, as Parliament who are sovereign, decide which parts prosper and which do not, and sometimes, again, put to the people in referendum some aspects of the reform.

Mr Speaker, in that context, neither my analysis of the sovereignty of Parliament, which is that it is not here, it is out there, nor his, which is that it is in him not in the rest of us, should suffer. Because the analysis will be out there in the public for them to bring their ideas, and in here with us when the time comes, and I take nothing for granted, Mr Speaker, not just that we will win the next election. I take for granted nothing. Not that even any of us will be here, because it is up to the people.

**HON CHIEF MINISTER:**

*[Inaudible].*

**HON F R PICARDO:**

Mr Speaker, I am convinced ... I will just pause there, Mr Speaker, to allow the hon Gentleman his intervention. I am going to be very clear with him, Mr Speaker.

**HON CHIEF MINISTER:**

*[Inaudible]*.

**HON F R PICARDO:**

I believe, we are going to win the election, but I do not take it for granted. I do not assume it has happened. The people will decide at the right time, because for me, Mr Speaker, perhaps I have not been there for sixteen years and I have not allowed it yet to get to my head, but I am here because the people give me the privilege to be here, and they can decide in the General Election to be called, when it is his privilege to call it, that I should not be here. Now, Mr Speaker, what could be wrong with putting it to the people. Well, Mr Speaker, the next point is, the way that we have drafted the motion, it has to be somebody from outside and the GSLP has lost the hairs of its chest. I assure him, Mr Speaker, we have done nothing of the sort. Neither figuratively, nor physiologically. I actually have in mind a number of individuals who I would propose to be chairman of this Commission, who are not from outside of Gibraltar. Mr Speaker, I have in mind a number of individuals who could do this job, who are not necessarily people from outside Gibraltar, because having experience of parliamentary democracies, does not mean having had to be Prime Minister of more than one place. It means having experience of the issues, and that he might know, Mr Speaker, there are many people, some of them in the legal profession, who have a very in depth interest in the issue of parliamentary reform, and an in depth interest in the way that parliament's work, and in the way that Government's work, and in the way that Government's should not work. It ill behoves him, I may say, to get up in this Parliament and suggest that he is the Leader of the anti colonial faction in Gibraltar, but that is for another debate, because I am trying to be conciliatory.

Mr Speaker, our motion, our amendments to the motion, is not about kicking anything into committee. Quite the opposite, Mr Speaker. It is the hon Gentleman's motion that just creates a committee. Our motion sets up the process in a finite period, subject to those amendments which I told the hon Gentleman I would be happy to move, within a very definite and tight timetable. From theory to practice. It could be, Mr Speaker, that, like the freedom of information legislation in the 1996 manifesto, like the Select Committee, like their compromise on parliamentary reform in the existing manifesto, theirs is an approach of simply kicking these issues into the long grass, but I say to him, do it now. Commit yourself with us, now, to this timetable. Commit yourself with us, now, to have this reform within two years. Commit yourself with us, now, even if you become the Chief Minister after the next election, which I certainly do not support, to having all of these things analysed and implemented in the relevant period. But, of course, Mr Speaker, it is very unlikely that we will be seeing anything from the hon Gentleman that might actually commit him to a timetable, because, of course, as you now know, having been with us for most of the time that I have been in this Parliament, it is only on the benches opposite that the words, soon, has the most elastic of meanings.

Mr Speaker, we, more than most, agree that Gibraltar is a grown up democracy, and that is why we want to create this Commission, because Gibraltar is a grown up democracy, and that is why one must do things properly and carefully, and not simply tinker around the edges. But if the hon Gentleman says, their approach seems to suggest that they see this place almost like Kosovo. Well, no, Mr Speaker, I do not see this place almost like Kosovo. I think Kosovo has, potentially, a more sophisticated system of Government than the one that he is presiding over now.

We seem to be in tribal Afghanistan with one warlord able to decide everything for everybody else, with one sultan of the Ottoman sort, to whom people must go and pay Court, whatever

it is they want to do. Who has the ultimate right to decide almost anything in this fair city, and he does it through nine very highly paid assistants. Well, in that analysis, Mr Speaker, of course, that what I want to do in this amendment to this motion, and what Mr Licudi is proposing, is designed to deliver sophisticated parliamentary reform after careful consideration, because it should not be a Select Committee of this whole House, with the inbuilt majority on that side, and the minority on this side. If the hon Gentleman wants that, well look, today his lot will vote the motion. We will resolve into Committee, and then what. The interesting thing about the Select Committee that was there, Mr Speaker. That is there, Mr Speaker, is that they had two members of the Government, and two members of the Opposition. There was no inbuilt majority. Moving to this is simply to say, not just, it will not be an Independent Commission, as the draft amendment proposed by Mr Licudi suggests, not just, let us have a careful debate with an equal representation from both sides, it says the usual, I the sultan, I want my way. I pay these ten to vote the way I tell them, and they vote my motion when I want it. So much, Mr Speaker, for Kosovo.

Anyway, Mr Speaker, I think it is important to say that there is a big difference, a massive difference, between negotiating a new Constitution, and proposing parliamentary reform. It is so elementary that I am surprised that the hon Gentleman wants me to explain it to him, but I will. When you negotiate a new Constitution, where we were before 2006 under the old Constitution, it is perforce a negotiation with a third party outside of Gibraltar. Of course it is. Is it that we are going to negotiate the Constitution amongst ourselves. Of course not. So there was a Committee, Mr Speaker. It received proposals, information, ideas from the general public. That Committee then formed a negotiating team, and that negotiating team negotiated with the United Kingdom, the officials from the Foreign Office. Of course, that has to be handled by the Parliament, the Government but, Mr Speaker, how can it be that that is equated to reforming the Parliament. Reforming the Parliament must

never be an issue exclusively for parliamentarians, and for parliamentarians to go out and consult, and receive ideas from third parties and the general public. That is why, in an attempt to show the general public, many of whom appear to feel remote from this place, and given some of the things that go on in here, I am not surprised, Mr Speaker, and that is why I say we have to reform politics, to simply take away from people the right to independently determine how this place works, and exclusively give them the right to come in, appear before us, and tell us what they think we should be doing.

Mr Speaker, I genuinely believe that if there is any substance whatsoever to the mantra that the other side are committed to parliamentary reform, and they do not simply want to clothe themselves in the coat of parliamentary reform in time for the election, then they need to agree to this amendment to the motion, because everything in the hon Gentleman's motion is in our motion. The only timetable for delivery is in our amendment to the motion. The only guarantee that there will be, that these things will happen within a particular buying time is by following the principles in our motion and the timings in our motion, and all that is left in the hon Gentleman's motion, as it stands without the amendment, is what has happened already.

We have discussed and considered the following principles. So, Mr Speaker, speaking on the amendment, I would commend the amendment for those reasons. I think I have dealt with all the issues that the hon Gentleman has raised. I think that where he raised the issue ...

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

*[Inaudible]*.

**HON F R PICARDO:**

No. I am speaking on the amendment. I am speaking on the amendment. I have had a chance to speak on the amendment. So the one thing that he raised, Mr Speaker, about timings which, on a careful reading of the motion, it is possible to see that if you are reading it with bad faith, in order not to repeat the equivalent words in Spanish, if you are reading it with bad faith, you could see some wriggle room as to timing. I am prepared, Mr Speaker, as I said, to move an amendment to the amendment to the motion, to provide for the establishment of the Commission, in paragraph 1, to be within a month of today's meeting, and an amendment to paragraph 8, so that the words, "the parliamentary term" disappear, and in place of them we have the words "six months of any referendum under 7 above or any other decision under 6 above". That would deal with the timetable and Gibraltar would have a real commitment in real timing to have parliamentary and democratic reform in a way that the hon Gentleman's motion does not, as presently drafted, do.

Now, the hon Gentleman and Mr Beltran said a lot of things that were partisan. I tried to avoid it. I think, I failed to stay completely non partisan, because sometimes one has to reply to certain things, but not to all of them, because if I had descended to replying to everything that Mr Beltran had said, I would still be in my first part of my first paragraph of the reply. But Mr Speaker, I urge the Members opposite to see whether it is possible to do the synthesis, that we have attempted to do, of their motion and our motion, and get to a place where we, for once, behave like adults, and give Gibraltar the reform that it wishes.

**MR SPEAKER:**

Does any other hon Member wish to speak to the amendment proposed by the Hon Gilbert Licudi, as amended by the Hon the

Leader of the Opposition. Does the mover of the amendment wish to reply?

**HON G H LICUDI:**

Yes, Mr Speaker. Mr Speaker, I listened tentatively to what the Hon the Chief Minister had to say in response to our proposal of the motion amending the Chief Minister's own motion. I will not repeat the matters that the Hon the Leader of the Opposition has said, but there are some things that were touched upon which do deserve a response.

The hon Member tries to turn the tables on this amendment, and has tried to suggest that this is simply an attempt not to take a firm decision on the issue before the Parliament today, to kick it into the long grass as he has said it. Mr Speaker, that is a bit rich, coming from someone who set up a Select Committee to look at parliamentary reform two years ago, where that Select Committee has met only once, and, where the hon Member has today acknowledged that it could have met, and he could have done his job by today, if the Government had had the will for that to happen. So where was the attempt to kick things into the long grass. The hon Member has gone as far as saying today that the reason that this is brought now is because there is a move outside Parliament. There is now, as he put it, a high profile and prominent debate outside of Parliament. Yes, there is that debate, but what clearly prompts something being done by this Government, now, is the fact that an election is looming within a month, two months, or three months. Otherwise, the Select Committee would have carried on with its work, which it could have done, and which is what we urged originally the Government to do, in the response that the Hon the Leader of the Opposition gave to the Chief Minister back in May of this year.

The hon Member suggests that this motion, which is a clear statement of, not just intent, but commitment, puts us back on

our democracy forty years. That we should not be told by outsiders. That it is colonial and retrograde. To have an Independent Commission make recommendations to this Parliament, is retrograde? Are we the only place in the world that would consider setting up an Independent Commission on important matters such as this? Is the hon Member not aware that these sorts of Commissions, Royal Commissions even, appear and have appeared in a number of countries such as New Zealand, Canada, the United Kingdom, and other Commonwealth countries. Why is it that Gibraltar is colonial and retrograde if it decides to adopt something like that which seems to be the most plausible and eminent way to proceed on something as important as this.

Whilst the hon Member is extremely critical of the amendment, we note that he himself does not propose an amendment to the amendment to cure, what he says, are the defects. Now, with respect to what he has been mostly critical of. Firstly, he does not like the idea of an Independent Commission. No, no, no. Nobody outside this Parliament knows better than us. We know better than anybody. We are big. We are mature. We know better than anybody how we should behave. Well, ultimately, the decision will be for Parliament. What have we got to fear from an Independent Commission looking at the issues, taking soundings, taking oral evidence. Or is the hon Member suggesting that we should sit as a Committee of the whole House, and take oral evidence here, and that everybody should parade into this House, and for days on end we should take oral submissions. Is that what the hon Member is suggesting?

**HON CHIEF MINISTER:**

Sorry. Is that a question?

**HON G H LICUDI:**

Perhaps, the hon Member can ... If he wants to answer it now.

**HON CHIEF MINISTER:**

Well, I do not get an opportunity on the amendment. You are closing on the amendment, so if the hon Member will give way. Mr Speaker, first of all, if I could just, I am sure he has not said this in any intentionally misleading way, but when the hon Member emphasised earlier the word "today" twice, he has "today" acknowledged that he could have called ... He has "today" acknowledged that there was a move. This is actually, I just point it out to him for his information, not strictly true in my letter to the Leader of the Opposition, in my public statements. So it is not "today". I am sure he did not want to give the impression that this is a new approach today. I have acknowledged publicly already and, therefore, not "today", emphasised as he has done, with the meaning the emphasis has.

Secondly, Mr Speaker, he asked the question, and I will answer it to him, because he repeats the same point, ignoring my answer, as if it was a new point. Independent Commissions on electoral reform, common. Independent Commissions on any legislative matter, reform matter, yes, common. I believe that the answer to his hypothetical question is, yes. On parliamentary reform, of its own internal working processes, I believe that Royal Commissions or Independent Commissions are indeed as retrograde, as they are unprecedented. He must not misrepresent me as having said that all Independent Commissions, on all subjects, which is the impression that he has just given, and "does he not know that these things take place in Canada and in Australia". Mr Speaker, of course, I know that there are Independent Commissions. Of course, I know that there are Royal Commissions.

On the way that Parliament organises its own workings and its own affairs, I believe that the hon Member's proposal is unprecedented, and there has not been any such Independent Commission of parliamentary outsiders in relation to how Parliament should organise its internal workings and how it structures, what the hon Member has called, its transparency architecture. Well, he has not called it that, but that is my shorthand for what he was talking about.

So the answer is, yes. I think it is unprecedented. I think it is retrograde, and no, I do not think it happens in Canada, in the United Kingdom, or in Australia. What I have said, not what he has said. What I have said on parliamentary reform, not electoral reform, I believe is, indeed, retrograde and unprecedented, anywhere.

#### **HON G H LICUDI:**

Mr Speaker, what the hon Member has suggested is that our proposal is retrograde and takes us back forty years. We must not lose sight that what our proposal is, what we are suggesting, is an Independent Commission on democratic and political reform, encompassing all areas of the democratic and political system in Gibraltar. Let me just point out, Mr Speaker, on that, because it is wide, democratic and political. The Royal Commission that was established in New Zealand to consider, which was in fact on electoral reform, but they published a report. They produced a report with recommendations to Parliament and the report was entitled, "Towards a Better Democracy", and that is, precisely, what we are trying to achieve in Gibraltar. That is precisely what we are proposing with this amendment on democratic and political reform in Gibraltar.

It is important to note, Mr Speaker, that the suggestion of democratic and political reform encompasses both what the Government has said, in terms of parliamentary reform, and the wider scheme that we are proposing, and which we are

commending to the Government, and which they appear to be very reticent in agreeing to. Having said that, Mr Speaker, it is, of course, the Government's prerogative to decide how they wish to vote, but what they should not do is find a devious or Machiavellian interpretation of our motion, as if it does not mean what it is intended to mean, particularly, in respect of the timescale. It must be very obvious, to anyone that reads this motion, what the spirit of this amendment is, that there should be a tight and specific timescale that we all subscribe to. That we vote on and that we hold the Commission on. The hon Member, earlier on in his intervention said, well what I am proposing are statements of principles and that we should look at the substance, not the form, and yet he does precisely the opposite. He forgets the substance of our amendment, with this tight and specific timescale, at least in spirit, and then goes precisely to the former, he says, aha, paragraph 1 says, an Independent Commission to be set up. It does not say when. It could be next year. It could be in two terms time. Well, a simple amendment proposed by the hon Member would have cured it as the Hon the Leader of the Opposition has done. To be set up within one month of today. That would simply set it up, and then he goes and he says, I always leave my best points to the last, and he says, on the killer point, paragraph 8, it says within the parliamentary term. It does not say which parliamentary term. It could be next. It could be the following. It could be in fifty years time, and that was the killer point, Mr Speaker, which is remedied, quite simply with three words, within six months, as the hon Member, the Leader of the Opposition has proposed in his own ...

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

It is not my job to correct his motions.



**HON F R PICARDO:**

*[Inaudible]*.

**HON G H LICUDI:**

Well, we are proposing an amendment to the hon Member's motion to try ...

**HON CHIEF MINISTER:**

*[Inaudible]*.

**HON G H LICUDI:**

What we are trying to do is to improve on the motion, and if the hon Member thinks there are obvious flaws in the form of the motion, then all he has to do is propose one or two words to cure those flaws, but what that shows belies the real issue here, that the Government is not interested in being as one with us. What the Government is interested in saying is, not parliament is sovereign, it is saying Government is sovereign and, in particular, as the hon Member, the Leader of the Opposition, has said, the Chief Minister's words are clearly, I am sovereign. Never mind what Parliament thinks. Never mind what an Independent Commission may think. Never mind what the people of Gibraltar may think, I take these decisions, and I decide what parliamentary reform should be, and I decide what principles this Parliament should abide by. Not the hon Members opposite, but only one hon Member opposite, and that is not the way that something as serious as this should be tackled. That is not the way that something as serious as this should be debated. We should have a full and independent consideration of these very, very important matters, so that recommendations are made and we, as a Parliament, then

decide which recommendations we accept, and which we choose not to accept. Therefore, I commend the amendment to the House.

**MR SPEAKER:**

I now put the question in the terms of the amendment proposed by the Hon G H Licudi as amended by the Hon Leader of the Opposition.

The House voted.

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

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

The amended motion was defeated.

**MR SPEAKER:**

We now go back to the debate on the original motion. We had the ...

**HON F R PICARDO:**

Mr Speaker, may I prevail upon the hon Gentleman to move an adjournment because this is an important issue, and I want to be here for all the speeches, and I need to go out for, literally, little boy's room purposes.

**MR SPEAKER:**

Shall we all have a recess of five minutes.

The House recessed at 4.55 p.m.

The House resumed at 5.00 p.m.

**HON F J VINET:**

I am grateful, Mr Speaker. I recognise that we have moved on from the original debate, but I will be speaking to the original motion standing in the name of the Hon the Chief Minister, which I will be voting in favour of.

I, personally, am hugely supportive of parliamentary reform. My view is that we need to make the conduct and the affairs of our Parliament more relevant and more attractive to the world outside these four walls. That does not mean modernising for the sake of modernising. Changes must improve and not just reform and modernise Parliaments and its work. The result, Mr Speaker, must be a more efficient, more accountable

Parliament, the workings of which are more contemporaneous and thus relevant.

A case in point, Mr Speaker, are the seemingly endless number of questions seeking the same statistical information across the floor of the House at each and every Question Time. More often than not, certainly in the case of housing, the answers must be necessarily be voluminous and, therefore, presented in written form. This cannot be the most productive way of conducting parliamentary business, Mr Speaker. Not only does it alienate listeners and those in the public gallery, of whom there are in any case, regrettably, precious few, but the volume of detail is such that, in practice, it does not easily allow for supplementary questions.

Regular Question Times for individual Ministers is something I personally would welcome as I would Parliament being effectively in constant session. It would ensure that contemporaneous information is sought, but it would also enable the diaries of Ministers and Members of the Opposition to be more effectively managed, knowing in advance when he or she needs to be present here, and not having to reschedule clinics and other meetings in order to accommodate meetings of Parliament, that we have little prior notice of.

As far as back benchers are concerned, Mr Speaker, their presence can only improve the quality and diversity of opinion in debate. I see no reason why a change to fifteen candidates cannot quickly percolate, to repeat the phrase used by the Hon the Leader of the Opposition. I do not see any reason why a change to fifteen candidates cannot quickly percolate into the minds of the electorate in the same way as I do not recall any difficulty in the change from eight to ten candidates percolating into the minds of the same electorate as a result of the new Constitution.

So, Mr Speaker, I said before that any reform must not only modernise but also improve the functions and the workings of

the House, and I think the principles that underpin the proposed reform do precisely that. But I take note of the arguments I have read or heard elsewhere, that it would be wrong for this motion, the original motion, to go through at this stage, because it may unfairly bind some theoretical, hypothetical, future new Government.

In my view, Mr Speaker, one is either for parliamentary reform or against parliamentary reform, but if you are for and, therefore, in favour of parliamentary reform, as the hon Members opposite have made a point of saying they enthusiastically are, then the timing of it is surely irrelevant. The amendments that have been proposed this afternoon are just a way to tamper with the timing and not to grab the bull by the horns here and now.

**HON J J BOSSANO:**

Mr Speaker, it seems to me that from the moment that the Leader of the Opposition suggested there was going to be an amendment, the reaction of Mr Beltran was, in fact, to switch entirely from the mode in which we are being encouraged by the Leader of the House to debate this, to one where we were just going back to a situation of exchanging insults and a slanging match, and therefore, it exposes, as far as I am concerned, that the prospects of consensus on anything is impossible in a situation where if you suggest that you are going to amend something the other side has said, even before they have heard what the amendment is and having read it out to them, they go berserk.

Well, consensus on the basis that you have to say, yes, to what the other side wants, has nothing to do with parliamentary reform. It does not even have anything to do with Parliament. You can dispense with Parliament if all you need to do is to just say, amen, to whatever the majority wants, and that is what happens. Therefore, if the Opposition invites the hon Member to suggest any amendments to things with which he is against, it is

not that it is not his job to do it. Well, look, if it is not our job to change anything that anybody else proposes, then why are we here? I mean, surely, that is precisely what our job is, to question.

**HON CHIEF MINISTER:**

Is he referring to anything I said?

**HON J J BOSSANO:**

Yes, Mr Speaker, the hon Member ...

**HON CHIEF MINISTER:**

Mr Speaker, I said it was not our job to amend your motion.

**HON J J BOSSANO:**

Exactly.

**HON CHIEF MINISTER:**

But you could not amend ours.

**HON J J BOSSANO:**

Exactly. Yes, and I say I do not agree with it. I think, in this supposed consensus mood, it is as equally his job to amend our motion, as it is ours to amend his. With one difference, that we cannot defeat his amendments, and he can defeat ours. So, in fact, the only amendments that count are the ones he puts.

Now, I do not understand why, if the hon Member was so keen to proceed with this, he decided, until now, except for the explanation that he has given us now, that apparently there is now, I do not know whether this is on Facebook or somewhere else, because I do not spend a lot of time on Facebook, even though I am there, somebody else does it all for me, and I never look at the damn thing, that there is all this sudden interest in us reforming the Parliament. It is true, Mr Speaker, that we had nothing in our manifesto in 2007 committing us to this course of action. It is also true that when it was proposed by the Government in 2009, I said, we would approach what he had to suggest with an open mind, that we ourselves do not have a policy to which we were committed by the election, or by the manifesto, to put forward. Therefore, when we started in the one and only meeting we have had, of which there has still not been the minutes produced, although it is only two years, and I accept that there is a lot of volume of work. Only two years ago, unless I am going to be accused of having secreted the minutes in draft form and trashed them like I am supposed to have done with the housing files in 1996.

I do not remember any Select Committee of this House ever been converted into a Committee of the whole House before it had done anything. Before it had finished what it started and it has not finished it because no more meetings were called. The report that was promised was not delivered, and the hon Member perceived that we were not as enthusiastic as he was on the subject. So what?

It is not enough to be willing to listen to his proposal. It is not enough to tell him whether we agree with him or not. We have to be enthusiastic and he has to decide whether our *[inaudible]* is sufficient. Look, this is not a methodology which is likely to persuade me. I do not know whether it persuades anybody else, that the person on the other side is remotely interested in anything other than getting me to sign up to whatever he thinks already is the right thing to do. Well, look, if he thinks it is the

right thing to do, and if it is the policy with which he fought the election in 2007, and he often criticises Members on this House for urging him to complete his policies, and he said today, and also criticising him because he is doing it all at the last minute. I do not think he has ever heard me urge him to complete any policy because, as far as I am concerned, I did not vote for him, so I have got no right to tell him to complete anything. He can produce the most glorious manifesto in the planet and I will never vote for him, and he knows that. I expect the same holds true of him for me. But what is it that this motion is asking us to do. That we vote the motion and then when we finish the motion, we have now moved into Committee Stage, as if the mace had been moved, and then what? We all start looking at these things and suggesting to each other ideas. The whole purpose of the Select Committee was that, at the end of the day, the Select Committee would come back with a unanimous report, or with a report with different views. The hon Member must remember that when we had our differences in the Select Committee on the Constitution, it was obvious that if a consensus could not be reached, there was nothing to stop us producing paragraphs which were shared and paragraphs which were not shared, of which the Government would have a view, and the Opposition would have another.

So, I do not really think that ... and, in fact, to not even, Mr Speaker, not even convene, even for the sake of simply accepting that it is a Select Committee of the Parliament that has been voted by us unanimously. Not even to convene one meeting of the Select Committee to say, well look, it is the view of the Government Members of the Select Committee that we should not continue in the time that is left and instead involve the whole House. Let us, the Select Committee, decide whether we want to do that. Not even that.

So, I must say that, clearly, we are going to be voting against this motion but that, in any event, even if there were no alternatives which we had put forward, which in our view contain practically everything that they wanted, but suggested a different

way of going about it ... I would say that to have a Select Committee of the House, that the Select Committee meets once in 2009, that the report is promised to it which is not delivered, that minutes are not produced, and then in 2011 to say, the governing side ... The two Members on the Government side without bothering to discuss it with the two Members of the Opposition side, with whom they were supposedly trying to reach a consensus, have decided to do something different.

Therefore, I think it is a mistake to have brought this motion to the House, in terms of the speech the hon Member made in the introduction about wanting to do something in which we were thinking as parliamentarians and not thinking as members of political parties that are going to be facing each other to persuade the electorate to vote for them in a few months time, and trying to get away from the debate on the election, to the debate on what the Parliament should be doing. It is quite clear that in the move from the first speaker for the Government to the second speaker, that philosophy was completely breached.

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

Mr Speaker, I am puzzled that at this stage of the proceedings, and we have been debating this now for quite some time ... Why it is that at this stage, and I have just heard the former Leader of the Opposition and presumably his colleagues agree with him, why he is saying, or why there is no intention of supporting the original motion.

We have heard the current Leader of the Opposition tell us in his contribution, go through point by point of the original motion, and indicating how the Opposition, or how he personally, presumably how the rest of the Opposition, agree with the points made. So let us stop a moment and analyse what has happened today. We have had a motion presented by the Government which has been amended as we know, and I am not going to go into the detail, which was proposed. An amendment was proposed by

the Opposition. That amendment, in essence, and I am speaking to the motion. Not to the amendment. Those amendments, in essence, took the original motion and enlarged it and added to it, by doing a number of things, but, fundamentally, two issues that this side of the House could not agree with. One, introducing the idea of an independent commission and two, bringing in electoral reform, whereas the original motion had dealt only with parliamentary reform.

**HON F R PICARDO:**

Will the hon Gentleman give way? Just on that. I am grateful. Mr Speaker, just to deal with the final point first. We are saying that we believe that when you look at the back benchers issue, because Mr Azopardi has raised that, that those back benchers should be elected by way of proportional representation, this motion must also include looking at electoral reform. Just to thank you for giving way just on that point.

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

I understand the point, but the issue still remains that there is a basic difficulty in this side of the House with the independent commission and with the fact that the whole thing has been expanded. A proposal has been made to expand it. It has not been supported by Parliament, so we are now back to the concept of whether we all want and we all say we want parliamentary reform, and we all agree that parliamentary reform is needed. So if we all agree that it is needed and we all think that it is needed, then we should be going, and I respectfully put it to the Members opposite, that they should be looking at the Government motion and, if necessary, propose another amendment to it, but they should not be saying, we are going to vote against it. I will try to be as brief as I can. That is all I want to say on the proposed motion by the Opposition. But in terms of the detail of the Government motion, conscious of the fact

that only the previous Leader of the Opposition has been in this House longer than me and conscious of the fact that I probably will not be here much longer, I thought I would share for the record some thoughts of some of the minor detail that I have felt over the years needs amending, and I will do it in relation to the points made in the motion.

Firstly, the question of Parliament meeting, well, that Members should appear, Ministers should appear for answers once a month. I think it would be useful to work out a system where it does not necessarily need all Ministers to be present all the time for all questions. If a system is introduced where the adjournments are in the hands of the Speaker, rather than in the hands of the majority, to my mind, there is no reason, and it would be much more a useful management of the ministerial time, if there were only one or two Ministers who were actually answering questions present, and irrespective of the number of Opposition Members wanting to be present at the same time.

Secondly, I think it would be extremely useful to have the dates set in advance, rather than as we do now, so that we all know that it is going to be the first Monday in every month, or the second Tuesday or whatever.

I think it is vital to revise the notice requirements of questions. I think it is ridiculous at this stage of the game where only five working days are ... I think the same applies to the Members opposite. The Opposition has too little time, but at least they can be preparing before, in the lead up, but in terms of Ministers, the workload on officials, on civil servants is astronomical. And I go back to when I first started in this House, on the Opposition benches, and thirty questions were the order of the day, thirty to fifty questions. In today's Parliament, we can have five hundred questions. The same criteria of five days is obviously not the best way to do things.

I ask the House to ... for the sake of brevity, I will not mention every point, but obviously, I support the motion. I will just deal with the points where I want to make additional points.

The Standing Orders. My understanding is that the Standing Orders, although they have obviously had minor amendments to it, were originally drafted by Mr Joe Pitaluga. We only have to read them to agree that they need modernising. And I will just make two points to illustrate how they need modernising. One, is in the presentation of Bills, where we have the Clerk read out the Title of the Bill, the Speaker repeat it, and then the Minister repeat it. There is a need to modernise procedures to cut out that rigmarole which my colleague the Chief Minister has got around it by saying, for all the purposes just read out by the Clerk. That is one issue. The second issue ... Okay.

#### **HON J J BOSSANO:**

Mr Speaker, there is a Standing Orders Committee which seems permanent, and nearly everything that he has said can be referred to the Standing Orders Committee which, to my knowledge, has never met. Well, it met when we changed the Constitution, I think, when we converted the House of Assembly Standing Orders into Parliament Standing Orders, and changed very little. It is not as if those practical things could not be tackled as part of the normal work of the House.

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

That is another reason for voting for the motion.

#### **HON J J BOSSANO:**

Well, no. We do not need this. That is the whole thing. We do not need this.

**HON F R PICARDO:**

Call a meeting of that Committee.

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

The second example of something that I think we need to revert to the original practice. I was commenting to one of my colleagues about it earlier today. When I first started in this House, the presentation of a Bill, the Second Reading was precisely what it is called in various places. It is an exposition of the general principles of the Bill. Over the years, I am not sure whether this happened before 1996 or after 1996, it does not really matter, but over the years that has developed to an exposition of the Bill, clause by clause, and it is not really necessary. It implies that the Opposition needs each clause explained to them on what we are doing, and with the greatest of respect ...

**HON XXX:**

[Inaudible].

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

No no. We have all fallen ...

**HON XXX:**

[Inaudible].

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

No, no. We have all fallen into the same trap, but my point is that those speeches can be much shorter and much more interesting for Members opposite, and I can see their faces when they are listening to us. Finally, Mr Speaker, I think the question of additional Members as back benchers is a very good idea. Well, I do not think the system we have at the moment is in any way the best system, where anyone of us, or anyone of us who has been on the Government side as Ministers, can be selling *pipitas en un quiosco* on the Monday, and come into the House on a Thursday as a Minister, after an election, and be expected to behave and to act as a Minister. Those of us who have had the advantage of being in the Opposition, and certainly, one member, the former Leader of the Opposition and myself, are the only ones to whom that applies, who have been in Opposition before they became Ministers, and that, believe me, is a very good training exercise. But people who come in off the street after an election and find themselves as Ministers, have to hit the ground running, and it is certainly not the best [inaudible]. So I will end on that note ...

**HON F R PICARDO:**

Before the hon Gentleman sits down. Just so I understand the point. Is he saying that people who have not been back benchers would not make good Ministers? Is that the idea, if it is, [inaudible]. What is the point?

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

No. I am not saying that. What I am saying is that someone who is doing a completely different job, and has never been in this House as an Opposition Member, comes straight in, and two days after the election, he is Minister for this or for that, and that it is obviously much better to have had a grounding, either

through the Opposition, or through the system being proposed where you have a cutting of the teeth on the back benches. That is the point that I am making. So I will end as I started, and urging the Opposition to think again about not supporting the motion. I think it is worth supporting if we are all sincere in what we are saying, that we want parliamentary reform. The thoughts provided in the amendment for further ..., all aspects of electoral and parliamentary reform, and all aspects of, I think it was the word democracy that was mentioned. Democratic, yes. Democratic and political reform. There is nothing to stop, in my way of thinking, the Opposition coming back with another motion dealing with electoral reform only. But that are words for another day. I will end on that note.

**MR SPEAKER:**

Does any hon Member wish to speak to the motion proposed by the Hon the Chief Minister, the original motion?

**HON D A FEETHAM:**

Yes, Mr Speaker. I will be brief. Mr Speaker, listening attentively to the speech by the Hon the Leader of the Opposition, it was on the motion to amend, but he made some relevant points in relation to the motion generally. He undertook the exercise, Mr Speaker, of actually going point by point through the Government's motion. He went through, first of all, Question Time, he said, that the Opposition can support paragraph 1. He went on to Parliamentary Committees and he said the Opposition have no qualms with that, and can also support that. Three, Opposition Motions, the Opposition have no problems with that. Broadcasting of Parliament, he said, well, I have been calling for this since 2003. Five, Standing Orders, he also said that he had absolutely no problem with that. Then he came to the question of Back Benchers, at six. He sort of shied away from expressing an opinion and I just could not

help but notice that he seemed to hesitate. He seemed to then say, well, back benchers, Opposition with back benchers, the Government is asking us to consider back benchers as if it was not the Government's very clear position, Mr Speaker, as expressed in the motion, that we certainly believe that Parliament ought to be increased in order to allow for back benchers. But, Mr Speaker, my Hon Friend Mr Britto has said that back benchers is a very good idea. I speak only for myself. I do not express a collective view when I say this but I actually think that, without back benchers, I do not think there can be meaningful parliamentary reform without tackling the question of back benchers and without increasing this House in order to allow for back benchers. I would ask ...

**HON G H LICUDI:**

Will the hon Member give way. That very concept is in our amendment which the hon Member has voted against.

**HON D A FEETHAM:**

No, Mr Speaker. Again, in his desire to make a point at all costs, he really misses the point. What I am saying, Mr Speaker, is that this side of the House is very clearly in favour of an expansion of Parliament and the introduction of back benchers, and what I am asking is what on earth is the position on that side of the House, on what in my opinion is a fundamental, the most fundamental aspect of the Government's proposals. The question of back benchers. Because he really cannot hide behind your amendments for further consultation and he should clearly put the colours to their mast in relation to the question of back benchers.

Now, if the position is that having gone through all the points up to five, and he pauses at six, but actually, I misunderstood the Leader of the Opposition and, in fact, the Opposition also



supports point six, well, then he is supporting point one, two, three, four, five, six of the Government's motion. What is there to oppose in the Government's motion? Other than what, seven, the way that the public consultation exercise is actually undertaken. Mr Speaker, it is simply not credible.

