PROCEEDINGS OF THE

GIBRALTAR PARLIAMENT

AFTERNOON SESSION: 2.30 p.m. – 7.45 p.m.

Gibraltar, Friday, 28th September 2012

The Gibraltar Parliament

The Parliament met at 2.30 p.m.

[MR SPEAKER: Hon. H K Budhrani QC *in the Chair*]

[CLERK TO THE PARLIAMENT: M L Farrell Esq RD *in attendance*]

PRAYER
Mr Speaker

Order of the Day

Clerk: Sitting of Parliament, Friday, 28th September 2012.

Correction to Answer provided
Statement by the Minister for Housing

Mr Speaker: The Hon. the Minister of Housing has asked leave to clarify an answer which he provided to the Hon. Damon Bossino at last week's Question and Answer session.

The Hon. Minister for Housing.

Minister for Housing and the Elderly (Hon. C A Bruzon): Thank you, Mr Speaker.

With reference to the Hon. Damon Bossino's supplementary question as to who changes the bulbs in the Mid-Harbour rental estate, I would like to inform him, contrary to what I said the other day, that this

is undertaken by A A Sheriff until the end of the defects liability period.

However, external lamp posts and the replacement of bulbs, this is managed by the Gibraltar Electrical Authority.

BILLS

FIRST AND SECOND READINGS

The Broadcasting Bill 2012
First Reading approved

Clerk: Bills. First and Second Readings.

A Bill for an Act to make provision for the Gibraltar Broadcasting Corporation and to transpose into the law of Gibraltar Council Directive 2010/13/EU of 10th March 2010 of the European Parliament and of the Council on the co-ordination of certain provisions laid down by law, regulation or administrative action in Member States concerning the provision of audiovisual media services supplementing Directive 2007/65/EC of the European Parliament and the Council of 11th December 2007 and for connected purposes.

The Hon. the Chief Minister.

Chief Minister (Hon. F R Picardo): Mr Speaker, I have the honour to move that a Bill for an Act to make provision for the Gibraltar Broadcasting Corporation and to transpose into the law of Gibraltar Council Directive 2010/13/EU of 10th March 2010 of the European Parliament and of the Council on the co-ordination of certain provisions laid down by law, regulation or administrative action in Member States concerning the provision of audiovisual media services supplementing Directive 2007/65/EC of the European Parliament and the Council of 11th December 2007, and for connected purposes, be read a first time.

Mr Speaker: I now put the question, which is that a Bill for an Act to make provision for the Gibraltar Broadcasting Corporation and to transpose into the law of Gibraltar Council Directive 2010/13/EU of 10th March 2010 of the European Parliament and of the Council on the co-ordination of certain provisions laid down by law, regulation or administrative action in Member States concerning the provision of audiovisual media services supplementing Directive 2007/65/EC of the European Parliament and the Council of 11th December 2007, and for connected purposes, be read a first time. Those in favour. (**Members**: Aye.) Those against. Carried.

Clerk: The Broadcasting Act 2012.

The Broadcasting Bill 2012
Second Reading approved

Chief Minister (Hon. F R Picardo): Mr Speaker, I have the honour to move that the Bill for the Broadcasting Act 2012 be now read a second time.

This Bill introduces a regulatory structure for all broadcasting in Gibraltar and transposes the audiovisual media services Directive, Council Directive 2010-13, of the EU as the long title suggests. It also replaces the existing Gibraltar Broadcasting Corporation Act and reproduces much of the existing legislation in that respect.

I will be introducing a number of amendments at Committee Stage and I will highlight the main ones during the course of this speech. The amendments serve five main purposes, other than correcting typos etc, as have been highlighted in the letter to Mr Speaker and which I believe were circulated to the hon. Members on Wednesday. Given the number of amendments, I will seek to summarise them now, with the caveat that they are principally technical in nature.

Firstly, Mr Speaker, the amendments provide for the revocation of the current AVMS Regulations – the Audio Visual Media Service Regulations and that, in the lexicon of what I am going to be saying for the next little while, is usefully summarised as AVMS – by importing necessary provisions from those Regulations into this Bill and also harmonising the language used in the Bill with the language that was used in those Regulations.

The decision to proceed in this way has been taken so as to ensure that there is no confusion as to

whether a particular broadcaster is caught by the Bill or the previous Regulations, or both and at the same time to maintain a sense of continuity regarding the style and use of language in the Bill and the Regulations, especially given that the language used in the Regulations has been effective to date. The majority of the amendments, which I will propose at committee stage, fall into this category, both in terms of numbers and volume.

Secondly, the amendments will remove references to the Transmission Standards Directive and to issues relating to conditional access. On further consideration, following the publication of the Bill, it is now the Government's view that, due to the particular technical nature of these areas, the regulation of the same would be best dealt with by means of secondary legislation.

Thirdly, the amendments will provide for even greater transparency and independence relating to the appointment of the GBC Board. An amendment to the Bill imposes a requirement on the Chief Minister to consult with the Leader of the Opposition before making any appointment. There is also a further amendment, which removes the Minister's power to choose the identity of the person who audits the GBC, thus removing an instance where bias might have been insinuated.

Fourthly, the amendments specifically provide for a digital terrestrial network and for outside operators to make use of it.

Fifthly, there are amendments which move powers invested in the Minister in the current Bill to the Authority – the Gibraltar Regulatory Authority – and also removing the requirement that the Authority obtain the consent of the Minister before acting in certain circumstances. This will allow the Authority to operate independently as a regulator under this Bill.

Mr Speaker, the Bill creates a licensing regime in relation to broadcasting beyond the public broadcasting provisions of the GBC Act for the first time in Gibraltar's history. Licences will be required by all radio and television broadcasters and this will include BFBS, who are presently exempt under the GBC Act. The licensing regime removes the exclusivity which GBC has had since the early 1960s. The monopoly in broadcasting is over.

All regulatory powers are transferred to the Authority which, on commencement of the Act, will be the Gibraltar Regulatory Authority, including the powers to ensure impartiality and fairness in GBC broadcasts. These are powers which have traditionally been exercised by the Board of GBC.

This Bill also provides that all broadcasters have to provide to all persons, whose legitimate interests – in particular reputation and good name – have been damaged by an assertion of incorrect facts in a programme, a right of reply, or a remedy judged by the Authority to be an equivalent remedy. Complaints are to be made to the broadcaster in the first instance and, if the broadcaster refuses to grant the right of reply, the matter is referred to the Authority for adjudication.

The Gibraltar Regulatory Authority currently already has a duty under the European Parliamentary Elections Act 2004 to establish procedures for the handling and resolution of complaints about the observance of standards in political broadcasting. Similar powers are given to the Authority for *all* elections and referenda in Gibraltar. Until now, hon. Members will be aware that such matters have been the subject of Governor's directions. As this House is aware, Gibraltar will have a digital broadcasting network at the end of this year, which will create opportunities to exploit it commercially. It will not only be GBC that will be able to broadcast on this network and the Government and the GRA have already been in contact with an organisation which will promote the use of the network by other international broadcasters. The existence of the digital broadcasting network is catered for, for the first time, specifically in this Bill and in some of the amendments, which I will be proposing at the committee stage.

Let me now move on, Mr Speaker, to particular clauses of the Bill.

Clause 2.(2) sets out what broadcasters are deemed for the purposes of the Act to be established in Gibraltar. In relation to this particular sub-clause and, as I mentioned above, I will be proposing an amendment at Committee Stage, which would include non-European broadcasters which are licensed in Gibraltar to broadcast on the digital television network within that scope.

Clause 2.(3) sets out which broadcasters outside of sub-clause (2) are under the jurisdiction of Gibraltar and includes those who use, for example, a satellite uplink situated in Gibraltar.

Part II of the Bill deals with the administration of the Act.

Clause 4 sets out the general functions of the Authority, which include regulating, supervising and enforcing compliance with conditions to which licences are issued. The Authority will further be tasked with investigations of any breach, regulating apparatus used and setting standards in technical specifications relating to broadcasting.

Clause 5 empowers them to publish relevant information and advice.

Clause 6 gives the Authority the power to require information relevant to their supervisory powers and duties under this Act. Failure to comply without reasonable cause is a summary offence. Giving false or misleading information is an either-way offence under clause 7. Information supplied to the Authority must be dealt with in compliance with clause 8, which creates restrictions on disclosure.

Clauses 12, 13 and 14 deal with the issue of directions and administrative notices by the Authority. References to the Minister in clauses 13 and 14 as being empowered to issue such notices are the subject

of an amendment I will be proposing at Committee Stage. The amendments will remove the need for the consent of the Minister, or for a consultation with the Minister to be necessary before the power is used.

Part III of the Bill creates the regime for the licensing of broadcasters.

Clause 15 sets out general licensing powers and I will be proposing an amendment, which makes it clear that this includes digital, terrestrial television. Fees for licences under this section will be set up by the Minister by regulation. It will be an offence to broadcast in Gibraltar without a licence.

Licences under this section do not affect requirements under Part VI of the Communications Act, which deals with radio communications. The requirements that the Authority needs to take into account are set out in Schedule 1 and Schedule 2, which set out who is restricted from holding a licence. Paragraph 6 of Schedule 2 gives the Authority discretion to refuse a licence to newspaper proprietors on public interest grounds only. There is no blanket prohibition for such proprietors from holding such a licence.

Let me say, Mr Speaker, that this position replicates what is the case already in the United Kingdom, although there are many entities with interests in newspapers that own and operate, either wholly or in partnership with others, media outlets that include digital or satellite television ventures. Our own view, as a Government, is that there would have to be a very good reason indeed why the regulator should consider that they need to exercise this discretion to prevent any entity with interests in newspapers from operating a digital broadcasting service in Gibraltar, but we have reserved the discretion in case there were to be a good reason in the future in the public interest of Gibraltar.

The final provisions of this part deal with enforcement etc of licences and include provision for financial penalties, enforcement notices and, as an ultimate sanction, the revocation of a licence.

Part IV deals with broadcasting standards and, to a great extent, simply replicates similar existing provisions contained in the AVMS Regulations. Examples of matters dealt with in this part include the issue of codes of practice, the recording of broadcasts, information in respect of providers of media services, prohibition of incitement to hatred, matters dealing with advertisements, teleshopping and sponsored programmes etc, the protection of minors and other such matters. Amendments to be proposed at Committee Stage also make similar provisions for accessibility, proportion of distribution and production of television programmes and a requirement to report to the European Commission. There are also amendments in this part which import the language used in the AVMS Regulations by substituting the equivalent clauses in the Bill with a new clause based on that language. The Bill goes further than the Regulations, in that it extends some of the above to audio transmissions, especially with regard to advertising.

Parts V and VI deal with exclusive rights and short news reports in television broadcasting and the right of reply. These are examples of where we have taken the current wording of the Regulations and imported that into the Bill.

Part VII provides for the regulation of community broadcasts, which, in effect, replicates provisions which are currently in parts 2 and 3 of the AVMS Regulations which are being repealed.

Part VIII deals with conditional access and there is an amendment which would delete this part as a whole for the reasons I have mentioned earlier.

Parts IX to XII replicate the equivalent parts of the GBC Act with some amendment.

Following an amendment I will be proposing, as mentioned earlier, the Chairman and board of GBC are now to be appointed by the Chief Minister, after consultation with the Leader of the Opposition, as opposed to the current position where the appointment is by the Governor, a power which I understand has long been exercised *in consultation with* the Chief Minister of the day, although the present Act does not require it. I believe that for the Chief Minister of the day – not the Minister for Broadcasting, but the Chief Minister, although at the moment I happen to be both – to have this power to exercise in consultation with the elected Leader of the Opposition, is the right way to progress this particular aspect of the governance of our community. There will not be a requirement to clear names with the Governor before publication in the *Gazette*.

The principal function of the board of GBC will now be to ensure the good governance of GBC. As I mentioned earlier, the independence aspects become the responsibility of the Authority. An amendment to clause 57 deals with the audit point I also mentioned earlier.

Part XIII extends the emergency powers the Governor had under the GBC Act to all broadcasters.

Part XIV deals with appeals against decisions made by the Authority and the appeals are to be to the Supreme Court.

