REPORT OF THE PROCEEDINGS OF THE GIBRALTAR PARLIAMENT

The Twelfth Meeting of the Eleventh Parliament held in the Parliament Chamber on Thursday 13th 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 29th 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 31st 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 17th 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 13th January 2011.

MONDAY 17TH 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 20th 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 17th January 2011.

THURSDAY 20TH 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 7th 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 20th January 2011.

MONDAY 7TH 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 Affairs
The Hon Mrs Y Del Agua – Minister for Health and Civil Protection
The Hon D A Feetham – Minister for Justice
The Hon L Montiel – Minister for Employment, Labour and Industrial Relations
The Hon C G Beltran – Minister for Education and Training
The Hon E J Reyes – Minister for Culture, Heritage, Sport and Leisure

OPPOSITION:

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

IN ATTENDANCE:

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

SUSPENSION OF STANDING ORDERS

HON CHIEF MINISTER:

I beg to move under Standing Order 7(3) to suspend Standing Order 7(1) 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 1st 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 31st 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 31st 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 1st 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 1st 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 1st 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 1st 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 1st 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 1st 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 1st 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 precedented 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

licenced 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 1st 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 1st 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 1st 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 1st 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 1st 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. Sub-section (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 blindingly 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 1st 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 1st 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 1st April 2011 and, therefore, will have been 16 on 1st 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 1st 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 1st September could be …, 1st September and, therefore, rights which have been accumulated already, will not have been lost, or 1st 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 1st 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 1st April 2011 is not a date that has any magic, you might as well choose another date, 1st September, or 1st 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 "1st 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 "31st 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 "1st April 2011" and substitute, therefore, with "31st 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 16th 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 7th February 2011.

WEDNESDAY 16TH 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 31st 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 31st 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 4th 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 1st April to the 31st 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 31st 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 1st 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

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 Xs 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 31st 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 1st 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 1st …" 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 31st 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 27th 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 16th March 2011.

WEDNESDAY 27TH 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 31st 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 31st 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 1st July 2010 whereas clause 7 will be deemed to have come into operation on the 1st 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 23rd 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".

<u>Schedules 1 and 2</u> – were agreed to and stood part of the Bill.

<u>Schedule 3</u>

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 27th April 2011.