Finally, Mr Speaker, there is one point that the Leader of the Opposition made. He said, well, electoral reform is linked to the question of parliamentary reform because Mr Azopardi has proposed that the way that one elects the back benchers ought to be by way of proportional representation. It does not necessarily have to be the case. One can make the decision, in principle, which is what this motion seeks to do. The decision, the support, in principle, for an expansion of Parliament and the introduction of back benchers, and then we will deal with the question of how we elect the back benchers at a later stage, but that is not an excuse, Mr Speaker, for not supporting the motion.

**HON F R PICARDO:**

[Inaudible].

**MR SPEAKER:**

One must be a bit quicker off the mark here, because the Member has made it clear he has finished. Does any hon Member wish to speak to the motion moved by the Hon the Chief Minister. I will allow half a moment. In any event both hon Members have already spoken. So really ...

**HON XXX:**

[Inaudible].

**MR SPEAKER:**

The proposal of the amendment comes in the context of speaking on the motion. It is not a separate debate, but I will allow the hon Member [inaudible]. A very short point if he wishes to make.

**HON CHIEF MINSITER:**

If he wants to, I will give way.

**MR SPEAKER:**

That is, in the context of the original motion. Yes. Yes. Before I call the mover.

**HON F R PICARDO:**

Mr Speaker, the simple point that I wanted to deal with, which was the last point of the Hon Gentleman the Minister for Justice has raised, is this. Point seven of the motion, which is the point that he did not take us to, he said, I took the Parliament through points one to six. Point seven is the one that invites public consultation. It is the one that says that we should be listening in respect of these matters. So, of course, point seven suggests that these are not things that are going to happen, absence that public consultation. There is going to be a public consultation. Now, the debate I think was whether that public consultation should be us receiving the public ideas, et cetera, or an independent commission that then recommends to us. That was the point. But, Mr Speaker, what you cannot do is seek that the Opposition and the Government agree on these seven points and when somebody brings us, as part of that public consultation, a valid interpretation of the way that things should be done, as Mr Azopardi has done, in respect of how back

benchers should be elected, and simply say, ah, well, but that might delay us, we can therefore, proceed without it. That was my point. The idea that electoral reform is not bound into this, cannot really survive any meaningful consideration of the issues that arise under point seven, as already shown by Mr Azopardi's short intervention in his letter to the hon Gentleman, which I think is an identical terms to the letter to me. Obligated.

**HON G H LICUDI:**

Mr Speaker, just on a Point of Order. Not that I want to make a further contribution, but just on the point that you have just indicated, that a mover of an amendment essentially speaks on the motion. As we understood the position, for example, Mr Picardo spoke on the motion, and spoke separately once the amendment was proposed. So he had the opportunity of speaking to both. I proposed the amendment and spoke only on the amendment, and spoke on the amendment to the motion. Does the mover of an amendment not then have the opportunity of speaking on the main motion.

**MR SPEAKER:**

No. I beg to differ because the amendment comes during the debate on the original motion and, by implication, is speaking in opposition to the motion, hence the amendment. Then we went through the whole process and the hon Member ...

**HON CHIEF MINISTER:**

Yes. Mr Speaker, I do believe you are absolutely right. What the hon Member could have done is, having suffered a defeat on the amendment, he could have then carried on speaking on the original motion but he does not get two separate bits at the cherry. At least, it has never been so before.

**MR SPEAKER:**

It is not intended to curtail the hon Member's speech but trying to follow the procedure as we have it today, and before Members [*inaudible*].

**HON CHIEF MINISTER:**

[*Inaudible*].

**MR SPEAKER:**

Continue with the original speech but, anyway, the Hon the Chief Minister in reply.

**HON CHIEF MINISTER:**

Mr Speaker, first of all, I should make clear that one of the unusual aspects of this motion has been that several members on both sides of the House have spoken, which is something that regrettably does not happen more often. Because we are all here in our capacity as Members of the Government, or Members of the Opposition, front benchers, but also as parliamentarians, as Members of Parliament with a stake in how this place goes about its business and, therefore, whilst I have spoken to the collective Government policy position, the other individual members have spoken individually as parliamentarians on our side, and indeed there has been no sharing of thought what each other Member has said here. So, and I welcome the individual views that have been expressed also on that side of the House for which, presumably, also had not been choreographed or approved in advance by each other.

Mr Speaker, having heard and listened to what everybody has said and having been much truer to my word, not to sling mud

on those who started saying that they would not and then did precisely that. Having listened to everybody, I cannot help being reaffirmed in my view that this is a debate between seventeen people, all of whom profess to want parliamentary reform, but some of them want it now, albeit woken up from a, sort of, day dream by public opinion, which is us, and the hon Members professing to want it, but reluctant to agree with me to any process that commits both on the substance and on the timing. I believe that, during the course of this response, I can make proposals to the hon Members that will demonstrate that that is the choice facing us, Mr Speaker. But before I do, I would like to deal with some of the more peripheral points that have arisen in this debate. Well, the hon the ... I do not want to carry on calling the ex Leader of the Opposition, it is just that I cannot remember what the ... Shadow, the hon Member, Opposition spokesman for Employment.

**HON J J BOSSANO:**

He can use my name. If it is not too much to ask.

**HON CHIEF MINISTER:**

I can use it, but it is not the way we usually do it, but, yes, certainly, the Hon Mr Bossano, I do not feel as badly towards him as he feels towards me. I have no difficulty engaging him by name.

Mr Speaker, it is true that we do not convene more meetings of Parliament and it is, therefore, to be expected and to be accepted by us that the hon Members will make as much criticism of that, as they wish to make, and we are not defending ourselves on that point. All I am saying to the hon Member is that is not a reason for not looking at the matter now. It is clear that the Select Committee has not met since it last met. We have given a public explanation of why it has not persuaded

some people. It certainly has not persuaded the hon Members opposite and, indeed, some of the reasons that we gave are themselves challenged by you, about what your attitudes were or were not in the Committee. Certainly, we accept, and I thought I had come clean, again, for the second time, on this question in my own opening address. Therefore, the Government has to explain why it is doing this, now, having sat on its hands since the last meeting of the Select Committee. That does not disqualify us from taking these steps. It simply puts the onus on me to explain why, now, and not during the last two years when we have been "sitting on our hands on the subject". Well, Mr Speaker, I cannot do more than be frank, honest and sincere with him. He may still not want to accept it, but the reason is what I said it was, and that is that we had misjudged and misread the sense in which there was a groundswell of opinion out there. That this was not something to be done in the ordinary course of business when Parliament, the Government and the Opposition, could get together and agree and not agree, and on the basis ... that there was actually much more interest out there. Much more concern out there for getting on with it than the Government had appreciated. A lot of it said by people who are not supporters of us on social networking sites and political commentary sites, and a lot of views in a similar vein expressed by people who are supporters of my party and of the Government. So I do not think this was necessarily a partisan debate that was taking place out there. I was struck by the very welcome extent and degree of interest and concern that there was for what we do inside these four walls, which we always proceed on the basis, interests only the half a dozen people that sometimes turn up here. I thought, well, if that is the case, well fine, then the Government has made a mistake, and we are still in time to try and rectify it. Look, Mr Speaker, it is actually quite an admission. There is no reason not to accept it. It is already a pretty far reaching admission. Governments do not normally admit they misread public opinion, or that they miscalculate or take their eye off the ball, or misprioritise things. That is the reason and the Hon Mr Bossano can repeat it and, perhaps, he could have said much more than

he said about that. He just said what he said, and all I am saying is, fine, even if you are right in all that you have said, it is not a reason, it does not justify ... Therefore, it is a non-sequitur, I should say, to therefore conclude and, therefore, the Government is disqualified from proceeding. I mean, one does not lead to the other, nor derive from the other. The Government can be wrong in the way it handled it in the first place and not wrong in doing it this way now.

I think it is a little bit unfair, although I did not know, until he showed me his text just before he read it out, what the Hon Mr Beltran was going to say, but I do not think it is fair of the hon Member to say that the Hon Mr Beltran's message, or tone, or change of direction, or whatever, was caused as a result of hearing the fact that there was an amendment going to be proposed, because he had a prepared text before he knew that there was going to be an amendment. So whatever he said, whether you approve of what he said or not, whether you think it was out of tone or not, it certainly was not the result of hearing the fact that there was to be an amendment. He was speaking for himself. He has strong views about this and, as a parliamentarian, I believe he is perfectly entitled to have spoken his mind on it.

Mr Speaker, I think the hon Member has misunderstood the point, the Hon the Leader of the Opposition has misunderstood the point when he said, it is such a simple difference I am surprised that the hon Member wants me to explain it to him, but I will, the difference between parliamentary reform and constitutional reform. He went on, with great relish, to explain to me that the big difference, of course, that perforce constitutional reform involves a negotiation with a third party. Never a more obvious fact pointed out. Mr Speaker, but that was not the point. The point was that even in a proposal, even in a project to develop the Gibraltar position on constitutional reform, which is much more important than parliament's internal working, this was done by the Government on the basis of a public consultation done through this Parliament, which is what we are

proposing here. If putting together Gibraltar's own position, determining Gibraltar's own position on constitutional proposals, did not require an independent commission, chaired internally or externally, it does not matter, then it is not logical that something less important does require an independent commission. And why cannot we do it the way we did that, which is simply to decide it between ourselves, having done a public consultation process, which is what we did for the Constitution, and those members of society and the community, who were interested in it, responded, and we had some very good submissions as I recall, and the vast majority of people said, this is why I elect Parliament to make these decisions for me and chose not to make any representations. It is not that we were overlooking the difference. It is the fact that, precisely that difference, is what makes my point, because there is a huge difference, and that is a much more important exercise, the constitutional exercise, and in that much more important exercise, it was not thought necessary to do this independent commission and, therefore, why should it be necessary now for something less important that is well within our grasp.

Well, Mr Speaker, he asked, why should it be Parliament with its in built majority? Well, Mr Speaker, I was a little bit amazed by the fact that he made that point, because, of course, in his own proposal he recognises, and in his own statement he recognised that, however independent commissions we had, it would still be Parliament that would make the decision. So it would always be the in built majority that makes the decision. Now, the in built majority on ...

**HON F R PICARDO:**

I think the hon Gentleman ...

**HON CHIEF MINISTER:**

Mr Speaker, he should at least ask you whether I am happy to give way.

**HON F R PICARDO:**

Sorry. If the hon Gentleman will give way.

**HON CHIEF MINISTER:**

Yes.

**HON F R PICARDO:**

The point I made about the in built majority I was making in relation to the sovereignty of Parliament issue. I said, Parliament is sovereign because the proposals will come to Parliament and Parliament will make its decision. The point I made about the in built majority was in relation to the manner in which the hon Gentleman now proposes to deal with it, which is to bring it to a Select Committee of the whole House, because in the Select Committee that is constituted it is two and two, there is no in built majority, and here there is the in built majority of the ten seven as it is today. It could be nine eight after another election. Those two points that I was making were different. The sovereignty of Parliament because eventually the report does come to Parliament and, separately, the Select Committee of Parliament today, which is two two, rather than the full Parliament sitting in Committee, which is ten seven.

**HON CHIEF MINISTER:**

Mr Speaker, as I recall it, he was making the point that the independent commission was more indicated because it protected Parliament of the in built majority of the Government side that could, therefore, bulldoze its view, but bulldoze its view it always will be able to, if it is minded to, because, even under the independent commission proposal, what comes is a report and a proposal to Parliament, which still has to be voted on, and the majority has the day and, therefore, the majority will continue to, if it was so minded to do it, bulldoze its way.

Given that he has announced that he was intending not to be offensive, I will ignore therefore, as if ... I will airbrush away all the references to tribal Afghanistan and sultans of the Ottoman souk and all of that, and how I have got nine highly paid assistants here, who are my instruments in this emperor style that they like to associate with me. All of which we are bound to conclude is not intended to, nor, in fact, offensive, because he had ceremoniously announced, of course, that he was not going to be offensive, or do anything like that, ignoring, of course, the fact that he had already called my hon Friend, Benny Hill, even before he said all of that. So, the Hon Leader of the Opposition's do as I say, not as I do, is quite impressive. He must either have a very high threshold of the definition of what constitutes offence, or he actually thinks that he can sound nice and pleasant and affable and reasonable, by announcing that he is not going to be offensive, in the hope that people would then overlook what he says when he actually is offensive. So, anyway, that is a matter of personal style which is not a matter of huge interest to me.

Mr Speaker, we could have had, you see, we do not need to reform anything apparently, because all of these things that we are proposing, we could do anyway. For example, we do not have twelve meetings of Parliament because the Chief Minister chooses that we do not have twelve meetings of Parliament. Well, look, Mr Speaker, that ignores the underlying issue, that it

is not a question of the number of sittings but of the number of meetings. It is not in my gift to give him monthly opportunities, or fortnightly opportunities, to question me, unless I start and finish a meeting of Parliament every two weeks, and that means starting the cycle again on Government legislation and all of that. Well, look, it is just not the way this Parliament's work and agenda is organised. The idea that I could achieve these things that I want to achieve for the benefit of future Oppositions in this House, in other words, for the benefit of the hon Members opposite, that this can somehow be delivered by my simply deciding to have more meetings of the House, is a complete misconception and misconstrual and misrepresentation of the point. It cannot be done in that way, without going all the way through the agenda of the Parliament as frequently as we want you to have these opportunities, and that simply does not work in practice in that way.

So the hon Member, in his exchange with the Hon the Minister for Justice, has clarified that he does support the enlargement of Parliament to create back benchers, because, of course, one of the criticisms that I would make of the hon Member's style is that he was generally supportive of almost everything, without specifying what he was supportive of and, therefore, what he was not supportive of and therefore, sort of, committing to nothing.

Mr Speaker, it transpires that they agree with everything in our motion, except that they worry that our motion is even less of a commitment to timetable than theirs. Well, Mr Speaker, I find that a wholly persuasive argument. You see, the hon Member was at great pains to tell me that I am bereft that this is ... at the intellectual dishonesty displayed, that if he is honest let me move him from his motion, that it is sophistry because my motion has no time limit. He then went on to say, again, that the Government's motion does not have a time limit and then he went on to say, again, this is about who is willing to commit now, when it would bind, or, perhaps, that is my note. I am sorry if he does not recognise that what I have said.

Well, Mr Speaker, I want to make two points on that. Firstly, that the Hon Mr Licudi has consistently and persistently, throughout this afternoon's debate, misspoken, most recently when he interrupted the Hon the Minister for Justice today, but you see it is in our own motion and he voted against it. He has misspoken on every occasion that he has made that point. Our motion and his motion are not the same, even when it deals with the same point because our motion commits to the points and your motion lists the points by way of referring to somebody else to express a view about them. Well, that is not the same thing. It is not the same thing for me to bring a motion saying, I believe that Parliament should be expanded, than to bring a motion that says, I believe I should form an independent commission to ask them to advise me whether they think that Parliament should be expanded. And so on and so forth in respect of each and every one of the points. The big qualitative difference between our motion and their amendment is that ours commits us to these eight points, and theirs commits them to nothing, in terms of the substance of the reform. Yet he has repeatedly, during the course of the afternoon, made statements to suggest that the way things, and the way each point is dealt with in each motion is to the same effect. To the extent that he taunted my colleague, the Hon Mr Feetham, for voting against his motion, when all his motion does is to invite somebody else to express a view on the subject. It does not itself express a view on the subject, a distinction which is not so small that should have escaped the hon Member opposite, given his professional training.

Mr Speaker, the Hon the Leader of the Opposition says that he hopes we can work together. It is not possible for us to work together on the basis of his amendment, because we simply do not agree with the process that he suggests. We really do believe that this is unconventional, unusual, retrograde and unparliamentary, but he taunted me to set a finite timetable to implement the principles in the Government's own motion, which he says he agrees with.

Mr Speaker, he then taunted me by reminding people that, back in 1992, I drew up a manifesto which contained a statement of social democratic principles, plagiarised, although he did not use that word, from the liberals. Well, Mr Speaker, I do not know whether this sudden commitment to an independent commission was in the GSLP manifesto that his new partner, Dr Garcia and Mr Linares, ceremoniously tore up on television. I am sure it was not.

Mr Speaker, nor should the hon Member, although of course, the virtues, as well as the disadvantages of freedom of information legislation, speak for themselves. And, of course, freedom of information legislation depends on what ... the devil is in the detail, in freedom of information legislation. But, Mr Speaker, we should not make the mistake of assuming that something that the UK did without for a hundred and fifty years, and themselves discovered ten years ago, is part of the essential ingredient of democracy and transparency. This freedom of information legislation is something which the mother of all democracies introduced ten years ago. Are we to assume that the mother of all democracies until ten years ago did not have proper democracy and did not have transparency. Well, I believe not, which is not to say that freedom of information legislation is not capable of enhancing the quality of democracy, if it is properly drafted and if it serves the very different interests, and the very different things, that it has to be careful to look after.

So, Mr Speaker, I do see a way forward here. I do see a way forward. The hon Members say that they agree with everything that is in my motion, but that my motion is not wide enough, and they want to expand it into things which are not in my motion. So my motion is basically about parliamentary reform. They say they agree with what is in it, but want to extend it to electoral reform. So there is no disagreement on the content of our motion. It is just that it does not go far enough for them in width.

I, on the other hand, and the Government, have a problem with their methodology, and that is this business of the independent commission. He has criticised our motion, harshly in my view, because it was never intended to be anything more than a statement of principles. Unlike his, which purported to set a timetable for commitment, which turns out not to be a timetable for commitment, and which I am criticised for having pointed out is not a timetable for commitment, even though I was told it was a timetable for commitment, rather, instead of criticising it, what I should have done is amended it myself.

So, Mr Speaker, in those circumstances, given that they agree with everything in our motion, and given that I am persuaded by the hon Member that our motion would look much better if it had a time commitment on it, I now propose an amendment to my motion, by adding a new paragraph 8, to read: COMMITS to implementing these principles within a period not greater than 12 months from today.

Now we have got, in terms of the Government's motion, agreement on the substance, because he has gone through all the paragraphs and claims to agree with them and, now, I am committing to introduce a timetable to implement these commitments. So now let us see who will join in commitment, now. Who will do it, now. Commit yourself to do it, now, were his words. Here is an offer that allows him to make good his words and to demonstrate that he is not the one who is guilty of sophistry. That he is not the one who professes to be willing to commit now. Accuses us of not being willing to commit now, whilst actually, in reality, being the one who does not want to commit now.

Now we have got a motion, in terms of the Government's motion, all the contents of which he says he agrees, and which commits Parliament, however it is constituted, next time. Whoever is in Government of us. Whoever is in Opposition of us. Whoever is on the slate at the next election on either side who is not sitting in this House today. This Parliament, these

Members of Parliament, commit ourselves to each other and to the people of Gibraltar, to implement these parliamentary reforms with which you say you agree, within twelve months of today's date. Yes or no? Do you commit, now, yes or no. And, Mr Speaker, in case he thinks I am being ungenerous with him about his desire to widen the remit of this proposal, there is a second limb to my offer and that is that, given that I have said that it is appropriate, or rather, that it is not inappropriate, it could be done either way, to explore the question of electoral reform by the concept of an independent body, or an independent, some [*inaudible*] independent function, I, in return, am willing to commit to deal with the matters of electoral reform, minus his little two, because I believe whether the number of candidates elected into Parliament should be increased is not a matter of electoral reform, it is a matter of parliamentary reform, I am willing for the rest of it, on voting systems, et cetera, et cetera, to agree to a motion that remits the matter to an independent process that he and I can sit down and thrash out the details of.

I have no difficulty with the concept of going out to some other body to express the view on electoral reform, on voting changes. Therefore, what I am offering the hon Member is two motions. One on parliamentary reform with which he says he agrees with the Government's motion on the basis that we include in it a commitment, whoever is in Government, to implement these within twelve months of today's date, and another motion based on what he has widened our motion to be, the electoral reform parts, which we agree should go out to his independent commission.

Mr Speaker, I think that that is a generous offer which does two things, in my view. First of all, it allows this business to go forward and allows this Parliament to make a commitment on a parliamentary reform, which I think will be hugely welcome by this community at large, and it commits us, it is a statement of commitment by both sides of the House around eight principles,

seven plus the timing one now, which we profess we all agree with.

Well, let us relieve ourselves of the hiding places that we each believe the other is using, to try and take this commitment on the chin, and let us take the commitment on the chin together, with no hiding places, twelve months. After the next elections, there are ... well, twelve months from now, to have implemented these principles upon which (a) we all agree, and (b) he believes it does not require very much, because he has said that most of it can be done by the stroke of a pen. Well, Mr Speaker, then let us see who is who, and what is what, and how we go about this, and that is my offer to the hon Member opposite. Mr Speaker, given that I have proposed an amendment, I suppose that the round of debate starts again.

#### **MR SPEAKER:**

Does any hon Member wish to speak to the amendment proposed by the Hon the Chief Minister.

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

Mr Speaker, I am very grateful to the hon Gentleman for having taken the time to consider how this could be done. It is, in fact, an issue that we need to continue trying to do together. Mr Speaker, I think one of the most important changes that is required in Governments of Gibraltar is that it should not just be one man making the decision. So I would be grateful if the hon Gentleman would lend me his majority to recess the House, so that I can consider the issues in the Shadow Cabinet.



**HON CHIEF MINISTER:**

Well, Mr Speaker, given that [*inaudible*] would appear like an [*inaudible*] even in this Parliament, I can, of course, propose the recess but I have not got the power to bring it about, unless I can persuade a majority of my parliamentary colleagues. Since he appears to think that all the ones sitting on my left and my right are little more than paid hands, then, perhaps, we can see what the hon Member ... I move an adjournment for ten or fifteen minutes.

**MR SPEAKER:**

Would a recess of fifteen minutes be convenient to everyone?  
The House will recess for fifteen minutes.

**HON G H LICUDI:**

Mr Speaker, before we recess ...

**MR SPEAKER:**

We will have a discussion on the whole matter.

**HON G H LICUDI:**

[*Inaudible*].

The House recessed 6.07 p.m.

The House resumed 6.25 p.m.

**HON F R PICARDO:**

We need to continue, in respect of these matters, always to try and seek consensus because, as the hon Gentleman has indicated, these, and I agree, these are not matters just for us, these are matters for many generations to come. We have not amended the Standing Orders ourselves since the re-adoption of them after the new Constitution. So these are clearly issues that need to have careful consideration given to them.

I welcome the fact that this afternoon, and after having heard everything that we have said, the hon Gentleman has himself brought an amendment to his motion which, accordingly to my note, reads as follows: Commits to implementing these principles within a period not greater than twelve months from today.

Now, what the motion as drafted does is to create this House as a Select Committee on parliamentary reform. At seven, it says that we are going into a public consultation, and at eight, despite that, it commits us to implementing. Now, I think it is necessary for me to take the hon Members through their motion again, so that they understand what my position was. I said that I agreed on point one, that there should be more meetings of the Parliament. I said that I had no fixed views, but it seemed like a good idea on parliamentary committees. Ditto, three, four and five. On six, Mr Speaker, the hon Gentleman clearly has a desire to see the expansion of this House happen immediately, to such an extent, that he drafts a paragraph that says ...

**HON CHIEF MINISTER:**

[*Inaudible*] twelve months.

**HON XXX:**

It cannot happen.

**HON F R PICARDO:**

Twelve months. But let us see what it is that they are proposing. Paragraph six actually says, "This House hereby approves", so it is not that it happens in twelve months. It happens immediately. Immediately. "This House hereby approves that the number of MPs, but not the number of salaried Ministers and front bench Opposition spokesmen, be increased to 25 to allow "back benchers" on both sides of the House." Mr Speaker, what I said about that was that I thought it required consideration, and that is what Mr Licudi said was in our motion. That it required consideration. Let us be clear, Mr Speaker, we do not agree, because if they have thought that we have somehow agreed to this ... Let us be clear. We do not agree that the House hereby approves that the number of MPs, but not the number of salaried Ministers, be increased to twenty five, to allow back benchers. I think that there are aspects of that which are positive. I think there are aspects of that which are negative. For example, Mr Speaker, and I think the hon Gentleman himself recognised it. Bringing back benchers on to the Government benches, for example, another five on that side, for example, another three on the Opposition benches, could make for a much more powerful Chief Minister. In other words, it could mean that if there is any potential dissent on the Government benches on an issue, the Chief Minister could remove somebody from a Ministry, put him on the back bench and raise somebody on the back bench to the front bench.

So, Mr Speaker, what I am saying is these are issues that need careful consideration. We do not agree, like this, to hereby approve the number of MPs, and Mr Speaker, to have a public consultation, after we have approved that, is to say to the public consultation, do not bother bringing us your views on that. Now,

there is an important difference of opinion across the floor of the House, and, look, it appears that, Mr Speaker, even when we are trying to be conciliatory, we somehow manage not to be. I am going to try and avoid that completely now, because there is an important qualitative difference across the floor of the House which does not need to lead to us to denigrate each other. We believe that the denigrating today commenced with the speech that was totally unrelated to the issues, after I had simply said that we were moving an amendment, and we got called every name under the sun, and the Hon the previous Leader of the Opposition was almost accused of having done things which [*inaudible*] improper. But let us put that to one side, because I recognise that in my reply I made statements which were partisan and which were less than conciliatory. I recognise that and I also recognise that the hon Gentleman in his reply on the main issues on the motion, although he alluded to them, managed to avoid actually replying in kind. And I am going to recognise that, and I am grateful for it. I am going to try and continue in that vein. I am going to try and continue in a totally non partisan, or at least, in a totally non-confrontational way. To say this, we believe that it is not, I made a note of the hon Gentleman's words, unusual, retrograde and unparliamentary for certain aspects of parliamentary reform to be put in an independent commission for the independent commission to report back to the Parliament. Not just the aspects that deal with electoral reform. Look, it is a difference of opinion. I am grateful for the hon Gentleman's attempt to bridge the gap by putting only the electoral reform aspects of it into a commission, but we actually took a decision in the Shadow Cabinet that we would propose an independent commission to look at all the issues surrounding parliamentary reform. We believe it would be retrograde, unusual and unparliamentary not to stick to that, because it is actually going to be the main plank of our parliamentary reform agenda. I think it is clear and I think it is positive for our community that both parties now should be moving on the issue of parliamentary reform. I believe that, unfortunately, it is going to have to be an issue of a difference between us. In particular, on the issue of back benchers, we are

not persuaded that it is something that we should do, immediately. Therefore, although I recognise the attempt by the hon Gentleman to proceed by way of consensus of the issue of timing, it is too important for us. The qualitative difference between us on how to bring about this reform is too important for us. There are aspects of the motion, as drafted, with which we are agree. I am not going to shy away from that, but there is that aspect which we do not agree should happen immediately, and there are things which must be, in our view, the subject of a very wide consultation exercise before they are implemented. Therefore, all I can do, is urge the Government to consider again the way that we proposed the amendment, creating the commission to look into all of these issues, reporting back on a fixed timetable, and delivering that parliamentary reform.

I must tell the hon Gentleman that the things which his motion commits to do within twelve months are not, in my view, the only ones that need to be done in this Parliament, and some of them may be ones which do not need to be done, but I think it has been a worthwhile debate.

I would raise with him also this issue. If the Government, with its majority, passes this motion, there will, in effect, be a Select Committee of the whole House, which I assume is not going to sit this afternoon, and will either be called by the hon Gentleman, now, or, if he wins the election, he will call it thereafter.

We certainly believe that it is possible, if there is a desire on the part of the hon Gentleman, to really do this by consensus, or, it could have been possible to have simply reconvened the existing Select Committee of two and two. Sometimes, even with the best will in the world, it is not possible to agree if we happen to think that the way things are going to be done are not in the best interests of our community. We sincerely believe that it is essential to take the steps that will change the way that this Parliament works for the next generation, to do so with the whole community and not just in this Chamber in the way that it

is proposed, many aspects of which we can agree with, but not all of which we can agree with, and I believe that this will now be an election issue between us.

#### **MR SPEAKER:**

Does any other hon Member wish to speak to the amendment moved by the Hon the Chief Minister to his own substantive motion.

#### **HON G H LICUDI:**

Mr Speaker, the hon Member's proposal shows, in fact, the danger of making policy on the hoof. It shows the danger of not thinking out the proposals that are being made, and shows the danger of not thinking out the implications of what is actually being proposed. I have just two small points to make.

The first one has already been touched upon by the Leader of the Opposition. The way the motion, as amended, would read is contradictory in nature. There is a contradiction between paragraph seven and eight. You cannot have a decision by motion of this House to put something out to public consultation, on the basis that what the Parliament is approving is resolving itself into a Committee of the whole House, for the purposes of considering something, of that something being the subject of a public consultation with the general public and NGOs et cetera, being invited, and the Parliament, in advance of that public consultation exercise, having already decided that all of this is going to be implemented anyway within twelve months. Irrespective of what representations might be made. Irrespective of whether Parliament is convinced it is a good idea, or is not a good idea, as a result of that public consultation exercise. It is self-contradictory. It simply does not make sense. It does not stand up to any scrutiny and it shows, as I have said, the danger of making policy on the hoof.

The other danger, the other issue, is in relation to paragraph six, the question of back benchers. If we were to approve this today, this Parliament would exercise a constitutional right of expanding the Parliament by two thirds majority. Because the motion, in effect, says, this Parliament is hereby increased to twenty five. Without having debated, how the twenty five members of this House are going to be brought about. Is it going to be brought about with a party being permitted to present fifteen candidates for election, as I mentioned earlier, with the idea being that there should be ten Ministers and five Government back benchers, and ten on the Opposition benches. Or is the idea that there should be fourteen candidates proposed by the Government at the election and eleven sitting on the Opposition benches. These are not things that can be decided in this way, without having given these matters thought, and decided what the consequences are, and decided, as a matter of policy, what the composition of this House is going to be. The hon Member seems to have taken exception with the Leader of the Opposition's suggestion that this is something that is happening immediately. Yes, we are immediately deciding to increase this Parliament by eight to twenty five, and the hon Member is right, it does require legislation, it does require further thought as to how that is going to happen. Well, and that, according to the hon Member, is a commitment that this House would have to do in twelve months. So what is it that the Government is proposing? We go to an election next month to elect seventeen Members of Parliament. Ten on the Government side and seven on the Opposition side, and this House has already committed the next Parliament, a new Parliament, is already committed to increasing Parliament by a further eight within twelve months.

So what do we do? We have a by-election for eight candidates. So we have a by-election in a year's time which can change the nature of the Government. What the hon Member is suggesting is that we elect a temporary Government next month, or in two month's time, and have a by-election to elect a further eight members in a year's time.

Is the hon Member seriously suggesting that this is a proper proposition to put to this Parliament? Unless we have missed something and they are saying, well, we are going to rush through the legislation. We have already got it drafted, and it is already there, and we already have ideas, and therefore forget the Select Committee. Forget this House being a Committee to consider and decide these issues because we have already decided, as a Government, how it is going to work and, actually, we have got it in our back pocket. It is either that, or you do not know exactly how it is going to work. We are going to leave it for implementation within the next twelve months, and in twelve months what? We have a totally different composition of this Parliament. Is that the serious proposition of this House?

This amendment, Mr Speaker, does not stand up to proper, or any scrutiny, at all. It is not something that is worthy of this Parliament.

#### **MR SPEAKER:**

Does any other hon Member wish to speak to the amendment proposed by the Hon the Chief Minister? Does the mover of the amendment wish to reply?

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

Mr Speaker, there are few more unedifying sights and sounds and, certainly, there are few less persuasive positions, than when a group of people have so obviously decided the result that they want to protect and then scurried around for arguments to justify it, instead of the other way around. Most people rationalise and argue and that leads them to a conclusion. Not the hon Members opposite. The hon Members opposite have decided by hook or by crook that they will not be made to make commitments here and now, having been deprived of their argument, they now scurry around for new ones.

Well, look, Mr Speaker, I presume that the Hon the Leader of the Opposition withdraws all the abusive arguments that he aimed at me before about intellectual honesty, about the absence of a finite timetable on my motion, because the Hon the Leader of the Opposition, or the Hon Mr Licudi, did not, during their last three hours, argue against the Government motion on the basis of these arguments that they have suddenly alighted upon downstairs, when they were put in a dilemma. The hon Members criticised my motion on the basis that it showed no commitment because it had no finite timetable, and when I give them a finite timetable, which is shorter even than theirs, they go running off downstairs to see, bloody hell this is a dilemma, now he has got us snookered, what other reason can we come up with for not accepting a commitment, and this is evidence of what I told them three hours ago.

This is a debate between ten people on this side who want to make, now, and want to signal, now, a commitment to parliamentary reform, and seven members of the House across there, who are determined by hook or by crook, not to be hooked on any issue of commitment.

Mr Speaker, the record of this debate speaks for itself. There can be few people that have listened to this debate from the beginning to the end, who are not of the view that the hon Members are ducking and diving. They change their arguments depending on which arguments they are deprived of. So they launch, a tirade, based only on the absence, on the alleged ... and the hon Member taunted me to agree to a finite commitment. Of course, he will not. He speculated. Well, unfortunately, the Chief Minister did and, having called his bluff, now we know who has been bluffing all afternoon and who has been bluffing to the people of Gibraltar on the issue of electoral reform since the first day he opened his mouth on it, after he was elected Leader of the Opposition.

The hon Member wants to sound good, but does not want to make the commitments that are good. He wants to be all things

to all men always, avoiding commitments. Avoiding what he claims he believes in.

Mr Speaker, these arguments that we are now hearing about immediacy, and about ill thought through, and about making laws on the hoof. If those were arguments that they really believed in, would they not have articulated them some time during the last three hours. No. They come up with them as a last minute idea for how to continue to justify a failure to support this motion after the Government has given them all that they have asked for, when they were criticising it, in order to obtain their support.

Mr Speaker, I am not trying to persuade them anymore. I am just making the point for the record because I believe that the hon Members hypocritical stance on this matter has now been exposed without risk of contradiction, and they do it, this dance on a six pence, that they have done in the last half an hour, is on a false premise to boot. It is not true that there is immediacy. That it happens immediately as the Hon the Leader of the Opposition says. This is a false premise that he had to lay in the foundation stone so that he could build the building of self-serving argumentation on top of it. It is not true. The Constitution says that there has to be support of two thirds of the House for increasing the number of seats, but you still need legislation, and the hon Member thinks that it is too late for legislation. So where is the immediacy? The only thing that is immediate is the statement that the House approves of the increase, but the introduction of the increase is very far from immediate, and impossible to introduce immediately.