Part XV includes miscellaneous provisions, including offences and repeals, where I intend to include the mentioned repeal of the AVMS Regulations at the committee stage.

Mr Speaker, to deliver arm's-length regulation of a new digital broadcasting network, to deliver independent regulation of public service broadcasting and to deliver the end of GBC's monopoly over broadcasting in Gibraltar, I commend the Bill to the House.

Mr Speaker: Before I put the question, does any hon. Member wish to speak on the general

principles and merits of the Bill?

The Hon. the Leader of the Opposition.

Hon. P R Caruana: Yes, Mr Speaker, regardless of the fact that large parts of this Bill are done by compulsion of EU obligations, we think that the creation of a broadcasting regulatory framework is a good thing and welcome.

We shall not, however, be voting in favour of this Bill, which contains provisions which we think prevent us from supporting it, and even if the hon. Members are not taken by any of the views that I express on matters that may go more to policy choice, I hope they will be taken at least by the observations that I make about matters that are not really political in nature but more technical in nature and which we think are deficiently provided for in this Bill, some of them quite serious – indeed, one of them *I* think unconstitutionally so.

Mr Speaker, can I just address one of the last points that the Hon. the Chief Minister has made about the supposed alteration of who appoints and who consults and who consults and who appoints the board. Certainly, during all of the years that I was Chief Minister – and I suspect the same is probably true of the years of even my own predecessor as Chief Minister – the appointment of the board of GBC has not been by the Governor in mere consultation with the Chief Minister; it has been by the Governor, because that is what the Act says is the appointor, but acting on the advice of the Chief Minister. In other words, it has always been, certainly since the mid-90s, a decision of the Government/Chief Minister of the day pursuant to a letter – the existence of which I hope he is aware, and if not, he now is – of a letter which is now less important because, of course, we removed the Governor from all of our legislation, or from most of it – a process which, by the way, I do not think we quite finished; there were a handful of Acts which we left undone, which I will recommend the hon. Member to finish… But anyway, at the time that our legislation was littered with references to the Governor, in the time of the *previous* GSLP Government they secured out of the Foreign Office a helpful letter – I suspect that if Mr Bossano was in the Chamber he would be able to now smile and take credit for this and, indeed, it would be due to him – a letter in which the Foreign Office recognises that where an Act of Gibraltar's Parliament refers to 'Governor' and the exercise of powers by the Governor in the context of defined domestic matters, such as broadcasting, those powers were exercised by the Government. In other words, 'Governor' meant 'Government' in terms of making the underlying decision, and so it was in almost every Bill. The Public Health Act was riddled with references to 'Governor'. So this Act, in a sense, does little more than formalise in terms the arrangements as they have been, as I have always known them, and therefore it is difficult to present it as any great increase in transparency, except… I mean it would be a considerable increase in transparency if the appointments that the Minister makes were subject to the *consent* of the Opposition, but simply to submit to the process of consulting the Opposition and then perhaps ignoring their views and proceeding with whatever appointment is towards the box-ticking end of transparency, rather than towards the effective end of transparency.

But still, Mr Speaker, I do not criticise him for effectively choosing to continue with a regime, which is the one that we had and presided over in terms of [*inaudible*] appointment. It is an important responsibility in a small community like Gibraltar for the choice of the board of GBC, for reasons that he has known and may often have felt the victim of in the past when they were in Opposition. People attach a lot of importance to what GBC says and does and, for that reason, the selection of the board. At the end of the day, we were in that position for 15½ years and they are in that position now. We like to think we did not abuse that power and we would like to think that they will not do so, either. I notice by his smirks that he does not share my statement – presumably the first part of my statement, although I suspect they subscribe to the second part of it about my hope for the future.

Mr Speaker, I cannot agree that this Bill does not increase GoG's powers over broadcasting. I think it does that and in the context of the regulator… although I accept that some of the amendments that he has given notice of are helpful, particularly in one section that I will come to in a moment, without which amendments this Bill would have been pretty objectionable in terms of the seizure of political control over the actions of the Authority, in terms of… I will come to the section number in a moment. I cannot recall it and it is marked here for acknowledgement. Without the amendments that he is proposing to that section it would have effectively put the Authority under the tutelage of the Minister for the purposes of the criteria that the Authority has to bear in mind. We will come to that. But, anyway, it is an amendment of which we approve thoroughly.

I have to say, Mr Speaker, before getting into the main points arising from the Bill, that the idea that the Opposition is given little more than 24 hours to consider 33 pages'-worth of amendments makes something of a mockery of the parliamentary process. Having been on that side of the House for many years, I do understand the need for amendments. Some of them are pointed out to the Government late in the day; it used to happen to me. But we now have a constitutional legislative process, whereby Bills are published six weeks in advance. It ought to be possible, in the case of amendments of the scale and magnitude of this Bill, to produce them sooner than 26th September – which, if my calendar management

serves me correctly, is the day before yesterday – and in a letter, which runs into page 33, full of amendments. I have no reason to doubt what the hon. Member says, that they are mainly of a technical nature, but the hon. Member will understand and accept, I am sure, that it ought not to have to be taken on the word, that the Opposition should have a reasonable period of time to consider amendments which really go to a substantial part of the body of the legislation.

So, in respect of the amendments… and we have just had an opportunity to scan and really limited ourselves to picking out the ones that we think went to ministerial powers which is, of course, the area in this field which would most concern us, I do not know whether we would agree or would not, so we do not take *issue* with the amendments. Simply to say that in the time available it has not been *possible* for us to test what the effect is of the amendments, compared to the legislation from which they are said to be imported, and whether the importation is pure or impure, in the sense of the context in which they now find their place in this new piece. As I say, we have no reason to doubt what the hon. Member says *but*, in the time available, we have no means of assessing that for ourselves.

I just wonder if, when the hon. Member replies to me, he might just like to tell the House what, if any, effect this Bill has on what one might loosely call in Gibraltar the existence of satellite clubs and things of that sort and whether this Bill, in his view, impacts on that or does not impact on that.

Mr Speaker, delving then into the Bill itself, we find in the context of this area… I do not say that there are not areas of legislation where the concept may be less objectionable, but in the context of the regulation of broadcasting, we find that clause 3(2) is so all-embracing as to really render the rest of the Bill nugatory. After all, if the Minister and the Authority may do *anything* that appears to them to be incidental or conducive to the carrying out of their duties, what is the purpose of purporting to set out what it is they can do and not do? In effect, this is a blank cheque to do anything they like so long as they believe that it is incidental or conducive to the carrying out of their duties.

Mr Speaker, I have also not been able to alight on an interpretation of clause 8, read with clause 6, which is not entirely circular, to the point where it renders clause 8 and clause 6 in part, completely otiose. So clause 6.(1) says:

> 'The Authority may, for the purpose of performing the functions assigned to or conferred respectively upon them by or under this Act, by notice–'

– and then it gives a list, and then there are sections which provide for the information that they can ask for and the purpose for which they can ask for.

Then clause 8.(1) says:

> 'Subject to the following provisions of this section, no information with respect to a particular business which–'

– and then it says (a) and (b).

Then it says:

> '(2) Subsection (1) does not apply to any disclosure of information which is made for any one or more of the following reasons–
> (a) for the purpose of facilitating the performance of any duties or functions assigned to or conferred on the Minister or the Authority by or under this Act;'

If the Authority can ask for information, under 6, only for the purposes of their duties under the Act, clause 8.(1) says that they cannot, in effect, publish it, and then clause 8.(2) says but the prohibition against publication does not apply for any reasons

> '…for the purpose of facilitating the performance of any duties',

you are back to where you are. In other words, you can demand information for purpose (a), you cannot publish them, or you cannot use them for particular… or you cannot publish it *unless* sub-clause (2) applies and the first thing that sub-clause (2) applies is that you can publish it for the purposes that you asked for it, which is of the Board. So it seems to me that all information can always be published, because it can only be asked for for the purposes of the Authority's duties, and *if* that is an exception to the non-publication rule, then in what circumstances can it not be published? Therefore, I cannot understand what the purpose of the restriction, or the purported restriction in publication is in 8.(1).

Mr Speaker, turning now to the regulation-making power in clause 9, I think that clause 9.(1)(b)… and on this side of the House we believe that clause 9.(1)(b) is objectionable. In other words, what clause 9.(1)(b) does is that, in respect of offences created by the Act, the Minister would later set penalties by regulations. I have come across, before, offences created by regulations and the Minister, in the same regulation as he created the offence, created the penalty. I have also come across regulations which

establish penalties for offences created by some European regulation of direct application to Gibraltar. I cannot remember *ever* having come across a Gibraltar Act of Parliament which creates offences, does not establish the penalties for them and postpones and defers the creation of penalties for offences created by primary legislation to a subsequent exercise of an unaccountable discretion by a Minister in subsidiary legislation.

Clause 9.(1)(b) says:

> 'the procedure and principles for the imposition of financial penalties on a person who fails to comply with an obligation imposed on that person under, or pursuant to, this Act…'

– shall be done by regulations. We are talking about regulations that can create penalties of as much as two years' imprisonment and fines of an apparently unlimited nature.

I applaud the hon. Member's amendment to clause 13, without which this Bill would have been even more objectionable, and that is the section the number of which I could not remember before. Clause 13, basically where all the references to 'Minister' have been taken out and replaced by references to 'the Authority' only and it no longer renders the Authority subject to criteria and other things published by the Minister under administrative notices.

Mr Speaker, turning to clause 15, which is the general licensing power, and specifically to clause 15.(3), we could not support a Bill that allows the Minister to decide by himself. Wherever it says 'consultation'… Consultation is not a check or a balance. Consultation is asking people what they think and not being bound by what they tell you, as opposed to acting on the advice of – *(Interjection)* Sorry? The idea that the Minister by himself should have the power to exempt a particular broadcasting service from the licensing requirement seems to me a huge power. There is no reason why such a power should be exercised.

If Parliament thinks that licensing should be broadcast and that the GBC monopoly is over and we are creating a licensing regime, I do not see what the need is for the Minister to reserve to himself a power to decide that a particular broadcaster, or a particular broadcasting service, should be allowed to broadcast outwith the regime created by this Act.

Mr Speaker, clause 20 deals with financial penalties and this is a section which I think may be unconstitutional.

Clause 20 allows the Authority to impose financial penalties, if I have correctly understood it, basically in shorthand, up to a certain percentage of the financial turnover of the organisation in question – and there is no right of appeal. The clause in the Bill that deals with the rights of appeal, which is clause 67, lists the decisions which are eligible to be appealed against. It does not include the imposition of financial penalties by the Authority and then says that no other decision of the Authority can be challenged in any court of law by any means or process.

I think it is *unconstitutional*. The imposition of a penalty without right of appeal, from my memory of the Constitution, although I reserve the right to be shown to be wrong, is unconstitutional. It violates a specific term of the Constitution, and even if it did not, it is wholly undesirable that any public organisation should have the power to impose financial penalty, or penalties of any kind on any citizen, without that citizen having the right and, indeed, being statutorily prohibited from, having that decision reviewed in court.

With slightly less vigour but not to be disregarded for that reason, I hope, I would make a comment in relation to clause 22, where the Authority is given power to make codes of practice, non-compliance with which threatens the licence, subjects to potential penalties, without those codes of practice having to be debated by Parliament, or tabled in Parliament and, again, no right of appeal, no right to challenge. I do not suppose it would be a right of appeal, it would be a right to legal challenge. So, if the Authority were… I do not want to use a ridiculous example, because then the hon. Members will put it in their press release after this, will use it against me, but if the Authority were to issue a code which was absolutely objectionable, it could not be challenged by any broadcasters in court because of the complete prohibition against challenging *any* action of the Authority in court, except by the exercise of the clause 67 right of appeal, and this is not listed in the things that you can appeal against.

I am all in favour of the exercise of regulatory function by independent regulatory bodies, but even they… the fact that they are independent of the Government does not mean that they should not also be accountable to the courts for their own independently exercised judgements. Indeed, I think that the codes of practice and the power of the Authority to issue codes of practice is so deep and wide and far-reaching in an area as important to modern society as broadcasting that I think those codes of practice should be tabled in Parliament and subject to parliamentary review, as is the other area of very important in society where codes of practice can be issued, in terms of the judicial… I cannot remember the name of the legislation now… the Judicial Commission Act, where hon. Members may remember… codes of practice to be issued etc.