The effect of this motion is not that there are, as of now, twenty five Members of the House and therefore there has to be legislation, and therefore it does not happen. He says, of course not, but he chose to open this section of the debate by saying, paragraph six happens immediately, and paragraph six does not happen immediately, and that statement ...

**HON F R PICARDO:**

Will he give way?

**HON CHIEF MINISTER:**

Not just now. I will give way to him in just a moment. And that statement, paragraph six happens immediately, is the whole argument upon which they have built all other arguments. The only thing that is granted, immediately, is the two thirds majority approval, but there still has to be all the legislation. I have told the hon Members that this is a statement of principle and I have told the hon Members that we have a period of a commitment of up to twelve months in which to do it. To do all of these commitments, all of this detail would have to be worked out. I mean, not content to come up with new, and false, and wrong arguments about immediacy, about happening immediacy. I mean, the one that takes the biscuit is that much more power to the Chief Minister. Well, look, having spent all afternoon suggesting that I am some sort of emperor and some sort of one man Ottoman Turk surrounded by nine paid henchmen, you would have thought that if they believed that the criticism to which paragraph six could be lent, was that it increased the power of the Chief Minister, they might have said it earlier on in the afternoon. No. This only comes after we have deprived them of their only argument before, which is the finite measure, and what is wrong with Governments being able to call people forward from the back bench, and send ... Is there any Prime Minister of any democracy in Western Europe, or in any part of the democratic world, that does not have the power to elevate people to Government from the back bench and to relegate people from the Government to the back bench? No. None. But, so desperate are they to construct arguments that will justify their predetermined decision, that they are willing to pretend that somehow democracy in Gibraltar is different to the way it is everywhere else, and even though everywhere else

something is okay, here it is "much more powerful Chief Minister".

Mr Speaker, it is clear as daylight that they have no intention of committing to any principle of parliamentary reform. That they want to utter an alleged commitment to parliamentary reform, without actually preceding that policy with anything that the electorate can hold them to by way of detail. Him or us. We are willing to be so held.

**HON F R PICARDO:**

Will the hon Member give way.

**HON CHIEF MINISTER:**

Mr Speaker, the hon Member claims that he made partisan points.

**HON F R PICARDO:**

Does that mean no?

**HON CHIEF MINISTER:**

Mr Speaker, he did not make partisan points. He made personally offensive and insulting points. I have made partisan points. I have made partisan points.

**HON C G BELTRAN:**

As usual.

**HON CHIEF MINISTER:**

And no personally insulting points. He has made only personally insulting points, because contrary to his desired image, and the mask is beginning to slip big time on his face by now, that he is this charming, affable ... The fact of the matter is that he is the one who invariably starts the exchange of abuse. On this occasion, on this side of the House, we have desisted. They have not been able to because they are unable to.

Well, Mr Speaker, ...

**HON F R PICARDO:**

Mr Speaker, it is very important that I make a point. If the hon Member will give way. I will make it as a Point of Order if I have to because it is a Point of Order.

**HON CHIEF MINISTER:**

Mr Speaker, it is either a Point of Order or he does not. He cannot ask me to give way and, if I do not give way, threaten that he will make it anyway as a Point of Order. He is not yet the Speaker of this House. Ask him to identify what he wants first.

**MR SPEAKER:**

Is it a Point of Order? What is the Point of Order?

**HON CHIEF MINISTER:**

Ask him to identify the point first.

**HON F R PICARDO:**

It is a Point of Order, Mr Speaker, because it goes ... and the reason I asked the hon Gentleman to give way is because I think there is a little to be said about it. He needs to understand that he has told the House that there is no immediacy about point six, and there is immediacy about point six, and I will refer him to section 25 of the Constitution, which talks only about the motion which deals with the expansion by having to be approved by two thirds, not the law. I would be grateful if we could deal with this, not just as a Point of Order, but, given that he appears not to want to give way, and he said, Mr Speaker, there is no immediacy, we still have to bring law, and we still need the two thirds majority. Mr Speaker, section 25(2) of the Constitution says that Parliament shall consist of, the Speaker and at least seventeen Elected Members elected in such manner and in such number as may be described by any law which may prescribe a number in excess of seventeen members if such increase or reduction has been approved by a motion supported by a two thirds majority of the Members of the Parliament. So, Mr Speaker, our reading of that law is that by passing this motion with the words "This House hereby approves", we would have given the hon Gentleman the two thirds majority after which he could have brought legislation to the House and, by simple majority, change the House of Assembly Act, the Parliament Act, for elections to include that further amount. The hon Gentleman said the opposite and that is a Point of Order, because this deals with that point.

**MR SPEAKER:**

[Inaudible].

**HON CHIEF MINISTER:**

[*Inaudible*] you let him finish, so I might as well have given way [*inaudible*].

**HON F R PICARDO:**

*Echalo, como hiciste con Alcantara.*

**MR SPEAKER:**

What is the Standing ... Will the hon Member please identify ... I have heard him. What is the Standing Order which has been breached? The Points of Order must relate to Standing Orders.

**HON F R PICARDO:**

No, Mr Speaker, the motion, the Parliament has been misled because the hon Gentleman ... The Parliament has been misled by the hon Gentleman, inadvertently, I am sure, Mr Speaker, because he has told the House in the debate on the motion that there is no immediacy here because the law has to be brought and the law requires two thirds majority. The law does not require two thirds majority. The motion requires two thirds majority and after this motion goes, they have the two thirds majority, and the law is then subject to simple majority.

**MR SPEAKER:**

Well, that is the hon Member's interpretation of how things will happen. It may be right. It may be wrong. That is his interpretation on how things will happen.

**HON CHIEF MINISTER:**

Mr Speaker, there is simply an insufficient degree of parliamentary integrity. The hon Member thinks that if he is frustrated in a request to get whatever he has got on his chest, off his chest, all he has to do is leap up like a jack in the box, say, Point of Order, and that gives him the right to spew out, whatever it is that he wants to spew out. He does it so often that the Hon Mr Speaker might by now begin to develop a suspicion about the strategy.

Mr Speaker, the reality of the matter is ...

**HON F R PICARDO:**

This is about a Point of Order ...

**HON CHIEF MINISTER:**

Mr Speaker, the reality of the matter is that even on the basis ... Mr Speaker, even on the basis of what the hon Member has just read out of the Constitution, he is demonstrably wrong. He does not even understand the words that he reads when he reads them out himself.

**HON F R PICARDO:**

*Bueno, venga, explicame.*

**HON CHIEF MINISTER:**

The Constitution says that there has to be a law allowing for an increased number, and that such a law cannot be adopted, except after a two thirds majority of the House, but you still need



a law and a motion is not law. A law is a statute, or a regulation, or a ruling of the Courts. You need a law. The Constitution says you need a law, and a motion does not produce a law. You need a motion for the House to signal that it is content by a two thirds majority, and then you still need to bring an amendment to create law. The only problem is for the hon Members opposite is that once the Parliament expresses its two thirds majority vote, a support on the motion, then when the necessary law comes before this Parliament, it then no longer needs a two thirds majority, it then only needs a simple majority, but it is wrong ...

**HON F R PICARDO:**

Exactly.

**HON CHIEF MINISTER:**

Oh, so I have persuaded them then. So, there is no Point of Order. There is a need for a law. It is not true that this motion ...

**HON F R PICARDO:**

That is not what you said before.

**MR SPEAKER:**

Order. Order. Order.

**HON F R PICARDO:**

That is not what you said before.

**HON CHIEF MINISTER:**

Mr Speaker, the hon Member might feel that by just creating a hoo haa, that he can conceal the indefensible inconsistencies and simple irrationality of his position. He has chosen to pick up the Constitution. He has chosen to read from it on the basis of only what he has read, which is what I knew the position to be. It requires a law. Or does the hon Member, for one moment, believe, that on the basis of just a motion, if this House were to pass this motion today unanimously, constitutionally, there would then be already twenty five members in the House, and therefore, eight vacancies already.

I am sorry, Mr Speaker, it is complete and utter nonsense. It is complete and utter nonsense, and what I said to him before was that it was not immediacy, that the increase in the numbers did not happen immediately. The only thing that happened immediately was the House expressing its two thirds approval to the increase, and everything that he has said subsequently to that is wrong. But, of course, Mr Speaker, he does not care that he says things which are wrong because all he wants is this dreadful afternoon for him to come to an end without having committed to anything contained here, despite saying that he agrees with it all.

So, Mr Speaker, it is not an issue of a difference between us on the question of twenty five. The hon Members have not all afternoon said that they were against the twenty five. Not all afternoon have they said, I cannot support your motion because I do not agree with paragraph six. Indeed, Mr Licudi has been saying all afternoon that there is no difference between his motion and ours, and why are we not voting in favour of his motion because it contains all the same points as ours.

**HON G H LICUDI:**

[Inaudible].

**HON CHIEF MINISTER:**

Ah, so now he is persuaded that it is not the same.

**HON G H LICUDI:**

We have always said that.

**HON CHIEF MINISTER:**

No you have not said that, because you have been criticising the Hon Minister for voting against your motion, saying, why vote against my amendment if it achieves the same as yours, and, now, you say, no, no, you have not said that because it is obvious ... It is only obvious, after I have pointed it out to him, that our motion commits us to it, and their's only wants to put it out to somebody else to express a view on it.

Well, Mr Speaker, look, it is now clear from the record of this debate who wants to get on with parliamentary reform in a meaningful way, and who does not, and, on behalf of the Government, I give the commitment that when returned to Office, we will, within twelve months, implement these commitments, *[inaudible]* is, of course, on the question of the parliamentary size, we would still need the two third majority.

So, I now, Mr Speaker, suggest that the Hon Mr Speaker may wish to put the vote on the amendment first. Perhaps with the only change, that it should not be paragraph 8, because the first numbered paragraphs are actually substantial issues, whereas this is about a procedural commitment on the process. So without making it paragraph 8, but bringing it to the margin, simply reads as I have suggested, but without a number.

**MR SPEAKER:**

Can I suggest it should read at the beginning:

**"THIS HOUSE (A)", capital A, "RESOLVES", all that ... and then "AND," another capital B "(B) COMMITS itself to implementing these principles within 12 months of today's date."**

**HON CHIEF MINISTER:**

Where does he suggest putting the A?

**MR SPEAKER:**

At the very top. **"THIS HOUSE (A) RESOLVES"**.

**HON CHIEF MINISTER:**

Yes.

**MR SPEAKER:**

... and then all that follows as it is.

**HON CHIEF MINISTER:**

... and then the new paragraph.

**MR SPEAKER:**

... and then after 7, “**AND (B) COMMITS itself to implementing these principles within 12 months of today’s date**”. Does that make sense?

**HON CHIEF MINISTER:**

Yes.

**MR SPEAKER:**

Whether you agree or disagree with it. Well, exactly. I have said nothing on the substance.

**HON CHIEF MINISTER:**

I so move, Mr Speaker.

**MR SPEAKER:**

If I may. I did not get round to ruling on the Hon Mr Fabian Picardo’s point. I think the confusion seems to arise in the terminology of the drafting of principle number 6, because what this House is resolved to do, or is going to resolve to do after we have taken the vote, is to ask the Select Committee to look into that with these principles in mind. I think the difficulty that lies there is that, but there is a tying of hands of the Select Committee by actually approving right here and now the numbers. I think that is where the issue arose.

**HON CHIEF MINISTER:**

I do not agree. If this House passes this motion unanimously, then, unquestionably, it is providing the two thirds approval that the Constitution requires.

**MR SPEAKER:**

I think that is their difficulty.

**HON CHIEF MINISTER:**

No. That is not their difficulty. Their difficulty is that that is immediately so, that the numbers are immediately expanded, and that is not the case. It is true, as I said, that it has the effect of immediately providing the two thirds approval of the House, but it is not true that it happens immediately. It requires further legislation for it to happen immediately.

**HON F R PICARDO:**

Yes. Mr Speaker, our point is this. It is just dealing with the point that you have raised very helpfully. Thank you very much. Is that, then, the Government’s in built majority means that they can bring a Bill to this House to increase to twenty five and, with their simple majority, pass it. So, therefore, the minute that we approve this motion as drafted, we give the two thirds majority, and that piece of legislation that must come is not protected by a two thirds majority bar. That was the point, Mr Speaker, which led to me being called a hypocrite and everything else under the sun.

**HON CHIEF MINISTER:**

No, Mr Speaker, I do not accept that that is the point that he was making. Certainly, the Speaker's intervention has been very helpful to you, but I do not accept that he has correctly interpreted what the hon Members were saying. That is his view. It is not ...

**HON XXX:**

*[inaudible]*.

**HON CHIEF MINISTER:**

I beg your pardon. You might have the courage to repeat that.

**HON F R PICARDO:**

*[Inaudible]*. I will tell you why, Mr Speaker ...

**HON CHIEF MINISTER:**

Yes, and what does that mean?

**HON F R PICARDO:**

... because the last time the Hon the Chief Minister disagreed with the Speaker, he sacked him, in his Sultanic Emperesque Ottoman empire style.

**MR SPEAKER:**

Order. Order. Order. That does not come into it at all. I have attempted to make a ruling and to try and explain what I understand. Well, Members on either side may or may not accept my ruling, or my understanding.

**HON CHIEF MINISTER:**

No, Mr Speaker. Mr Speaker can make rulings on the basis of Standing Orders and this side of the House accepts them immediately, unlike them, whether we agree with you or not.

**MR SPEAKER:**

Absolutely.

**HON CHIEF MINISTER:**

But Mr Speaker was not making a ruling. Mr Speaker, was purporting to interpret what the Hon Leader of the Opposition had in his mind, which is not a ruling on anything, and with which the Government is free to disagree and does disagree. It is clear from the arguments that they were using, that they thought that the effect of the Constitution is that as soon as this House votes on the motion, that the increase happens immediately. The Hon Member Mr Licudi actually went so far as to speculate that this would require, after the next election, by-elections. It is clear, without the need for any new law, because if we passed the new law it would not be a question of by elections. So, he believed, what is clear ... They all believed was that when they said that it happens immediately, that the motion is what the Constitution requires for the two thirds support to convert that number of twenty five into the law of the

land, and that, which is the only interpretation consistent with Mr Licudi's fear about by-elections, is nonsense, Mr Speaker.

**HON G H LICUDI:**

Will the hon Member give way.

**HON CHIEF MINISTER:**

No. I will not give way any more on this question. So, Mr Speaker, we shall ... I propose the amendment ...

**MR SPEAKER:**

I was in the middle of my ruling when I sought to explain what I understood the substance of the point was. Having explained what I believe the substance of the point was, I do not believe it was a proper Point of Order. It was a disagreement with what the hon Member was saying. Now, we can go to the question.

**HON F R PICARDO:**

Mr Speaker, I accept your ruling on a Point of Order, without compunction.

**HON CHIEF MINISTER:**

Yes. Mr Speaker, and it is typical, and this is a Point of Order. It is typical of the Hon the new Leader of the Opposition's mendacious style, both inside this House and outside of this House, to stand up ... Yes. Mendacious. I have a motion to that effect on the Order Paper. Mr Speaker, the hon Member stands up in this House without any compunction or without any

reprimand on Mr Speaker's part, to say that I sacked the last Speaker because I disagreed with his ruling. Well, Mr Speaker, that is simply a lie on his part but, of course, it goes completely unreprimanded, except a statement to the effect that that is a little bit out of the scope of what we are discussing. Well, it is more than just out of the scope of this House, of what happened. I am sorry, if the hon Members are entitled to the protection of Standing Orders for improper application of motives and improper behaviour, I think the Members of the Government are too. Standing Orders exist for the protection of both sides of this House and not just only for the protection of the Members opposite.

**HON F R PICARDO:**

Mr Speaker, it is improper to call a member of the House a liar, or to say that something that is said in this House is a lie, and I invite therefore, Mr Speaker, the hon Member to bring a further motion in respect of what he calls my mendacious style, because I am quite in reply to talk about his pernicious and perfidious style.

**MR SPEAKER:**

Order. Order. Order. This is getting out of ... It is totally out of order for any Member here to discuss the circumstances of the departure of my esteemed predecessor. Totally out of order to discuss that, and it is equally out of order to accuse any other Member in this House of lying.

**HON CHIEF MINISTER:**

I said that he has a mendacious style.

**MR SPEAKER:**

But the word was lie was used then.

**HON CHIEF MINISTER:**

Well, yes, Mr Speaker. It is a lie to say that I sacked the last Speaker. I am sorry, Mr Speaker. What do you want me to say? It is premeditatedly distorting the truth. He has premeditatedly set out to say something which is untrue. If the hon Member wants me to construct the sentence that means exactly the same, but does not use the word spelt "lie", then that is okay, but that is exactly what it is. So, the hon Member has premeditatedly said something which is not true, which he has no means of knowing if it were true and, therefore, he has just said it without any basis whatsoever.

**HON F R PICARDO:**

I take a completely different view as to what happened because I was here too.

**HON XXX:**

I beg your pardon?

**HON F R PICARDO:**

I said, I take a completely different view of what happened, because I was here too on that day.

**MR SPEAKER:**

Well, I was not here at all but, in any event, this is not the proper forum indeed to discuss the circumstances in which my predecessor vacated the chair.

**HON CHIEF MINISTER:**

Mr Speaker, we are not discussing the circumstances in which your predecessor, with respect, was replaced. We are discussing the impropriety of the Leader of the Opposition accusing the Chief Minister of sacking the Speaker, because he disagreed with his ruling. That is what we are discussing.

**HON F R PICARDO:**

Absolutely.

**HON CHIEF MINISTER:**

Not the circumstances in which he ceased to be Speaker.

**MR SPEAKER:**

Again, it is a totally inappropriate remark which not ought not to have been made.

**HON F R PICARDO:**

I accept your ruling without compunction, Mr Speaker.

**MR SPEAKER:**

I now propose the question in the terms of the motion as moved by the Hon the Chief Minister as amended by the Hon the Chief Minister.

The House divided.

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

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

The amended motion was carried.

**HON CHIEF MINISTER:**

Mr Speaker, I would like to call for a poll on that.

**MR SPEAKER:**

Would the Clerk call out the names of all the Members in alphabetical order.

The motion is carried by a majority of ten to seven.

**HON F R PICARDO:**

Mr Speaker, just for the purposes of the record, although he motion has been passed ten to seven, paragraph 6 requires a two thirds majority and that two thirds majority has not been achieved.

**MR SPEAKER:**

I think that is implicit on the numbers.

**ADJOURNMENT**

**HON CHIEF MINISTER:**

Mr Speaker, now that the Hon Member has been kind enough to do the arithmetic for us, the mathematics rather, I have the honour to move that the House do now adjourn to Wednesday 28<sup>th</sup> September at 2.30 p.m.

Question put.           Agreed to.

The adjournment of the House was taken at 7.11 p.m. on Monday 5<sup>th</sup> September 2011.

**WEDNESDAY 28<sup>TH</sup> SEPTEMBER 2011**

The House resumed at 2.35 p.m.

**PRESENT:**

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

**GOVERNMENT:**

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

**OPPOSITION:**

The Hon F R Picardo – Leader of the Opposition  
The Hon J J Bossano  
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 accounts on the  
Table.

Question put.

Agreed to.

**DOCUMENTS LAID**

**HON J J NETTO:**

I have the honour to lay on the Table the following accounts:

1. The Report of the Principal Auditor on the accounts of  
the Care Agency for the period 28<sup>th</sup> May 2009 to 31<sup>st</sup>  
March 2010;
2. The Report of the Principal Auditor on the accounts of  
the Social Services Agency for the period 1<sup>st</sup> April 2005  
to 31<sup>st</sup> March 2008 and for the period 1<sup>st</sup> April 2009 to  
27<sup>th</sup> May 2009;



3. The Report of the Principal Auditor on the accounts of the Elderly Care Agency for the year ended 31<sup>st</sup> March 2009 and for the period 1<sup>st</sup> April 2009 to 27<sup>th</sup> May 2009.

Ordered to lie.

## **BILLS**

### **FIRST AND SECOND READINGS**

#### **THE BORDERS & COASTGUARD AGENCY ACT 2011**

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

I have the honour to move that a Bill for an Act to make provision for the establishment of the Borders & Coastguard Agency 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, immigration control at all of Gibraltar's entry points including but not limited to the air terminal and security at various terminals, is provided by security and immigration officers presently employed by a company called Security and Immigration Limited, which is a privately owned company owned as shareholders by its Directors.

As I mentioned in my Budget speech in the House on 5<sup>th</sup> July 2011, this arrangement is to be discontinued before the new air

terminal becomes operational, and the staff and the functions that they carry out, amongst others, will be transferred into the public sector through the new Agency, the Borders and Coastguard Agency, that the Bill establishes.

The legislation before the House establishes the Agency in the terms which the hon Members will recognise by way of format of the Bill, broadly follows the structure that is the legislative structure, that has been used in the past in things like the Gibraltar Electricity Authority, the Sports and Leisure Authority, the Care Agency and, more recently, the Housing Works Agency. The Bill, therefore, is a model which hon Members will be broadly familiar.

In terms of the general principles of the Bill, Mr Speaker, I should say, because it arises almost immediately in clause 2, the definition section, that I will be moving an amendment. The hon Members may have noticed that for the last year or so, we have been introducing into Gibraltar legislation a standard definition of British Gibraltar Territorial Waters, which was a definition which appeared very differently, and to very different effects, both legally and geographically, in various bits of Gibraltar legislation. By the letter that I hope the hon Members have had now for some time, we are introducing that definition, with which the hon Members are familiar, into this Bill as well. It having not been done when the Bill was originally drafted.

So clause 3 establishes the Agency. The Agency will be a body corporate with perpetual succession and a public seal, which shall be officially and judicially noted.

Clause 4 provides for the affairs of the Agency to be conducted by a Board and the composition of the Board will be as follows: The Chairman will be the Minister who is the Chief Minister or such other Minister as the Chief Minister may, from time to time, designate by legal notice; The Chief Executive of the Agency and such number of other persons as may be appointed by the Minister.

Clause 5 states what will be a quorum at all meetings of the Board and also the frequency with which the Board should meet which should be at least once in every six months.

Clause 6 states the functions and duties of the Agency, namely: To carry out immigration control at points of entry into and, if so required, exit from Gibraltar as directed by the Principal Immigration Officer; To monitor, investigate and enforce compliance with immigration laws; To carry out passenger, staff, cargo, vehicle and baggage security checks at all air and sea passenger terminals and at ports and in such other places as the Government may direct and generally conduct security checks, functions and controls in relation to such places; To carry out vehicular traffic and pedestrian circulation controls in relation to any of its other duties; To collect and prepare statistics, data and other information relating to or arising from any of its other duties; To carry out and be responsible for maritime search and rescue; To provide general maritime and seaborne incident and event response capability including but not limited to accident and pollution response; To conduct general patrols of, and here is where there was a reference to Gibraltar's territorial waters which is now replaced by a reference to BGTW, the defined term, and Gibraltar's maritime and terrestrial borders; To monitor and enforce compliance with marine and coastal environmental protection laws and other environmental protection laws where the source or cause of the threat is seaborne; To monitor and enforce compliance with maritime safety and shipping laws and port rules; To monitor and enforce compliance with marine leisure laws; To monitor compliance with and enforce bunkering laws and rules; Such other related or similar functions as the Government may direct; To advise the Government and assist in the implementation and administration of Government policy in relation to all such matters.

Mr Speaker, under clause 7 the Agency shall have power to do all things necessary to carry out its functions and duties under

the Act. The Agency may employ persons, purchase, lease, or otherwise acquire and hold and dispose of any property. It may also purchase or otherwise acquire and operate boats and aircraft, contract with any person for the supply to, or by the Agency of any good services or personnel. Erect, equip or maintain all necessary buildings, plant and equipment. Furthermore, it may also compile, prepare, print, publish, issue, circulate and distribute, whether for payment or otherwise, such papers, leaflets, magazines, periodicals, books and other literary matter as may be conducive to the attainment of the objects of the Agency or the advancement of its functions and duties. Now, Mr Speaker, at Committee Stage I will be moving an amendment to this Bill which has been observed to be unintentionally drafted in a way that could be interpreted when read together with another section that I will be amending, when read together with a transitional section which is section 20, which I will also be amending, is thought to create, theoretically, a statutory structure under which and whereby the Government could empty into this Agency any and all public functions regardless of whether there are alternative constitutional mechanisms to regulate that function or body. For example, as very loosely drafted initially, the Government could tip the RGP into the Borders and Coastal Agency because it is a public function and it would have the powers to transfer it, even though there are specific constitutional arrangements which cannot be defeated by primary legislation in this House, relating to how the police is to be run and where the constitutional responsibility for that lies. So this amendment is designed to overcome that concern and it is achieved by an amendment to section 7 that I will move at the Committee Stage and also by the deletion of the whole of subsection 2 of section 20, which was the second bit, which, when read with each other, would, it has been pointed out to the Government, be capable of use, should any Gibraltar Government in the future have become so minded to do, could have been used for that purpose which is not the intention of this Bill.

Mr Speaker, clause 8 provides that the Agency may arrange for the discharge of any of its functions by a committee or sub-committee or by any employee of the Agency or by any Government department or any other Authority or Agency.

Under clause 9 the Agency may regulate its own procedure and may make standing orders as respects any committee of the Agency.

Under clause 10 the Government shall appoint a Chief Executive Officer. He or she shall hold office for such period and on such terms as may be specified in the instrument appointing the Chief Executive. In the event of the death of the Chief Executive, illness, retirement, suspension or removal from office, another person may be appointed to act as Chief Executive Officer.

Under clause 11 the Agency shall manage its financial affairs to ensure that, taking one year with another, its outgoings are not greater than its revenues from funds voted by Parliament. All fees for the provision of services and facilities provided by the Agency and other monies properly accrued from any other source.

Clause 12 provides that the Agency shall establish with the Accountant General a general fund into which all monies received by the Agency shall be paid and out of which all payments made by the Agency shall also be paid. The Chief Executive Officer shall be responsible for the management of the fund.

Clause 13 says that proper books of account shall be kept and they will be subject to audit and certification by the Principal Auditor as soon as practicable after the end of each financial year. The Principal Auditor, with reference to the accounts, shall report whether he has obtained all the information and explanations that are required to certify the books as such. Within one month after the end of the audit of its accounts for

any financial year, the Agency shall prepare and submit to the Minister a written report of its operations for that year and the Minister shall lay a copy of such annual report and audited accounts on the Table of Parliament as soon as practicable after they have been received by him.

Under clause 14 the financial year for the Agency is established to be the twelve month period ending on the 31<sup>st</sup> March each year. However, as is customary, for the first financial year of the Agency it shall be a period commencing on the date of the establishment of the Agency and ending on the 31<sup>st</sup> March next following.

Clause 15 says that no personal liability shall attach to any member of the Agency in respect of anything done or omitted to be done in good faith under the provisions of this or any other Act.

Clause 16 says that if at any time it appears to the Government that the Agency has failed to comply with any provision of this or any other Act, then it may by written notice require the Agency to make good the default within such time as may be specified in the notice.

Clause 17 provides that no execution by attachment of property shall be issued against the Agency.

Under clause 18 the functions of the Agency are a public purpose within the definition of public purpose contained in section 2 of the Land (Acquisition) Act.

Clause 19 gives the Government the power to make regulations.

Clause 20 provides for consequential modifications and amendments and, in particular, the Borders & Coastguard Agency is added to the list of Authorities in the Schedule to the Public Services Ombudsman Act 1998 as an entity to which the

Ombudsman may investigate a complaint from an aggrieved person.

Mr Speaker, the second amendment that I will be moving, as I have indicated to the House, is section 20(2) which used to read, "The Government may make regulations for the purposes of modifying and amending any orders, regulations or rule made under any Act for the purpose of giving effect to any modifications or amendments made to any Act by this Act and for the purpose of transferring the functions of any person or body to the Agency, notwithstanding that the power to make such orders, regulations and rules is vested in some person or body other than the Government." Actually, Mr Speaker, that is a pretty standard formulation of words that the hon Members will have seen before in other such ... and it is not an uncommon consequential modifications and amendments section. When read with section 7, subsection (1), it has been pointed out to the Government that it could allow the Government to exercise its powers to do all things necessary for carrying out its functions and duties in respect of functions and duties that it could transfer under the consequential modifications and amendments in subsection (2). Well, we actually do not agree that it is reasonably open to that interpretation but since it is not the intention of the legislation and it is a piece of legislation that operates broadly in the law enforcement area, we thought it would be best not to legislate in terms that could be thought to allow this statutory mechanism to, somehow, allow the Government to tip other law enforcement mechanisms into it.

Now, Mr Speaker, the Bill, in establishing the Agency, is not limited to the current activities of Security and Immigration Limited. That is to say, although the catalyst and indeed the timing for establishing this Agency is the fact that the Government has agreed to take the functions and staff of Security and Immigration Limited into the public sector before the new air terminal opens for business, so that the new air terminal will start under a new regime. Even though that is what is driving the timing, it is not the design of the Bill that the

activities of the Agency should be limited to the activities that Security and Immigration Limited currently do. The intentions of the Government, as to the uses to which the Agency can be put, in a sense, bringing under one cohesive, consolidated umbrella, functions which are spread out amongst various other departments and Agencies of Government and, indeed, some not carried out by anybody at all, is there in section 6(1) and, indeed, I gave some indication of this list in my Budget address earlier this year.

So, Mr Speaker, I think that the Government believes that the Borders & Coastguard Agency will provide a useful and welcome reordering of the public sector's capacity for dealing with a lot of matters which many people regard ... Well, everybody would regard some of them as very important. Many people would regard some as less important than others, but they are all important and it is logical and rational and would improve, I think, the efficacy of the output in these areas if they were carried out by a single body under single management and control, so that the various activities can be coordinated and done in a holistically coordinated fashion. Of course, not least, it is a means of extracting better value for money from a single body of people rather than have to employ many more people in different bodies to carry out some of these functions, at least the ones that are not presently being carried out by anybody.

The Government does not dispel the possibility ... does not rule out the possibility of transferring into the Borders & Coastguard Agency some functions which are presently carried out by Government departments. Clearly not any functions carried out by the Royal Gibraltar Police in their constitutional policing powers and functions. But there are other areas and the Government's publicly stated policy, and we have so informed the potentially affected trade unions of this, is that any such transfer of a current, of an existing public sector function or activity would be by agreement with the staff involved in that activity and in consultation with the Unions that represent the grades or people in question.

So, Mr Speaker, this is very much a framework piece of legislation. It creates an employment vehicle. It does not deal directly with the vires of specific powers that may be needed to carry out the function. So, for example, the immigration control function would continue to rely on such powers as might exist in the Immigration Control Act. Now called the Immigration Asylum and Refugee Act. The environmental protection laws would continue to rely on the substantive environmental legislation, the policing of bunkering rules, the policing of compliance with merchant shipping and shipping safety rules would continue to depend on the merchant shipping Acts. So this is an Act that creates a body and gives the body a list of functions and structure but it does not deal with the framework of statutory powers that would be needed for the officers of this Agency actually to do any of these functions. To the extent that these functions are regulated by their own statute, then those powers would have to be given to these officers under those statutes and are not given to them by this statute. Mr Speaker, on that basis I commend the Bill to the House.

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

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

Mr Speaker, the hon Gentleman is absolutely right that in a post 9/11 world everybody will think that both or each of the issues that the hon Gentleman has referred us to in respect of borders and security, are issues that are increasingly important in the modern and dangerous world in which we all live.

Mr Speaker, this is the first Agency Bill that comes to this House where we are bringing into the public sector workers that are presently outside the public sector, and for that reason this Bill will enjoy the support of the Opposition, for the purposes of doing what it is that the hon Gentleman is telling us today that it is intended it should presently do. That is not a blank cheque for

the Government should it, in the currency of this Parliament, decide that it wishes to bring other departments under the auspices of this Bill, to do so. We are not suggesting that it is agreeable by us, as it has not been in the past, for things that are done by other departments of the Government to come under the auspices of the Agency. The hon Gentleman will know that that is why we have previously abstained on the creation of Authorities or Agencies, because they were in effect the movement of public sector employees from one part of the Government into an Authority or an Agency. So this Bill, to do the things that we are told to date is intended presently to do, is something that is going to enjoy the support of the Opposition.

I do want to ask the hon Gentleman to address a couple of issues in his reply. One of those is the position of the Customs Department and the law enforcement powers of that Department. He will know, as I am sure, if they have been in contact with his offices, they have been with mine, that many of the members of that Department are concerned to know what it is that the present Government believes they should be doing in respect of this Bill, whether their law enforcement obligations, whether some of what they do for Government should eventually come, in the minds of the present Government, to be done under the Borders & Coastguard Agency provisions.

In fact, he will know, like I know also, that they are concerned that they will not be, in the Customs Department, enjoying the training on the police and criminal evidence provisions that is being provided as a result of the new crimes legislation that is being afforded to other departments. That is also an issue, Mr Speaker, on which he might give us some indication whether the effect of that training on the new Crimes Act not being provided to people at the Customs Department, has anything to do with them, in his view, eventually being brought under the Borders & Coastguard Agency.

Mr Speaker, there is also concern among some of the present employees of Security and Immigration Limited that the

Government may be thinking of farming out aspects of the security that will affect the new terminal and other of the entry points to Gibraltar, to a third party entity and, perhaps, he could take the opportunity of telling us whether that is the position or not.

Mr Speaker, finally in respect of the issues that can arise. The hon Gentleman has said that he has wanted to bring this Bill before the operators of the new air terminal commence. Can I ask him to tell us whether this Bill will in any way affect how the auditing of the terminal and the operation of the terminal by the Department of Transport and TRANSEC, in particular, will be affected, whether this Bill will have any effect on that or whether, in any event, we can expect the Department of Transport to continue performing the audit through TRANSEC of the Gibraltar air terminal.

Finally, Mr Speaker, can I tell him that I agree with him that section 20(2) as drafted is very much in terms that we have got used to in this House and that we would have agreed with him that that section could have stayed because [*inaudible*] one thing that it may allow Government to do something which is unconstitutional, but as long as the Government does not do things that it is unconstitutional to do, there must be many other examples in many other pieces of legislation that might potentially open the door to that and, of course, it is up to the Government to come here and defend what it does. If something is unconstitutional, or is potentially unconstitutional, I am sure that we in this House are also able to point it out without it needing to be pointed out by anybody else. I would be grateful if the hon Gentleman would address those questions in his reply.

#### **HON G H LICUDI:**

Mr Speaker, just one matter on which I would be grateful for clarification from the hon Members opposite, and that arises, in

particular, in relation to clause 15, which is headed "No personal liability to attach to members". This is an exclusion of liability clause and it is, of course, important, Mr Speaker, that it should be very clear whose liability is expected to be excluded. What it says is that no personal liability shall attach to any member of the Agency. The question which arises is who is to be regarded as a member of the Agency. We see reference to members in clause 4, Mr Speaker, in relation to the composition of the Board of the Agency, and clause 4(2) says, "The Board shall consist of the following members" and we have provision there for members of the Board. So one would have thought that clause 15, when it refers to members, means members of the Board, rather than members of the Agency because, of course, the Board and the Agency are two different things and we do not want to be confused as to whose liability is excluded. There is a little bit of scope for confusion as a result of, perhaps, clause 8, which states that, "The Agency may arrange for the discharge of its duties by a committee, a sub-committee or an employee of the Agency; or by any Government department". So there will presumably be committees made up of members of that committee that will discharge the functions of the Agency. Are members of committees that discharge functions of the Agency covered by the exclusion of liability or is it limited to members of the Board of the Agency? That is a matter that needs to be clarified.

Clause 8 also refers to Government departments. So, presumably, there will be civil servants who may be called upon to discharge these functions. Are they to be regarded as members and what is the position of employees? Presumably, employees are not to be regarded as members of the Agency but again, perhaps, there is scope for confusion which could be helped if it is intended that this should be limited exclusively to members of the Board, then it should simply say, "To any member of the Board of the Agency" but I am not sure whether that is the intention of the Government or not and I would be grateful for clarification.

**HON CHIEF MINISTER:**

Mr Speaker, yes, I think I wish and I should, given that the hon Members have made some very helpful and supportive points.

Mr Speaker, first of all, if I can just deal with the point raised by the Hon the Leader of the Opposition about the, what I would call the constitutional point. In other words, the effects of section 20, subsection (2). I personally agree with him. He has agreed with me and so therefore we agree, and there is an overriding point that I think cannot be overlooked and is frequently overlooked, and that is that it is not legally possible for this House, by primary legislation, to override the effects of the Gibraltar Constitution, which is supreme law, which cannot be defeated. So even if a future Government of Gibraltar were to try and use this or any other legislative device that may already be available or may become available to him in the future, to do something which is inimical to the Constitution, it would simply be ultra vires the powers of this House to make legislation. It is not necessary, in primary legislation in this House, to save, or feel the need to save, the provisions of the Constitution. A point that I do not tire of making to others to no consequential ...

**HON F R PICARDO:**

*[inaudible]* Constitution?

**HON CHIEF MINISTER:**

Perhaps, that is the source of their lack of understanding on the point. Anyway, as it does no harm to put it in or to accommodate it, we invariably agree to do so, but we do so, as I think I have commented in other Bills, in the knowledge that what we are doing is completely unnecessary and that would be the position even if it were not done in the Act. Well, Mr

Speaker, dealing with the hon Member's points in the order then that he made them with the exception of that one, he commented that, in the post 9/11 world, the importance of border security ... I just want to make one thing absolutely clear. Although immigration control and border controls are an important part of the sort of security that he has in mind, in other words, internal security, this Act does not transfer responsibility to the Borders & Coastguard Agency for the general security aspects. These guys as employees, in terms of security, will be doing exactly the same functions as they were doing as employees of a private company, where they are even further outside of public sector control. Operational responsibility for all aspects of policing in Gibraltar, including security, remains and will remain vested in the Royal Gibraltar Police which is where it lies under the Constitution and the legislation that exists.

Mr Speaker, the hon Member then asked about the Customs Department, well, I think some of my remarks earlier dealt with that. The Government does not rule out consolidating into the Borders & Coastguard Agency some functions that may presently be carried out by civil servants from within a Government department. But I remind the hon Member what I have also just said, namely, that in that event it would be by agreement with the staff involved in carrying out those functions and, therefore, he need not concern himself, or they need not concern themselves, because it will happen with their agreement or not at all. I have to say to the hon Member that he talks, presumably, to the other half of the Customs Department to the one that talks to the Government because there are many people in the Customs Department who see the virtue of a possible ... of an exploration ... they put it no more strongly than that, of sitting down with the Government to explore whether some of their activities may be safe. It remains to be seen. I think that there is scope there for a discussion with affected staff and with unions, with a way to maximising the potential that the Borders & Coastguard Agency offers for a coordinated approach to some of these functions. Now, the Government does not do this because it is obsessed with redistribution of staff or

obsessed with reorganisation. He himself has alluded to the post 9/11 world and he therefore also knows of the importance, which has been criticised in many other countries, of the potential loopholes in security that disjointed functions responsibility can lead to and result in. So the Government's thinking is driven mainly by the fact that the more activities that are done holistically within a consolidated organisation, the less likelihood there is of things falling between stools. But we shall have to see the extent to which the Government's thinking on that can prosper. But what the Government is not willing to do is to impose change on existing staff. So, at the moment, it is the employees of Security and Immigration Limited only, in respect of the functions that they are doing and such additional functions as we may be able to agree with them in their new contract of employment, they should carry out in terms of the functions, which may not presently be in their job description, but which relate to the statutory functions of the Agency.

Mr Speaker, I think the hon Member is wrong in thinking that the Criminal Procedure and Evidence Act excludes the delivery of, what in the UK would be called PACE training, from Customs Officers. I do not know where he has got that idea from. If he has been told, then I think he has been misinformed. I think that Act is too recent for any meaningful training to have started but, as the hon Member knows, the people to whom that Act applies is effectively a matter of the functions and the powers that they exercise. So it is not a question of saying that the Act only applies to police. The courts have ruled and will rule that these are ... anyone who has similar powers of arrest and detention, et cetera, et cetera, would be subject, I presume, to the Act and, certainly, the Government will extend training. Obviously, the police is the principal body affected by these things, but should it become the case that the Act applies either by court ruling or on its own terms, or for any other reason ... should it be the case that the new Criminal Procedure and Evidence Act, equivalent of PACE, applies to other Government officials in whatever department they might be, not just Customs, that exercise powers that should be covered by the Act, then of course, the

Government will give appropriate resources for training in these new principles enshrined in the Act. I cannot tell him, with the knowledge and information that I have available to me on my feet right now, whether that is so and in respect of which functions that is so. But he knows that there are other officials in Government administering other acts of Parliament that have functions which could very broadly be described as enforcing laws.

Mr Speaker, I am very surprised that anyone ... I realise that when people wanting to, sort of, see what they can criticise, that people will come up with the most unusual of sources of concern. Why anyone should think that we are thinking of farming out aspects of security at the new air terminal. Well, look, security at the air terminal is presently farmed out. It is presently farmed out by the Government to a privately managed and privately owned company. What we are doing is to reverse that farming out and bring the activity, as a matter of Government policy choice, back into the public sector fold. Why anyone would feel entitled to believe that what we are actually wanting to do is the opposite of what we are reversing, namely, farm out the very activity that is presently farmed out and we could therefore leave farmed out, if that was our inclination, when we are actually bringing it into the public sector, is not something that I think this House should waste very much time speculating about. It is absurd to harbour the genuine concern that the Government is bringing this function into the public sector from the private sector, where it presently lies, in order to re-outsource it to the private sector, Mr Speaker.

Mr Speaker, this has nothing to do with any aspect of aviation security. The Borders & Coastguard Agency does not have statutory responsibility for aviation security. The entities with responsibility for aviation security are established in the Aviation Security Act. However, the Borders & Coastguard Agency will be the service provider to the air terminal as is Security and Immigration Limited today, the service provider. So it will be, in a sense, in loose common parlance, a contract by statutory



mandate and remit, rather than by private contract, of services in relation to the security of the airport, but it has nothing to do with the auditing. The hon Member may be aware, I think I have explained it in the past in this House, when we debated the Aviation Security Act, that the Government has a Memorandum of Understanding with the Department of Transport which includes, amongst other things, a contract to *[inaudible]* on behalf of the Government of Gibraltar, ensure that we are up to speed and complying with the various international and EU now regulations relating to aviation security and that is in no way affected by this change, just as today, Security and Immigration Limited provide the people that do the luggage checks and all these things and the passenger checks and that sort of thing, but they are not the party with statutory responsibility for aviation security. They provide outsourced services to those that are responsible for aviation security which are, principally, the Terminal Operator and the Director of Civil Aviation who is the regulator of, amongst other aspects of aviation, its security.

Mr Speaker, turning now to the point raised by Mr Licudi. I ...

**HON F R PICARDO:**

Before the hon Member moves on, will he give way just on that final point.

**HON CHIEF MINISTER:**

Yes.

**HON F R PICARDO:**

I am very grateful. Mr Speaker, the hon Gentleman has said that the arrangements, the Memorandum of Understanding with the Department of Transport is not affected by this Bill. Can he

tell us whether, in fact, the Memorandum of Understanding continues in place and will be relevant to the operation of the new air terminal? Whether or not it is affected by this Bill?

**HON CHIEF MINISTER:**

Well, Mr Speaker, if it is not affected by this Bill then nothing in this Bill, necessarily, can affect its continuity. So leaving this Bill to one side, I will interpret his question to mean what he asked in the second half of it, which is whether anything other than this Bill affects that MOU in consequence of our move to a new air terminal. Well, it does not, Mr Speaker, because the nature of the MOU is not specific to a particular terminal. It relates to activities and, therefore, the outsource or the insourcing of expertise from TRANSEC which includes regular audits of compliance with that ... This is expertise that we would otherwise have to have in house and it is highly technical, the rules are constantly changing. It is a very valuable source of advice to us. That is regardless of where the air terminal is located or which of the air terminals it is. Indeed, it mentions neither SIL, Security and Immigration Limited, nor a particular terminal. What does change, of course, if the hon Member is interested in aviation security, as indeed he should be, is that the aviation security programme, in other words, the detailed code by which all users and service providers in the air terminal need to comply, to ensure compliance with security regulations, that has to be re-written because it is presently written applying principles to the specific factual circumstances and layout and geography of the current terminal. So the principles will remain the same but in their application to a wholly different building, a different size and a different layout and geography, that aviation security programme has to be re-written and is indeed currently being re-written.

Turning then to the final point made by the Hon Mr Licudi in respect of the definition of a member. Well, I agree with him that it is entirely desirable that there should be no confusion as to

who the statutory exemption from liability is intended to benefit and, if it is not clear, we should introduce language to clarify. The Government's intention and I think this may be a case of the consequences of slavishly copying a previous draft of a similar agency, which may have been cast in slightly different terms in this regard. For example, I seem to recall that the Care Agency Bill speaks of members of the Agency because the Agency consists of members. The legislative intention, to answer his question, is that the exemption is supposed to answer it to the benefit only of members of the Board of the Agency and, since he is not the most unreasonable chap in the world, if that has not been clear to him, then perhaps it will not be clear to others either. I am very happy at Committee Stage to amend clause 15 of the Bill by replacing the reference to "any member of the Agency" by a reference to "members of the Board of the Agency" and I think that would leave it clear beyond peradventure. It is for consideration, which frankly I am not sure the Government has given any thought to, whether that statutory exemption should also extend to members of committees of the Board, to the extent that it consists of people who are not members of the Board but may be co-opted and we can certainly have a discussion about that at Committee Stage and move whatever amendment the House decides is appropriate.

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 on another day, if all hon Members agree.

Question put.                      Agreed to.

## **THE SOCIAL SECURITY (SURVIVOR'S BENEFITS MISCELLANEOUS AMENDMENTS) ACT 2011**

### **HON J J NETTO:**

I have the honour to move that a Bill for an Act to amend social security legislation so as to make benefits and pensions paid on the death of a spouse gender neutral, be read a first time.

Question put.                      Agreed to.

### **SECOND READING**

### **HON J J NETTO:**

I have the honour to move that the Bill be now read a second time. Mr Speaker, hon Members will recall that in my Budget speech last June, I did mention that it was my intention to bring legislation to this House in order to end discrimination against men on death of spouse. The current legislation, since 1955, has only provided an allowance to ladies on death of husbands, but not vice versa. Therefore, the Bill will tackle this historical anomaly. The new allowance will be at the same rate of benefit as it is now paid to widows.

This Bill contains a number of amendments to various pieces of primary and secondary social security legislation in order to make the provision of benefits on the death of the spouse gender neutral, so as to eliminate discrimination against men on the death of their spouse, by providing the same benefits awarded to women in the same circumstances. No benefits awarded to women in such circumstances are being reduced or scrapped.

The legislation being amended consists of-

- The Social Security (Closed Long-Term Benefits and Scheme) Act 1996;
- The Social Security (Open Long-Term Benefits Scheme) Act 1997;
- The Social Security (Closed Long-Term Benefits) Regulations 1996;
- The Social Security (Open Long-Term Benefits) Regulations 1997;
- The Social Insurance (Insurability and Special Classes) (Amendment) Regulations 1980;
- The Social Insurance (Benefits) Regulations;
- The Social Security (Closed Long-Term Benefits) (Claims and Payments) Regulations 1996;
- The Social Security (Closed Long-Term Benefits) (Overlapping Benefits) Regulations 1996;
- The Social Security (Open Long-Term Benefits) (Insurability and Special Classes) Regulations 1997;
- The Social Security (Open Long-Term Benefits) (Claims and Payments) Regulations 1997;
- The Social Security (Open Long-Term Benefits) (Overlapping Benefits) Regulations 1997;
- The Social Security (Open Long-Term Benefits) (Contributions) Regulations 1997,
- The Social Insurance (Contributions) Regulations;
- The Social Insurance (Claims and Payments) Regulations.

The major amendments are contained in clauses 2 to 5 of the Bill. It is of note that due to the existence of the open and closed social security schemes, the content of certain amendments needs to be repeated for each of them. For instance, the content of clauses 2 and 3 closely mirror each other. The former being in relation to the Closed Long-Term Benefits Act and the latter being for the Open Long-Term Benefits Act.

Likewise, the content of clauses 4 and 5 also closely mirror each other, being amendments to the main regulations under each respective Act.

Furthermore, many of the amendments of the Acts and to the secondary legislation are in order to reflect the change of nomenclature from “widow’s benefit” to “survivor’s benefit”. These amendments are included as clauses 6 to 15 of the Bill, where a simple change of the name of the benefit suffices is what needs to be done. In other instances, whole regulations have been recast. Where this has been done, it is for the purposes of clarity only and involves no change to any person who receives or would be entitled to receive benefits under the current legislation.

The Bill has retrospective effect to 1<sup>st</sup> July 2009. Clause 16 makes transitional provisions to allow for this.

I commend the Bill to the House.

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

**HON N F COSTA:**

Yes, Mr Speaker, to say that the Opposition will be voting in favour.

Question put.                      Agreed to.

The Bill was read a second time.

**HON J J NETTO:**

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

Question put.            Agreed to.

**SUSPENSION OF STANDING ORDERS**

**HON CHIEF MINISTER:**

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

Question put.            Agreed to.

**GOVERNMENT MOTION**

**MR SPEAKER:**

Before the Hon the Chief Minister moves the motion, I would like to address the House in ruling on this motion. When I read the motion which was moved, or rather, presented to this House on the 6<sup>th</sup> or maybe the 7<sup>th</sup> July 2011, I must confess that I entertained some unease without, I hasten to add, any prompting from any person. I took it upon myself, without disclosing to anyone - and certainly not the mover of the motion - my thoughts, to seek guidance from **Erskine May** (23<sup>rd</sup> Edition). I also researched the numerous citations from Hansard in the footnotes to the various passages, which deal with the matter, and I took the view that the use of the words “lying” and “deceive” in the motion was unparliamentary.

Having formed that view, I must say, I went into parliamentary recess mode myself throughout the month of August and on the 1<sup>st</sup> September I wrote to the mover of the motion, the Hon the

Chief Minister, expressing my belief that the use of those two words, “lying” and “deceive”, was unparliamentary and inconsistent with the practices prescribed by **Erskine May**.

I had in mind page 390 of the 23<sup>rd</sup> Edition which sets out the *Manner of dealing with irregular notices of motion* and that text is reproduced verbatim at page 399 of the 24<sup>th</sup> Edition, which the Hon the Chief Minister has very kindly presented me with today. As is my duty and suggested by **Erskine May**, I brought to the Chief Minister’s attention - but only on 1<sup>st</sup> September - what my thoughts were. He made certain representations, as he is entitled to, and invited me to give the matter some further thought. I did give the matter further thought. I also took advice from the Clerk of the House of Commons and came to the conclusion that my initial thought that the use of those words is unparliamentary remained unchanged, and I so informed the Chief Minister. I thus invite him to amend the motion if he intends to proceed with it..

**HON CHIEF MINISTER:**

Well, Mr Speaker, as a Member of the House in general, and as its leader in particular, I of course bow to your ruling and accept it. The subject matter of the language of this motion has already been the subject matter of a public statement by me, outside of this House, without the benefit of parliamentary privilege, and, of course, I maintain that statement, but I acknowledge that Mr Speaker has ruled that the words cannot be used and, therefore, it is incumbent on me, given that I intend to proceed with the motion, to propose a formula of words which Mr Speaker is content to rule is not unparliamentary.

Mr Speaker, one way of achieving that would be to, after the words, “and condemns him for”, delete the words “lying in it to, and thereby premeditatedly seeking to deceive”, and substituting them with the words “by his false statements premeditatedly seeking to mislead”. So, in other words, deleting the words

“lying” and “deceiving”, which appear to be the offensive words. So that it would read: “and condemns him for premeditatedly seeking to mislead all the people of Gibraltar who view it or otherwise learn of its content by his false statements.”

**MR SPEAKER:**

Yes. I believe that amendment would cure the irregularity that I have ruled upon, and the hon Member has leave to move the motion in those terms.

**HON CHIEF MINISTER:**

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

**“This House notes the video podcast posted on his Facebook profile page by the Leader of the Opposition in relation to the Budget debate in general and public debt in particular and condemns him for premeditatedly seeking to mislead all the people of Gibraltar who view it or otherwise learn of its content by his false statements.”**

Unless the hon Members believe that the motion speaks for itself, we can go straight to the vote. Well, Mr Speaker, I did not think they would. Well, Mr Speaker, in that case the hon Member puts me to the trouble of reminding him of what he said, reminding him of why it is false and reminding him of why I believe there is little conclusion, with the best will in the world, to conclude that it was a premeditated attempt to mislead by statements that he knew to be false.

Mr Speaker, the House will recall that on that day, the first week of July, 4<sup>th</sup> of July I believe, in his reply on the Second Reading of the Appropriation Bill, he said certain things about public debt

about which I will remind him in a moment. He then left this House went, presumably, to his party office, judging by the backdrop, and proceeded to record a podcast, that scourge of some modern day politicians, in which he said, amongst other peculiar things, the following, and I quote him. “There is an issue with the economy that I want you to understand”, wagging his finger with a sense of authority that might have misled the viewer to believe that the hon Member was about to say something that was true. “Gross debt, in other words, the amount owed by the Government of Gibraltar is now up to £480 million, the ceiling is £500 million. It is already at £480 million”, and then he went on to say, “Well, the gross debt borrowing limit is £500 million. If you add to the £480 million that we have already borrowed in respect of gross debt, the £20 million that Mr Caruana has borrowed from banks, using Government buildings which he has put in a company, then you have reached a total of £500 million. That second £20 million, for technical reasons, does not count as Government borrowing but, in fact,” more finger wagging, “the Government now owes more than the law allows them to owe.”

Two essential elements of that statement are firstly, that there is a public debt ceiling of £500 million, which is false, and that it has been exceeded, which is also false.

Well, Mr Speaker, it is not my job to educate the Leader of the Opposition and, therefore, he is deemed to be aware of what the laws of the country, the Government of which he seeks to lead and generally have responsibility for its economy and public finances. Presumably, he knows what that law provides and he, therefore, is aware that section 3 of the Public Finance (Borrowing Powers) Act, reflecting Her Majesty’s Treasury guidelines for the borrowing by Overseas Territories Governments, says, that subject to the provisions of this Act, the Government may, with the prior approval of the Minister, from time to time, in addition to any other sums of money that it is for the time being authorised to borrow under any law, borrow any sum or sums of money, provided that the Government shall not

drawdown or incur any additional public debt, nor, without the leave of the House by resolution, draw on the cash reserves of the Government, a defined term, in manner that will cause: (1) Net public debt after such borrowing or drawings to exceed the higher of £200 million or the lower of 40 per cent of Gibraltar's gross domestic product, or 80 per cent of Consolidated Fund recurrent annual revenue. In other words, by this Act net public debt can be at least £200 million, or, if it is higher than £200 million, the lower of 40 per cent of Gibraltar's gross domestic product, or 80 per cent of Consolidated Fund recurrent annual revenue. Or, separately to all of that, (2) the annual debt service ratio to exceed 8 per cent. The annual debt service ratio is defined as the ratio of interest payments over a full period of twelve months at interest rates applicable to public debt at that time, to the Consolidated Fund recurrent annual revenue. That is the legal borrowing ceilings established by the law of Gibraltar. None of them provide the figure of £500 million, and none of them have been breached, or anywhere near.

Now, Mr Speaker, before concluding that a Member of this House has rushed out of this House to record something which is, as the motion says, and before imputing to a member, the motives that my amended motion imputes to him, and the motives that I have publicly imputed to him, it is, of course, proper to consider whether there may be some more innocent explanation for the hon Member's extraordinary false statement. Mr Speaker, having given the matter that degree of thought, it is simply not possible to conclude other than that the Member deliberately set out to say what he said not believing it to be true. Why do I say that? Well, Mr Speaker, the recording of the podcast, the text of which I have just read, was not more than a handful of hours after he had delivered his speech on the Budget in this House. You would have thought that if the Leader of the Opposition thought, genuinely, that the Government had exceeded its legal borrowing powers and had, therefore, committed an illegality, it is not the sort of detail that he would have overlooked mentioning in his hour long speech in this House. In fact, what he said in this House, he went on with

some sort of kitchen economics about attributing the public debt to every man, woman and child, and how a family of three or four would be mortgaged for the rest of their lives, or words to that effect, and then ended his contribution on public debt with the timid words and I quote him, "But I do believe that there is room for less debt". He then finishes his address, he leaves this House, he goes to the rarefied and less controlled environment of his party butchery, and then immediately proceeds to record a podcast in which he says, amongst other things, the things that I have just read. Namely, that the ceiling is £500 million and, in fact, the Government now owes more than the law allows them to owe.

Well, it is a pretty extraordinary chronology of events that has the Leader of the Opposition not report that extraordinary view in Parliament when he is on his feet, discharging his public obligation to hold the Government to account, and then rushes out and says something completely different which is, to boot, fabrication for the purposes of spreading a politically convenient message to his party faithful, and anybody else willing to swallow hook, line and sinker, the rubbish that he serves up to them. Even if that is not sufficient reason, which I believe it is more than, to conclude that this was a premeditated act on his part, does he really believe that the Financial Secretary would allow the Government to drawdown on debt in breach of the law, or does he think that he is a paid up member of my party at my orders even to the point, or any point. Does he have no respect for the senior officials in the Treasury who administer the public debt?

Even if he believes that the Government is capable of acting in flagrant breach of the law. Does he believe that all the officials in the Treasury are also so inclined and to cover it up. He cannot possibly believe that and, therefore, he cannot possibly have believed the truth of what he was saying out of the House, which he had not said in the House. Even if neither of those two are sufficient to persuade an objective observer that the hon Member must have meant a falsehood to mislead, it is not two

hours earlier I had explained to the hon Member what the legal constraints on borrowing were, in my own address to which his was a reply, and in reply to which he did not make the point.

I will read it again. I am now quoting myself from my Budget speech on the Second Reading of the Appropriation Bill. "Our net public debt also remains well within the ceiling permitted by our legislation which, as the House knows, places a ceiling on net public debt. Under this legal limit, public debt cannot be taken on if the effect of doing so would, firstly, increase net public debt to more than 40 per cent of GDP. That parameter would permit a net public debt of £400 million, compared to the current £217 million". I even did the mathematics for him, "or, secondly, increase net public debt to more than 80 per cent of recurrent revenue. That would permit a net public debt of £305 million, compared to the current £216.7 or £217 million, which is just under 57 per cent of revenue." "Or, thirdly, increase annual debt interest to more than 8 per cent of revenue. That would permit an annual interest Bill of £30.5 million, compared to the current Bill of £17.5 million, which is just under 5 per cent of revenue. It would permit a net public debt at current interest rates of £381 million, compared to the current net debt of £216.7 million." "Mr Speaker, since the law says" I continue to quote myself, "Mr Speaker, since the law says that none of these three parameters can be exceeded, the statutory debt ceiling is effectively the one produced by the parameter but results in the lowest number. Therefore, the statutory net public debt ceiling currently stands at £305 million, compared to the current actual net debt figure of £216.7 million."

Mr Speaker, I think for as long as paper and pencil exists, it is impossible to conceive of a more clear, simple, easy to understand, unambiguous, unmistakable, unnecessary, explanation of not only what the structure of public debt ceiling is, statutory public debt ceiling, but, indeed, applying that structure to the actual current figures at that time to produce and give the House a figure of what each parameter would allow by

way of net public debt, compared to the actual then current figure of net public debt.

Well, did he think I was lying? Does the hon Member think that, on the basis of his own lack of familiarity with the Act, apparently, I was lying in this explanation and this is complete hogwash, and that instead of all of this, and instead of all that in the Act, there is in some place written this figure of £500 million that he graced his little, do it yourself, film maker's camera within his party office.

Mr Speaker, or did he not hear what I was saying. Or did he not understand what I was saying. Or, more likely, did he know what the law was. Did he hear me perfectly well. Did he understand it perfectly well but because that was not convenient to the political message that he wanted to pedal at the time, he nevertheless had no compunction to go out of this House and tell a pack of fabricated facts and circumstances to try and convey to the people of Gibraltar who cannot be expected to know the nitty gritty of public debt, or public finance, to believe what he wanted them to believe, regardless of the extent to which it was not true. By bringing this motion, I am telling the hon Members that, on this side of the House, it is not possible to conclude anything other, for the reasons that I have said, that the answer to all of those questions is, yes.

How is it possible for the hon Member to ignore what the Act says. Ignore what I have just explained to him in Parliament two hours before he did his podcast. Ignore the fact that he had made no such point in his own address in this House. How is it possible? What innocent explanation, other than the one in this, which is not innocent in my motion, could there be for the fact that he then goes out of this House and invents what he invents, and uttered for those people who have watched it, with a degree of body language and finger wagging designed to suggest to everybody that the Government and Al Capone had much in common.

Well, Mr Speaker, I believe that the hon Member is worthy of condemnation for his behaviour. For at least, two reasons. Firstly, his false statements were premeditatedly used, knowing them to be false, with the intention of misleading the viewers of his podcast, the viewers of his party's website, the viewers of youtube and all the various media in which his grubby little podcast was shown. Secondly, they are very, very serious allegations against a Government of illegal behaviour. If a Member of Parliament wants to accuse the Government of illegal behaviour on the grand scale of having exceeded lawful borrowing limits, he could, at least, do it in this Parliament. He could, at least, ... what he says outside of this Parliament should be consistent with what he says in this Parliament, and he should, at least, take the trouble to ensure that what he says bears some resemblance, at least, to the truth. But he could not have cared less what degree of truth or factual accuracy, or lack of them, his statement had. He was drunk with the desire to score political points on the back of a political economic debate in which he had practically little else to say on any other matter.

Mr Speaker, his podcast contained things that were not true in other respects although less gravely so, as well, but that was not the only statement that a Leader of the Opposition, concerned not to mislead with untruths, would have avoided. I have already told him that it is not true that applying the same rules of public finance organisation, as are applied today, net public debt in 1996 would have been zero. This did not prevent him from repeatedly saying precisely that. Net debt, which is the amount of gross debt less all the money that the Government has in all its piggy banks in 1996, was zero, and if public debt had been calculated in 1996, as it is now, it would have been zero. It is simply not true. It is certainly true to say that it would have been lower than the then published figure of net public debt. It is not true to say that applying the same calculation, rules and principles and money holding rules and principles, the net public debt is zero. I do not know whether this is just tit bits of information that he picks from people without bothering to check. It is untrue. As it was untrue for him to say in his podcast,

although I know what he meant, one often hears these statistics bandied around, but not in this form. That means that net debt is now £7,000 per capita. That means, after we have used all the money we have in reserves, every Gibraltarian, every man, woman and child still owes £7,000 per capita. As if not content with that obfuscation of the difference between people owing money themselves and their Government owing money, he went in to ram home the point. For a family of three that is £21,000 per household. For a family of four, £28,000 per household. You can do the four times table. Leading all the viewers of his podcast to falsely believe that the net public debt of the Government was not only their personal liability but that, indeed, their personal liability was a factor of the number of members of their household and families.

Of course, nobody with a grasp of economic jargon, or with a grasp of economic jargon and a lack of desire to confuse and mislead, would possibly have framed the per capita analogy in those words, which are false and convey a false impression premeditatedly so. Because what he meant to achieve was the sense that he did, in fact, achieve. I think I already said in this House, in my reply to the House, that one lady had telephoned, very worried that she would have to pay this money herself and that she did not have any savings to pay from.

Well, Mr Speaker, the reality of it is that, because he does not care, all he wants is to create the effect. He could not care less. He is not a merchant of truth. He is a merchant of whatever he needs to say to gain peoples' political support. Frankly, I condemn him in this House as its Leader and as the Chief Minister and I commend to this House to condemn him because he has shown a shocking, shocking lack of respect for the people of Gibraltar and integrity.

Question proposed.



**HON F R PICARDO:**

Mr Speaker, that was a party political broadcast on behalf of the GSD. Well, Mr Speaker, first of all I want to thank you for, as usual, carrying out your job with the diligence that all of us in this House know that you always do, whether we agree with you in all of your rulings or not, and I want to thank you for having addressed the language of this motion in the constructive way that you have. Because, of course, one goes into public life and one expects to be the subject of scrutiny of this sort, and if one has to face some such motion, then so be it. But I am grateful that Mr Speaker has ensured for the good of all of us, for those sitting on that side of the House and those of us sitting on this side of the House, that we do not tread into a parliamentary debate on language and on terms that we should not have. Thank you, Mr Speaker, therefore, for allowing us the opportunity to put our respective views in respect of the substance of this issue around a motion that is now in parliamentary terms.

Mr Speaker, frankly, it is incredible that this Parliament has been asked to waste time on a purely partisan motion of this sort, really designed only to advance the hon Member's attempts to blacken my name and my character that I know that he does at every possible opportunity. They all do at every possible opportunity. Not just those sitting directly opposite me but, perhaps, also others. Maybe that is the name of the game, Mr Speaker, these days in public life.

When there is a real issue over whether the ambulances that serve this city have passed their MOT or not, today we are debating a podcast that is four months stale.

**HON CHIEF MINISTER:**

Rubbish.

**HON F R PICARDO:**

Well, these are the last gasps of the old order. The last few breaths of a desperate regime. This debate, although they may relish it opposite, is not in keeping, Mr Speaker, with the common sense of our times. Our community is not interested in a ding dong about who lied on a podcast or a ding dong about Facebook. I mean, heaven forbid, because, Mr Speaker, let us face it, their lies are my truths, their truths are my lies, that is the way in which tribal politics unfortunately now is working in Gibraltar. Our community is not watching this Parliament today to see which of the gladiators wins this vote, they know who has bought and paid for the majority of the votes, and so they know where the votes will lie.

Our community knows, perhaps thanks to that podcast, that we owe half an American billion in gross debt terms. Our community knows that the hon Gentleman has borrowed twenty million to lend to a group of developers, led by the brother-in-law of one of his Ministers, and has mortgaged a whole raft of Government properties for that purpose. He told us in this House, and he has defended it. He believes it is the right thing to do, and we do not.

Our community is not just interested in changing the individuals that sit on the Government benches. It is interested in changing the way that Government is done. That is why the community, Mr Speaker, in my view, is looking to us. Because we are not in politics to change this Government, Mr Speaker. We are in politics to change lives for the better and that does not mean having debates of this sort. That is why, Mr Speaker, I believe, that our positive programme to change the way that Government is done is resonating with the public and with everyone who is interested in real transparency and accountability, not just on Facebook. You see, Mr Speaker, analysing my honesty in economic affairs is all very well, but it was the hon Member opposite, the Leader of the House, I believe some of his people would prefer that I call him the Chief Minister in this House, that

was going around all the housing estates saying that Gibraltar was bankrupt. That was one of the central themes of his campaign in 1996. Well, Mr Speaker, was it bankrupt? No, Mr Speaker, it was much more solvent than it is now. It was the hon Member opposite and his fellow Members of the House then, who were going around saying that the debt burden, then, was a millstone round the neck of future Gibraltarians.

Well, Mr Speaker, after the 1996 election, it became not just clear, but apparent to all, even to those who had supported the hon Member, in fact, I dare say, even to him, that their doomsday cry had been in vain. There was no impending bankruptcy of Gibraltar. There was no issue of solvency. There were reserves and sinking funds and his policy then, which he has defended, was to spend, spend, spend, with no need for a rainy day fund.

Well, Mr Speaker, there could have been no greater deception. There could have been no greater lie told outside this place than the one told by him in 1996. Mr Speaker, how can it be that the analysis of debt per capita that I did in my reply to the hon Gentleman's Budget address results in such ire, in such expressions of my lack of honesty, of my inability to deal in truths and, yet, it was the self same analysis that was done by the hon Gentleman and those who were campaigning with him in 1996 and even in 1995 in this House.

Well, Mr Speaker, our position remains. Our truth remains that net debt per capita, calculated as net debt per capita as now, in 1996 was zero, and that in 2011 it is £7,216 per capita or £10,717 per voter, calculated on the first register so effectively prepared by the Electoral Registration Officer for this year, which is in the region of twenty two thousand voters.