It may be that I am misunderstanding clause 24.(1), Broadcasters' duties, but is it really the

intention… I can understand that

> 'Every broadcaster shall ensure that −
> (a)'

and (a) deals with news and that news shall be given objectively, impartially and without expression of the broadcaster's own view, but is it possible for the same to happen in (b)? Is it possible for a broadcaster to have a current affairs programme in which there is no expression of the broadcaster's views? Obviously, Mr Jeremy Paxman is not subject to the same rules in England. In other words –

Hon. Chief Minister: Yes, he is.

Hon. P R Caruana: It may be that this is the case and that this is a perfectly workable system but, in current affairs programmes, it is *inevitable* that presenters and moderators and interviewers end up making comment which amount, directly or indirectly, to the communication of a view. But, as I say, this might be… The fact that it is lifted straight from UK legislation is, frankly, I discovered while I was there, not by itself a sufficient certificate of reliability.

Mr Speaker, turning to clause 37:

> '(2) The Minister may prescribe that events on the list shall be made available live, partially live or by way of whole or partial deferred coverage.'

I do not know whether this is an *intended* provision or whether it is just the effect of casually chosen language. Sub-clause (1) does not give the Minister the right to decide that particular events need to be broadcast, but rather that, if they are, they cannot be broadcast on an exclusive basis. That is the effect of the clause, so the Minister for Broadcasts cannot say; you *shall* broadcast the GSD annual general meeting –

A Member: [*Inaudible*] (*Laughter*)

Hon. P R Caruana: It says – no doubt, under future leadership, it will have them regularly – that if the GSD annual general meeting is on the list under sub-clause 1 that the Minister has put together, that it cannot be broadcast exclusively. GBC cannot say only I can broadcast it. Now, read sub-clause (2) in relation to sub-clause (1), sub-clause (1) being the operative sub-clause.

> 'The Minister may prescribe that events on the list shall be made available live, partially live or by way of a whole or partially deferred coverage.'

In other words, in determining the three manners of broadcasting, a power has been introduced which means that he *can* order particular events to be broadcast. Because read by itself, it has that effect.

> 'The Minister *may* prescribe that events on the list shall be made available…'

- one, two or three but made available– so the Minister could put the GSD annual meeting on the list and then say you *must* broadcast it, 'either live, partially live, or deferred coverage', but broadcast it, you must.

If that were the intention, it would be in sub-clause (1), not in sub-clause (2), which is *intended* to deal only with whether the non-exclusivity applies to live, recorded, etc.

It may not be the hon. Member's policy intention to empower the Minister to order any broadcaster that they *must* broadcast a particular event (*Interjection*) Well, it cannot be made available, if you do not broadcast it. (*Interjection*) Then you are ordering somebody to record it. You cannot broadcast it without recording it… without covering it.

Mr Speaker, look, I have to make the point, so it is up to the hon. Members to decide (a) whether they have any merit and, even if they do have merit, whether they agree with that.

I understand the power of parliamentary majorities. I make these points and observations in good faith –

Hon. Chief Minister: [*Inaudible*] inform the debate.

Hon. P R Caruana: Yes, well, Mr Speaker, the Bill, in our view – the hon. Member is honourable to interpret it differently, but in our view the Bill says that the Minister may prescribe that events on the list *shall* be made available. (*Interjections*) That is not what it means. (**A Member:** Yes.) *Shall* be made available live, is available to recipients of the broadcast, not to other broadcasters!

Hon. Chief Minister: The hon. Member has made a number of points which I will deal with in my reply, but if I can just contribute to this part of what he is saying.

As I understand that clause, Mr Speaker, comes from a European requirement that certain broadcasters who may be transmitting these events, which are on the list, are not entitled to keep that video of the event to themselves and they must make them available to other broadcasters who may wish to include excerpts of it in their news broadcasts, or may also wish to broadcast it live.

It is certainly not the intention – if the hon. Member says that it can be read that way, perhaps we need to look at the wording of it. It is certainly not the intention – I do not think it can be – that people *must* transmit something. It is that those who are recording it or showing it live, if they wish to, have to make it available to *other* broadcasters for those purposes. That is how we read it.

I invite the hon. Gentleman to see whether that reading fits within that clause.

Hon. P R Caruana: Mr Speaker, of course it fits and that objective is an entirely logical part of the architecture.

That interpretation would be an entirely logical part of the architecture of not allowing particular broadcasters to hog a particular event. The only way that you can not hog it, is by being ordered to make it available to others and that making of it available to others, can be live, partially live or whatever.

All I am saying is that language that makes that clear would render the clause unobjectionable but, *as drafted*, it is not limited to that interpretation, because the Minister may prescribe that events on the list *shall* be made available live. You are saying that it should be read like this: if a broadcaster broadcasts an event, which is on the sub-clause (1) list, *if* both those things have happened, then the Minister may prescribe that that event shall be made available to other broadcasters, either live, partially live… Read like that, which is how the hon. Member has described it, it is completely unobjectionable. The hon. Member's interpretation, which is innocuous, is not the only interpretation to which that subsection is capable.

Hon. Chief Minister: If the hon. Gentleman will give way. If the hon. Gentleman looks at sub-clause (4) he will see that there is an obligation to refer this list also to the European Commission, so it is a list for the purposes of competition of the events in a particular territory so, in other words it is not 'and you shall transmit the GSLP annual general meeting live into every home in Gibraltar, whether you like it or not'.

It is designed as a competition counterbalance measure, which is why the requirement is there for the Commission to be informed of the list. So that those who might wish other events to be on the list, which are not listed by particular countries' Ministers with such a power, can, through the Commission, say, 'Well, Minister, why are you not putting the Miss Gibraltar show, which is the one everybody wants to share, not the GSD annual general meeting, on the list?'

Hon. P R Caruana: I do not doubt that is the case, which is why I started my intervention on this point with the caveat that I did not think this was a policy choice, that this was just a juxtaposition of language. Anyway, enough said, Mr Speaker, it is up to the hon. Members to decide whether they think there is any merit in the point.

Mr Speaker, turning to clause 39 and it is no… where there is latitude in how you transpose directives, it is no… if the way that we choose to do it, is undesirable, it is no consolation to be told that this is a provision of the Directive. The whole regime of right of reply which, at first glance, looks real and useful and valuable, I think is rendered not so by the architecture of deadlines that have been put into it. The easiest way to illustrate the point is this – and I will just do it by reference to three milestones in the whole process, rather than go in detail through the whole regime. In a nutshell there is a right of reply, but sub-clause 5.(a):

> 'The broadcaster… may refuse to provide the right of reply…'

if *he* thinks that it 'is not justified'. What are the remedies, then? If somebody feels aggrieved, they ask for the right of reply, the broadcaster says I do not think it is justified. So what then is the remedy available? The remedy available is all the rest of it that follows. In a nutshell, that will take 42 days because, under clause 7, there is 20 there, the Authority has 28 days to adjudicate on it and even if they adjudicate in your favour, the broadcaster then does not have to publish anything for the next fourteen days.

I do not see why, in a small place like Gibraltar, it should take 42 days to decide whether somebody has been justified, feels justified… the hon. Member knows that there are very few grievances which are not made worse, rather than better, by being revisited 42 days later. So you get… somebody calls you all things under the sun, or treats you very unfairly politically, or whatever, and 42 days later, just as everybody is forgetting about it, the whole thing gets dragged up again. It just seems unnecessary,

frankly. I would much prefer to see there a simple provision that if the broadcaster wants to invoke 39.(4)(a), then the Authority can consider the matter in a handful of days and direct and should have the power to *direct* the broadcaster to broadcast.

The benefit of the doubt, the balance of doubt should be in favour of the victim, not of the perpetrator. It would not do a broadcaster a great deal of harm to give somebody a right of reply in circumstances where they might not deserve it. It is much more serious for the person *not* to get the right of reply in circumstances where they might.

Mr Speaker, I think the amendment that he proposes to clause 47.(2) of the Bill, that is to say, not allowing the Minister to make the decision of who should be on the Board of GBC, but repatriating it to himself, is correct. But it does not sit well with his usual boasts that he is just a normal Minister, that they are all equal in the GSLP Cabinet, and that he does not exercise more power than anybody else.

I support, given the importance of the matter, that it should be the Chief Minister, which is why I always exercised it in consultation, perhaps, with Ministers, but a chief ministerial power, rather than a ministerial power, but I see that the hon. Member's desire to bring this back to *him*, rather than allow somebody to give it to the Minister, did not appeal to him, despite being a genuine and literal case of *primus inter pares* – which is what he claims, but I do not think anybody else believes. I hope that, by now, he is learning that *primus inter pares* is a luxury which effective governance renders pretty unaffordable. (*Interjections*) Well, if he has not learnt it yet, he will before much longer! I can tell him.

Mr Speaker, turning now to clause 62, which is taking legal proceedings against GBC, I think that these provisions are indefensible, *even* if they are in the existing Act.

Hon. Chief Minister: Which clause?

Hon. P R Caruana: Well, I am going to talk generally about Part XII; it is on page 105 of the Bill.

If we are taking an opportunity, I do not know which of these provisions is in the GBC Act, or it is not. Frankly, it matters not. We should not in this day and age be legislating in these terms. If we think we are reforming, we think we are just transferring the old Act into the new Bill, regardless of the effect of it, I don't think, then that is another matter. That will be a policy decision for the hon. Members.

Clause 62 itself,

> 'The exercise of any discretionary power with respect to broadcasting content made by the GBC shall not be challenged except by way of a complaint to the Authority.'

Well, Mr Speaker, *he* who has been elected by the people of Gibraltar – *albeit by a small margin* – to be the Chief Minister, does not enjoy this privilege. Why are you giving it to anybody else? The idea that it should not be possible in the courts that we are excluding from the competence of the courts the ability to challenge, even by the Wednesbury principles, the editorial decisions of GBC's Board is antediluvian in the context of modern-day access to justice by citizens.

As I say, this is not a statutory cover against legal challenge that *he* enjoys or that any of his Ministers enjoy. Why are we bestowing it on others, who are not accountable to the people who cannot be elected and are not hireable and fireable by anybody, except by them, except by the Chief Minister?

Then clause 63 is, in a sense, even worse. clause 63 says:

> 'No civil suit shall be commenced against the GBC before the expiry of one month after written notice…'

How on earth do you get an injunction against GBC in respect of a programme that you think they are broadcasting tomorrow, if you have got to give them one month's notice of civil suit? I do not know whether this provision is in the existing Act or it is not, but if it is, it needs to be confined to the dustbins. I do not think it has been honoured in practice, because I am well aware that people have commenced legal proceedings against GBC and have obtained injunctions or gone to court seeking injunctions against GBC. How they did it in the light of this provision, if I take the hon. Member's word for it that it exists in the Act, I do not know.

I think it is wholly undesirable, particularly against a broadcaster who may be about… The BBC does not enjoy this in England. The idea that you know that GBC is going to publish a programme that a court of law would injunct but that you cannot get an injunction until 30 days' time, because you have got to give them a month's notice of the injunction, is obscene in its effect on the rights of the citizen and on the individual, and I think that this clause has got to go. It serves no useful purpose, it is oppressive of the rights of citizens and it is not protection to which a broadcaster should be entitled in the 21st century in our modern European community.

Mr Speaker, perhaps I might reserve some of my controversial but also advisory and informative remarks in relation to Part VIII, Emergency Powers. I recognise the hand of the Foreign Office legal department here. I say that I 'recognise' because I suggest the hon. Member has been subjected to the

same treatment as I was often subject to when junior lawyers in the Foreign Office got their hands on our legislation whilst it was still on the green paper.