Mr Speaker, they did this analysis of debt per capita as a relevant illustration of what the net debt per capita was for every Gibraltarian, not just in this House, not just in the all the housing estates, they did it in their now defunct publication, the

Gibraltarian. Gross debt per capita in 1996 was £3,000 per capita, and in 2011, Mr Speaker, this debt which I am wrong to highlight to every voter, gross debt per capita in 2011 is £16,000 per man, woman and child. Well, Mr Speaker, I know that, in most of the Budget debates since I have been in this House since 2003, the hon Gentleman has liked to boast about growth. Why is he not so proud to talk about the growth of the debt on his watch. Is that not growth also to be put out for the general public to think about, to rationalise, to see the massive effect that the hon Gentleman's stewardship of our economic affairs, has brought.

Perhaps, Mr Speaker, I should do a podcast just on that. Perhaps, I should do one of my grubby little podcasts, with my crappy little camera, just on that, on the growth of the gross debt per capita, since the hon Gentleman took over. How his safe pair of hands, Mr Speaker, has grown net debt per capita from zero to £7,216 per capita, or £10,717 per voter. That great growth, Mr Speaker, of gross debt per capita from £3,000, the millstone, Mr Speaker, in 1996, to £16,000 now. That is a record, Mr Speaker, no doubt to be proud of. Why is the hon Gentleman not thanking me for having put this, as he says it, in the homes of all Gibraltarians. Perhaps, he is just jealous that I have got more friends than him, Mr Speaker, at least on Facebook.

Well, Mr Speaker, if he needs a device to denigrate me and to try and blacken my name further than he has already tried to blacken it, because, let us face it, this motion is just that, a device and nothing more, to try and distract from the enormous growth of debt on his watch. Well, Mr Speaker, you know, you are in politics for the good and for the bad, and I will have to allow him his device. It is not the way I would do politics, but so be it. He no longer likes the per capita analysis on either a gross or net basis, but if the analysis is not valid now, then it was not valid when he was the Leader of the Opposition, and he was doing it.

Then, Mr Speaker, we had to listen, in the hon Gentleman's reply to me in his Budget address and, today, in the course of the presentation of his motion, to his attitude to new social media. Well, look, Mr Speaker, the hon Gentleman can think what he likes about Facebook and Twitter. He can call me and everybody else who tweets, a twit, if he likes, but these are new, important ways of communicating with the public. It is the sort of thing that is being done in every Parliament in the world to draw people in. Well, at least, Mr Speaker, I am delighted that we have achieved that. My video on Facebook has drawn people in to his motion today, although he has had to amend it, because his language was unparliamentary. Yet, Mr Speaker, only he would have the hubris to say that something is waffle, and at the same time, sanction the use of it. Facebook is waffle, he said, but he has obviously sanctioning the use of it. Or is he not aware, Mr Speaker, that some of his Ministers are working harder on Facebook than they ever have done in their offices. There is one Minister, Mr Speaker, who is now even given to wishing people happy birthday. Well, Mr Speaker, mine is on the 18<sup>th</sup> February and, you know, these things should be across the Parliamentary divide, and you tell me yours, and I will wish you a happy one too.

It is incredible what an election year can do. But why bother, Mr Speaker, with this debate, and with this motion, if it is all waffle. Of course, do as I say, but not as I do. Mr Speaker, perhaps, perhaps, it is all like the apparent deception which comes in not giving this House or the public any information on how those consultancy agreements, in excess of €250,000, have been given to one particular consultancy company, despite European Directives suggesting that they have to go out to tender and not be directly allocated. That really does take the biscuit, Mr Speaker, because that is the public money that builds up the debt that we are debating today. Millions of pounds on consultancy agreements awarded outside internationally binding tender procedures, and he has even refused to provide the explanations to this House, and now he wants to question my credibility. Well, Mr Speaker, the hon Gentleman's credibility,

his currency, is now rendered so low that all he is left with is saying that everybody else is a liar in order to get his message believed.

**MR SPEAKER:**

May I interrupt the hon Member.

**HON F R PICARDO:**

Of course, Mr Speaker.

**MR SPEAKER:**

I have ruled that the use of the word lying in the motion is unparliamentary. The hon Member has used the word liar now and, in fact, he did earlier on at nine minutes past four. There was a specific allegation of lying on that side of the House.

**HON F R PICARDO:**

Yes, Mr Speaker.

**MR SPEAKER:**

Perhaps, he will withdraw those terminologies.

**HON F R PICARDO:**

Well, Mr Speaker, what I said was that everybody else is a liar, but he is saying [*inaudible*] hon Gentleman is saying everybody else is a liar, but I am happy to withdraw that.

**MR SPEAKER:**

No, but there was an earlier reference too. The hon Member may recall.

**HON F R PICARDO:**

Quite right. What I said before, and I am happy to accept your ruling, was that the hon Gentleman had lied outside the House.

**MR SPEAKER:**

Which is exactly what the hon Member has accused you of doing.

**HON F R PICARDO:**

Fair enough. But if you would rather that I withdraw it ...

**MR SPEAKER:**

It is unparliamentary inappropriate.

**HON F R PICARDO:**

... and consider it expressed in another way and I am quite happy to do so, Mr Speaker.

**MR SPEAKER:**

All I seek is a withdrawal of that.

**HON F R PICARDO:**

Withdrawn, Mr Speaker. Well, Mr Speaker, this is all tax payers money. All of it is tax payers money. Perhaps, if we had answers to questions like that, maybe the rest of the tax payers might feel more comfortable about where all of this gross debt of £480 million is going. It is not my interpretation of the law, he told us, when I questioned him about those contracts during Question Time and Mr Speaker will recall that debate. Well, Mr Speaker, what is his interpretation of the law. The hon Gentleman thinks that he can come to this House and in this motion he can refer to the community how I move my fingers in front of a camera. That he can judge the quality of my audio visual equipment. That he can call my headquarters a butchers shop. And if he does not come to this House to explain to us how, despite the provisions of a European Directive on public procurement of services, very, very considerable amounts have been paid on consultancy agreements which do not comply with those requirements. Mr Speaker, there are no provisions in those Directives which are now directly effective, and have been for some years, which create exceptions on the grounds of public interest, public policy or public security. So I hope not to hear any of that waffle if he descends to particulars in his reply. Anyway, Mr Speaker, I have got used to it. I have got used to the hon Gentleman doing one thing whilst he says another. He has said that all of this debt of £480 million, based on the premise of his politics, has been spent on projects put out on a

fair and open tendering system. Well, Mr Speaker, let him explain to us how those consultancy agreements, that did not go out to tender, were awarded on the basis of an open and fair tendering system, because that is what I want to know.

Mr Speaker, perhaps it is like the recent remark in an interview with a local daily publication, with the Gibraltar Chronicle, where he told us that he wanted to be remembered, this legacy thing that politicians get when they are looking over the precipice, for having banished bilateralism from Anglo/Spanish relations. I will assume, Mr Speaker, that the hon Gentleman was not lying when he said that, outside this House, but that is truly how he wants to be remembered. But, Mr Speaker, is he so self obsessed, was he wagging his finger at Geoff Hoon and at Miguel Angel Moratinos to believe something else than what he was signing, because that must have been, by his standard, a premeditated lie. Or is it that he did not read the document that he signed in Cordoba on 18<sup>th</sup> September, all those years ago. Because, does he not know, Mr Speaker, or does he like me to remind him, that he is the only Chief Minister in the history of Gibraltar to have signed up to a document, understanding and accepting, are the words, understanding and accepting that references to sovereignty in it are purely bilateral to the UK and Spain, and I will accept, Mr Speaker, that he was not lying when he told the people of Gibraltar that he wants to be remembered for having banished bilateralism from Anglo/Spanish relations. Can he have so little respect for the intellect of our people, Mr Speaker? Can he have so much hubris and is there so much sophistry to define them that he wants us to believe that he did not know what he was signing. Well, Mr Speaker, perhaps it is that other thing that he has told us which was on display when he replied to me in the Budget debate and which was so on display today, and it is those unfortunate words, Mr Speaker, that have now crept into the lexicon of this Parliament and which are obviously parliamentary because they came from his mouth and not from ours, that to succeed in politics one needs *mala leche*. Mr Speaker, loosely translated and, in fact, I think properly translated, *mala leche* means bad faith. The hon

Gentleman has stood up in this Parliament, and it is on Hansard in this Parliament more than once, that he has said that the Caruana doctrine for succeeding in politics is that one must act in bad faith. That is the Caruana doctrine. The Blair doctrine was the third way. The Caruana doctrine is bad faith, and he gives it as advice to the Hon Mr Bruzon. Advice to the Shadow Minister for Housing, that one must act in bad faith and then, of course, we must understand how the premeditation of the intention to mislead is best affected by bad faith. You know how you do it, Mr Speaker, you tell people in public with your microphones around the estate, on your grubby party political broadcasts, that you are going to build seven hundred houses, when you know full well that you are sending out four hundred letters, because only four hundred houses fit on that plot of land, four hundred and ninety. Less. I expect another motion and waste everybody's time for forgetting the ninety.

Well, Mr Speaker, I do not believe in the politics of bad faith. I do not believe in the politics of bad faith, even though the politics of bad faith brings a smile and a snigger to those opposite. But this motion will be passed by Government majority. But let no one inside or outside of this place think that the ruling, the judgement, the finding on this motion, the ten to seven that I confidently predict it will be, is anything other than the finding of a kangaroo court. A kangaroo court addressed by a barrack room lawyer. Well, Mr Speaker, I do not put my fortunes in the hands of this court, political or otherwise. Their verdict on me is as irrelevant to me as my verdict on them is to them. The time has come to change the way that politics is done in Gibraltar. The time has come, Mr Speaker, to leave the politics of *mala leche* and bad faith behind.

The performance which the hon Gentleman gave, and I describe it as a performance advisedly, Mr Speaker, would have been more at home on a Hollywood psycho movie than in a parliamentary intervention when he replied to our Budget addresses. It was, and I am sorry to say, Mr Speaker, to him, a shameful denigration of this place. The language certainly

bordered on the intemperate, if at times, not on the unparliamentary. It was in my view, Mr Speaker, an absolute disrespect to this Parliament, and a disrespect to our people for him to have descended into such an unparalleled level of demagoguery. But, let him keep it coming because it shows him for what he is, and I have to thank him for performing as he did, because he showed his true colours. He threw his toys out of the pram, to character, and many people do not appreciate that that is the real him. It happens too often behind closed doors.

Mr Speaker, I will not ever, if the people of Gibraltar do me the honour of choosing me as their Chief Minister after this election or any other, ever allow my interventions in this House to sink to the depth to which the hon Member opposite sank in reply to our Budget debate, and there is no need for the nervous laughter from the hon Gentleman, he does not need to worry about it. The people of Gibraltar always get it right. If they choose him, they will be right. If they choose me, they will be right.

Mr Speaker, their verdict is the one that matters. Nervous laughter or otherwise, but it was frankly, Mr Speaker, incredible to see a grown up person in this House in that debate unable to control his anger in public in such a way. What a let down and I say a let down, Mr Speaker, even a let down to me, because I respect the hon Gentleman. I believe that he is a man of intellect, and I respect a lot of what he has done, but when he performs like he performed in reply to the Budget debate, he does not just, Mr Speaker, let his supporters down, he lets all of Gibraltar down and he lets himself down, and when he does that, Mr Speaker, I consider him worthy more of pity than of derision.

Mr Speaker, I think it is shameful to use the Parliament this close to an election for something as clearly a partisan gimmick as this is. It is a pity that we should be showing, as politicians, our people this sort of debate and turning this Parliament into this sort of a circus. I therefore, Mr Speaker, think it is appropriate to tender on behalf of this whole House, and of the

hon Gentleman opposite, in particular, an apology to the people of Gibraltar for the deplorable level of debate in this House during the last Budget debate. We must have robust debate, Mr Speaker, on issues, but we must never allow our standards to fall that low again.

Mr Speaker, we are ready to deliver the change that Gibraltar needs, away from intemperate sophistry. We have already begun our election campaign. Whenever the Leader of the House names the date, or if he does not, if it is called for him by a fluxion of time, we are ready to fight this general election. We have listened to the social partners in the community that we wish to serve, and if the date is fixed for thirty days from to date, we are ready to step up to the plate and become the Government of this great nation.

If, the hon Gentleman's desperation for power drives him to attempt to stay in post until the last minute, we are ready to continue to run a positive campaign, leave all the *mala leche* and the bad faith to him, and ready to run the Government of Gibraltar for all its people, and not for a favoured exclusive [*inaudible*].

Mr Speaker, the latest is cold calling. People are getting cold calls from supporters of the hon Gentleman, even people whose telephone numbers are not in the telephone directory. Mr Speaker, perhaps instead of bringing a motion to allow him to raise the hands of those sitting next to him to vote me down, the hon Gentleman should man the phones and take this challenge from me. Call the election now and let the electorate be the judge of who should be entrusted with the administration of our nation's affairs for the next four years. Instead, Mr Speaker, we are more likely to be treated to the unseemly sight of the hon Gentleman hanging on, grasping the opportunity in his reply on this motion to call me every other name he has not yet deployed, seeking to persuade those who are not yet so turned off by his hubris and his sophistry, that he should be the arbiter of whether I am fit to be Chief Minister of Gibraltar.

Mr Speaker, all of us are the servants of the people of Gibraltar. None of us is the King of Gibraltar, even though he sometimes behaves as if he were.

**HON J J BOSSANO:**

Mr Speaker, I have been in this House thirty nine years and the hon Member, the mover of the motion, twenty and I can say that it is only since he arrived that we have had a constant approach to things being said where the debate is not about the accuracy of what is being said but imputed motives to those who say those things. Something which he introduced from the moment he arrived in 1991 and which he continues doing to this day and which, certainly as far as I am concerned, I have hardly ever done to him although it is as easy to do to him about the things that he says, as it is for him to do it about anybody else. If every time a statement that he makes is not accurate, it is legitimate to suppose that that is evidence of a desire to deliberately make false statements in order to mislead the public, then he is the prime example in this Parliament of doing that. And, in fact, he has done it again today. He has actually repeated today, for the third time, that is to say, he said it in his Budget speech, he said it in his interview on television and he said, for the third time today quoting his previous statements, what is the definition of public debt.

He first of all told us that of the three elements in the law, the two first elements, that is to say, the percentage of the GDP and the percentage of the revenue apply to the net debt and then, as a separate element, the percentage that is the cost of servicing the debt, that applies to the gross debt. Right. Except that the statement he went on to read today and the statement that he read in the Budget and the statement that he told GBC in his interview, says the opposite.

He says, "The first element is an increase in net public debt to more than 40 per cent of GDP. That parameter would permit a

net public debt of £400 million compared to the current £217 million." That is what he has said today. "The second element is an increase in the net public debt to more than 80 per cent of recurrent revenue. That would permit a net debt of £305 million." And then he says, "The third element" which is supposed to be the one that applies to gross, "The third element is an annual debt interest to more than 8 per cent of revenue". He has just read it today. All he needs to do is to look up what he has read. "That would permit an annual interest bill of £30.5 million compared to the current bill of £17.5 million which is just under 5 per cent of revenue. It would permit a net public debt ..." What do you mean net public debt? Have you not just told us that the first two are about the net debt and the third is about the gross? Is it that he has made a mistake and is not trying to mislead the public, the audience or the people listening on radio? Is this a deliberate thing that he is doing or could it be that he has made the same mistake three times. At the Budget, on television and today because, in fact, the third element which he told us applies to the gross debt, he has just read out and said "this would permit a net public debt at current interest of £381 million compared to the net current debt of £216.7 million." Well, that statement is a false statement. It cannot be anything other than a premeditated false statement because he has made it three times, the third time today.

I do not believe and I would not accuse him of doing this deliberately to mislead anybody. I honestly think that a mistake has been made in the arithmetic because, in fact, to say that it would permit a net debt or public debt at current interest rates of £381 million, means nothing. How can it mean that, if you do not know what the net debt is going to be because it depends on what asset you sell tomorrow? If you have got tomorrow a gross debt of £400 million and somebody comes and buys a piece of Government land for £100 million and he puts it in the bank, the way the Government now calculates debt, automatically, even though the money has not been used to repay anything, the net debt is £100 million less. I have argued that one of the misleading elements in this is it gives an impression that

somehow we are £100 million better off if we have got an asset that is worth £100 million less and an increase in liquidity of £100 million. But our net worth is the same.

If the Government has invested money in housing, Gibraltar is not poorer, it may have less cash but the worth of Gibraltar is that now it has assets in bricks and mortar instead of in cash. So the reason why the difference between net and gross is so misleading, to the extent that it even misleads the defender of the concept, and has misled him on three separate occasions, and I do not think he is actually trying to mislead me, Mr Speaker, or you, or Parliament, or the audience, or the listeners. I think he is actually misled himself because I think he is giving us that statement and that explanation in good faith. But it happens to be incorrect and in conflict with his own explanation earlier in his statement today that the third element was a separate issue. In fact, the numbers only come out if, somehow, whoever did the calculation for him, applied an 8 per cent interest rate to the £381 million. Because 8 per cent of £381 million happens to be £30.48 million which rounded to one decimal point is the £30.5 million of interest bill, which he says, the formula provides.

So, here we have got a situation where the hon Member attaches such serious importance to getting the difference between net and gross right, imputes such malevolent intentions to those that get it wrong and he has actually got it wrong three times in a row. In the statement, in the exchanges that we have had, Mr Speaker, the Government in a press release accused me of being deceitful, saying that I was now claiming to have been talking about the £200 million ceiling in 2008 as if it was the ceiling on the net debt and not the gross debt. In fact, the reality of it is that when the Bill was brought to the House, what was said by the hon Member in the House was that whereas in the United Kingdom they regard it as financially prudent and conservative to limit their debt to 40 per cent of GDP, the position of the Government was that they would not follow the United Kingdom by making the limit applicable to the net debt,

as the UK did, and he also claimed that, in fact, the EU had a maximum bench mark which was 60 per cent of GDP under the convergence criteria established in the Maastricht Treaty. And he said that this was also based on 60 per cent where the debt was the net debt. That is the amount owed less the cash reserves. He went on to say, the first is the ratio of public debt to GDP and that is the one that has just been spoken about. Where the UK aims for 40 per cent and the EU has a maximum of 60 per cent under the convergence criteria. Well, that is a false statement.

The EU convergence criteria under the Maastricht Treaty is based on gross debt and not on net debt and I advise him, if he does not believe me and if he thinks I am uttering falsehoods or being deceitful, which are parliamentary language for lying, which is not permitted, that I can let him have the copy of the Office for National Statistics of the United Kingdom Government which clearly lays out the obligations of the United Kingdom under the Maastricht Treaty and where, in fact, the gross debt of the United Kingdom under the Maastricht Treaty is now 76.1 per cent of gross domestic product because it is the gross debt that the EU uses.

So, when he said, in the exercise of his right of reply in the Budget, that it was complete nonsense to say that what we were talking about was gross debt and not net debt in 2008, that my hon Colleague was, in fact, not being truthful because no economist talks about gross debt. No economist in the European Union talks about the gross debt. In fact, that is a false statement. Every single economist on Sky Television, on BBC, on Al Jazeera, on the Chinese Communist Party's television, which is a very good station, all of them are using gross debt to GDP ratios. All of them. So, you know, it is not true. In fact, almost the entire planet is full of economists talking about the gross debt. The entire debate is about the gross debt. The criteria is the gross debt. The gross debt Maastricht requirement is 60 per cent and Greece has got 120 per cent. So



they have got a gross debt which is double what they should have. But it is gross debt.

So, in fact, for any Member of this House to be confused between net and gross debt is not a heinous crime which proves how deceitful he is. I would agree with the hon Member that, in fact, to try and suggest that a proper scientific definition of the level of debt is to divide the debt by the population, that that is not a very scientific way of doing it. But it is a way that he was the first one to introduce in politics in Gibraltar, when he was saying I was [*inaudible*] a millstone around the necks of the Gibraltarians, when he was saying that it was a huge gamble to borrow £100 million. Even though, in fact, I had not borrowed £100 million because the debt was £25 million when we were elected in 1988 and it was £60 million, net debt, £60 million, in 1996. Net debt as it was defined then. And that is an important definition that I have repeated on a number of occasions, Mr Speaker, and if we are going to have debates here which are about more than calling each other names and scoring points, then, at the very least, for those debates to be meaningful and useful and fruitful, either we can agree to disagree or we must, at the very least, recognise that there is legitimacy in the arguments that one side puts or another side puts. Of course, the reality of it is that the hon Member changes the ground rules whenever he needs to change them.

So, in 2008, he came here with a Bill and having just said what I quoted, Mr Speaker, about the gross debt and the net debt and having shown how other people were, in fact, saying, well the net debt must not be higher than this, we, in Gibraltar, were going to be more conservative and more prudential. And we were going to measure the ratio by reference to the gross and not the net amount. And he thought it was so important that we should not use net debt figures, that he actually said it six times. He said, "The act imposes a statutory limit, a new borrowing, by providing that no drawdown or additional borrowing will be permitted that will cost the total gross public debt. I want to emphasise the word "gross" to contrast it with the emphasis I

made of the word "net" when the UK uses the criteria." The UK, who are not as good as us, use net in 2008. But we are better than the UK. We use gross. Except that if you use gross in 2011, you are a lousy cheat trying to deceive the people of Gibraltar. But that it was a wonderful thing in 2008. What changed? We are not using that. We are using gross which is even more prudent than the UK.

So, it is not an unreasonable thing, I think, Mr Speaker, that if you come to try and persuade me and you say to me, look I am being more prudent than the UK, in 2008, and you make a big song and dance of how prudent you are and then, in 2009, you rubbish every argument that you used in the preceding twelve months and you say, well now we are not going to be more prudent than the UK. Well look, it must follow that, if what you were doing in 2008 was more prudent, what you are doing in 2009 must be less prudent. This is not making false statements. This is simply the inevitable logic. If using the gross debt is better, then using the net debt must be worse. If, by comparison with the UK, we were being more prudent in 2008, then since 2009 we have been less prudent than in 2008 and as imprudent as the UK was in 2008. Therefore, I cannot have been deceitful when I issued a press release saying that, in the debate in 2008, we were talking about the gross debt, because the entire debate was about gross debt and nothing else. And the net debt only entered into that debate as the basis for comparison as to how much better, how much more prudent and how much more solid and conservative we were being in our public finances than the UK.

The only thing is, of course, that we were even more prudent and conservative in our public finances in terms of borrowing before he got elected than since. Because, of course, the previous debt limit was also gross debt. So it is not that in 2008 we were going, for the first time, from net to gross. It is that it has always been gross in the history of Gibraltar and that in 2009 we became less prudent, by his definition of what is prudent, and joined the UK in measuring the ratio of net debt to

GDP instead of gross debt to GDP. Therefore, given the emphasis on the net, we now talk about the debt being £217 million and not the £480 million that we owe, a figure that may well be much higher now because, of course, since the Government raised the limit that can be invested in debentures from £100,000 to £500,000, I imagine it is because they want to carry on borrowing, otherwise why increase the limit. I imagine that they have been successful in borrowing because they are offering, I think, one of the most attractive rates on Government investments that can be found anywhere, unless you are talking about bonds like those of the Greek Government where people are getting astronomical rates of interest because of the risk of default. There is no such risk of default in Gibraltar and investing in Government debentures is a very good business for the investors, less of a good business for the tax payer. The Government thinks it is a good idea to keep on borrowing at that rate of money. Well look, they are the Government. They are entitled to do that.

The limit, as the hon Member said, is the third part of the equation of the formula in the Public Debt Act. But, of course, it is not a fixed limit and it is not a limit that is impossible to breach. In fact, de jure there is a limit, de facto there is no limit because, in fact, the limit depends on two things. One of the things is, of course, the rate of interest and, since it is determined by the rate of interest, it means that to some extent it is a limit that is not a very good idea to have because suddenly there can be rampant inflation all over the place and you can finish up paying huge interest rates and you then find that the limit of your debt comes down as the rate of interest as the *[inaudible]* goes up. Because the 5 per cent the Government is offering now on Government debentures is a very attractive rate. But, if tomorrow the UK was offering 10 per cent, people would sell the Gibraltar Government debentures and buy UK ones.

So, there is that element to it which makes it uncontrollable. But there is, of course, the other side of that same coin. Because the two elements in that ratio on the debt servicing, on the cost

of paying the interest on the debt, is that one is the level of interest that you are paying expressed as a percentage of the level of revenue that you are receiving and, therefore, it means that the Government should not allow the cost of servicing the debt to rise above 8 pence in every pound of Government revenue. That sounds fine. But, of course, one of the things that happened in 2010, you will recall, Mr Speaker, was that we passed a Bill here, which I questioned, where we moved all the Government Agencies into the Consolidated Fund and backdated that to the 1<sup>st</sup> April 2009. Something which I frankly questioned and which I thought was not the correct thing to do, too. We have now audited accounts that show that Parliament approved expenditure from the Consolidated Fund which took place in April 2009 but which Parliament approved retrospectively in February 2010. But there is an effect of the formula, because by shifting something like £90 million of the Social Insurance contribution to the Gibraltar Health Authority, that became Government revenue. It did not make any difference to anything. The Government defended it on the basis that this was going to make it more transparent and more accountable to Parliament and that we in Parliament would be able to better control the finances. Well look, how can we better control the finances of finances that have already been spent?

The effect of it is that the ratios that are now defined, backdated to 2009, means that you can now argue that the 8 per cent of the revenue is not the 8 per cent of the revenue that there was in 2009 when we had the 2009 Budget. It is the 8 per cent of the revenue which includes the revenue of all the Agencies, Authorities, the electricity. So that means that if tomorrow you increase electricity charges, and the people that consume electricity finish up paying another million pounds, you can now increase your public debt because you have got another million pounds of revenue and that, therefore, you can now use 8 per cent of that million pounds to service the debt.

Well, if that was being done by an Electricity Authority that would be done because the Electricity Authority was using the revenue

to amortise its capital investments. But, by moving all that in, what happened was that in 2008 it was fantastic to have net debt. In 2009 it was not so fantastic to have ... in 2009. So we moved from net to gross because we were on the verge of breaching the £200 million. This was the explanation given at the time in the House. We were, I think, on £197 million and, therefore, we were very near breaching the £200 million gross debt. So now the £200 million becomes net and therefore, in addition, you have a problem now that the only real barrier is the third criteria which can stop you borrowing because the other two you can always say, well look as long as I do not spend the money, or as long as I do something else, you can put tomorrow a bundle of properties into a Government company or you can get the Royal Bank of Scotland to finance the building of car parks and remove them from the Improvement and Development Fund and juggling things from one place to another means that the formula can still be applied and the limits will never be breached, because you simply say, well okay, I sell all my car parks to a company. The company mortgages the car parks. The cash is then used to lend to other companies which are currently now borrowing from the Consolidated Fund. The Consolidated Fund cash level goes up. I then produce revenue by making the companies pay me interest on the money that I lend them, which we can see in the Estimates, and for every million pounds they pay me in interest I am now able to increase my gross debt. So the reality of it is that the position that I took in 2008 was not even to criticise the Government. Notwithstanding the fact that I had more than sufficient reason, having been there, and having been attacked for having £99 million of public debt, which was gross debt. I could have said, well look, how could it have been such a bad thing to have had £99 million of gross debt and now you want to go to £200 million. What I told the hon Member was that I supported it. That I thought it was reasonable. I said, therefore, we see nothing wrong with the level of £200 million in an economy of our size. It seemed to me a reasonable thing, and I said to the hon Member, if I am going to question anything, this I will look when you start spending money. Not how much of the £200

million you spend, but whether it is a reasonable thing to be spending the amount of money you are spending on galactic toilets, or containers for rubbish bin that are costing more than a three bedroom house used to cost in Harbour Views in 1991. But that is monitoring the wisdom of Government spending which is what we are paid to do on this side of the House. They are paid to exercise judgement and we are paid to question how good their judgement is. Questioning how good their judgement is, is one thing and suggesting that they are evil people with evil intentions, in exercising that judgement, is something else. That is what they used to do to me when I was there and what I do not do to them now that I am here. I could have done it about the £200 million and I chose not to do it and I could have done it today about the discrepancies that I have pointed out and I am still not doing it, because I think, in fact, when the hon Member stands up and says things, sometimes he either forgets what he said before, or sometimes he has changed his mind and tries to cover up. But I do not think that it is some evil thing. That he is a deceitful person, that wants to deceive the people of Gibraltar and I have not said that to him.

But, Mr Speaker, if the hon Member has said in this House that he has given a commitment to Community Care that he will restore the funding so that they do not eat into their capital base and then he has an interview in the Chronicle and says, I have been deliberately running down the capital reserves of Community Care over fifteen years. Well, it is not Parliamentary to say so. But let us just say that both statements cannot be true. I am not saying either was a lie. But it is manifestly clear that the two cannot be true. So, either he forgot what he was doing for fifteen years when he said what he said in the House, or when he said the fifteen years, he forgot that he had said something different in the House. And if he says to us in the House that he has come to the conclusion that, what he had previously praised and defended, I think it is one of the few things that he has actually given me credit for and said it was a good thing to do, was the setting up of Community Care and he has gone to the Foreign Affairs Committee in the United

Kingdom and defended it every inch of the way, in the same terminology and with the same arguments that I had done before. It is good that things like that should happen in public life in Gibraltar, that there should be certain things that are sacred, that are of interest to all of us, that all of us will one day be entitled to be recipients of. Some of us already are entitled. I am one of them.

So I have got a political interest in this and a personal interest in its survival. Both. But, of course, if he comes to the conclusion that it is unsafe as structured at present, and I say to him, well look, if it is a time bomb waiting to explode, if it is ticking away, and if you reach that conclusion, and if you claim that you have something better and safer, and which gives everybody the same benefits, and if these are not false statements, right, then get on with it. Because, you know, who wants a ticking time bomb if you know where the time bomb is and you know that it is ticking. Let us get on with removing the detonator and stopping the bomb. He tells me that it is going to be done in 2010 and, when I ask him in 2010, he says, well, there is a bit of slippage and it may slip in 2011. Well, there is not much left of the life of this Parliament for it to slip. I really think that any of those things could be attacked as being deliberate attempts to mislead people. I did not attack him on that basis. He attacked me. He said I was trying to scare people. Well look, I am the person who is saying let us find out where the ticking time bomb is and let us switch the thing off. He is the one saying he knows there is a ticking time bomb and he knows where it is. And I am scaring people? I want to get rid of the ticking time bomb. I do not know that there is one. I do not know whether he has invented it or whether his judgement is mistaken. All I know is that these statements get made in public life and we can all, if we choose, make a big song and dance of when anybody in the opposite political camp says something like that, and then impute the most improper selfish motives for these contradictions. We can all do it. If the pattern of the future is going to be that to boot, as he likes to say, to boot, we are going to use our majority in this House to bring censure motions

against every contradiction, or anybody that is in Opposition, then, of course, we will bear that in mind as his preferred modus operandi for what will happen after the next General Election.

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

Mr Speaker, I think I caught, towards the tail end of the Hon the Leader of the Opposition's reply to my motion, his use, not once but twice, of the word sophistry. Well, Mr Speaker, for those people who before today did not know what the word sophistry meant. They have just had a three quarter hour definition of it. The Hon the Leader of the Opposition has done nothing but sophistry in reply to an accusation which does not use the word in this House that are used outside this House, only because the Speaker instructed me not to use it, which has not prevented them from using it, repeatedly, during the contributions. Mr Speaker, the hon Member needs to understand that there are some holes from which you cannot extricate just by blowing hot hair downwards in the hope of rising out of the hole, and the Hon Leader of the Opposition has done that. I still harboured the hope, despite having come to the conclusion that this was a deliberate, premeditated attempt to use information that he knew to be false, to mislead public opinion, that he would stand up in this House today and say something, anything, by way of defence against the charge. Not a single word. Not a single word has he, the Leader of the Opposition, said to deny the truth of anything of what I have said in presenting my motion to him. Not one word and, therefore, Mr Speaker, if it is ten seven, it is not because the Government is engaged in devices, it is because there are seven Members of this House who, having heard not a single word, or justification, or explanation for the hon Member's behaviour, are going to vote for him, even though they know that everything I have said is true, and that is the correct analysis of what he said. There are six other Members of that House who know that every single word that I have uttered in presentation of this motion is one hundred per cent correct and who know that everything that the hon Member said

in that podcast is one hundred per cent incorrect on this point, and they are still going to vote against this motion and in favour of him, even though he has not given them a single statement or argument on which to base their submission, on their vote.

Mr Speaker, this debate is not about the level of public debt. It is not about whether the Hon the ex Leader of the Opposition, who sounds more and more like the still Leader of the Opposition every time he stands up to open his mouth, it is not about whether he likes or does not like the way the Government has restructured public finances. It is not about the trilateral process. It is not about Community Care. It is not about all the things that have been brought into this debate. It is about whether the Hon the Leader of the Opposition knowingly left this House and made a film containing things which he knew to be untrue, for the purposes of misleading public opinion. That is what this debate is about and nothing else, and no amount of smokescreen ... What we have just heard the Leader of the Opposition ... he thinks he is going to draw me now into a debate about who said what and all to his usual Bossanesque debating tactic, throw up enough sand in the air, throw up enough smoke, and everybody will forget and by the time they have read the end of the Chronicle's report tomorrow, people will not know what this debate was about and will have forgotten that the Hon Leader of the Opposition set out to do exactly what he does.

The Hon the ex Leader of the Opposition's, is if you could call him that, smokescreen is not even based on the thickness of the smoke. It is based on the quantity of the smoke. I suppose he thought that by keeping us here an hour, talking about things that have precious little to do with anything of what is at stake in this motion, he thought that we would all forget what this motion was really about. A mistake. Does the Hon the ex Leader of the Opposition really think that what the Hon the present Leader of the Opposition made was a mistake. Well, I have given him four reasons why, having thought carefully about whether I thought it might have been a mistake, I have come to the conclusion that

he could not possibly have made a mistake, and the hon the Leader of the Opposition has not rebutted one single one of them. Not one. I started my motion by saying that I had set myself the task of thinking very carefully of whether there could be some innocent explanation to justify the hon Member's behaviour. I then set out four reasons why I had concluded that it could not possibly be a mistake, and must have been a premeditated act. When he has stood up to say all the things that he has said, that we are now going to have to review as well, not one word in rebuttal of any of the reasons why it cannot be a mistake and must have been intentional. So it was intentional, and if it was not intentional but a mistake, why has he not at least today recognised that it was a mistake? Not one word of acknowledgement by the Hon the Leader of the Opposition to say, alright look, I was not telling a premeditated truth. I just got it wrong. Not one word. In the face not of a contradiction, or saying one thing today and a different thing tomorrow, or the normal political debate, all of which the Hon the ex Leader of the Opposition has said in any case nonsense. In the face of a statement of four reasons that demonstrate that it could not have been a mistake, and still not even a declaration that it was a mistake. So a mistake, it was not.