Mr Speaker, there is an important underlying issue here which transcends the importance of the substance of this section, even though I think the substance also has importance, which I will come to in a second. There is a view in the Foreign Office, which I think is *wholly incorrect* – and this is not a point I am making against the hon. Members, because it used to be deployed against me as well – here is a view inside the Foreign Office legal department that the Governor's constitutional responsibilities trump everybody else's so that, if the Governor is responsible for internal security and the hon. Member is responsible for broadcasting, when it comes to the internal… If there is an internal security dimension to broadcasting, then his – the Chief Minister's – competences are pushed aside in favour of the Governor and, in my view, that is a wholly indefensible legal interpretation.

Let me illustrate my point by this example. This is worth hearing and he ought to put his mobile phone down for a minute.

Hon. Chief Minister: No, I am looking for something which relates to exactly –

Hon. P R Caruana: Alright, well in a moment, Mr Speaker, because this is not a point in which I suspect that we need to argue across the floor. I hope we are on the same side on this.

Let me illustrate my point by reference to an example which I think proves it beyond peradventure. For that statement that I have made earlier to be true of the effect of the Governor's internal security constitutional powers over the hon. Member's, opposite, powers of broadcasting, the same would have to be true, because it is the same Constitution subject to the same constitutional interpretation mechanisms, of the judiciary. Would anybody argue that it is a tenable sustainable interpretation of the Constitution that, in times of emergency and if the internal security of Gibraltar required it, the Governor could usurp the independent judicial functions of Gibraltar's judges? No. Well, then, exactly the same applies to anybody else who has constitutional powers. There is not one rule of constitutional interpretation when it comes to whether the Governor's powers trumps the judiciary's powers under the Constitution and a different one as to when the Governor's constitutional powers trumps the judiciary's constitutional powers.

If this insidious attempt by a small element, I suspect, in the Foreign Office, to claw back a role for the Governor in our legislation by the deployment of this outrageously irrational, practically infantile, argument of constitutional statutory interpretation is allowed to go unchecked, you will end up with this clause in every piece of legislation that you bring to this House because everything has a potential internal security dimension.

Next time we pass amendments to the Traffic Act, they will be telling you that because a terrorist can load a car with explosives and drive it into somebody and cause an explosion, that there is a potential internal security dimension – traffic. Where does it say that the Government's constitutional powers are subservient to the Governor's constitutional powers and that the Governor assumes responsibility for things that are normally the Government's constitutional powers when internal security may be a peripheral affected issue? It does not. This is just the Foreign Office helping themselves to their unilateral… which is why we passed the Bill giving the Government power to *test* the constitutionality of a Bill before it comes to this House, which is why the Foreign Office did not like the idea that the Government passed that Bill, and there was a Bill – I cannot remember the exact name of it, the Bills Constitutionality Act or something – which was passed precisely in response to a dispute of this sort with the Foreign Office, so that the Government, when deciding whether to bring legislation affected by this question to this House, cannot be unsettled by the threat that it might not get Governor's consent. That Bill gives the Government an alternative route. You *test* the constitutionality of the Bill before you bring it to this House and if the court says that it is constitutional, then they cannot withhold their consent, because that is the only ground they are entitled to withhold it for. That was the whole purpose of that Bill.

The same, frankly, applies to the proposed amendment in clause 41.(4)(c), although I do not know if that is already in some other piece of legislation. This is not a criticism of the fact that the hon. Members have submitted to it. We invested a hell of a lot of time on page 26 of his letter, where it says:

> '…where the reason for the intended adoption of a measure is the safeguarding of the internal security defence of Gibraltar and is of such a nature as to fall within the Governor's constitutional responsibility and the Governor has informed the Minister that the measure needs to be taken and so directs the Authority.'

It is not the case, in our view, that the Governor, because he is responsible for internal security, is responsible constitutionally for the internal security dimensions of broadcasting and traffic and public health and firefighting and everything else, any more than we are as constitutionally responsible for the dimensions of *genuine* internal security, which are his, which may invoke other areas that we are

responsible for.

I can only suspect that the reference to 'Government' on the second line of clause 66.(1) is a Freudian slip:

'If at any time the Governor is satisfied that it is necessary for the preservation of internal security that the Govern*ment* should have control over broadcasting in Gibraltar…'

(Interjection) Yes. No, Mr Speaker, but he will say that the Government includes *him* – I do not mean this particular Governor; I mean him, the office of Governor – and it cannot be that because it says:

'(2) If and whenever the Governor exercises the powers conferred upon him by subsection (1) the broadcaster shall be entitled to receive from the Government –'

Mr Speaker, if the hon. Member is going to tell me – which I would welcome – that, in effect, what the Governor is doing is invoking internal security powers for the *Government – (Interjection)*

I beg your pardon?

Hon. Chief Minister: As prerogative..

Hon. P R Caruana: Well, Mr Speaker… but if that is the case, it is the Government's prerogative, not the Governor.

The idea that the Governor suspends the Constitution, suspends the Broadcasting Act, not in favour of himself, as the party responsible for internal security, but in favour of the Government, if he has achieved that, then he has achieved a little bit more in this area than I, although I was able to…

Hon. Chief Minister: Black and white. It is all [*inaudible*].

Hon. P R Caruana: Well, Mr Speaker, I doubt very much if that is intended, but if that is what is intended, then the more direct way of doing it would be for the Government to do this directly. The Government is perfectly capable of… I am not suggesting it should be so, but there are plenty of other pieces of legislation – the Civil Contingencies Act, for example – the Emergency Powers Act, for example, gives the Government and Ministers, direct powers in cases of genuine…

I am not so concerned about this *particular* provision, although it has its importance, but certainly the whole question of the need in the context of this and 47 whatever it is – 47.(1) or (2) as referred to – that we should just keep… There will be pieces of legislation – and I sometimes conceded this to the Convent – which do *genuinely* go to the Governor's constitution… This is not about us wanting to *usurp* the Governor's constitutional responsibilities or to somehow redraw the lines of the constitutional settlement of 2006. We, on this side of the House, are very content. It is about making sure that, through this mechanism, these lines are not blurred against us.

The Government will *always* enjoy the support of this side of the House and should not fear the parliamentary consequences of a dispute with the Foreign Office in relation to anything that genuinely goes to holding the constitutional line.

You will *not* enjoy our support if the legislation is trying to circumvent the proper constitutional, the proper delegation, the proper constitutional assignation of powers to somebody other than the Government and this Parliament, for example, the judiciary or the Governor, or whoever it might be.

The powers lie where they lie. They are there by agreement with Gibraltar, but they should then respect those and not, by this side door, try to enlarge the impact of that constitutional settlement in their favour.

Mr Speaker, turning now to clause 67, which is the appeals section, the hon. Members will see at 67.(1) that the right of appeal is limited to (a) to (f), to the six matters listed there at clause 67.(1).

Leaving to one side for a moment the fact that that is *all* that can be appealed against, and there are many important things that cannot be appealed against, even this right of appeal, limited to these six matters can only be exercised with the leave of the court. Mr Speaker, *why* should a citizen have to get the leave of the court to exercise his first right of appeal? I am familiar with the concept of the leave of an upper court for a subsequent appeal in other areas of our law – indeed, it is constitutionally permissible – but that the *very first* appeal by a citizen against the decision-making should be subject to appeal is just putting justice even more out of the axis of the ordinary citizen. He has got to spend the money litigating, obtaining the right – the leave to appeal – and then he has got to spend money again actually prosecuting the appeal. What is the need for it? The court is perfectly capable of throwing out frivolous, vexatious and unmeritorious appeals, without having to put the citizen… without having to load the dice this heavily in favour of the broadcaster.

Then, sub-clause (7) I think is unduly onerous in its effect.

'The bringing of an appeal under this section shall not operate to suspend the effect of the decision appealed against saving that the Court may award such interim relief as it sees fit.'

This is all very well and, of course, there is a similar provision in quite a lot of bits of legislation, but we are talking here about the revocation of somebody's licence – I mean, literally close down your broadcasting station at 6 o'clock tonight – because I passed a code, which is inappealable, a code of practice you disobeyed and I have directed you to close down. You have got to close down, you cannot appeal, the appeal does not *stay* the effect of the order. I think this is simply too draconian. In financial services, the regulator does not have any power of this kind. The Financial Services Commission does not have power to revoke and suspend people's licence without putting them on notice, giving them opportunities to comment, etc. A process. It has not arisen in that case. *(Laughter)*

I just do not see why we are making… we are not following the same, well-established template in relation to this new regulatory framework and challengeability of their decisions. We now have an established regulatory framework; we have it in quite a few areas; we have it in financial services, we have it in telecommunications. We do not need to reinvent the wheel every time we regulate an activity. We can just borrow the regime with which we are familiar.

Then, clause (8):

'Except as provided by this section the validity of a decision to which this section applies shall not be questioned in any legal proceedings whatsoever.'

So you get an appeal, but you are not entitled to judicial review – it is probably ineffective; you cannot exclude the court's jurisdiction in judicial reviews. It is completely ineffectual and ineffective. Why are we passing legislation that we know is a nonsense?

I think I heard the hon. Member clarify in his – well, state by way of clarification – I think I understood him to say in his own opening address that the effect of the new powers of the Authority are that *they* will be the ones to make what used to be called 'Governor's directions', in terms of impartiality in the electoral context (*Interjection*) Yes, but who makes them? I am not focused on the provision that specifically empowers them to make it, not just in respect of directions of that sort, but also where does it say that there will be party political broadcasts? At the moment those things are in Governor's directions, so is it now up to the Authority to decide whether or not there will be party political broadcasts in the future and the terms of it? This is a pretty… it would be a pretty – (*Interjection*) sorry?

Hon. Chief Minister: Only for Government.

Hon. P R Caruana: No, I am quite happy for the hon. Members to have party political broadcasts: the more the better, so long as I have my proportionate share of them, too! The point I am making is that obviously it is the intention that *somebody* will do this and it is not immediately clear who or where it is provided for and *if* it is the Authority, they should not have a discretion, they should be *required* to do it.

Trying to make it fit within a discretionary power grant is not good enough, Mr Speaker. He cannot have a discretion *not* to have party political broadcasts. There has to be some statutory provision *obliging* the Authority to require the dominant broadcaster, GBC at least, to have party political broadcasts and the rules that we have got, which used to be all in Governor's directions. Now we are repealing the Governor's directions. I am not saying anybody intends to do any of this, but we need to understand the architecture by which this will be done without anybody having the discretion not to do it.

I would welcome the hon. Member telling me, when he replies, whether the provisions of Schedule 2, in other words, the definition of the various disqualifications, the various disqualified persons and entities, whether the provisions of paragraph 2, 'Disqualification of religious bodies' and of paragraph – I cannot remember now. I have not made a note of it, the one about political bodies – whether that is a requirement of the Directive, or whether that is a policy choice that has been made by the Government – it is Schedule 2 on page 115 of the Bill. In other words, there appears to be a disqualification for religious bodies to own broadcasters. That may be a requirement of the Directive; I have to admit I have not checked this Bill *against* the Directive. It might be so, I do not know, but it seems odd and I frequently watch a broadcaster that is owned by a religious body. It is not everybody's taste, but it is some people's taste, so if it is a requirement of the Directive, so be it, if it is not a requirement of the Directive, but something that is just a matter of policy, then I would urge the hon. Member, perhaps, to reconsider that.

If I could just refer the hon. Member to paragraph 3 of Schedule 2, dealing with 'Disqualification of publicly-funded bodies', it says,

'The following persons are disqualified persons in relation to any licence granted by the Authority',

as amended,

'other than a licence to provide a restricted service–
(a) a body, other than the GBC, which has, in the last financial year, received more than half of its income from public funds.'

That is intended to capture GBC, which gets more than half of its income, but it also commits the Government to fund another broadcaster up to 49% with public funds *outside* of the statutory control that affects GBC, in terms of the GBC provisions of this Bill.

Hon. Chief Minister: Subject to licensing.

Hon. P R Caruana: Yes, but the GBC is subject to much more than licensing. There are a whole series of provisions here, which are GBC specific, in other words, all the Bill... all the sections…

I think it is wrong that the Government should be able to fund *up to* 49.99% of a second broadcaster with *none* of the constraints under which GBC is required to operate, because it gets 50.01% of its funding. The hon. Member will see that this provision is seriously open to abuse by any Government – and I do not suggest that theirs is such – but any Government that wanted to circumvent the GBC constraints could easily do it by funding somebody else up to just one decimal of one percentage point less than 50%.

Then, of course, having done that, having funded somebody to 49.99%, this fictitious Government – which, of course, does not yet exist, that might be tempted to do this – then has paragraph 4 to assist it:

'A person is a disqualified person in relation to a licence granted by the Authority if in its opinion –
(a) any relevant body is, by the giving of financial assistance or otherwise, exerting influence over the activities of that person…'

Mr Speaker, the reason why GBC is subject to the statutory control that it is, is precisely because the funder, the Government, would otherwise be able to exert influence, so you have an anti-influence provision in paragraph 4 followed immediately by something that allows the Government to put 49.99% finance and then argue that it is not influencing it. If it is not influencing it, then free GBC as well – which, of course, I am not recommending! I think that what needs changing is 3(a), because a body that requires slightly less than half of its funding from the Government is in the same *category* as GBC and should not be allowed to operate outside of the sort of statutory framework that GBC – for that very reason – is required to operate.

I do not know, Mr Speaker… I know that the rules in England about when a newspaper can own a broadcaster and when a broadcaster can own a newspaper are very complicated and are constantly changing and I do not profess to understand them or know what they are, but reading paragraph 6 of Schedule 2, it says

'A licence may not be granted to a body corporate which is, or is connected with, the proprietor of a newspaper published in Gibraltar if the Authority determines'

– delete 'in consultation with the Minister' –

'that in all the circumstances the holding of the licence by that body corporate could be expected to operate against the public interest.'

The question that this begs, apart from the substantive question of how and to what extent this is justified is… Having said that a broadcasting licence cannot be given to the proprietor of a newspaper, what restriction is there – 'No, don't tempt me. I had not thought of that, so don't put naughty ideas in my mind!' – what is to stop a broadcaster having a newspaper? If a broadcaster establishes a newspaper, do they forfeit their broadcasting licence, because they would not be able to get one if they had it… there is no provision here for that. So there seems to be a prohibition against somebody who owns a newspaper being granted a broadcasting licence, but no prohibition against somebody who already *has* a broadcasting licence acquiring or establishing a newspaper, which results in exactly the same thing – the same entity controlling both an audiovisual and a written medium.

It just does not seem logical. This whole area, I think, is too simplistically dealt with in five or six lines. I suspect that the UK provisions, which may not derive from the Directive – they may be policy of the UK Government, in terms of their broadcasting policy – I am sure are much more complicated than this. But anyway, I just make that point. I think, in this day and age of multimedia, in this day and age of… Look, if it is a Directive requirement, then there is nothing for us to debate in this House, but if it is not a Directive requirement, or there is more wiggle room in the Directive, in this age of multimedia, it just seems to keep these strict lines. It seems… I think you are about to be given the answer, which I will be interested to hear.

Mr Speaker, I think my final point relates to the 'Due impartiality and undue prominence' in Schedule

3. It says, in subsection 2.(1) – paragraph 2.(1):

> 'The code of practice shall require that television and radio services shall exclude all expressions of the views or opinions of the person providing the services on any of the following matters–'

political, public policy etc. That is consistent with the one that we spoke about a few moments ago. But then sub-paragraph (3) says:

> 'The requirements specified in sub-paragraph (1)'

– which is the one that I have just read,

> 'may be satisfied by being satisfied in relation to a series of programmes taken as a whole.'

Now, that is nonsense. How does that read with (1)? If you cannot, in a programme, express… if the service provider cannot express his opinion, how can (3) then say that that requirement not to express an opinion is satisfied taking a series of programmes…? That is the language – taking a series of programmes as a whole – is about *balance* of coverage. It is not about *prohibitions* of even one example of an event. What is a broadcaster supposed to do to ensure that they do not express an opinion over a series of programmes? I suppose they would have to express *one* view in one programme and a *contrary* view, both of their own, mind you, and a contrary view in another programme. I think it just does not work.

If it is an absolute prohibition, it is an absolute prohibition and (3) must relate to something other than sub-paragraph (1) because sub-paragraph (1) does not lend itself to 'over a certain number of programmes' balance, it is an absolute prohibition to do it even once: it is not a question of balance.

Mr Speaker, I hope that the hon. Member will take as many as possible of my observations on board in the spirit in which they are intended, which is without partisan political hostility. It is an important piece of legislation and we need to get it right. If anything I have said, in his view, warrants more careful consideration then, after which, they may disagree with me, that is fine. That is their prerogative.

I would urge them not to rush the Committee Stage of this Bill – I do not know what sort of pressure they are under in terms of the infractions timetable. I remember there were issues about that that I recall in my day. I think you might have negotiated an extension which may be up, or coming up, I don't know. I remember things of that sort. I do not know if this is the Bill in question. Maybe. But if the hon. Members can sustain a degree of delay in the completion of the legislative passage of this Bill through this House I think that they…

If I was making a whole series of partisan points of great political relevance, they may be tempted to resist them just for that reason. This is not such a case and, therefore, I hope that they will take advantage of the considerable effort that I have put into these assessments for the benefit of the quality of [*Inaudible*]**.**

Mr Speaker: Does any other hon. Member wish to speak on the general principles and merits of the Bill?

Does the mover of the Bill wish to reply?

Hon. Chief Minister: Mr Speaker, can I thank the hon. Gentleman for the analysis that he has done of the draft of the Bill that is before the House and take him through what I think are the arguments that actually should persuade him that many of the issues that he has raised have been considered and can be dealt with in the general body of what is the Bill today and invite him, perhaps, in some instances where he is not satisfied, to move minor amendments of the nature which he might glean from my intervention during the course of the Committee stage today.

Mr Speaker, I am grateful to the hon. Gentleman for alerting me to the existence of this letter. Certainly, it was always in my contemplation that the appointment of the Board of GBC – certainly since I have been sentient politically – is a matter that has been in the hands of the Chief Minister of Gibraltar and that the Governor has acted in accordance with the advice from the Chief Minister. When I presented that to the House, I used the words 'in consultation with' but I accept that it is that sort of consultation that leads to the Governor doing exactly what is proposed to him. The formula of words is the advice formula of words and that is exactly how it has been handled and right that it should have been, when we had the concept of 'defined domestic matters' and broadcasting was a 'defined domestic matter', let alone now when that balance is now reversed.

But I must say to him, Mr Speaker, that he will recall that one of the points that we took in respect of the review of the GBC, which they commissioned of Mr King, who is presently the Chief Executive, and of which they published a summary and we were committed to publish the whole Report – which we did do within days of being elected by our *fine* majority, by our *fine* majority, with one highlight deletion in

order to avoid identifying a particular individual in respect of an illness.

The one point I did take at the time, Mr Speaker, was to say that I believe that any review of GBC should also review how the Board was appointed and I made the point, at the time of the review initially, at the time that I spoke in the Budget debate after that and I think he may recall, if he follows my interventions on Newswatch when I spoke on the publication of this Bill, that I was not actually happy that the position in respect of the appointment of members of the Board of GBC was *exclusively* in the control of the Government – because then it was the Governor on the advice of the Chief Minister, in effect.

What I have sought to do, Mr Speaker, in this Act is to create a regime not dissimilar to regimes like appointment of yourself, Mr Speaker. A more constitutionally important responsibility for a Chief Minister there probably isn't the appointment of Mr Speaker – and other office holders, like the Mayor – where the wording of 'consultation with the Leader of the Opposition' has traditionally been the language of involving Members of the Parliament in some way through their respective leaders in this place, in the manner of appointments.

He will know, Mr Speaker, that in the time that he was in my Chair, consultation meant what it meant to him, namely that he would advise *(Interjection by Hon. P R Caruana)* who he had considered was appropriate and, put it this way, I cannot think of one occasion where either it was put to him that he should have appointed somebody else or where, if it was put to him that he should have appointed someone else, that he was persuaded with the views of a Leader of the Opposition to not appoint his original proponee and appoint somebody else.

Mr Speaker, I actually think this is a *huge* step forward, consulting the Leader of the Opposition in respect of the appointment of the Board of GBC, when the Board of GBC would actually be much less important than it is today, is a huge step forward than simply the Chief Minister deciding *who* should be on the Board of GBC, when the Board of GBC has been responsible for editorial control in respect of content etc. I will give way to him when I finish the point…

Mr Speaker, I think that if we are going to follow the model – and he sees that this is actually what we are proposing – of public service broadcasting *à la* BBC, in some way, then it is important that we do not stay on the ground we were on before, which is that the Chief Minister makes up his mind and either signs the *Gazette* himself or asks the Governor to gazette those names. It would be a foolish Chief Minister who was simply to propose to the Leader of the Opposition, in consultation, names of his political devotees to take control of the public service broadcaster. I put it to him, Mr Speaker, that there have been instances in the past where we have not been convinced that that has not been the case. He recognised that in the course of his intervention, where he said that we might have felt, in some instances, two in particular that he will recall from controversy in his days – and, if wishes to be reminded, it is reporters attending the Committee of 24 when the Chief Minister of the day decided not to attend, although they had previously attended, and issues related to the referendum on the new Constitution, that the Board of the GBC then responsible for editorial control etc etc had not satisfied those who were concerned at their decisions… of their political impartiality.

So I want to take a step forward in this legislation and *include* the process of consultation with the Leader of the Opposition in respect of the appointment of a Board of GBC, which will now really just regulate the GBC, *inter se*, itself, but will have an *outside* regulator determining the issues as to right of reply, editorial content of news etc, etc – although I will come to the points that he makes about that later on in the Bill.

For that reason, Mr Speaker, I think this is a *huge* step forward that opens up the process of the appointment of the Board of GBC. Previously, the Leader of the Opposition would have found out, when he read the *Gazette* or saw it in a press release from the Government, that individuals had been appointed. Now the Leader of the Opposition will be consulted by the Chief Minister and, therefore, Mr Speaker, I can only say that, in the context of modernising the GBC, this is not what the Bill is about only. The Bill is about broadcasting generally but, in respect of the GBC, this is a huge step forward and I think it is ungenerous of the hon. Member to say that consultation is not really any step towards transparency. I think it must be seen by any *objective* observer to be real transparency.

Could there be more by seeking consent of the Leader of the Opposition? Well, of course, there could be more. One might, in another political system, even seek unanimity across the floor of a Parliament for appointment. That may be possible. In the Government's judgement, Mr Speaker, having lived through sixteen years of the hon. Gentleman's Government in respect of such appointments, where he has appointed, I would have thought, about four or five of the Boards of GBC, having found out who was on the Board of GBC periodically in *Gazettes* and in press releases, we think this is actually, for the reasons I have said, a huge step forward.

I give way to the hon. Gentleman on this point.

Hon. P R Caruana Obliged. Mr Speaker, I think the hon. Member… First of all, let me hasten to say that I think it would be a nonsense to require unanimity or *consent* from the Opposition because, then, the

Opposition could hold the Government to ransom and say 'Unless you appoint the person I want I will *never* consent to anybody that you suggest'. Requiring the Opposition's consent to something is equivalent to transferring the power of appointment to the Opposition. That would be absurd and no reasonable, responsible Opposition could have that aspiration.

By the same token, I think that the hon. Member is confusing consultation with transparency. If picking up the phone and saying 'Peter, I am thinking of appointing Jo Bloggs to be the Chairman of GBC. What do you think?' and keeping me on the phone for a minute, perhaps, listening to my views and then putting them down and my not knowing whether he was going to do anything with them or not, which is what 'consultation' means… There is no point in pretending that 'consultation' is capable of meaning anything more than it means in the English language and I would be careful about signalling to others that you think that 'consultation' is capable of meaning anything else because they will use it against you in those areas where they have the right to be consulted.

The hon. Member has presented this publicly not as a step forward but as transparency. Transparency means that you can *see* it; it means that a decision making process is *accountable*. That is transparency and that is not delivered by *consulting* the Leader of the Opposition in a non-binding way, for example not requiring the Opposition's consent, obviously, but one form which *would* be a *big* step forward in transparency in the appointment of the GBC Board, if a big step in transparency is the policy objective that the hon. Members have set themselves, which would be laudable, but then they have got to deliver things that amount to that… Something that would amount to that would be, for example, that the nominees of the Chief Minister should have to be brought to this House and be subject to approval by a majority motion. You are not transferring to us any power of appointment, because you have got the majority; what you are doing is exposing yourselves to having to justify the balance of your appointment and that would be transparency.