With the greatest of respect to Hon the ex Leader of the Opposition, Mr Bossano, everything that he has said in his own contribution is a nonsense, factually and actually incorrect, but I am not going to fall into the trap of being drawn and sucked in by him. No, if he wants, we can have another motion, and if the hon Members want a motion about the level of public debt, and the correct use of the phrase per capita ... If they want a debate about all of those issues, I am very happy to have a debate on each of all those issues. But this is not what this debate is about, and they cannot get away, or they will not get away with their usual blunder bluster approach of throwing up enough dust, throwing up enough confusion to obliterate the simple fact that the Hon the Leader of the Opposition left this House to make a recording which he knew was untrue. And if he did not know it

was untrue, what is his explanation for not having made the same observation in the House two hours earlier.

Mr Speaker, the Hon the Leader of the Opposition simply makes matters worse by what he has said in his own non-defence. It is really not possible to call it a defence because he has said not one word that is an answer, even an attempted answer, even an unconvincing answer to what I have said of him. There has simply been no answer at all from the Hon the Leader of the Opposition. He thinks he can get away with it by sitting down, after that act of irrelevant sophistry, and then be defended by the ex Leader of the Opposition, who all too often is now having to protect the hon Member from doing the crazy things that he said he was going to stay in politics for, until he was ninety two. He thought that the defence would be the Hon the ex Leader of the Opposition's list of irrelevant non-comparables. Well, Mr Speaker, look, let us go through some of the things that the Hon the Leader of the Opposition did say.

He said it was incredible that the Parliament was being asked to waste time. Well, Mr Speaker, he may find the distinction between the truth and the untruth a waste of time. In fact, I suspect he does think it is a waste of time, but most people in Gibraltar do not. He may think that pointing out that the Leader of the Opposition has gone out of his way to premeditatedly fabricate facts in order that people should be misled about the subject matter of his statement, he may think that that is a waste of this Parliament's time. I do not think it is a waste of this Parliament's time and I suspect that most people of integrity in Gibraltar do not think it is a waste of this Parliament's time either. This waste of Parliament's time was supposedly to blacken his name. Mr Speaker, it is not necessary for the Government to blacken the Leader of the Opposition's name. He does it all by himself.

So, let us be clear, the Leader of the Opposition should be free, according to morality, according to the Leader of the Opposition. The Leader of the Opposition should indeed be free to do what

he has done in this podcast, and anybody who holds him to account for what I would use a three letter word outside of this House but which I cannot use it inside of this House, he believes that that is a device and a waste of time. In other words, let me invent facts to mislead the people of Gibraltar into believing what is not the case. Mr Speaker, it is not a device to blacken his name. He blackens his name repeatedly, and as a matter of political system by his cavalier disregard for the difference between falsehood and truthfulness and he says that he would not do politics in this way. Well, Mr Speaker, on this side of the House we do not give him cause to have to do politics in this way, because we do not say one thing in this House and another thing outside of this House. We do not invent facts and figures in order to make a false political case outside of this House as the hon Member does.

Mr Speaker, he says that pointing these things out to the electorate of Gibraltar is the last gasp of the old order. He believes that the community is not interested in a ding dong of who has lied. Well, Mr Speaker, does he really believe that. Does he really think that the people of Gibraltar, whom he wants to serve as Chief Minister, does he think so little of them that he believes that they do not care that their Leader of the Opposition leaves this House and fabricates a little Thespian production for the purposes of misleading them into a, sort of, Alice in Wonderland analysis of the public debt. He really believes that the people of Gibraltar are not interested in that. Well, I think there is only seven people in Gibraltar who subscribe to that view and they are sitting on that side of the House at the moment.

Their lies are my truths, their truths are our lies. Well, Mr Speaker, look, the only one that has said things in the podcast that are wholly untrue is him. Is he still denying that they were untrue. Their lies are my truths, he said. So, I am lying now, in my motion, therefore, he is still asserting that what he said is true. He continues to stick by his fabricated, false, misleading, premeditatedly so, statement. The Hon the Leader of the

Opposition, ex Leader of the Opposition, sorry, one gets very confused. So the Hon ex Leader of the Opposition wants us to write it off as a simple mistake. There is no mistake about this and, if it had been a mistake, he has had the golden opportunity today to say, I am sorry, I got it wrong. Instead, he has just thrown up smoke and dust into the air. Well, Mr Speaker, the hon Member is simply not telling the truth, again, for his own self serving premeditated political interests, when he says that the Government has lent property to a property developer of the brother in law of one Minister. That is exactly what he has said. That is exactly what he has said. It is not true, Mr Speaker. First of all, he knows that the transaction has not taken place. Secondly, he knows that I have carefully explained that the Government is not willing to lend, because the Government is not willing to be the bank. He knows that. I have explained it to him in this House. That the Government, if anything, would be a joint venture shareholder. They know about joint venture companies. They invented them. Now, did this stop him from just saying on his feet whatever suits him at the time regardless of whether it is true or not. Of course, it does not, because he does not care about the difference between what is true and what is not true. Then he said that we, the GSLP, are in politics to change lives for the better. Well, a clearer statement that no spots on the GSLP has changed, and it is still the same old GSLP, a clearer statement you could not have. In other words, never mind the untruths that I premeditatedly tell the people of Gibraltar. All that is okay because I am in politics to change lives for the better. In other words, nothing has changed. The end justifies the means. So, pointing out that the people have been shamelessly and premeditatedly misled is a device to blacken my name, and it should not be done, not because the accusation is not correct, but because he is in politics to better lives. People do not want their lives bettered on the basis of lie, after lie, after lie.

And he still does not appear to understand the point that I have made to him about his abuse of the per capita point. I have explained to him now twice, and he still stands up and says you

are the first one in 1996 to talk about per capita. Look, there is nothing wrong, Mr Speaker, with converting public debt into a per capita figure in order to demonstrate the relationship between debt and the number of people in the country. What you do not say is that the people in the country are personally responsible to repay the debt. The point here is not the per capita bit, it is that each man, woman and child owes, and if you have got three in the family, then three of you owe, and if you have got four in the family, then four of you owe. That is the fraud on the public. Not the question of whether you can make a point by expressing public debt on a per capita basis. It is the way he did it, Mr Speaker, which lends itself to the description that I have uttered in my motion. And you see, he thought he could correct it by using the correct formulation, pounds per capita. What is wrong with expressing debt as pounds per capita? Answer, nothing. What is wrong is to say, as he said in his podcast, that means that net public debt is now £7,000 per capita, that means after we have used all the money we have in reserve, every Gibraltarian, every man, woman and child, still owe ... They, the men, women and the children, still owe £7,000 per capita for a family of three, by the way if you have been unfortunate enough ... I mean, if you have been fortunate enough to have only one child, do not worry because that is only £21,000 that you owe, but if you have been unfortunate enough to have two children, then it is £28,000 for you and you can do your own tables, in case you have got more children. That is where the element of premeditated fabrication of facts and presentation, to which I have referred. Not the one that he tries to pretend is the subject matter of the Government's accusation against, which it is not.

Mr Speaker, and then he referred to my attitude to social media. He reminded me that this was a new and social way of communicating with the public. Yes. But does he not think that the public, with whom he communicates on this modern social media, have some interest, and perhaps some wish, that he should speak to them across it, telling them the truth, and not whatever untruth suits him at the time to try and cheat them out

of their vote. Or was all that he was interested in saying is being able to tweet, as he does, from Parliament. The Chief Minister says that everybody that uses social welfare is ... Well, I have not said anything about anybody. What I have said is about people like him, who abuse social [inaudible] sites, to say untruth, social media sites, who abuse it to say untruths which they do not dare say in this House. That is what I think is the problem, and you can be very certain, well perhaps he is not very certain, because I am completely convinced that he is completely detached from the values and standards of the vast majority of people in this community. So he may not understand that people who value social media do not value being told premeditated untruths in the social media too, and that is the distinction that he does not understand, because of course he attaches no importance to the difference between truthhood and falsehood. None whatsoever. When have I said that Facebook is a waffle. It just suited him, there and then, to utter the fact. The Chief Minister thinks that Facebook is a waffle. The only thing that is a waffle on Facebook is the abuse to which the hon Member puts it by telling premeditated untruths on it, systematically. He only waffled.

He will use ... rather than apologise, rather than say that he got it wrong, rather than admit what he stands accused of, he resorts to any and every argument however damaging and untruthful it might be. So why does he think that saying in this House that we have given a €250 consultancy without going out to tender, why does he think that that is a defence to the charge in this motion? In this motion against him. Why. What is the relevance of it. Even if it were true, which it is not. I have not refused to provide the hon Member with an explanation. I gave the hon Member an explanation, namely, that we had legal advice. It is just that he did not want to accept it and kept on asking me for an explanation different to the one I have given him. I recall that the Speaker then intervened to say, the Chief Minister has given you an explanation. Whether you accept it or not is your matter, business. So why does he say that I have refused to provide him with an explanation about all of these

supposedly ... all of these consultancy tenders that have not gone out, or contracts that have not gone out to tender, Mr Speaker? I am not going to get drawn into that. If he wants to bring a motion against the Government ... It is all very well for him to constantly insinuate something untoward about the Government's lack of going out to tender and constantly having people believe that this is for some corrupt, nefarious reason, that we are all lining our pockets, and, if not our own, then our brothers or some relative. This is the insinuation. If he believes that, why has he not had the political honesty and courage to bring a motion in this House, as is his duty? He is a political coward. A serial political coward.

Mr Speaker, and it is not true that we have not ... In defence to the charge that he has done the very bad thing that this motion accuses him of, he says, well, perhaps if the Government would inform us what they have spent the £480 million of borrowed money on, then we would know. Well, first of all, that is another premeditated untruth on two grounds. First of all, he still does not know the difference between gross and public debt. The £480 million is gross public debt which means it has not all been spent. So why does he stand there asking for public information about how the Government has spent the £480 million, when surely everybody listening to this debate by now must know that it is gross public debt £480 million, and it has not been spent because the net public debt is the difference between the gross public debt cash reserve. Then, why does he insinuate, if he were interested in sticking to the truth, that the Government does not give details of how it does spend capital, whether it is borrowed or generated from its own resources, when every year in my Budget address I give a tiresome list of projects with figures of the amounts spent on each, and I do the totals for them, so that they can follow. So why does he stand there? Why does he stand there in this House compounding the very thing that he is accused of in this motion, by suggesting the contrary, when he knows it is not true? It is because it comes to him naturally. Because he does not care whether he uses the



truth or whether he uses falsehood. He does not care for the difference between the two things.

I do not know. I do not know how he thinks his inaccurate statements and his false statements about the trilateral process. I do not know how he thinks that these are an answer to the accusation which is being made openly by a substantive motion in this Parliament, that he left this Parliament having not, 2 o'clock or 12.30 p.m. or whenever it was that he started his address, not thinking that there was a £500 million debt limit and that the Government had exceeded it, goes five hundred yards down the road to the GSLP Headquarters, I will call it that since he does not like reference to butchers, and say precisely that. How is that possible? Does the hon Member not believe that that contradiction in his behaviour in the two places calls at least for an explanation on his part, so that those people who are minded to believe that it was not a premeditated attempt to mislead public opinion by uttering premeditated untruths, might have a reason for believing it, if they were minded to.

He does not give, even those with an inclination to think better of him, the opportunity to do so because he offers no explanation for his extraordinary behaviour. Well, Mr Speaker, he says that obviously we subscribe to the principle that politics has to be carried out in bad faith, bad milk, bad faith. I think *mala leche* is the phrase that he used, and he suggests that I have said somewhere that politics has got to be like this, another issue upon which we might bring a motion to see, to test the truth of. But, Mr Speaker, I can think ... I do not know whether people expect politics to be carried out in bad faith or not. I suspect that they do not. But there can be no greater example of the bad faith that the people of Gibraltar will find repellent to them, than to have been systematically told untruths to, on a premeditated basis, to premeditatedly mislead them. I am sorry about the long hand, but I have to avoid the use of the much shorter single word.

So that apparently is not in his definition of bad faith, or bad faith politics, or bad ... That is okay. So, therefore, I suppose the people of Gibraltar have to draw the conclusion that the hon Member thinks that these things are okay in politics, and that should they ever elect them as their Chief Minister, they should expect more of it, since he thinks it is okay, and not bad faith.

Well, Mr Speaker, he says that the time has come to change how politics is done in Gibraltar. Well, I do not know whether the people of Gibraltar will agree with him. I suspect that even those who might believe that change from time to time may be a good idea, even those people will not rush to subscribe to the proposition that any old change is good enough, Mr Speaker. It is never time to change to a political style based, as his is, on systematically telling people things that he has fabricated and invented for the purposes of misleading them. If he thinks that the people of Gibraltar think that it is time for change to the sort of politics represented by his performance on that podcast, and the complete absence in it of any regard or care for what is true and what is not true, what is a premeditatedly uttered falsehood and what is a genuine mistake, then he is very mistaken and he is going to find out quite soon.

Mr Speaker, he says that, in bringing this motion, he is glad that I have brought this motion because he says, he, me, that I have shown my true colours. That is the biggest political complement that he has ever paid me. It does, indeed, show my true colours. It means that I do not tolerate the premeditated telling of falsehoods to the people of Gibraltar in order to mislead them. That is the colours that it shows. It also shows him in his true colours, namely, being entirely comfortable with the idea of systematically telling premeditated falsehoods to the people of Gibraltar in order to trick and cheat them into believing what it suits him, his politics, that they should believe. I think there cannot be a bigger monument to the differences between our personal styles and our personal values and our personal standards, than this statement, which is his and not mine. But I

could not have done better myself in devising an oral monument to the difference between us.

Mr Speaker, he said that he would never allow his interventions in this Parliament to sink to such low levels. Well, Mr Speaker, it is not his interventions in Parliament that concern me today. It is his interventions on his podcast on the internet. Or does he think that there is one standard in Parliament and a different standard on the internet. Well, it is not enough for the people of Gibraltar that he will not sink to such interventions in this Parliament. What the people of Gibraltar want to know is whether he will stop sinking to the levels of intervention of his podcast on the internet, riddled as they were with, here comes the long hand again, premeditated falsehoods for the purposes of misleading the people of Gibraltar. That is what the people want to know, Mr Speaker. That is what the people want to know that he would never allow and they cannot know that because, not only does he allow it, he is the arch practitioner of it himself. It is shameful, he said, to use Parliament so close to an election for this partisan gimmick. Oh I see, so it is a partisan gimmick to point out to the hon Member opposite that he fabricates laws, facts and figures, not on the basis of a casual mistake in the misspeaking of a figure, or even of the misspeaking, inadvertently, of a principle, or a concept, which can indeed happen to anybody. But for that to have been the case, he would have had to say on his podcast, the same as he said inside this Parliament. He cannot say in this Parliament that there is "room for less debt", and then rush down the street to tell the people that there is a £500 million non-existent limit, and that the Government has therefore breached it and borrowed more than the law allows them to borrow, having said none of those things in this Parliament. That is not capable of being an innocent mistake, however many examples of innocent mistakes his colleagues around him may wish to site from the past.

Mr Speaker, for the hon Member to have made an innocent mistake on his podcast would have required him, first, to have

acknowledged it by now and, secondly, to have disbelieved everything that I read to him about what the public debt ceilings were, which are not as the Hon ex Leader of the Opposition says. No-one on hearing my Budget speech could have thought that there was a debt limit of £500 million or that it had been breached, when I had carefully spelt out what the debt limits are and, in each case, said how far we are below the limit. If he thought, genuinely by mistake, that I might have been lying through my teeth, the least that he could have done is, as a lawyer that he is, yes, he might have gone to the Public Finance (Borrowing Powers) Act and read the law for himself, if he did not think that my exposition of it, two hours earlier in this House, was persuasive. Then he would have known that what he was saying to the people of Gibraltar on his podcast could only have been a premeditated falsehood in order to premeditatedly mislead them.

Mr Speaker, the hon Member has taken a liking to saying that we hang on in power longer than the proper rules of democracy permit. My I remind the hon Member opposite that the party of which he is now the Leader is the only party in the history of Gibraltar that has done that. We have never done it, but they have. They are the only political party to have done precisely what he is wrongly, again premeditated falsehood, saying that we are doing.

Mr Speaker, the hon Member, regrettably, has not given this side of the House, as we would have hoped, any argument however flimsy, any argument to alter our view that because of the circumstances in which he did what he did, it could conceivably have been a mistake. Had he given us any grounds for believing that, then, as Parliamentarians, we would have assessed whether the benefit of the doubt should be given. Not only has he not done so, he has not even himself claimed that it was a mistake and he has said nothing except irrelevant counter attack to obfuscate and confuse and to cover up what he said which is a simple untrue statement. A simple untrue statement uttered in circumstances which I have set myself the task of

demonstrating is not compatible with mistake. He had the chance to argue that it was compatible with mistake, and that it was a mistake. He has failed to take that opportunity in his usual intellectually arrogant way. Well, he leaves un rebutted the proposition that because of the four circumstances that I have described in my own address on the motion, what he did on that podcast was a premeditated uttering of things that he knew to be false to the people of Gibraltar in order to mislead him and this House rightly should condemn him for it.

If there are seven Members on that side who do not, then ask yourselves this question. Who is playing partisan politics in Parliament? Or is there anybody on that side of the House who thinks that what the hon Member said was true in his podcast. Is there any member opposite who thinks that the Hon Leader of the Opposition, having concluded that nothing of what he said was true in this respect, has offered an explanation that might lead you to believe that it was a genuine innocent mistake. The answer is that he has not because the facts speak for themselves. It could not possibly have been so and therefore, Mr Speaker, it gives me no personal pleasure, but with every sense of personal and political justification, to commend my motion to the House.

Question put.

The House voted.

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

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

The amended motion was carried.

## **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 Private Members' Motions.

Question put.      Agreed to.

## **PRIVATE MEMBERS' MOTIONS**

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

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

#### **“THIS HOUSE:-**

**NOTES the actions of PC Jared Mackintosh on the 31 May 2011 when he attended the scene of a fire at the North Mole;**

**ACKNOWLEDGES that PC Mackintosh put himself at great personal risk;**

**NOTES that he removed to safety one of the workers injured in that accident (now sadly deceased);**

**ACKNOWLEDGES that PC Mackintosh put his own life at risk in protecting others;**

**RECORDS AND ACKNOWLEDGES the bravery of PC Mackintosh at the scene of the fire;**

**AND this House therefore resolves that the Gibraltar Medallion of Distinction be bestowed on PC Jared Mackintosh.”**

Mr Speaker, this is a much more pleasant motion, I am sure, for all of us in this House and for those that are listening, tainted only by the tragedy that one of the individuals that PC Mackintosh bravely removed from the fire on that day has now sadly died. The events of the fire at North Mole on the 31<sup>st</sup> May this year were daunting for all of us in this community. In a moment, our usually peaceful and safe environment appeared under threat. A large cruise ship berthed at the North Mole which had been slowly receiving its passengers back aboard from a day amongst us, was forced to quickly slip its moorings and steam into the bay. Our whole community was looking at the North Mole and seeing plumes of smoke and flames. A noxious smell soon engulfed parts of our city, and yet even before most of us were aware that there had been an incident at the North Mole, our emergency services had started to deploy. All of them deserve credit for what happened on that day, and what they did to stop it from affecting the wider community. The City Fire Service and the Defence Fire Service were at the front with a number of private operators who, although not an essential or emergency service, turned their hands to assist immediately when the community needed them. The Customs Department were also deployed in the front line with their vessels as were the Gibraltar Defence Police. The Ambulance

Service and the GHA were on alert and had thankfully to deal with precious few casualties, although it is fitting, Mr Speaker, that we should of course recall that one of the workers at the facility, where the explosion and the fire occurred, has since, as I said before, very sadly and tragically, passed away.

Parts of the MOD were on alert to assist and the whole of Gibraltar was united in concern for what might have been. Our common gratitude must go out to all of those who acted on that day. The bravery of the officers of the City Fire Brigade, the Defence Fire Service, the Royal Gibraltar Police and the Defence Police, displayed immense courage and bravery in the hours whilst the incident was live and the fire burnt. Each and every member of those bodies deserves our recognition and collective thanks. I know I speak for the whole of the House, Mr Speaker, when I utter these words of thanks to all of our emergency services.

Mr Speaker, as the alarm went out, before any of the rest of us of the community knew that there was even an incident, and before the personnel of our emergency services referred to had yet arrived, a young man, a police constable in the area, saw the incident. Saw that there were two people in danger in the area, indeed, atop the tank in question and selflessly launched himself to their rescue. It takes a special kind of courage to be a police officer or a fireman. It is at moments like this, when faced as PC Mackintosh was on that 31<sup>st</sup> day of May, that the measure of a man is found and the courage numbs the fear that any other citizen may feel.

PC Mackintosh's endeavours gave the very seriously injured worker atop that tank a chance to live. It gave him a chance to fight for his life, a fight he unfortunately lost some weeks ago after many months of struggle against his injuries. In risking his life to save another, in our view, Mr Speaker, Jared Mackintosh made himself a very worthy first ever recipient of the newly created Medallion of Distinction. Having only joined the RGP less than a year and a half before this incident, PC 152

Mackintosh is a well liked young man of twenty nine, whose selfless courage represents the highest standards of our police service. I have had a chance to speak to Jared and know that, although we, as any objective observers, consider his actions on that day to be heroic, he does not see himself as a hero but just as another PC doing his job.

This motion to bestow this Medallion is a fitting way to acknowledge his actions on that fateful day last May. I have, before moving this motion, Mr Speaker, consulted with the Hon the Leader of the House and I am grateful for the indications he has given me about the way that they will approach this motion.

Question proposed.

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

Mr Speaker, I seem to recall that, when we were debating the last motion, the hon Member thought that it was a party political broadcast of the GSD. Well, the cynics out there might think that this is a party political broadcast on behalf of the hon Member and that he is making a political pitch to all the bodies ... I think he has been very careful to mention as many collective bodies as possible in the hope of acknowledging the participation of, I think he has mentioned every single body in Gibraltar, with numerous membership. And of course, Mr Speaker, I do not attribute any such motive to him, but people more cynical than me might take the view that there is an ulterior political purpose for doing that. Mr Speaker, I think given all in all, and given that he is not the Leader of the House, I do not think, and it is the second time that he has done it today, he is entitled to speak for the whole House on any issue and, certainly, not on one on which we are going to speak for ourselves.

Mr Speaker, I agree with the hon Member opposite that PC Jared is clearly a very dedicated, dedicated to his duty and that I

think he has been a very brave young man. I think that his bravery constitutes distinction and that is why the Government has agreed to support this motion. But in supporting this motion, let us be clear that many police officers, many fire officers, many emergency workers of many types, regularly put their lives at risk to protect and save others. It is important that one act of bravery, because it happened in such spectacular context, does not get acknowledged as distinction, but that other acts of bravery by people who are brave by nature, in doing the jobs that they do, go unrecognised. I sound that, not in any way to suggest that PC Jared has not been very brave, which I believe he has been, nor to suggest that he is not worthy of having that bravery recognised by this act as an act of distinction, which we will do, but simply to comment that many police officers, many fire officers and many other public servants and, indeed, some people who work in the private sector, regularly place their lives at risk to protect and save others and we should not forget that, and indeed have done so in the past without this recognition. I think that this House will want to send the signal and, certainly, on this side of the House we want to send the signal, that, in recognising PC Jared's bravery, which we do graciously and gratefully, that we are not somehow signalling to others that their bravery, recognised or not by an award, is any less deserving of the gratitude of the community that they serve. With only that caveat, which is no derogation or detraction from the worthiness of PC Jared to have his distinction recognised, the Government will support the Hon the Leader of the Opposition's motion.

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

Yes, Mr Speaker. I do not want this motion to be tainted by my replying to what the hon Gentleman said in opening his speech in support, and I will gratefully acknowledge the support of the Government in passing this motion and recognise that the hon Gentleman is, of course, right in echoing my words that there are very many others who also deserve recognition because of what happened on that day, and I echo his that some things

sometimes happen in the course of every day in this place that are worthy also of our recognising people putting themselves at risk.

**HON CHIEF MINISTER:**

Mr Speaker, will the hon Member give way?

**HON F R PICARDO:**

Yes, of course. Yes.

**HON CHIEF MINISTER:**

In a sense PC Jared agrees with everything that I have said. He himself has reported to this House, he, the Hon the Leader of the Opposition, has reported to this House that PC Jared sees himself just as another police constable doing his duty and his job, and that is the point that I am making, that there are many police officers, many fire officers, there are others but those are the two main ones, that constantly do this, exposing themselves to danger, policing the streets at difficult hours, and exposing themselves to all sorts of things, and all I wanted to do was not to, in any way, detract, but simply not to leave them unrecognised or leaving them feel that their own contribution and their own acts of bravery are any less worthy.

**HON F R PICARDO:**

I am grateful, Mr Speaker, and I, because I wish this motion to not be controversial, will not say that when the hon Gentleman says it, it is fine, and when I say it, it is a party political broadcast, because this is about Jared Mackintosh.

Question put.

The House voted.

The motion was carried unanimously.

**THE HON F R PICARDO:**

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

**“This House notes the extraordinary and sterling support given by Lord Greville Janner to the people of Gibraltar throughout his time in public life in the United Kingdom (as far back as the early seventies) both as a Member of the House of Commons and most recently as a Member of the House of Lords; the support of Lord Janner for the work of successive Chief Ministers of Gibraltar in the United Kingdom on behalf of the people of Gibraltar; his strong links with the Jewish Community in Gibraltar and now hereby resolves that the Honorary Freedom of the City of Gibraltar and thus also the Gibraltar Medallion of Honour be conferred on him.”**

Mr Speaker, I think the motion standing in my name speaks for itself. It displays what I think are the relevant issues with Lord Janner, namely, that he was first elected into the Commons in the very early seventies, when Sir Joshua Hassan was Chief Minister of Gibraltar, and he started his work then in assisting that Chief Minister and has worked with all the Chief Ministers of Gibraltar in helping fight Gibraltar's corner in the time that he has been either in the Commons or in the Lords.

Mr Speaker, Mr Janner is now in his mid eighties. He continues to be an active Member of the House of Lords. Not one of those that take the name, or the peerage, simply for the purposes of having it put before his name. He is an active Member, speaking on all issues that matter and always looking out for the

Gibraltar issue. I had an opportunity of seeing him yesterday in Liverpool at the Labour Party Conference. He is a Labour peer. He continues to support the Labour Party and attends at party conference. I know, you can imagine, Mr Speaker, that I have referred this motion to the hon Gentleman before putting it, and I hope it will enjoy a fair wind.

Question proposed.

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

Yes, Mr Speaker, I have known now Lord Greville Janner for all the years that I have been in politics, and I know him to be a committed and enthusiastic supporter of Gibraltar, as indeed there are many peers and many Members of Parliament. Whilst the last thing that would cross my mind to do is not to recognise that Greville Janner is deserving of this recognition, we need to be careful that we do not, sort of, lock ourselves into a spiral of giving it to every peer and every Member of Parliament that has done what Greville Janner has done for Gibraltar, because there are many, many, many of them. Indeed, the time may come where we need to find some generic way of recognising these, at the risk, otherwise, of offending the ones that we do not recognise in this way. In the past, when I have moved, I have always had the rule that I tend to propose people for honours of this sort when they have left UK politics, or when they have retired, or when they are no longer active, and then usually one from each side of the House as we did, precisely to try and avoid sending the signals to those who are, at least, as worthy as Greville, who is a great friend of Gibraltar and a great friend of many of us in this House personally, that their contributions are somehow less valued, less appreciated by Gibraltar.

On the basis that we give it to Greville Janner, there are many others in both the House of Lords and the House of Commons that would have it, but we are very happy to give it to Greville Janner. I just sound that cautionary note because this is a

thought that has gone through my mind every time we have proposed a peer or a Member of Parliament, and that is the risk that we run collectively. All that said, I suppose I should also add, which the hon Member did not, that Greville Janner actually made Gibraltar, and the support for it, the subject matter of his maiden speech in the House of Lords which is, I suppose, a particularly noteworthy and distinguishing feature should we ever need to explain distinguishing features in this respect. There are only two points that I would make to the hon Member, and neither of them detract from our support for the motion.

The first is that whilst Greville Janner's strong links with the Jewish community in Gibraltar are self-evident, and you need only speak to members of the Jewish community to know the regard they have for him and the support that he has always given to the community and, indeed, I have seen that for myself when he has been in Gibraltar, that would not normally be a reason for granting somebody the Medallion of Honour. It would not occur to me, for example, to move a motion to give somebody a Medallion of Honour because they have strong links with the Muslim community, or the Hindu community, or the Roman Catholic community. In other words, we are noting that he has these strong links. He does indeed have those strong links. I think those strong links are very helpful and useful to the Jewish community and therefore to Gibraltar, at large, of which the Jewish community is an important part, but it is not of itself a reason for recognising somebody with the highest honour that this House can [*inaudible*]. I do not know whether the hon Member is using it in that sense, or is just noting it in passing. It does not matter. It does not detract in any ... I am certainly not suggesting that he should amend the motion to remove those words. Those words are true. He does have very strong links with the Gibraltar Jewish community, and the Government, and I think the community at large, values those strong links greatly.

The other point that I would make is that under the rules of ... on a slightly more procedural point. That under the rules established by this House, in the motion in relation to the grant,

not of the freedom, which is what this motion is about, but of the Medallion of Honour, a motion to bestow a Medallion of Honour can only be brought by the Chief Minister. That is what the motion in the House reads and therefore it is true that the Government's motion on the establishment of the Medallion also says that the Freedom of the City, which is what this motion is about, is the highest award, and therefore, everyone who is given the Freedom of the City ... No. Not has the honour bestowed. Has their name entered into the roll of. So, simply to make the point, again without any suggestion that there is any need to tinker with the wording of this motion, that to the extent that this motion reads, as if it, the motion, is granting the Medallion of Honour, it is actually not in compliance with the rules established by this House, unanimously as I recall, for the grant of this motion, more accurately, and that might be the sense in which he means the words "and thus", and, certainly, we can just leave it at that, if that is what he indicates, yes, and in consequence, the correct wording would be "and in consequence his name is entered in the roll of", but it is not necessary to change the language. It would suffice for the hon Member to acknowledge that this motion is not of itself directly granting the Medallion of Honour but, rather, that this motion is a motion to grant the Freedom of the City, which is a higher honour and that the House has already decided, at another time, that anybody who gets the Freedom of the City, automatically, and that is the sense in which I am interpreting "and thus", automatically receives the Medallion of Honour too. On that basis, we are very happy to support the hon Member's motion.

**HON J J BOSSANO:**

Yes, Mr Speaker. I think there is an important point that we need to consider, taking into account what the hon Member was saying about all the many friends that we have in both the House of Lords and the House of Commons. It is that, in fact, we do have them but we also know that there are those who have been our friends for a very, very long time, and of those,

and he is one of those ... Well, but there are, regrettably, because of the way the passing of age operates, less and less of those, and he belongs, in fact, his links go back to the early days of Sir Joshua Hassan's participation in politics.

**HON CHIEF MINISTER:**

I think he is worthy of recognition.

**HON J J BOSSANO:**

Yes, but I think it is important that ... We have got a lot of friends today and we have had lots of friends at different points in time, and there are some that have been with us almost in every battle, and for years, and with a closed frontier, and with an open frontier, and when we were trying to persuade the British Government to grant parity to the Trade Union movement here, and Greville Janner is one of the remaining ones, and there may be a few more like him, but there are not all that many, and some of them that we granted the Freedom of the City in Gibraltar, sadly have passed away since. Therefore, I think he belongs to that group of long standing friends of Gibraltar that were friends of the Gibraltarian people irrespective of who was in Government, and have had links with all the Governments since we have had the kind of political system in Gibraltar where Gibraltarians have been running the show, going back to the times of Sir Joshua Hassan.

**HON F R PICARDO:**

Does the hon Gentleman want to say something and I will give way to him before I start?



**HON CHIEF MINISTER:**

Yes. Only to say that I agree with what the Hon Mr Bossano has said, and I hope his remark was not prompted by any suggestion that I was saying anything different. My only concern is not ... Greville Janner is clearly a worthy recipient of this honour. My only concern is not to be mealy-mouthed about that but, rather, just to point out that we need to be careful not to offend, however few or many they may be, who are also worthy, if not forty three years, some very long period of time, and that at some point we may have to find a more holistic way of trying to capture that group. But in the meantime, there is really no alternative but to go it along this way and hope that the ones that we have not yet got round to, do not misread that, as indeed they have not in the past, I suspect.

**HON F R PICARDO:**

Mr Speaker, only to say that I accept what the hon Gentleman has said first off in relation to the Jewish community, and the reading of the motion actually is "The House notes", so it is just noting that, and, second, to say that, yes, I accept that the reading of this "thus" is in consequence and that the reason why this motion reads "thus" is because it is how the motion in respect of Miss Aldorino read, when we conferred the Freedom on her, we had these tail end words but I accept ...

**HON CHIEF MINISTER:**

That was because it was moved by me.

**HON F R PICARDO:**

But I accept that as it was moved by the Leader of the House, then this issue did not arise and, therefore, the issue of the

Medallion really is one of the fact that it is now [*inaudible*], so to speak, in the Freedom.

Question put.

The House voted.

The motion was carried unanimously.

**HON F R PICARDO:**

Mr Speaker, this is the motion on the reopening of the Register which is something that, on all sides of the House, obviously, we agree on. The Chief Minister has now made an order to reopen the Register, so I am happy to withdraw this motion. It reflects the meticulous effort carried out by the Electoral Registration Officer in compiling the initial Register and, of course, I think it is common ground between us that the fact that it needed to be reopened is no criticism of that excellent and sterling work. So the motion is withdrawn, Mr Speaker.