If the hon. Members want transparency… *They* said it; I didn't. We did not have transparency on the appointment… No, Mr Speaker, I am not saying that they are *required* to have transparency. I am saying that if they are telling the people of Gibraltar that this is in order to deliver *transparency* in the appointment, is what *they* have set themselves out as their goal, then they have got to deliver a mechanism which delivers visibility to the appointments. The way that visibility to appointment… is by having to come to this House, in the knowledge that they can appoint whoever they want, because they have got the majority in this House. So there is no transfer, there is no mortgaging yourself to the views of the Opposition but, of course, it is *visible* because, then, the Opposition can say what it feels about this appointment and you will counteract it: there is not the need for agreement but transparency. People can *see* what the Government is doing and know why the Government is doing it.

In my view, that would be a *genuine* act of injecting transparency into the view of GBC. I do not say to them, do it; I say to them, do it if it is your policy to have transparency on the appointment of the GBC Board, because what you are offering now in this Bill is *not* the transparency on the appointment of the GBC Board. Consulting the Leader of the Opposition in private is not a transparency; it is something else. I am not saying it is valueless, I am not saying it is nothing, I am not saying it is not a step forward in another direction, but it is *not any* degree of step forward in transparency, meaning visibility, to the community at large in what the Government is…

That is my point, but if the hon. Members do not want transparency… Look, if I had thought that there *should* be more transparency, I had 15½ years to do it and I did not, so I can hardly now sit here demanding of the hon. Member to do things that I did not do in 15½ years of opportunity to do so. So he must not misunderstand where I am coming from on this.

Hon. Chief Minister: Mr Speaker, that is a very useful aid to what the hon. Gentleman considers the definition of 'consultation' to be, which perhaps we may have to remind his Opposition colleagues of on occasion.

Mr Speaker, we actually disagree. We think that this *is* a much more transparent process because the definition of transparency that he now adopts we do not think is the only definition of transparency. One is transparent if one consults with the Leader of the Opposition and then announces to the community who the individuals to be appointed to the GBC are. Of course, they would always be announced to the community either by the Governor in the *Gazette* under the old model, or by the Chief Minister in the *Gazette* under this model.

Mr Speaker, the hon. Gentleman seems to forget – a point, perhaps, to consider why it is that Question Times take so long – what are the privileges of Members of this House. The hon. Member can bring a motion at any time, after he has read in the *Gazette* the names of the people appointed by the Government, and say that he does not believe that those names reflect an independent Board for GBC, or whatever he likes, and we can have the debate in the House and we can then vote with such numbers as one may be able to muster in this House one way or the other. So that is in-built in the system, Mr Speaker. We believe that there is, therefore, now greater of what *we* call transparency than there was before, but I am grateful the hon. Gentleman recognises that he did not do this and that he cannot,

therefore, be urging us to go forward, and that he must simply be analysing what it is that we are doing and trying to adopt his own definitions of what is transparency and consultation and apply them to our process. We do not accept those definitions. We believe that this is a more transparent process, for the reasons I have already indicated.

Mr Speaker, neither do I accept the proposition of the hon. Gentleman that this Bill does *anything* to bring the Authority – the Gibraltar Regulatory Authority, as defined under the Bill – under the tutelage of the Minister. I know the hon. Gentleman will know that I found a Bill, in not too dissimilar terms to the one which I am now moving, ready for publication when I was elected, and this was an issue that was already, as the hon. Gentleman has indicated, something put to him and that there are Directive timetables which are applicable and which had been extended. He will know, Mr Speaker, from having looked at *that* draft, which gave the Minister many more instances of power, that this Bill, as published, let alone as now to be amended, gives to the Authority almost all of the powers that there were under the Bill and retains to the Minister very, very few, and that has been the process that I have intended to deliver in the course of publishing this Bill.

Mr Speaker, it is true that the hon. Gentleman and Members and lady opposite have not had sufficient time, in my view, to consider the amendments to this Bill, but they will now have seen – and I think the hon. Gentleman's reading of it indicates – that they are principally technical because of legal advice resulting from the need to deal with what is known as the AVMS Directive in a particular way.

Hon. P R Caruana: Mr Speaker, if the Hon. Minister will allow me to say –

Hon. Chief Minister: If I may –

Hon. P R Caruana: We can skip this part. We have made a comment. He need not concern himself, except for me to just record…

I am not asking him to delay the Bill for this reason on this occasion, simply to bear it in mind for similar situations in the future, except to comment that the amendments are 'principally technical' suggests that this House does not have a legislative function in respect of merely technical provisions, (**Hon. Chief Minister:** Absolutely.) which is not the case, (**Hon. Chief Minister:** Absolutely.) even if they are only technical.

Hon. Chief Minister: Yes, indeed, and Mr Speaker, the hon. Gentleman will allow me to say that the technical aspects of the amendments are not to make a new law for Gibraltar – they take something that was in regulations and put it in the principal Act. *(Interjection by Hon. P R Caruana)* As long as he takes me on my word at that, then he will understand that the amendments are for a purpose.

Mr Speaker, I actually believe that hon. Members *should* have longer to consider amendments and it is only for technical reasons, if he will accept that, for legal advice reasons, that I have been put in a position where I have given them long amendments in this situation. He will know that he had done that before and that, in some instances, we accepted that and in some instances we were critical. *(Interjection by Hon. P R Caruana)* Well, it may be, Mr Speaker, but only in the attempt to make the letter as clear as possible and not simply… The hon. Gentleman will recognise that the letter does not simply refer to the changes to be made; it actually gives them the logic of the amendment to be made so that they could understand the amendment.

Hon. P R Caruana: For the future, if the hon. Member ever finds himself in this position again with a need to thrust upon us lengthy amendments at the last minute – and there may well be other examples when he is up against a deadline he has no choice – it is much more helpful to be sent a marked-up copy of the Bill than it is to… (**Hon. D A Feetham:** Tracked.) a tracked copy of the Bill, rather than to be sent the letter, which then requires you to do your own… Sorry?

Hon. Chief Minister: I thought he had been sent both.

Hon. P R Caruana: I have only seen… I do not know whether we have been sent it or not… I have only seen the letter.

No. We are not making an issue, except an observation we are making on this occasion. This is for the future.

Hon. Chief Minister: I am grateful, Mr Speaker.

If I could now move on to the substance, Mr Speaker, of what it is that the hon. Gentleman has said. We are advised that this Bill, as drafted, this Bill, as now marked up and amended, has no effect on what the hon. Gentleman called 'satellite clubs', and that some of what we are taking out to do by regulation might have in the future. Of course, Mr Speaker, that is an issue to look at very carefully.

Mr Speaker, clause 3.(2) of the –

A Member: [*Inaudible*].

Hon. Chief Minister: Liverpool Football Club supporters don't tend to watch football much these days, Mr Speaker. It is a sad time for us!

Mr Speaker, clause 3(2) we do not accept renders nugatory everything that is set out in the Act. I think he will find, Mr Speaker, for reasons I will come to now, that that is actually the sort of language that is in Acts and Bills *he* moved in this House and it is there for a purpose. It is for the purpose of giving business efficacy to what it is that Ministers do.

I recall him saying to me, Mr Speaker, on many occasions, that one had to accept that Ministers would act in good faith and not seek to use powers like this for any purpose other than for the purpose given, which is what the preamble of the legislation provides. So, Mr Speaker, I used to reluctantly take him at his word, so I hope that he does take us at ours.

I do not think, Mr Speaker, that the interaction of clauses 6 and 7 actually render the whole thing tautologous or circular, in particular, Mr Speaker, because clause 8.(1) of the Bill talks about 'disclosure', not 'publication'. So it is the disclosure to the Minister, not the publication that is the issue.

If he wants to just look at that, it is about 'disclosure', not 'publication'. So, Mr Speaker, we do not actually think that that deals with the –

Hon. P R Caruana: No, Mr Speaker, if he will give way, it is true that one clause speaks of publication… collection of information, and the other one speaks of disclosure, but the clause that speaks of disclosure does not speak of disclosure to the Minister, it speaks of disclosure at large, and disclosure at large is publication.

If the clause said 'to the Minister', then at least you would be limiting the circularity, but sub-clause 8.(1) is disclosure to the world, not disclosure to the Minister. It does not say the Minister. Where does it say the Minister?

Hon. Chief Minister: Mr Speaker, it says it in 8.(2)(a).

Hon. P R Caruana: Yes, Mr Speaker, but that is only in respect of (a).

Mr Speaker, I think he is misreading it.

Hon. Chief Minister: If the hon. Member will allow me, there is absolutely no intention to take information from operators and create a regime which carves out a part of the Data Protection Act and allows somebody to publish information which might otherwise be sensitive. *(Interjection by Hon. P R Caruana)*

There is a list, Mr Speaker, in 8.(2) for purposes (a), (b), (c), (d) and (e), of which the disclosure can be used, and therefore we do not believe (**Hon. P R Caruana:** No.) that the point makes sense. If he is ever instructed to deal with this matter in court, he can put that side of the argument. We are just not persuaded that the point he makes bites.

Now, Mr Speaker, if I can –

Hon. P R Caruana: Mr Speaker, [*inaudible*] to correct him if the hon. Member will give way.

Hon. Chief Minister: Does he want me to give way?

Hon. P R Caruana: Mr Speaker, if it is his position that he does not *mind* the position that this creates, then of course I bow to his majority, but he started by saying that that was not his intention. It was not his intention to create a general power.

If he will just give me one more hearing of 30 seconds on this, 8.(1) places no restriction on who you can disclose to. 8.(2) says… or, rather, it says that you cannot disclose, 8.(2) says sub-clause (1) –

Hon. Chief Minister: Does not apply.

Hon. P R Caruana: – does not apply – to what? It does not apply to the list to which he has just referred. Amongst the things that it does not apply to, the first item of it, (a), so you can disclose to the world in the five instances in the list in (2), amongst them:

> '(a) for the purpose of facilitating the performance of any duties or functions assigned to or conferred on the Minister or the Authority by or under this Act;'

Hon. Chief Minister: Yes.

Hon. P R Caruana: As that is the sole purpose for which information can be obtained in the first place under clause 6, then you can always disclose *all* the information that can lawfully have been demanded under clause 6, because if under –

Hon. Chief Minister: That is only – if you will allow me to complete his sentence –

Hon. P R Caruana: Of course, I –

Hon. Chief Minister: – for the purpose of facilitating the performance of duties or functions –

Hon. P R Caruana: Which is always. That is always.

Hon. Chief Minister: – which, Mr Speaker, will not *always* mean publication to the world, because – listen, Mr Speaker, and I will come to this point later on – there is, whether the hon. Gentleman likes it or not, a different sort of appeal possible and challenge possible in respect of actions done under this Act, or otherwise by a Minister, which is judicial review. Therefore, Mr Speaker, if a Minister were to publish something to the world, when all he needed to do was discuss it with the Authority, then it would be unreasonable to have done so and, in particular, if the person whose information is disclosed has suffered damage. So, Mr Speaker –

Hon. P R Caruana: I am not concerned about the Minister; I am concerned about the Authority.

Hon. Chief Minister: Fair enough. *(Laughter)* The Authority is subject to the same control.

Hon. P R Caruana: No, he is not.

Hon. Chief Minister: Of course he is, Mr Speaker, because what the hon. Gentleman has to accept – and I will come to this later on – is that, although there are statutory rights of appeals only for the purposes set out in the Act – *statutory* rights of appeal with leave – there is always, and he will remember this from his time in practice, that he is now back at, always the right of judicial review, especially if somebody acts unreasonably.

Hon. P R Caruana: But does he accept that that right – and I agree with what he has just said – that is *despite* the Bill, because the Bill tries to prevent it.

Hon. Chief Minister: No.

Hon. P R Caruana: The Bill says, you will not challenge *any* exercise of authority by the Authority under this Act, *except* by an appeal under clause 67.

Hon. Chief Minister: No, Mr Speaker, for the reasons that I will come to, when I deal specifically with that, *(Interjection by Hon. P R Caruana)* but that is not the case.

Hon. P R Caruana: I give way.

Hon. Chief Minister: I cannot give way; I gave way to you!

Hon. P R Caruana: No, no, no – 'we'.

Hon. Chief Minister: Anyway, Mr Speaker, we are not persuaded of that.

Mr Speaker, the hon. Gentleman also referred us to clause 9 and I believe he said he was very concerned about this. Was it *this* clause that he said caused him to have constitutional concern? This clause gives the Minister power to make particular regulations and the way that it sets out the power to make particular regulations, I need to tell him, is very similar, if not identical, to section 69.(2) of the Transport Act, which gave the Minister for Transport general regulation-making powers, including the power to fix the penalties for the breaches of the regulations that he made. He will recall that members of a certain association with very loud whistles made their way around No. 6 Convent Place for some time complaining in part about that.

That Act survived and that section survived and that regulation-making power survived, but, before I give way – and I will, Mr Speaker – let me tell the hon. Gentleman that this section is not just *similar* to

section 69.(2) of the Transport Act, not just similar to that, it is actually identical to section 9.(1) of the Communications Act 2006 that he brought to this House. It is identical, Mr Speaker.

When I talk about the other sections that he has referred to, where he has expressed some concern, in particular about the creation of a new regulatory framework, I am going to be telling him repeatedly that, actually, we accept that a regulatory-style framework has been established. There is no need, as he said, to reinvent the wheel and a lot of what we are doing here is to take, word for word, the sections that *he* brought to this House in the Communications Act 2006. So we do not think that there was unconstitutionality in *that* Act: we did not raise the point in 2006 at the time. Therefore, Mr Speaker, if there was no unconstitutionality in the Communications Act that the hon. Gentleman brought to this House in its section 9, there cannot be – because *I* move it – an unconstitutionality here, but I recognise the hon. Gentleman has asked me to give way.

Hon. P R Caruana: Of course not, Mr Speaker. Of course the hon. Member is right that what I do cannot be constitutional and if he does the same thing it is unconstitutional, I have not suggested that.

Mr Speaker, I am saying two things to him. Firstly, in respect of his point, I specifically said that I had seen many examples and there is nothing wrong, if you create an offence by regulations, then you have to create the penalty by regulations. That is not what I was complaining about. I made that perfectly clear, I made that distinction perfectly clear. What I am complaining about is that the offences and the rights of penalty establishment created not by the regulations, but by this Act *itself* is establishable later by regulations.

Sub-clause 9.(1)(b) reads:

> 'The procedure and principles for the imposition of financial penalties on a person who fails to comply with an obligation imposed on that person under, or pursuant to, *this Act*…'

not regulations. Of course, any statutory regime created by regulations will contain the penalties of the regulations. The objection *here* is that where 'offences' – in inverted commas, because they are, if it is penalties – against the regulatory regime is created by *this Act*, the offences are not created by this Act, they are postponed – the penalties are postponed – to be created.

I believe that that is wrong. Now, Mr Speaker, is no answer, it is not even a matter of embarrassment to me, that I may have done the same thing 25 times. I regret that nobody pointed it out to me, because if the Opposition had pointed it out to me at the time – and this is not a criticism aimed at them – if the Opposition or anybody else had pointed it out to me, he could be very sure that I would *never* have agreed to legislate it. Of course, he knows how these things work. A lengthy piece of legislation gets brought to the hon. Members by others and if nobody raises an objection, you are too busy to stop them for yourself. Now he is having them pointed out to him. Well, I wish somebody… I wish he had pointed it out to me when I was legislating it. The fact that we – because it was not pointed out to us – did something that we could otherwise agree is not desirable, does not become okay simply by saying 'but you did it as well!' Otherwise what is the purpose of us being in this House? So everything that has gone on in the past, whether intentionally, unintentionally, whether by consciously or simply because no-one had addressed their minds to it – *anything* that we have done in the past is now legitimised for all time in the future.

Mr Speaker, I do not think that that is appropriate. If it would help the hon. Member give this point a little bit more seriousness, if I concede to him that I deeply regret having allowed such legislation to get onto the statute book in my time and if he will move amendments to it now, I will gladly vote in favour of those amendments in all the bits of legislation… if that sort of – I don't know – will assist him in giving this matter objective consideration, not by reference to whether I have done it myself in the past, but whether it is right or wrong in principle, I would gladly do that.

Hon. Chief Minister: Mr Speaker, I might be prepared to accept that in respect of the Communications Act, where he rightly points out that I have accepted we did not raise the issue. I said, we did not raise this issue in the Communications Act.

He cannot say that in the context of section 69.(2) of the Transport Act because, as I told him, the GTA were happily deployed around his office, I attended a meeting there myself, there was much opposition to it, he was told that what he was doing was unconstitutional, and plough on he did regardless, Mr Speaker, and section 69.(2) of the Transport *Act* says:

> 'Regulations made under this section may provide for such offences and for such penalties as may reasonably be appropriate in the circumstances',

and that is what we were pointing out to him, whistles and all, *(Interjection by Hon. P R Caruana)* around No. 6 Convent Place in 1998.

Hon. P R Caruana: Will he give way?

Does he not understand that that is wholly different to what I am pointing out to him now? I cannot think of words in which to articulate my point more clearly, so clearly my powers of articulation are deficient –

Hon. Chief Minister: Rusty!

Hon. P R Caruana: Mr Speaker, I am not complaining.

There is nothing objectionable to the section 69 of the Transport Act, because that is regulations creating an offence and also creating the penalties attaching to breach of the regulations of the offences created in the regulations. That is *not* what I am talking about here. What I am talking about *here* is not regulations that create both the offence and the penalty, what I am talking about here is 'offences' – in inverted commas – created by the Act, where the Act does not also create the penalty, so you have an offence created by an Act and the penalty created by the subsidiary legislation *later*. This parliament is entitled to know before it passes an offence, what the nature of the penalty that is going to attach to that offence, because it is completely germane to the reasonableness of the offence.

He is not comparing the point that I am making with anything that may arise from the Transport Act. He is right to compare the point I am making with the Communications Act, if he says – and I am taking him at his words – that the Communications Act also creates offences in the Act, but not penalties. The penalties are left silent in the Act and the penalties only are created later after the Act. That is not my recollection of it, but my recollection of it is not strong enough to contradict him. That would be a comparison with the point I am making.

Just a point of repetition, Mr Speaker, he knows my views… I cannot do better –

Hon. Chief Minister: Mr Speaker, let it be clear in *Hansard* that none of us believe, or wish, to act in a manner that is unconstitutional and neither do we believe that the provisions in this Act, as they stand –

Hon. P R Caruana: Mr Speaker, I have not said that –

Hon. Chief Minister: It is 20, is it not? Later on…

This act is drafted something like… [*Inaudible*] Neither do we believe that there is anything in the way that this is drafted which creates any hostage to fortune in that way. The hon. Gentleman has said what he has said and that is our position in respect of that section.

Mr Speaker, clause 20, which the hon. Gentleman referred us to, deals with the financial penalties: the right to appeal in respect of those penalties. Our view, Mr Speaker, is that there is *always* a right to challenge a penalty, even if there is not a specific statutory right of appeal against that penalty. That is often the position in much of our laws. It is not unusual that, in some instances, there should not be a particular statutory right of appeal and that the right of appeal should be left to judicial review.

I have made the point already that I do not accept that judicial review is excluded by the way this Bill is drafted. Therefore, we do not share the concern that the hon. Gentleman seems to suggest there could be, but if it is helpful to the hon. Gentleman, I am quite happy to agree to an amendment, if he wishes to move it, to bring within the provisions of statutory appeal anything to do with the financial penalties imposed. I think nothing turns on it, I have not got the concerns that *he* has got about it, but I am prepared, if he wishes to move an amendment – which is a very simple one – to consider it with him in committee.

Hon. P R Caruana: I am grateful to the hon. Member for offering –

Mr Speaker: [*Inaudible*] it is…

Hon. P R Caruana: I beg your pardon, I thought he had sat down.

I am grateful to the hon. Member for his generosity of conceding an unnecessary amendment. I really do not know where the hon. Member, when he says, 'We have considered' presumably he means *he* has considered on the hoof, because I just made the point and I have not seen any evidence of consideration by anybody other than him.

But, Mr Speaker, that is not the point. The point is this: he has said there are other instances in our legislation where there is a public authority entitled to impose a financial penalty without a specific statutory right of appeal. I tell him that he is *absolutely wrong* and that there is not a single other instance in our statutes where there is a right to fine somebody without a specifically granted right of appeal. Simply to say – even though they have tried to avoid it – that you can have judicial review, he must know is not an alternative, because on judicial review you cannot challenge the *quantum* of a fine, you can challenge the reasonableness of the decision-making process that led to the fixing of a fine, but if you are

fined £100,000, you cannot judicially review it because you think the fine is excessive and it should only have been £20,000! There is a difference; surely he will understand that the principles and the procedures of judicial review exist for different purposes in courts and in the law, than the processes of appeal against the decision.

Mr Speaker, I do not want to convert Parliament into a moot forum between lawyers, but he has made a statement, which is factually incorrect: there is not another statute on our statute book which creates a right to fine somebody a financial penalty. The Financial Services Commissioner does not enjoy a right of financial penalty *at all* in the area of financial services regulation. Where there is a right of penalty, there is necessarily a right of appeal.

Again, Mr Speaker, his last intervention, I think, is some evidence of the fact that he feels the need to defend this draft, this Bill, despite the fact that I am not subjecting it to political attack. If he is going to concede the objection, the concession, what impedes him from simply saying, 'Yes, we agree that there should be that amendment. No, we think the hon. Member is wrong. We think there is absolutely no need for the amendment. We do not think it is necessary, but we are going to write a Bill, because he has asked us to, that gives a statutory right of appeal for the imposition of a penalty.'

I am glad that he has done it, I am grateful to him for taking the point, but it is the way he has conceded the point does not signal to me – not that he is obliged to view my comments in this light… that these are not political attacks and he should not feel that he has to defend the drafting in terms of our debate across the floor.

If I had had more time, I might have written to him privately about some of these points.

Hon. Chief Minister: Mr Speaker, he does not accept *my* view on what our *corpus juris* covers and I do not accept his, so one of us is going to have to spend a long time going through a few thousand Acts. *(Interjection by Hon. P R Caruana) (Laughter)* But look, Mr Speaker, we have considered it, even though he has not seen me confer with others, because obviously I, with others, have sat and looked at this Bill and ensured that we are satisfied with the provisions as they are. We have not considered it in the context of what he has said, but everything that I have considered with others before. Therefore, we… leads me to believe that I should not share the concerns that he now puts, but Mr Speaker, as I told him, it is something that can be cured if he wishes to move the amendment.

Mr Speaker, the codes of practice that are dealt with in clause 22 we believe can be challenged, if they are in some way unreasonable in the hands of the Authority that will make them, by way of judicial review, and he is going to get that answer in many respects – and I am not going to give way, Mr Speaker, because at some stage we have to finish the debate.

Hon. P R Caruana: [*Inaudible*] speak, because I have seen the mood he is in!

Hon. Chief Minister: Mr Speaker –

Minister for Tourism, Public Transport and the Port (Hon. N F Costa): He has given way a thousand times! *(Interjections)*

Mr Speaker: Order!

Hon. N F Costa: [*Inaudible*] give way!

Mr Speaker: Order!

Hon. Chief Minister: I am in no mood other than in the mood to get to the bottom of the points that the hon. Gentleman has made for the good of our legislation, but I actually do not believe, Mr Speaker, that the point made in respect of clause 22 is a valid one. It is actually an identical position to the position in the United Kingdom as to the way that codes are produced, and there is the ability to challenge the code in the hands of the Authority by way of judicial review if it is in any way unreasonable.