**MR SPEAKER:**

Well, under Standing Order 22 ...

**HON CHIEF MINISTER:**

Well, Mr Speaker, if I may speak on the movement for a withdrawal of the motion.

**MR SPEAKER:**

Yes, I was going to refer to Standing Order 22, but ...

## HON CHIEF MINISTER:

Alright. First of all just to point out that, of course, the Government will agree to the hon Member withdrawing this motion but, in passing, I hope he will forgive me for making just two points.

The first is that the Electoral Registration Officer actually does not have the power to do what the hon Member has called upon him to do. The Government, which was already at an advanced stage of preparation in doing what it has done, and certainly the coincidence of time makes the hon Member seem like the instigator, even though the moves were already well afoot. Obviously, we have both had representations and my instinct is that people, ... if there is time ... technicalities should not exclude people from voting if there is time to get them on. But just for the record, Mr Speaker, the Registration Officer has the statutory obligation to publish the Register by the 1<sup>st</sup> August, which he did, and then he has very limited powers, under something called the Register of Electors Late Registration Rules, to do the following: Where the Registration Officer is satisfied that circumstances have prevented the registration of any person, or persons entitled to be registered under section 5, he may by notice in the Gazette extend the period by which registration may be affected, to such date as shall be specified in such notice.

Firstly, this is not a reopening of the Register generally. It is allowing somebody to register late into the closed register and it requires the individual, on a case by case basis, to explain the circumstances that prevented him from registering on time. It is not enough to say, I did not see the advert, or, I was too busy, or, I could not be bothered. This does not give an opportunity for a second general reopening and it would not have served the purpose that the hon Member and I both agree should be served, which is that there should be a second general opportunity, regardless of whether the Registration Officer is satisfied that circumstances have prevented the registration. It

is very difficult for somebody to satisfy that circumstances have prevented him from registration. So, there is not, "and therefore now calls upon the Electoral Registration Officer to reopen the Register for a short period of time, to allow those who may not have yet registered to do so and to publish an addendum". That, which is what the hon Member's motion asked the Registration Officer to do, is out with his power. It is not out with the power of the Chief Minister, who has the power not to reopen the Register either, but to direct the preparation of a Supplemental Register. Not even that is a reopening of the Register. The Register closed on the 1<sup>st</sup> August, remains the Register. There is a Supplemental Register which, if the elections were to be called before the closure of publication date, might never be used in these elections, so that dependency.

The second point that I would like to make to the hon Member is this. Both today in this House and in a recent public statement, he has taunted me to call the general election immediately, a taunt and a call which is wholly inconsistent and incompatible with his public statements calling for the Register to be reopened, giving days, and for the compliance with all the procedure. So the hon Member needs to make up his mind. Does he want me to dissolve Parliament immediately and call elections immediately, or does he want me to give the Electoral Officer the opportunity to reopen, as he calls it, or produce a Supplemental Register, which is the proper version of what the result that he wants. They are not both duable and they are not both compatible with each other. Therefore, Mr Speaker, I make that point because, in the unlikely event that I should succumb to the hon Member's taunt, and accept his instructions to dissolve this House, and issue a Writ for elections, at a time of his choosing rather than mine, which would be a novelty in a parliamentary democracy ... The effect of that would be that his other wish, that he utters out there when he is appealing to the people out there, would not be able to be delivered to him. Therefore, I think it is important that we should be consistent in the statements that we make. But, I think, on the fundamental

things we are agreed and that is that, if there is time, we ought to avoid scenes of people going to the polling booth, wanting to vote, only to be told that they are not on the Electoral Register, and we should go the extra administrative mile, to the extent that it is possible to do it within the time that is available, to try and avoid that happening. He obviously knows of lots of people that have done it. We know of lots of people. There are people who have stopped me in the streets who declare to me that they are, "Chief Minister I hope you do not mind my asking you, even though you know that I am not a GSD supporter", but, you know, this is not about whether more GSLP voters are going to get on than more GSD voters, or vice versa. This is about ... that the basic rules of our society is that voting is core to the way we run ourselves and people should not be deprived of that, if at all, to the greatest practical extent possible, from things that can be remedied in time. I think that is the sentiment that underlaid his motion and it coincided entirely with the thinking, for the same reasons that we were doing at the same time. I am grateful to him for giving way to me.

**HON F R PICARDO:**

Mr Speaker, well, I am grateful for what the hon Gentleman said about the mechanics of the reopening or the Supplemental Register. I think that with this motion we were trying to ensure that what has happened has happened and that is an important thing, and I think on that we need say no more.

Mr Speaker, on this question of either choose between the election, or the reopening or the Supplemental Register, I would simply say this to him. You see, those two are not mutually exclusive. The Chief Minister is required to give a minimum of thirty days for an election to be called. He could give longer and, if there is a date by which a Supplemental Register is to be finished, it could be finished by that date, and the election held seven days later, or fifteen days later. So I do not believe that there is an absence of consistency, or that the two are mutually

exclusive but, as we said on earlier motions, Mr Speaker, his truth is his truth and my truth is my truth. So it will be ...

**HON CHIEF MINISTER:**

If he will give way just once more to me? I mean, if I do dissolve Parliament and give much more than thirty days, give as long as may be necessary, can I be sure that you will not accuse me of clinging to power?

**HON F R PICARDO:**

Mr Speaker, I think that the clinging has already started. So you see, however long the campaign may be, the finger nails will be sticking to the wood as he comes down, but he can be assured that if he is persuaded by me, and I do not mean to taunt him, and it is a pity that he sees my remonstrations as such, but if he succumbs to my taunts and he calls the election, I do not think it is impossible for a Supplemental Register to be compiled, so that what we all agree is the most fundamental rights in our democracy, which is to vote, can be exercised by as many as is possible. Mr Speaker, with that, with your leave, I will withdraw the motion.

**MR SPEAKER:**

Well, I was going to say Standing Order 22 reads, "Once a motion has been proposed by a Member it may be withdrawn only with the leave of the Parliament". Is it the will of this House that the Hon the Leader of the Opposition has leave to withdraw his motion?

**HON CHIEF MINISTER:**

Mr Speaker, the hon Member relies entirely on the will of the majority in this House to withdraw his motion.

**MR SPEAKER:**

Motion withdrawn.

**ADJOURNMENT**

**HON CHIEF MINISTER:**

I have the honour to move that the House do now adjourn to Friday 30<sup>th</sup> September 2011 at 9.30 a.m.

Question put.           Agreed to.

The adjournment of the House was taken at 6.15 p.m. on Wednesday 28<sup>th</sup> September 2011.

**FRIDAY 30<sup>TH</sup> SEPTEMBER 2011**

The House resumed at 9.30 a.m.

**PRESENT:**

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

**GOVERNMENT:**

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

**OPPOSITION:**

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

**ABSENT:**

The Hon N F Costa

**IN ATTENDANCE:**

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

## **BILLS**

### **FIRST AND SECOND READINGS**

#### **THE PORT OPERATIONS (REGISTRATION AND LICENSING) (AMENDMENT) ACT 2011**

**HON J J HOLLIDAY:**

I have the honour to move that a Bill for an Act to recast the Port Operations (Registration and Licensing) Act 2005, to provide for further powers with regard to the licensing of port operators, and to confer on the Government the power to amend, suspend or revoke licences when it is in the public interest to do so, and to validate regulations made pursuant to the Act and validate the exercise of powers by the Minister under those regulations, be read a first time.

Question put.            Agreed to.

#### **SECOND READING**

**HON J J HOLLIDAY:**

I have the honour to move that the Bill be now read a second time. Mr Speaker, this Bill amends the Port Operations (Registration and Licensing) Act 2005 to provide for a more rational system of licensing port operators and registered port workers. The two matters are kept separate which is clearer and less confusing for those seeking to register one or the other.

Section 1 to 4 of the Bill are tidying up provisions.

Section 5 introduces a new Part 2 of the principal Act providing for the licensing and registration of port operators. These

provisions are largely repeating and recasting the provisions of the principal Act but there are important changes to which I wish to draw the attention of the House.

New section 2M, which appears on page 1886 and following, relate to the amendment, suspension and revocation of a licence. The Authority is given power to amend et cetera, a licence in relation to the protection of human health, public safety, environmental protection, a breach of any provisions of the licence or an overriding public interest. The latter is further defined in subsection (5) of the new section 2M to include, in particular, the wider economic interests and the international reputation of Gibraltar.

Mr Speaker, the House will remember the recent explosion and fire at the sullage plant at the North Mole. Happily, the consequences of that fire were not more serious, although, at this point, I would like to mention that I am sure the whole House will join me offering our condolences to the family and friends of the unfortunate man who lost his life and, at the same time, pay tribute to the emergency services who did such a magnificent job in preventing further injuries to others and then controlling and extinguishing the fire. However, the Government has looked at the provisions for control of licences, following that fire, and come to the conclusion that the Port Authority needs these wider powers.

The House will note section 2M subsection (3). This provides that where section 6 of the Constitution, which relates to the preservation of property rights, is involved, the Authority may act with the consent of the Government. This is an important safeguard both for licence holders and, indeed, the Government. Where there is an overriding public interest, such rights may be secondary, but it should be for the Government to decide. Then, there is subsection (4) which permits the Government to act on its own in amending et cetera, a licence in the public interest. This might occur in an emergency whether there is no time for the Port Authority to meet.

Mr Speaker, sections 6 to 16 of the Bill make the necessary consequential amendments to the principal Act in relation to the registration of port workers. Essentially, the system remains the same.

Section 17 provides for regulation making powers under the Act to be vested in the Government.

Section 18 provides for regulations made previously to be valid.

Mr Speaker, the House will be aware that urgent situations require urgent counter- measures. This Bill will provide the Government with the necessary power to deal with the aftermath of an emergency in the future.

Mr Speaker, I have given notice of various amendments I intend to move at Committee stage. I commend the Bill to the House.

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

**HON DR J J GARCIA:**

Mr Speaker, the Opposition is uncomfortable with the retrospective aspect of the legislation provided for in clause 18 of this Bill. It says it applies to regulations made by the Minister under section 16 prior to the commencement of the Port Operations (Registration and Licensing) (Amendment) Act 2011. It then goes on to say that the exercise by the Minister of powers conferred upon him under regulations to which this section applies are hereby validated and declared to be lawfully done by him. There is, as the hon Member has said, an amendment to this section which does not change the principle at stake.

Mr Speaker, the reference is to a power that the Minister has exercised, which is being conferred on him under regulations. The main regulations under the Act are the Port Operations

(Registration and Licensing) Regulations of 2005. The only power conferred on the Minister, by name, in those regulations is under section 22, which refers to the suspension of licences for apparent gross misconduct on the part of the licensee, or if there is sufficient reason that warrants a suspension. This is, presumably, the power which the Minister has exercised, which the House is today being asked to validate and declare to be lawfully done. The Opposition considers ...

**HON J J HOLLIDAY:**

I am sorry, I am not listening to what he is saying clearly, and I am afraid if I have to reply later, I will not be able to ...

**MR SPEAKER:**

Would it be convenient for the hon Member to sit down. He might be closer to the mike.

**HON DR J J GARCIA:**

Yes. No problem. So I will start again then, Mr Speaker. The Opposition is uncomfortable with the retrospective aspect of the legislation provided for in clause 18 of this Act. This says it applies to regulations made by the Minister under section 16 prior to the commencement of the Port Operations (Registration and Licensing) (Amendment) Act 2011, which is this Bill. He then goes on to say that the exercise by the Minister of powers conferred upon him under regulations to which this section applies are hereby validated and declared to be lawfully done by him. There is, we note, an amendment to this section which the hon Member has already explained but that amendment does not take into account or change the principle at stake.

Mr Speaker, the reference in the Bill is to a power that the Minister has exercised which is being conferred upon him under regulations. The main regulations under the Act are the Port Operations (Registration and Licensing) Regulations of 2005. The only power conferred on the Minister by name in those regulations is under section 22 which refers to the suspension of licences for apparent gross misconduct on the part of a licensee or if there is a sufficient reason that warrants a suspension. This is, presumably, the power which the Minister has exercised which the House, today, is being asked to validate and declare to be lawfully done. The Opposition considers that if the action taken by the Minister is being questioned or challenged, the process of challenge has to be respected. It is not acceptable that the Government should seek to correct the position by legislating with retrospective effect.

There is another issue, Mr Speaker, and it is the change of the word "Minister" to "Government" in clause 17, I think it was, which the hon Member said was going to happen, but he did not explain why, and we would be grateful by way of clarification if he could explain why the change is necessary.

Mr Speaker, the Opposition cannot support the Bill and will be voting against it.

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

Yes. Mr Speaker, first of all let me emphasise that the provisions of this Bill should not be interpreted to mean that the Government now has powers to deal with the aftermath of an incident in the port, in circumstances in which it feels it did not have sufficient powers before and, therefore, this is a question of giving the Government stronger and less easily challengeable powers to avoid arguments of technicalities, and not in any sense to provide the Government with the ability, the Government or the Port Authority, with the ability to respond to

an incident in the nature of the responses that there have been, which may not have existed before.

So what the Government has sought to do, as one of the lessons of the incident in the port, is to make sure that the powers available are the powers that the Government believes already are available, but that they should be available in language that does not draw the Government and the port administration into a dispute, which the Government believes it will win, based on technicalities rather than on the subject matter of interest to the general public, which is the safe operation of the port, and that unsafe operations in the port, if they arise, should not be allowed to continue, and that the public administration in Gibraltar should have the power to protect Gibraltar's economy and Gibraltar's general public interest from rapidly from any incident of that sort, without that necessary public safety exercise of executive power being tied up in legal technical arguments about technicalities, which is what has happened to the Government in the case to which the hon Member has referred. In our view entirely without merit but, nevertheless, it is possible through legal process, raising argument of a technical nature, that does not go to the safety or lack of safety on which people, of course, are always entitled to challenge a public decision on judicial procedure grounds, should not become. These issues are far too important. The other thing is that ... I am certain that the hon Member's opposite, despite the fact that the operators of the plant in question are represented in litigation against the Government by a firm of which two Members opposite are partners, nevertheless, are not intending to serve those interests in this House, and the interests that we all serve in this House are the public interests of Gibraltar, as legislators.

Well, Mr Speaker, there are rules about declarations of interest and, in the past, I recall in this House that I have been made to declare interests when Parliament has debated a subject on which my firm, the firm of which I was a member [*inaudible*] involved. I do not impute ...

**HON F R PICARDO:**

Mr Speaker, on a Point of Order.

**MR SPEAKER:**

Let me hear the Point of Order.

**HON F R PICARDO:**

I believe that the hon Gentleman is referring to a rule that says that when taking part in a debate an individual must declare any interest which may be relevant to the debate. I have not taken part in this debate, other than to point out that rule, and neither has my colleague, Mr Licudi, and I would therefore think that it is otiose to refer to that, because I agree entirely with the Chief Minister that in this House we are here to represent public interests and not the interests of any particular party. For that reason, would he accept, Mr Speaker, that that rule does not engage.

**MR SPEAKER:**

Well, can I just express the thought. I need to obviously consider it further. What does taking part in a debate mean? Surely, again thinking without having considered in detail, even voting at the end of a debate is taking part in a debate. Presumably, the hon Member will vote at the end of this debate.

**HON F R PICARDO:**

Mr Speaker, I do not think that taking part in the debate means voting, as part of a debate, because I have not spoken on the debate. I am speaking on a Point of Order but I will tell you

what, Mr Speaker, I have absolutely no problem with not just not voting in this debate, but absenting myself from the Chamber when the vote is called.

**HON CHIEF MINISTER:**

Mr Speaker, the hon Member can be as melodramatic as he wants for political effect. I have suggested, already, before he stood up to make his little contribution, that I was proceeding on the assumption that the hon Members are in this House as legislators and not as partners of their firm, and that I was not imputing to him any such motive and ... So everything that the hon Member has said ... However, I have to say for the record, now that he has spoken, that I would not argue on any Point of Order that participating in a debate does not mean voting in a debate and, secondly, Mr Speaker, that the spirit of the rule of declaration of interest cannot be defeated if the hon Members were doing this, which I am not saying they are, could not be defeated simply by having another Member of the team do the speaking on behalf of everybody else.

The fact of the matter is that if the Hon Mr Garcia is speaking for all the hon Members opposite, then the hon Members opposite, for whom he is also speaking, are participating in the debate through him and should, in my view, if they are interested in keeping to the spirit as well as the letter of the regulation, at least say, well look, this has nothing to do with it but I just want the House to know that I am a partner of the firm that is on the other side to the Government in this legal dispute. It is nothing. It does not take any difficulty. It does not suggest that the hon Members are behaving improperly but it would, I think, more unambiguously comply with the possible application of a rule and it would avoid exchanges of this sort.

The point that I am making is not that the hon Members are doing that. I started by saying that they were not doing that, and I was not assuming that, indeed I was assuming the opposite, in



their favour, that they were not doing that. What I am saying to the hon Member is that the distinction that I am trying to draw is between what the public interest needs, which is what concerns us here as legislators, and what legalistic technical argument may throw up, and what we are saying is two things here, on this Bill. Firstly, that the Government has no doubt whatsoever and will robustly defend any legal challenge of the exercise of ministerial powers in relation to what the Government has done in response to the incident at the port, and secondly, that because the Government does not want the issue clouded by technicalities ... Look, if there has been an incident and the operators of the plant are innocent, then they are innocent, and they are without blame and this Bill does not alter that fact. This Bill does not deprive the operators of the plant of any right to challenge, for compensation or anything else, the, whatever may be their rights on any argument that the Government has behaved improperly, or abused, or exercised powers that it did not have, or abused the exercise of powers that it did have. What it does mean is that the issues that have to be discussed in any such litigation are the substantial issues of that sort and not a smokescreen or an argument based on technicalities which do not serve the public interest of Gibraltar, and would deprive Governments of Gibraltar of properly defending the public interest and the interests of the port and the interests of other port users. Mr Speaker, so ...

**HON G H LICUDI:**

Will the hon Member give way?

**HON CHIEF MINISTER:**

Yes, of course.

**HON G H LICUDI:**

Mr Speaker, just on the point that has been made by my Learned Colleague, the Hon the Chief Minister suggests that in a case such as this he will expect us to get up and declare that interest.

**HON CHIEF MINISTER:**

But I did not say that. I said it would be helpful.

**HON G H LICUDI:**

It might be helpful. Well, we have not had the opportunity of doing that. All that has happened in this debate, so far, is that the Hon Mr Garcia has spoken on behalf of the Opposition. The debate has not finished. But one thing that I am particularly concerned about, if the hon Member thinks that it is helpful in these circumstances for people like Mr Picardo and myself, and it would also apply to Mr Linares in other situations, should declare an interest as being partners, or being involved in a firm, which could in some way, not the firm, but clients of the firm, could in some way be affected by legislation which is being passed. Look, we have passed legislation in this House relating to gaming, for example. We have got clients who are in the gaming industry. Are we supposed to walk out of the Chamber and not vote on those issues, or are we supposed, because it is helpful to do so, to simply get up and say, well, we have to declare an interest because we have clients, as partners of Hassans, who are in the gaming industry and they may be affected in some way by this legislation and therefore, lest it be said that we are acting in the sectarian interest of our clients, rather than in the public interest ... I certainly do not recall, and the hon Member may correct me if I am wrong ... The hon Member was a partner in a firm when he was a Member of the Opposition and I certainly do not recall a practice at the time,

open to be corrected, of the hon Member getting up every time there was an issue which potentially could affect, or which did affect, in some way, clients of the firm of which he was a partner, and say, I have to declare an interest because it might be helpful for the House to know that I have some clients, or my firm has some clients, that could, in some way, be affected by this legislation. I just raise that point because I do not think we can have a wide rule cast, or net cast in the wide terms, that the hon Member has suggested, and us being expected to think about and perhaps make enquiries about who are the customers of our firm who might be affected by legislation, lest it be said that we are acting in their interests.

**HON F R PICARDO:**

Will the hon Member give way.

**HON G H LICUDI:**

I will.

**HON F R PICARDO:**

Mr Speaker, and just to make the point and perhaps in more stark terms. I think that this is not just an issue that affects lawyers. This is an issue that affects people who have interests. It is not about whether you have an interest in respect of clients. For example, the Hon Mr Holliday has never declared an interest, during the Appropriation Bill, when there have been duties raised or lowered which might affect the business interests that he legitimately has outside this House. As long as he is not speaking to those issues, and he is speaking to his issues, we never challenge that he should be telling us whether he has business interests in relation to watches or anything else

that may be affected by the matters being raised in the Appropriation debate.

**HON CHIEF MINISTER:**

Mr Speaker, it is not a matter of recollection for the Hon Mr Licudi. He simply was not in the House at the time and, therefore, he is not in a position either to collect or not to recollect what I may have done in the House whilst I was on that side or, indeed, what speakers may have said to me when I was on that side of the House. Actually, he is mistaken, or is he suggesting that he has heard every debate in the House on the radio. Mr Speaker, actually, the position is not as the hon Member describes it, but look, the hon Members cannot be arguing that the rules of declaration of interest, when we act as legislators in this House, cannot apply to lawyers.

**HON G H LICUDI:**

Of course, they apply.

**HON CHIEF MINISTER:**

Fine. Now, we are not talking here, Mr Speaker. We are not talking here about there being no rule that applies to lawyers because in every application it would be not required. What we are talking about here is litigation, by the operators of the port facilities that exploded, against the Government, and the firm representing that interest is the firm of which the Hon the Leader of the Opposition and the Hon Mr Licudi are partners. This is not a question of having some indirect interest in the consequences of the legislation, in terms of a reduction of duty, although on that basis, every time we lower tax rates, we are all in this House beneficiaries of reduction in tax rates and, therefore, I suppose we all have to declare interest. To use

arguments of that sort in support of a proposition that when a lawyer is acting against the Government on a specific issue, in a specific piece of litigation against the Government, and a piece of legislation comes to this House dealing specifically with the issues in issue in that litigation against the Government, that that should somehow be thought to be in the same category as beneficiaries, in the same way as every other citizen, of the consequences of legislation, is simply, in my view, another example of using an inapplicable generality to try and defeat the case of a very specific set of circumstances.

Mr Speaker, the hon Members, to boot, and I am not imputing this to them as a motive, as I have said, but if the hon Members want me to illustrate why I think it is important to declare an interest, even though it is, in their view, unnecessary. The hon Members have indicated that they will not support this Bill precisely on one of the grounds which is bound to be relevant to the issues in that case. Fine, Mr Speaker, the hon Members now say that they do not like the retrospective consequences of it and they say that that, not liking the retrospective consequences of it, has nothing to do with the fact that two of them are partners of a firm that have a client in this litigation. So, therefore, one has got to assume that they simply have a general objection to the application of legislation retrospectively. Because if there is a retrospective measure to which they object, and it is not because of the effect it has in this particular case, then it must be because they have some view, to which they would be perfectly entitled, that legislation should never operate, or should not operate retrospectively. But, Mr Speaker, that happens very frequently, retrospective legislation. This is not the first piece of retrospective legislation that they are invited to consider and do not.

So, Mr Speaker, it is not for me to decide. I have expressed a view. I remember being subjected, in many years gone by, to similar situations in which a different view was taken. It is not for me, and I am happy to live with whatever ruling Mr Speaker may eventually make, should he choose to make one, about the

circumstances in which Members should or should not. It is a matter entirely for you.

I have expressed the view that in the circumstances of this case, when there is litigation on the very subject matter of litigation in which two of the Members opposite, that is, more than twenty five per cent of the Opposition bench, are partners in the firm representing that client in a case on this matter against the Government, I would have, if I were on the other side, erred on the side of caution, at least, and just put my hand up and declared an interest. But look, it is their judgement, and in the absence of a ruling, it is their judgement as to whether they feel it is appropriate to do that or not.

Mr Speaker, I repeat, for the benefit of what the Hon Dr Garcia has said, that this does not make lawful, behaviour that would previously have been unlawful, for reasons other than a technicality. In other words, if this had been the provisions in the law before this Bill, it would not render lawful everything that the Minister does pursuant to this power, because the court still has to consider whether the exercise of that power was a lawful exercise of the power. So, if the Minister had exercised a power and somebody wanted to argue that the power did not exist, at all, that is the technicality, and which we do not, by the way, we do not believe to be the case. But to avoid the argument that it might be the case, this means that the Minister is deemed to have had the power, which we believe he has. It does not render unchallengeable any actual exercise of that power. So, for example, if a Minister had a power to suspend a licence in the public interest, or words to that effect, he would still have to demonstrate to the court, if challenged, that his exercise of that power was reasonable in defence of a legitimate public interest. He could not there ... and this clause would not legitimise some suspension of a licence done on some whimsical ground. I do not like the colour of your hair, or some other unlawful and improper motive.

So, I am not saying this to persuade him to change his vote. I just want to put his mind at rest that this is not ... This deals with any possible argument about whether powers existed, and we believe this is unnecessary, and it is there *ex abundancia cautela*. It does not sanitise the unlawful exercise of powers which did exist, and it does not render lawful any exercise of this power having established that it exists. I am just differentiating between the existence of the power and the vires of the power and its exercise. That is an important distinction. It falls squarely in the category of what I said of avoiding technicalities and simply having a dispute, if a dispute is what others want, about the substance of the argument.

I cannot believe that there is anybody in this House who believes that if an operator in a port, and I am using language carefully chosen to avoid any suggestion that I am referring to this operator in this plant. I do not think anybody in this House surely believes that if an operator in the port, or anywhere else in Gibraltar for that matter, were thought to be unfit to carry out an activity, on grounds of safety, or some other legitimate lawful ground that the hon Members would recognise as lawful ... anybody in this House believes that he should escape the consequences, the desirable consequences of that, on some technical ground that has nothing to do with the merits, or the lack of merits, of the case of one of the party and the others, and it is important that the hon Members opposite understand that that, and only that, is the distinction that this Bill is making and that the Government is intended to make.

I repeat the two salient points. One, we do not believe that these powers are actually necessary, but we want to avoid the dispute on the technicalities and, secondly, and perhaps even more importantly than that first point, is this point that it would not legitimise the unlawful exercise of an existing power. It simply establishes the fact that the power clearly existed and it established retrospectively that the power clearly existed, for the avoidance of doubt, and that therefore the right to exercise power existed too. But that exercise still has to be otherwise

lawful. It does not legitimise the exercise of unlawful powers, or it does not legitimise the exercise of the power unlawfully in the sense of the application of improper criteria, or the taking into account of considerations that are extraneous to the public interest in question.

Mr Speaker, the Government believes that in a battle between the public interest, the collective public interest, and the narrow private interest, it is legitimate for the legislature to protect the collective public interest retrospectively, and we do so, not infrequently. I would not say this is frequent, but certainly not infrequently. Mr Speaker, I resume my seat reemphasising the point that it would be wrong for anybody to believe that these legislative measures are introduced because the Government believes that the existing legislative framework is challengeable. It is being done on a belt and braces basis to protect the public interest from the possibility of technical arguments of that sort.

#### **MR SPEAKER:**

To revert to the Hon Mr Picardo's Point of Order. I should say, first and foremost, I am mindful of the fact that the Hon the Chief Minister did precede his remarks about the disclosure of interest with the clear assertion that he did not impute any improper motive and that we were all acting here as legislators. That takes away the urgency for me to decide right here and now because it is a matter which requires some consideration. I am inclined to the view that the concept of participating in a debate extends to voting in a debate. One cannot draw a line and say, as long as I say nothing I am not participating in a debate, although I vote afterwards. But I am inclined to that view, and I am also mindful of the fact the Hon Dr Garcia concluded his remarks with a clear statement on behalf of everyone on his side when he says, we will not be supporting this Bill, or words to that effect. That is my inclination but, as I said, I do not have to decide right here now. I will deliver a considered and reasoned ruling in writing very shortly.

**HON G H LICUDI:**

Mr Speaker, just for clarification on the point that you have just made and I note that you will be delivering a ruling. I take it that the issue is simply declaring the interest, rather than a requirement of non participation, of non voting.

**HON CHIEF MINISTER:**

Absolutely.

**MR SPEAKER:**

That is my understanding. That is why I did not see the urgency of having to make a full ruling now. As long as one says, well , you know ...

**HON CHIEF MINISTER:**

Let us be clear, Mr Speaker. I entirely agree with the sentiment behind the Hon Mr Licudi's question.

**MR SPEAKER:**

Yes.

**HON CHIEF MINISTER:**

Having an interest does not disqualify a Member of the House from participating in the business. The rules, as I have always understood them, are designed that the House, in taking into account the view expressed on a matter by a particular Member, should be able to place the expression of that view in the

context of any relevant, other interest, that the hon Member may have, but I was not, in any previous ... required not to participate. That is not, at least, it is not my understanding of what the rules about [*inaudible*] exists for.

**MR SPEAKER:**

The hon Member is free to express, participate as fully as possible in this debate.

**HON D A FEETHAM:**

Mr Speaker, ...

**MR SPEAKER:**

Is the hon Member speaking on the general principles and merits of the Bill.

**HON D A FEETHAM:**

Well, I am speaking on the question of the conflict of interest.

**MR SPEAKER:**

Oh.

**HON D A FEETHAM:**

Mr Speaker, I was a partner in the litigation department of Hassans and they may well be circumstances in which I shall return to the litigation department of Hassans. Now, unless

anybody ... I do not think that it impacts on me but let us say that I am erring on the side of caution, lest anybody say that I should be declaring my interest, that is the extent of my declaration.

**MR SPEAKER:**

It is an interesting expectation I think.

**HON G H LICUDI:**

Expectation of losing and coming back to Hassans. That is the expectation.

**MR SPEAKER:**

Does any hon Member wish to speak on the general principles and merits of the Bill?

**HON G H LICUDI:**

Mr Speaker, I declare that I am a partner of Hassans, the firm that is involved in ...

**HON CHIEF MINISTER:**

In the litigation department?

**HON G H LICUDI:**

No. I am not in the litigation department, although I do carry out litigation. But, technically, I am not in the litigation department of Hassans, and Hassans is the firm that is involved in the case

that the hon Member has mentioned. For that reason, I will not speak on the specifics of this particular Bill, but rather a general principle which is what we are invited to address, the general principles of the Bill and, particularly, this issue of retrospective effect of legislation. The hon Member is right in that this House has passed legislation with retrospective effect, either giving effect to matters which have been addressed at budget speeches, or social security measures, and we are clearly not against the principle of, where necessary, legislation being passed with retrospective effect in very defined and specific circumstances. So, per se, that is a general principle. What we are against is a general application of a principle, and I am talking of a general application rather than any reference to this specific case. A general application, if that is what might be argued is being done, or could be done in the future, of a principle that where Ministers are challenged, or where Ministers make a decision which could be said to be unlawful, then all that the Government has to do is to come to this House use its majority to pass a Bill saying, whatever the Minister has done in the past we now declare it to be unlawful. That is what is behind the principle which Dr Garcia alluded to and the reasons why the Opposition is voting against this particular Bill. It is that, the creeping in of that sort of general principle that the Government can use its majority to ratify decision which would otherwise, or might otherwise, be unlawful when made.

Governments, Ministers, and I am sure there is consensus across the House on this particular point, are, and must be expected to act lawfully, and act lawfully must mean act within the powers conferred on them at the time when those powers are exercised. I am sure that there cannot be any disagreement on that. It cannot be said, it cannot possibly be argued that a Minister can disregard those powers and say, well, I am going to take this decision because it seems to be the right one, whether or not I have got the powers, and if I have not, then we will just go to the House and correct that with retrospective legislation. That cannot possibly be a right principle and I would hope, and I would ask the hon Members opposite for some comfort on this,

that what we are not doing is introducing that sort of general principle, that that view is now being taken, perhaps as a matter of policy, or as a matter for ...

**HON CHIEF MINISTER:**

Will he give way.

**HON G H LICUDI:**

Yes.

**HON CHIEF MINISTER:**

Otherwise I cannot participate in this rather legalistic aspect. I am grateful to him. Mr Speaker, absolutely, there is no such ... Look the Government ... We have been in office for fifteen and a half years. We have been subjected to many judicial review applications and legal challenges and this is the first occasion on which the Government takes this view. So, it is not the view of the Government that all litigation against it should be defeated by rushing to Parliament to change whatever it is that is in the litigation that risks inflicting a judicial defeat on the Government. That is neither the Government's intention, view, both of which I am happy to declare, as he has asked me to do, to give him comfort here and now. More importantly, it has demonstrably not been the Government's practice in previous times. But I do think that the corollary is, cannot either be declared. In other words, it cannot be, because that is the preferable view, and I agree with him that that is the preferable view, nor is the opposite true. Nor can it be said that it is never appropriate to retrospectively correct a technical defect in legislation, but there has to be a justification for it which has to be explained. I have tried to explain our justification. The hon Members are free as they appear to be taking the view that the justification is

insufficient, or they are not persuaded by the explanation about the ... That is a different matter. I accept that when the Government is exercising the residual and exceptional legislative means of bringing to Parliament legislation to correct defects in legislation retrospectively, that there is an onus on the Government to explain, clearly, why it is doing it, and we have taken the view that there has to be something which is a technicality, and does not go to the substantive rights of any citizen. In other words, we should not bring legislation retrospectively that alters the rights and obligations of citizens or Government against each other in respect of each other, in respect of the substance of that right, and, secondly, so therefore that is what I meant when I said it has to be a mere technicality, and secondly, there has to be a sufficient collective public interest to render the legislative approach of retrospection appropriate. The view of the Government, with which the hon Members are obviously free and, indeed, do appear to disagree, is that they do not agree that it is either a technicality or sufficient in the public interest to justify it, and that is fine. I do not think it is possible to say that it is never appropriate to do this, and I believe that we are not the first Parliament to consider legislation of this sort, in these particular circumstances. I repeat what I said before that it does not make the challenge to the legality of any such decision on substantial grounds unchallengeable. So it is not a question of Government protecting itself through its power to amend legislation whenever it is challenged, or whenever Ministers are challenged, as the hon Member speculated in his address. So if we can just separate this debate between voting intentions, et cetera, on the one hand, and his request for comfort, which is what he has done just before he gave way to me, for which I am grateful, this is about expressing to him the comfort that this is not an acknowledgement or a statement of belief that a recourse to this means of belts and braces approach to technical challenges is a generality that should happen every time a Government is challenged.

**HON G H LICUDI:**

Mr Speaker, I am grateful for that explanation by the Hon the Chief Minister. But it must be said, of course, that clause 18 of this Bill, which amends section 18, or rather, inserts a new section after section 18, says, what is going to be section 19(2), regulations as now proposed to be amended, regulations made by the Minister to which this section applies, and the exercise by the Minister of powers conferred upon him by those regulations are hereby ratified, validated and declared to be lawfully done by him. There is no suggestion here that this deals with any technicality. This applies to all the exercise of all the powers which the Minister may have exercised in respect of those regulations, and they are declared by this Parliament to be lawful, and I simply point out that ...

**HON CHIEF MINISTER:**

Yes. Will he give way to me yet again. I understand that, you know, to a layman it reads like that and in simple English ...

**HON G H LICUDI:**

I am a lawyer.

**HON CHIEF MINISTER:**

No. On a simple reading in English, but the hon Member knows that that cannot be the practical application and that can be corrected if he genuinely has that concern. If what he is saying to me now is that he believes that the legal effect of section 19 subsection (2) is the opposite of what I have just explained to him, that this does not render lawful any unlawfully exercised power on the substance, then it is to be changed to make that clear. But I should say that that cannot be the legal effect.

First of all, primary legislation, whatever it says, cannot defeat a constitutional right to compensation for expropriation et cetera. Secondly, you can put in your legislation whatever you want. The courts, as he well knows, have repeatedly and consistently found that their powers of judicial review of the lawfulness [*inaudible*] of decisions, particularly when they are of a quasi judicial nature, cannot be displaced. You cannot displace the courts inherent jurisdiction and this is inherent jurisdiction. So, Mr Speaker, if the hon Member would like us to amend clause 18 to make it clear, what I am just explaining is the legal effect clearer ... In other words, that what has been sanitised here, on a belts and braces basis, because I repeat, we do not actually think it needs sanitisation, that what the effect of this cannot be more than to say, for example, the following. Let me just articulate it this way which is a description of what we are trying to achieve. If anybody in their mind has any doubt as to whether the Minister had this power under the old legislation, know yee that that doubt is being put beyond argument by this and that, therefore, any decision, any exercise of power under any such doubted power, has vires. But the lawfulness of the exercise of that power, otherwise than on the question of whether it existed or not, still has to be adjudicated and can be adjudicated by the court. I agree that that is not what it says. No, Mr Speaker, I agree that that is not what it says but whether it says it or not, that is the legal position. No court will allow its power to review the lawfulness of the exercise of the power, once its existence has been established by statute, to be displaced by the very Parliament whose laws, and particularly the constitutionality of it, is appropriate. So I am perfectly willing, at Committee Stage, to move an amendment, which he and I can discuss in a short adjournment if he wishes, to make it clear that this does not legitimise any dispute about the lawfulness of the exercise of a power. It simply eliminates the argument about the existence of the power, leaving entirely intact a court's review about the lawfulness of its exercise.



**HON G H LICUDI:**

Mr Speaker, I am, again, grateful for that explanation. We are in danger of falling into a trap of litigating across the floor of this House as to what this means. I understand what the intention of the Government is ...

**HON CHIEF MINISTER:**

[*Inaudible*] more clear, if it is ...

**HON G H LICUDI:**

I do not. I happen to think that that intention is not currently reflected in this because, although the hon Member talks about the court's inherent jurisdiction that cannot be displaced, it seems to me that the court's jurisdiction can always be displaced by primary legislation which says if black is black, then the court has to find that black is black. Putting aside constitutional arguments, because primary legislation certainly cannot displace a constitutional right, but short of a constitutional challenge to that, what this Parliament says, this Parliament is considered to be sovereign in terms of its powers of legislating, and that is why we had concerns about this particular section and the ambit and extent of this section. But I understand the limitations that the hon Member imposes on this particular section and I agree that we need to find a formula which achieves what the Government intends.

**HON CHIEF MINISTER:**

Sorry, Mr Speaker. I was distracted. Has he accepted my offer to try and draft an amendment?

**HON G H LICUDI:**

Mr Speaker, we will invite the hon Member to put forward whatever amendment is considered by the Government appropriate in order to achieve the Government's intention. It seems to us to be inconsistent to form part of suggestions of amending and then say, oh, by the way, we are voting against this in any event. So, ...

**HON CHIEF MINISTER:**

That does not matter.

**HON G H LICUDI:**

I know that but I will invite the hon Member to put ...

**HON CHIEF MINISTER:**

What I have often said to the hon Members is that they are free to improve legislation, even though they may not support the legislation as a whole. This is part of the legislative process.

**HON J J BOSSANO:**

I do not suppose I have to declare an interest.

**MR SPEAKER:**

I would not know.

**HON J J BOSSANO:**

I am not remotely connected to either the firm, the lawyers, or any other lawyers, other than politically and, therefore, this is something where I want to contribute to the debate on the basis that I disagree with the hon Member in that the choice is between something which is in the public interest and something which is in the private interest. I think it is in the public interest that if a law is being challenged on the basis that, because of a technical fault, it does not give the Minister a power to do something, which the Minister believed he had and did, then that right should exist. It is not a question of something that affects somebody privately. It is something that can affect everybody in Gibraltar who may think that the Minister is using a power to stop him doing something and that the Minister is, in fact, going beyond what the law allows him to do. If citizens have the right to question the powers of Ministers, in the sense that it is ... The hon Member has drawn a difference between the illegitimate use of an existing power, and whether the power exists at all, and if what is being disputed, however weak the ground, is that the power exists at all, then I think that should be permissible and it should be the courts who decide who is right. The person who is questioning it or the Government that is completely confident that it is not going to lose its trousers in court, but just in case it does, it wants belts and braces. Well, the reality of it is that what is important in the public interest is that if that issue has been raised in respect of an event that has occurred, then we should change the law to make sure that nobody can raise the same issue from now on. That means that there is no conflict because what has happened, has happened. If what the Government has done, as a consequence of what happened, is being challenged, the Government is right to bring legislation to the House to say, well look, independent of the fact that I think that the challenge does not stand a chance of winning and that I will defend myself in court and I am confident that I can win, I nevertheless want to change the law just in case we lose on this case, so that nobody else can use the same technicality in future to get away with it. I would support that entirely because,

in fact, there is nothing you can do about what has happened already. This does not say, well, look, if we do not do this retrospectively, it means that something can happen and we will not be able to stop it. No. We can do it from now on and we do not need to go back and say, whatever it was that the Minister did, which somebody else may be saying he did not have the power to do, we are now saying we are giving him the power to do, retrospectively.

Well, I have questioned before the use of retrospective legislation in areas which is not something that has happened before. Like, for example, the hon Member may remember that he raised social insurance contributions and then nine months later changed the law, with retrospective effect, and I remember saying in this House, look, this cannot be right because we have actually been illegally in breach of the [*inaudible*] Ordinance, making deductions from people's wages and the hon Member says, that is alright because we are now giving retrospective legal cover. Well, look, the concept of retrospective legal cover when you are taking three or four pounds a week from somebody's pay packet is a very peculiar concept. I think, therefore, these are issues that are not simply, either you are supporting a private litigant against the Government and, therefore, you are supporting the lawyers ... I imagine the lawyers will charge the same fees, whether they win or they lose. I do not think they stand to get very much either way. But, certainly, as far as I am concerned, we want to give the Government the power to do whatever is necessary to ensure the safety of the port. We thought the power was there, like they did. But if somebody thinks it did not exist and that person has got the constitutional right to say, well look, you are actually using a power that you may think you have, but I think you do not have. Well, and the Government is ninety nine point nine nine certain that they are going to win, I think they should win. But just in case that that zero point one risk exists, because of a technicality, then I think we should close that potential loophole from today on. But what I do not think is right is that you should say, well know, I am going to go back and close the loophole

that I do not think exists but somebody else thinks exists, and this is not because it is private versus public, but because I do not think it is in the public interest to do that kind of thing. I want the Government to win. But I want the Government to win in court or because we legislate about something before it happens. Not because I say I may have made a mistake on that, so now I am going to pretend I did not make the mistake and go back. The infrequency of retrospective legislation, certainly, is not something in this meeting of the House that is happening because the next one we are going back five years to 2006, the next Bill on the order paper.

**HON CHIEF MINISTER:**

We had better check on that one.

**HON J J BOSSANO:**

Well, we will see what it ... I do not know what it does. Until I hear what it does, I do not know whether I am going to be objecting to that or not.

**HON CHIEF MINISTER:**

Will he give way to me before he sits down?

**MR SPEAKER:**

He has given way.

**HON CHIEF MINISTER:**

Okay. Mr Speaker, I think here we are debating something. If we could just take it outside of the scope of this particular Bill to avoid any suggestion, one way or the other, as to motive which is not my intention. I think is a legitimate issue for Parliament to debate. But can I just mention to the hon Member that the circumstances, or rather the appropriateness and inappropriateness of the existence of the ability to legislate retrospectively, is not a matter that he and I are required to debate. It is provided for in the Constitution. It is provided for in legislation. And the Constitution and the legislation of Gibraltar stipulates what are the circumstances in which legislation cannot be applied retrospectively, thereby ... and that [*inaudible*] in the Constitution and in the Interpretation and General Clauses Act as to subsidiary legislation. Therefore, Mr Speaker, I am going to express views on the starting premise in which obviously there is a difference of view between us, which is fine. The hon Member appears to think that it is not appropriate, in any circumstances, to bring retrospective legislation, and we take a different view. Fine. That said, there is still a discussion to be had about the circumstances in which it is appropriate to bring retrospective legislation even if, like us, you believe that it is not inappropriate in all cases. That is the Government's position. Can I just illustrate, perhaps, a little bit more graphically, the reason why the Government believes that there are circumstances in which what he thinks is always unjustified, is justified in certain circumstances, but that the onus is on the Government to explain the parameters of those circumstances and to justify them. I have expressed it in terms of technicality only and public interest. Just to remind him of what those parameters were, when I explained that. Can I ask him to assume something and, again, ignore the incident in the port that happened earlier in the summer. Can he just assume an example in which an incident happened, and it may not be in the port it could be somewhere else, but obviously we are talking about the port here, in this legislation, in which there is a very serious incident. In which there is a genuine, if he could assume

that in my favour, just for a moment, in which there were a genuine public interest of reputation for Gibraltar, continued economic activity, other port users willingness to continue to use the port, public safety, if there was absolutely no doubt about the unsuitability of a particular port operator for all the reasons that are ... Let us assume, for a moment, the unlikely scenario that all of that, I am just trying to illustrate a theoretical point, were common ground between a group of people and that there were some technicality in the law, which we do not believe is the case, but that there were some technicality in the law that prevented the Government from suspending the licence and that operator, that everybody thinks is unsafe, inappropriate, unsuitable, danger, bla bla bla, were threatening to immediately restart operations. Impeding the Government's ability to protect the public interest of Gibraltar in its social, economic, public safety, and every other respect, on the basis of some technical argument, you cannot stop me. Even though I am all these things, you cannot stop me because section so and so, of so and so Act does not give you the power to do so and we say, yes it does, and they say, no it does not, and we say, yes it does, and they say, no it does not. In those circumstances, exposing the public interest ... In those circumstances, the Government has two choices. Either it says, well alright, we do not have that ... I will assume a case in which we do not have the power. Assume the worst case, which is not a dispute about whether it exists or not. Clearly, there is no power, let us assume. In those circumstances, the Government in protecting of the public interest has two choices. Either it says, well I do not have the power and therefore you carry on doing whatever you have been doing, in the way you have been doing it, because I am powerless to protect society against this thing that everybody believes society needs protecting, or the Government exercises a power unlawfully and then submits to a massive claim for damages at the suit, on the basis of a technicality of somebody that everybody believes should not be allowed to continue what they were doing. That is the dilemma that a Government could face in those circumstances. It is a huge dilemma and we do not see it in terms of defeating ... We do not

see it as using the Government's access to this Parliament as a tool to defeat the interests of litigants against the Government. We see it as a means of protecting the public interest from arguments to the possibility of losing, which the public interest should never have been exposed, and the idea, which we do not think is going to be the case here, by the way, that the public interest in the ... and it is just an example, it is an entirely hypothetical example to try and explain to the hon Member why we cannot subscribe to the view that it is always inappropriate to do it. The idea that in these circumstances that I have described, hypothetically, the Government and the Parliament of Gibraltar should not be free to say, well look, the idea that Ministers never have the right to protect the public interest, the legitimate public interest, which is why the importance of the distinction that I acknowledged with Dr Garcia, and I am willing to reflect in amended ... The idea that a Government should not have the power to protect the legitimate interests of Gibraltar and, if it does so, it is only at the expense of those same tax payers of Gibraltar, whose public interest is at stake, having to pay out damages to somebody who everybody agrees is entirely inappropriate to ... is just ... We just do not think it is right that that should be the case. People should not have the right to a windfall at the tax payers expense, based only on some technicality, ignoring the public interest involved. Not ignoring the Government's wish to save money, because the Government pays out damages regularly when it loses litigation. This is about whether, in circumstances that were otherwise thought to be appropriate, the only means that a Government should have to protect what is the unquestioned public interest of Gibraltar, should be by the unlawful exercise of the power, of a non-existent power, and exposing the tax payer to litigation. We have taken a view on that question and we think that that is not appropriate, hence this belts and braces litigation. We are not willing to give up the belts and braces litigation, such is the strength of feeling, but I repeat for the umpteenth time that the Government is entirely satisfied that it can see off this plane, on the basis of the existing legislation, and we believe that the legal

challenges that the Government is subjected to are wholly without merit.

**HON J J BOSSANO:**

Mr Speaker, taking the hypothetical case that the hon Member has given to illustrate the point, it is clear therefore that the issue of public interest is not the public interest in the safety of the port, because that can be dealt with from a current date without a problem. That is to say, the point that I was making initially is that if where the issue of the public interest enters is in leaving Gibraltar exposed to reputational risk, or health and safety risk, then, in fact, what has happened before cannot be corrected retrospectively. That has happened and there is nothing we can do about that. We can make sure it does not happen again. We can make sure the power is there beyond doubt by making that crystal clear in the legislation and we can make sure that if an unsuitable operator tomorrow wants to operate, the Minister has the power to refuse the licence.

**HON CHIEF MINISTER:**

Allow me to interrupt him ... This is a genuine ... I do not see any political controversial ground here, other than on the subject of the case. I would ask him not to overlook, in his assessment of what I have just said to him, the fact that we are being challenged for something that we did at a time when it was the present, and for the future. In other words, in my hypothetical example, let him assume that the very next day after the explosion the operator wanted to restart ... Not the operator, we are talking about a hypothetical case. After the incident, the operator of the plant, that suffered an incident, wanted to restart the operation and immediately submit Gibraltar to whatever risks are involved without the Government ... That is the future. At the time that this power was exercised, it was to protect for the future. The only thing that I do not have access to is the House

on a daily basis, to bring the legislation on a daily basis. I am just asking. I am sure it is not going to alter very much what he says but those were the circumstances. Of the exercise of the power, not of the change in the rules.

**HON J J BOSSANO:**

Mr Speaker, the Government did the right thing in exercising the power I thought it had and, even if it was not crystal clear, they did the right thing in removing the risk. But the point is that, if in removing the risk, they actually might have gone beyond the power that they had, then the public interest requires, sometimes, that to protect a certain basic right, that the Government has to act as the law says and not as its interpretation of the law says, because otherwise we can dispense with the courts and people having the right to go to court if they think the Government is mistaken. That is the issue. If the operator says, you cannot stop me because you are wrong in your interpretation of the law, and the Government says, well, I think I am right, and I am stopping you and the public interest requires it, and we agree that that is the way they should act, and then they go to court. But given that they are in court, they then say, wait a minute, I must make sure that nobody in future, even though I think this case will be lost by the person that is challenging it, just in case it is not, I am going to make sure that nobody else from now on can use the same technicality to try and escape from his obligation, or to try and stop me doing what I have got a duty to do which is to protect Gibraltar. But by going beyond that point, back to say, well look, you believe you are right, we believe you are wrong, but just in case there is a risk of me losing and having to compensate you for being right and me being wrong ...

**HON CHIEF MINISTER:**

As to the existence of the power.

**HON J J BOSSANO:**

As to the existence of the power. I am talking to the existence of the power. I accepted that point from the beginning. That the issue is not whether the power that exists has been exercised properly. The power that we give him today, we are accepting that we are giving the power to make sure that the power exists. Not to make sure that he can do with the power whatever he likes. Right, and therefore do not know anything about the case. I do not know what is being challenged, or what the technicality is, and given the amount of money that people make out of deciphering the technicalities which is reminiscent of the Byzantine arguments about how many angels can dance on a head of a pin, I probably would not understand it if I read the case. As a politician and as a Member of Parliament, I am uncomfortable with the idea that the Government can get something wrong and argue, well look, it is in the public interest that I should save the tax payer the compensation. Well look, let us just do one or two toilets less.

**HON CHIEF MINISTER:**

This is not ... The Government is not correcting a decision of its own. If there was a defect that is being corrected, it is a defect in the legislation. If there were a defect, it would be a defect in the legislation passed by this Parliament. Let us be clear. This is not to sanitise a ministerial mistake, or a ministerial Act. What we are saying here is let there be no doubt that the law of the land allows the Minister in a lawful manner, for example, to suspend the licence.

**HON J J BOSSANO:**

Well, Mr Speaker, I can remember when the hon Member was here, how he used to castigate the Government about the quality of the drafting of legislation. So, presumably, it is not

whether the power is intended to exist, but whether the legislation has been accurately drafted to reflect the intention. There were many, many, debates in this House, which are recorded in Hansard, about how good or how bad the drafting was in those days. I do not think we ever made an issue of making the hon Member responsible for the drafting, like I used to be made responsible for something I did not understand at all. The point is not that. There is a political point of principle at stake. A parliamentary point of principle at stake which is, okay, the Parliament has drafted something. But the whole concept of the separation of powers is precisely that if a citizen thinks the Government is wrong or the Parliament is wrong in that what it intended to do is not what it has done, then it has a right to go to court and say, you think you got this power, but the law, I am advised by my lawyer, does not give you the power that you think you have, and I am prepared to spend my money getting a judge to interpret the law and tell me whether your interpretation is right or mine is right. Now, it seems to me that the essence of the need for the retrospective legislation is so that that should not be possible, and I think that should be possible, and if, in fact, not the Government, all of us in this Parliament made a mistake and we did not pick up that the drafting was not as tight as it should be, then that is part of the price that democracy has to pay. I do not want the money to be paid. I hope the person does not win. I do not want public money to be spent compensating somebody who put lives at risks, or did something wrong, or is not fit to be there. But the point is that if the issue is ... if the justification for doing it is so that if he has got one chance in a million of getting compensation, which he does not deserve, we will remove that from him. Well, I do not think we should, as a matter of policy. As a matter of philosophy, and I am not getting any commissions on this.

**HON D A FEETHAM:**

Yes, Mr Speaker. Now, I have listened very carefully to what the ex Leader of the Opposition has to say and I have to say

that he obviously does not remember the debate in relation to the Criminal Procedure and Evidence Bill, which is exactly your point. It is analogous to the hypothetical examples that he has actually given. He may recall that, in fact, in relation to police bail, in the United Kingdom, earlier on this year, there was a decision of the High Court actually saying that it was unlawful for the police to grant bail over and above a specific period of time. Now, that had implications. It had implications, for example, to potentially exposing the police in the United Kingdom, up and down the United Kingdom, to claims left, right and centre from people who had been bailed over and above a certain period of time by the police, because at the end of the day, bail is bail. It is subject to conditions when they should have been allowed free after a period of time. Now, what the United Kingdom Government did, in that instance, was to actually legislate. There was a deeming provision included in a Bill that they brought as an emergency measure to the House of Commons. Basically, deeming that everything the police had actually done, going back years and years, since the Police and Criminal Evidence Act, was actually lawful. In fact, we debated this across the floor of the House and the hon Member opposite, Mr Licudi, was urging the Government on this side to actually speed up the introduction of the same clause in our legislation because of the potential impact that that decision in the United Kingdom may have in respect of our legislation. I gave an undertaking to Mr Licudi that, in fact, we would do that because ... he may recall that the Criminal Procedure and Evidence Bill was not going to become effective until all the training and people became familiar with it. So it was going to be delayed. I think at the time I said at the end of October. But he was saying, well, in relation to this particular provision, go ahead do it earlier because it is going to expose the police in the same way as the police in the United Kingdom. Now, that is the classic example of where Parliament actually intervenes in the public interest and it is certainly right and proper to do so in those circumstances. There was cross party consensus. A cross floor consensus that that ought to be the case.

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 FJ Vinet

For the Noes;

The Hon J J Bossano  
The Hon C A Bruzon  
The Hon Dr J J Garcia  
The Hon G H Licudi  
The Hon S E Linares  
The Hon F R Picardo

The Bill was read a second time.

#### **HON J J HOLLIDAY:**

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

Question put.

Agreed to.

## **COMMITTEE STAGE**

### **HON CHIEF MINISTER:**

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

1. The Borders & Coastguard Agency Bill 2011;
2. The Port Operations (Registration and Licensing) (Amendment) Bill 2011;
3. The Social Security (Survivor's Benefits Miscellaneous Amendments) Bill 2011.

Could I just in moving, with the Hon Clerk's indulgence, indicate to the hon Members that it has been pointed out to us that there may be technical issues with the drafting of the other Bill and that we will not be therefore running the risk and proceeding at this stage. We will leave that Bill for another day.

### **MR SPEAKER:**

Which Bill.

### **HON CHIEF MINISTER:**

There is a fourth Bill on the order paper.

### **THE BORDERS & COASTGUARD AGENCY BILL 2011**

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

## **Clause 2**

### **HON CHIEF MINISTER:**

Mr Chairman, in accordance with the notice that I have given in my letter of 23 September 2011, I move that after the definition of the word "Agency" there should be introduced a definition of the defined term "BGTW" which is the traditional way of referring to Gibraltar's territorial waters and that "BGTW" means British Gibraltar Territorial Waters which is the area of sea, the sea bed and subsoil within the seaward limits of the territorial sea adjacent to Gibraltar under British sovereignty and which, in accordance with the United Nations Convention on the Law of the Sea 1982, currently extends to three nautical miles and to the median line in the Bay of Gibraltar;".

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

**Clauses 3 to 5** – was agreed to and stood part of the Bill.

## **Clause 6**

### **HON CHIEF MINISTER:**

Mr Chairman, in clause 6(2)(h), I have given notice of an amendment to delete the words "Gibraltar's territorial waters" and "its" and to substitute the words "Gibraltar's territorial waters" with the acronym "BGTW" and to substitute the word "its" with the word "Gibraltar's".

Clause 6, as amended, was agreed to and stood part of the Bill.



### **Clause 7**

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

Mr Chairman, in clause 7(1), I have given notice of an amendment to delete the words "Subject to the provisions of this or any other Act" and replace with the much clearer words "Save in respect of the exercise of any powers provided for under any other Act".

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

**Clauses 8 to 14** – were agreed to and stood part of the Bill.

### **Clause 15**

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

Mr Chairman, in clause 15, I think in the debate in the Second Reading I agreed with the Hon Mr Licudi that it would be appropriate and indeed desirable to make clearer, at his suggestion, what "member" meant by way of the non attachment of personal liability. I therefore move that after the word "member" should be added "of the Board".

#### **HON G H LICUDI:**

Mr Chairman, perhaps the same thing can be achieved simply by removing the word "Agency" and replacing that with the word "Board", because "Board" is a defined term.

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

Yes. Correct.

#### **HON G H LICUDI:**

And therefore it would simply say "any member of the Board" and we know what the Board means by reference to the defined term.

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

Yes, "any member of the Board", so delete the word "Agency" and substitute with the word "Board", is the simplest.

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

**Clauses 16 to 19** – were agreed to and stood part of the Bill.

### **Clause 20**

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

Mr Chairman, in clause 20, I have given notice of an amendment which is to delete sub clause (2) altogether and I think then, as a matter of attractive drafting, the figure should be removed from sub clause (1), which is unnecessary if there is not a further sub clause.

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

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

## THE PORT OPERATIONS (REGISTRATION AND LICENSING) (AMENDMENT) BILL 2011

**Clauses 1 to 4** – stood part of the Bill.

### **Clause 5**

**HON J J HOLLIDAY:**

Mr Chairman, I have given notice that in clause 5 of the Bill, in section 2A(2) for the change in words as follows: delete the words “changes to a licence” and replace with the words “changes to a port operator licence”.

**MR CHAIRMAN:**

I think since the Hon Minister has taken the trouble of writing at length all the amendments, there is no need to move every single amendment. We just take the amendments in clause 5. Does anyone wish to comment on the amendments to clause 5?

**HON J J HOLLIDAY:**

That is fine.

### **NOTE**

For the purpose of Hansard the amendments are as follows:

Replace existing sections 2H, 2I, 2J with the following sections-

**“Issue of port operator licence.**

2H.(1) Upon the consideration of an application under this Part, including any information provided to it, the Authority may, in its absolute discretion, issue a port operator licence.

(2) In the Authority’s absolute discretion, a port operator licence issued under this section may be-

(b) restricted to any named activity or class of activities; and

(c) issued subject to such terms, conditions or restrictions as the Authority deems appropriate.

(3) Without limiting the Authority’s absolute discretion set out in subsections (1) and (2) the Authority may take into account in considering an application for a port operator licence any one of the following matters –

(a) if, having required further information from the applicant it has not received that information;

(b) if it considers that-

(i) the operational circumstances, the viability of a particular sector, the need to maintain levels of investment or the safety of the Port, port users and members of the public or the safety of the sector of port operations for which the application is made; or

(ii) the public interest of Gibraltar including (but not limited to) the wider economic interests of Gibraltar,

may be adversely affected if such a licence were issued;

- (c) if it would be proper to do so on the basis of the information available to it at the relevant time;
- (d) compliance with such criteria as may be prescribed;
- (e) the protection of human health;
- (f) public safety;
- (g) the protection of the natural environment;
- (h) any breach of a provision of this Act or any regulations made hereunder;
- (i) the public interest;
- (j) having regard to all the circumstances of the case it would be just to do so.

(4) The Authority shall regulate its own procedure for determining an application for a port operator licence.

2I. *Not used.*

2J. *Not used.*

In the heading to section 2K, delete the words “Renewal of licences.” and replace with the words “Renewal of port operator licences.”.

In section 2K(2)(d), delete the words “of the applicant”.

In section 2K(4), delete the words “renewal of licence” and replace with the words “renewal of port operator licence”.

In the heading to section 2L, delete the words “Renewal of licences: supplementary.” and replace with the words “Renewal of port operators licences: supplementary.”.

In section 2L, delete subsection (2) and replace with the following:

- “(2) The applicant shall notify the Authority of any change of circumstances which may be material to the renewal.
- (3) Notwithstanding sub-sections (1) and (2) the Authority may require the applicant to provide additional or updated information relevant to its consideration of an application for renewal and the applicant shall provide such information within such timescale as the Authority may require.”.

In the heading to section 2M, delete the words “Amendment, suspension and revocation of licence.” and replace with the words “Amendment, suspension and revocation of port operator licence.”.

In section 2M(1)(a), after the words “amend a port operator licence including” insert the words “but without limitation”.

In section 2M(2)(a), delete the word “proper” and replace with the word “reasonable”.

After subsection (2)(b), delete the words “regard to any or all” and replace with the words “regard to any”.

Replace existing subparagraphs (2)(v) and (2)(vi) with the following subparagraphs:

- “(v) any breach of a provision of this Act or any regulations made hereunder,

- (vi) any material change of circumstances since the licence was granted, and
- (vii) the public interest.”.

In section 2M(4), delete the words “not take any steps under the section in relation to that licence” and replace with the words “take such steps as are necessary to give effect to that amendment, suspension or revocation”.

After subsection (6) insert the following subsection:

“(7) Where the Government, pursuant to this section, exercises a power in a manner which engages section 6 of the Constitution such exercise shall be without prejudice to such right to compensation as a licensee may have.”.

At the end of clause 5, after the closing quotation mark insert “.”.

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

#### **Clause 6**

**HON J J HOLLIDAY:**

It is on the last page of the Memorandum. Paragraph 5.

**MR CHAIRMAN:**

That is the amendments to the heading.

**HON J J HOLLIDAY:**

Yes, Mr Chairman.

**MR CHAIRMAN:**

Clause 6, amended as to the clause heading, stands part of the Bill.

**Clause 7** – stood part of the Bill.

#### **Clause 8**

**MR CHAIRMAN:**

Again clause 8, as amended as to the clause heading, stands part of the Bill.

**Clause 9** – stood part of the Bill.

#### **Clause 10**

**MR CHAIRMAN:**

Clause 10, as amended as to the clause heading, stands part of the Bill.

**Clause 11** – stood part of the Bill.

#### **Clause 12**

**HON J J HOLLIDAY:**

Mr Chairman, I beg to move the following amendments:

In the heading to the clause, delete the word “Amendments” and replace with the word “Amendment”.

In clause 12(a), after the words “Port workers: supplementary.” insert “;”.

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

**Clauses 13 and 14** – stood part of the Bill.

**New Clause 14A**

**HON J J HOLLIDAY:**

Mr Chairman, I beg to move the following amendment:

After clause 14, insert the following clause:

**“Insertion of Part heading.**

14A. Immediately preceding section 13 of the principal Act insert the following Part heading-

**“PART 4**  
Miscellaneous”.

New Clause 14, stood part of the Bill.

**Clauses 15 and 16** – stood part of the Bill.

**Clause 17**

**HON J J HOLLIDAY:**

Mr Chairman, I beg to move the following amendments:

In the heading to the clause, delete the word “Amendments” and replace with the word “Amendment”.

In clause 17(c), delete “.” and replace with “;”.

After clause 17(c), insert the following:

“(d) for paragraph (i) substitute the following paragraphs-

“(i) criteria that an applicant or a holder of a port operator licence, as the case may be, is required to meet, including but not limited to any qualifications, experience, solvency, good character or any other attribute;

(j) criteria for the amendment, suspension or revocation of a port operator licence;

(k) conditions to be attached to port operator licences including but without prejudice to the generality conditions regarding the type and level of insurance cover to be carried by licensees;

(l) such other matters as are incidental and supplementary to or may be necessary or expedient for the purposes of this Act.”;

(e) after paragraph (l) insert the following subsection-

“(2) Regulations made under this section may amend, add to or substitute any matter provided for in the Act.”.

Clause 17, as amended, stood part of the Bill.

### **Clause 18**

**HON J J HOLLIDAY:**

Mr Chairman, I beg to move the following amendment:

In section 19(2), delete existing subsection (2) and replace with the following:

“(2) Regulations made by the Minister to which this section applies and the exercise by the Minister of powers conferred upon him by those regulations are hereby ratified validated and declared to be lawfully done by him.”

**MR CHAIRMAN:**

Clause 18, as amended, stood part of the Bill.

**HON J J HOLLIDAY:**

Mr Chairman, in section 19, I think that there was going to be an agreed wording of possible changes.

**MR CHAIRMAN:**

In clause 18 we were supposed to discuss any amendments.

**HON G H LICUDI:**

Mr Chairman, having declared the interest that we have declared and given that this might be a clause of a section that might be relevant to the court proceedings, I do not believe it is right that I should be involved in the specific wording.

**HON CHIEF MINSITER:**

Sorry. Are we talking about this section.

**HON G H LICUDI:**

Yes.

**MR CHAIRMAN:**

Clause 18.

**HON G H LICUDI:**

Yes. What I have said, for the Hon the Chief Minister if he did not hear, that having declared the interest that I have declared and given the possibility that this clause, or this section, might be relevant, an issue in the court proceedings, I do not believe that it is right that I should be involved in a specific wording of the clause.

**HON CHIEF MINISTER:**

The hon Member gives himself less credit for integrity than I give him. Alright, Mr Speaker, well I am very happy to suggest language which is that after the amended version of the, at the

end of the amended version of the section. So the section amended as already proposed by my hon Colleague, the Minister. We should add the words, so after the last word “him”, we should add the words “as to legal vires only”, making it clear.

There are two issues which could be the subject of legal challenge. One is whether a power existed at all and the other is whether that power, given that it exists, has been lawfully exercised. This amendment has the effect of putting beyond doubt the existence of the power, but leaves intact the court’s freedom to challenge the lawfulness of the exercise of the power, except on the grounds of whether it existed or not. So the manner in which the power is exercised remains entirely free to be challenged.

Clause 18, as further amended, stood part of the Bill.

**HON CHIEF MINISTER:**

As to legal vires only.

**MR CHAIRMAN:**

Added the words “as to legal vires only” at the end of the clause.

**Amendment to the Explanatory Memorandum**

**MR CHAIRMAN:**

I am not sure I should say, stands part of the Bill, because the Explanatory Memorandum does not feature in the Act, anyway. So I think we will leave it that.

**THE SOCIAL SECURITY (SURVIVOR’S BENEFITS MISCELLANEOUS AMENDMENTS) BILL 2011**

**Clauses 1 to 16** – were agreed to and stood part of the Bill.

**The Long Title**

**MR CHAIRMAN:**

The Long Title. No, no. I have not fallen asleep. I made a note in my own reading. Even though I said, clause 13 stands part of the Bill, I invite hon Members to look at clause 13 at page 1517. There is a heading about two thirds of the page down. Amendment of the Social Insurance (Insurability ... and is it Special Classes, or Special Clauses? I may be mistaken. That is Special Classes. In that case, clause 13 stands part of the Bill, as previously read.

**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 Borders & Coastguard Agency Bill 2011;
2. The Port Operations (Registration and Licensing) (Amendment) Bill 2011;
3. The Social Security (Survivor’s Benefits Miscellaneous Amendments) Bill 2011,

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

Question put.

The Borders & Coastguard Agency Bill 2011;

The Social Security (Survivor's Benefits Miscellaneous Amendments) Bill 2011,

were agreed to and read a third time and passed.

The Port Operations (Registration and Licensing) (Amendment) Bill 2011.

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 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 beg and indeed have the honour to move that the House should now adjourn sine die.

Question put.           Agreed to.

The adjournment of the House was taken at 11.15 a.m. on Friday 30<sup>th</sup> September 2011.