Mr Speaker, similarly, the duties of broadcasters under clause 24. It was the hon. Gentleman who said 'This cannot apply to Mr Paxman', and yet it is verbatim what applies to Mr Paxman. So I am not uncomfortable with a piece of legislation that allows a broadcaster the leeway that Mr Paxman enjoys to scrutinise the current affairs of the United Kingdom. I am actually very welcoming of that sort of regulation now for those in our broadcasting, public or otherwise.

Mr Speaker, on clause 37, which he referred us to in respect of the exclusivity of major events, I think we have already had the debate, because he gave way whilst he was speaking. We read the provision, Mr Speaker, as meaning that there will not be exclusivity for one individual broadcaster or licensee in respect of events, and that 'shall make available' shall not mean pushed down the throats of viewers. It means shall make available to other licensees so that they are able, Mr Speaker, to also relay a transmission of a

particular event. The word 'must', Mr Speaker, is not in those sections, as far as I can see.

The hon. Gentleman says, 'Well, it means that they must.' Well, shall means must, but the word 'must' is not here, but it is 'shall make available', not shall transmit, which is the damage that the hon. Gentleman was trying to cure. If this said 'shall transmit' and 'must allow or make available to other broadcasters', you might read what the hon. Gentleman wants to read in it, but if you actually bother to read the section as a whole, what it talks about is one licensee, one broadcaster who is actually there with his cameras, making available to others that audiovisual signal for them to put online or for them to put on in deferred transmission, in whole or in part. So I do not think there is any merit whatsoever to that particular point when you read the section as a whole, and, as I referred to the hon. Member, the reference there to the Commission illustrates the fact that this is a European requirement for there to be competition and for not one licensee or broadcaster to exclusively be able to monopolise one particular event. There is, therefore, no question, Mr Speaker, of forcible transmission of the GSD annual meeting, if there were one, or of the GSLP annual general meeting, of which there is one.

Mr Speaker, in respect of the deadlines provision which the hon. Gentleman identified in respect of clause 39, can I tell him actually that his reaction was my reaction but, having considered it carefully, actually it is very difficult to either put in a regime with shorter timetables, if you are going to allow people to make arguments properly, *or* to create narrow regime in legislation which is more advantageous than the reality of the libel regime.

Mr Speaker, the hon. Gentleman said one would not want to revive something 42 days after it had been said – you somehow sometimes make it worse. Absolutely right, and what timetables do, Mr Speaker, or *should* do, is set out a maximum period of time within which to do things. In the context of libel proceedings, 42 days is actually quite a short period of time *(Interjection by Hon. P R Caruana)* because libel proceedings could take years. In the context, therefore, of this Act, Mr Speaker, that the right of reply, which is not just in terms of politics – it can be in many other terms, in terms of reputation etc – to be corralled into a period of 42 days actually, on reflection, is not bad. So, for that reason, Mr Speaker, we do not think that, if the hon. Gentleman gives thought to his criticism of clause 39, there is actually anything in it.

But, Mr Speaker, if I can just refer him to clauses 37 and 39 in this way *(Interjection by Hon. P R Caruana)* before I allow him to get up, against my better judgement, clause 37 of *this* Act, of this Bill, Mr Speaker, and clause 39 of this Bill, are *identical* to regulation 17.(2) and regulation 30 of the Audiovisual Media Services Regulations, which he made. So these deadlines, these concerns, about 'makes available'… Mr Speaker, I am taking the language that *his* Government made and passed in the AVMS Regulations.

I give way, Mr Speaker.

Hon. P R Caruana: Mr Speaker, if it is against his better judgement, I withdraw.

Hon. Chief Minister: Mr Speaker, in relation to clause 47, what I will tell him is that we are very happy with the way that the provision as to consultation on the appointment of the Board of GBC is now drafted. We think it is a step forward, as I said before, but I will come to this point, Mr Speaker, which is why it should be the Chief Minister and not the Minister for Justice.

Mr Speaker, it should be the Chief Minister, who does not consider himself to be anything other than one among equals, not even first, because issues of *public* broadcasting have an importance which the hon. Gentleman has recognised in his intervention and, therefore, I think in the same way that it is right to have a Chairman of Gibtelecom who is not the Minister for Telecommunications – something that occurred during their time in office as a result of an issue involving the European Commission – we are now taking the step that the Chief Minister should be the person to appoint the Board of GBC, whether or not he is the Minister for Broadcasting.

In the present instance, the hon. Gentleman will know, all hon. Members will know, that I am both the Minister for Broadcasting and Chief Minister, but that will not always be the case and the appointment of the Board should be something that, in my view and in my Government's view, comes through the Chief Minister.

Hon. P R Caruana: Not at the time that the Bill was published.

Hon. Chief Minister: No, Mr Speaker, not at the time that the Bill was published, but as the hon. Gentleman will know, that is exactly what I said during the course of the interview in GBC – or should know, if he is going to make a criticism. I said specifically about that part that I was not happy with it, but that I was publishing the Bill already whilst I took further counsel as to how best to deal with that section, and I am going to assume, Mr Speaker, that he follows avidly everything that I tell 'Newswatch'.

Mr Speaker, similarly, clauses 62 he said gives power only to the Authority to receive complaints of anything broadcast by GBC. Well, Mr Speaker, in the new paradigm that we are setting up… I know he is

no longer interested because I am not taking his points and demonstrating that they are not valid, but he might at least do me the courtesy of listening; I listened to every word that he said.

Clause 62, Mr Speaker, of course makes the Authority the person, therefore, that receives those challenges, because it is the Authority that has the control of all the other licensees and it should also have that control in respect of the GBC, but that does not mean, Mr Speaker, that third parties cannot approach the Authority in respect of those issues for the Authority to take action and, where they do and the Authority does not, that they cannot judicially review the Authority for not having taken that action, if not to do so would be unreasonable.

Mr Speaker, clause 63, he is right, is an identical reproduction of the section that is there now, and it is there now, Mr Speaker, because GBC is a public broadcaster and will remain a public broadcaster, but the hon. Gentleman knows that there are ways round those time limits that might create a problem in certain instances, not least because *he* was the only party that would not agree to GBC including in a leaders' debate in 2007 the leader of the PDP, who enjoyed the support of my party and the Liberal Party, and of all of us contesting the election, except the hon. Gentleman, to appear in that leaders' debate. That matter was brought to the Supreme Court for a hearing very quickly under judicial review procedures. So, again, we are not concerned that in issues, in moments of urgency, there is not the business efficacy in the Act, as it was and as it is, for matters to be brought to the attention of the court timelessly. Unfortunately, Mr Speaker, in that instance the PDP did not succeed in appearing on the leaders' debate. The first time they did, he lost the election, so perhaps, if they had been there in 2007, a happier time would have been had.

Mr Speaker, clause 66.(1) is a serious issue and clause 41.(4)(c) is also a serious issue, so I ask the hon. Gentleman to listen carefully to this part of my reply and, as he did when I was looking for something on my phone, ask him to put down his phone, as he said to me, and listen, because this is about Gibraltar and *our* differences should not be relevant to it.

I heard everything that he said about clause 66 and everything, if not *almost* everything, is a matter of agreement across the floor of the House, not just between him and me but, I am sure, every Member, but the wording of 66.(1) is *precise* and there are no typographical errors in it, and it is there black upon white. He did an analysis, Mr Speaker, of the effect of one particular case on 'colonial legislatures', as some people like to call them, during the course of an intervention at the United Nations, I believe in 2007 or 2008, I forget whether it was at the Committee of 24 or in the Fourth Committee.

Hon. P R Caruana: It was in 2008 and in Fourth Committee.

Hon. Chief Minister: Yes, indeed.

Mr Speaker, the analysis he makes and the concerns that he airs would have been absolutely right, were it not for the fact that, in 66.(1), it is the Governor who acts in a moment of internal security but it is the Government that takes the power as a result of that action. That, Mr Speaker, is in keeping with the analysis that he did in the United Nations and that, to a very great extent, he and I, and all the other lawyers in this Chamber, likely believe is the reality of the constitutional position very much in respect of all the issues that he alighted on today.

He said that if I had achieved what 66.(1) says then I had achieved something more than he had been able to achieve and I am grateful for him recognising that because this is specific, clear and there are no errors in this section of the draft, believe me – as he will know – because it has been pored over by all the people who would pore over it and who would insist on rectifying that typographical error, if it *were* a typographical error. So, on that, Mr Speaker I know that we are *all* united.

But I refer him, Mr Speaker, to the amended 41.(4)(c) because that is equally important. If hon. Members want to look at that section and read it *in toto*, it says this:

> 'subject to subsection (5), the Authority shall take a measure pursuant to subsection (2) where the following conditions are satisfied –'

and the third one, Mr Speaker, which is the relevant one for national law, which is not Community law:

> 'where the reason for the intended adoption of a measure is the safeguarding of the internal security or defence of Gibraltar and is of such a nature as to fall within the Governor's constitutional responsibilities and the Governor has informed the Minister that the measure needs to be taken who so directs the Authority'.

Mr Speaker, that is exactly the issue that the hon. Gentleman was alluding to and it is in this context that the Minister, in those circumstances, alerts the Authority. The hon. Gentleman will know from his analysis, having hinted at it, the importance of the way that section is drafted because, in effect, Mr Speaker, 66.(1) and 41.(4)(c) *now demonstrate* that in a moment when internal security measures need to be taken, when the Governor triggers those parts of the Constitution, *of course* the Government is not out of the equation. The Government, as would be the Government in the United Kingdom, is the actor

through which actions continue to have to occur because, constitutionally, that could always only have been the way it was intended.

There is an element here, Mr Speaker, of the prerogative being engaged: a more interesting discussion might be who can trigger that in the Governor? I hope he is listening, Mr Speaker, because this *is* fundamentally important. Is this that internal security matters or that trigger for the Governor to press can only be pressed when individuals with political responsibility *outside of* Gibraltar seek that the Governor engages it, or is it that even Ministers of the Crown in Gibraltar can seek that it be engaged because of information that they have. Mr Speaker, I believe that it can be both under our constitutional set up because we have no responsibility for defence and there may be a defence reason why internal security measures need to be taken. There could even be Foreign Affairs reasons why an internal security measure might be taken, but there are very many other reasons – those that are now at large – which could result in an internal security measure to be taken.

This is where *his* analysis, which was the academic analysis being made already in respect of Quark at the United Nations, is relevant because, in *that* instance, I believe that the trigger that the Governor presses to engage 66.(1) or 41.(4)(c) can be engaged on the advice of Ministers – the Governor here is the Crown, the Queen – either the two whose portfolios are not in this House – Defence and Foreign Relations – or *any* of the ones who are in this House. That is a more interesting debate and I believe, Mr Speaker, that there cannot be *any other* analysis on that. I am sure that he shares my view and I am grateful that, in analysing 66.(1)(c) and 41.(4)(c), as he has, he has recognised the huge step forward we have been able to take in this short time.

Now, Mr Speaker, on clause 67 which follows immediately thereafter, I have to tell him – and this comes back to the other points he has made about the right of statutory appeal – that, actually, this is also identical to the Communications Act that he made in 2006, in section 91 of the Communications Act – that are in identical terms, – 91.(7) and 91.(8) in particular, dealing with 67.(7) and 67.(8) that he particularly singled out. I do not believe that the analysis done by the draftsmen in 2006 was wrong. I know that he has a higher regard for *his* legal analysis than he has for mine but I read the Communications Act when I was sitting where he is sitting and I did not think that these points were merited. When he was sitting where I am sitting he did not think these points were merited when he presented the Communications Act to the House, so I believe that he was right then and I believe that I am right now. I believe that we voted in favour of the Communications Act in 2006, so I do not believe that the mischief he says could be there actually arises under the section at all.

Mr Speaker, the hon. Gentleman said 'What happens in respect of party political broadcasts and the Governor's Directions? The Governor's Directions are there now: how can we ensure that the new regulations are going to be there in the future?' Well, actually, the position is much more advanced than it was. The Authority – the regulator here because it is the Gibraltar Regulatory Authority – is not just going to make these Governor's Directions his own in his own way, he has actually got an *obligation* to do so and I think the hon. Gentleman has missed it. It is in clause 22 that the Codes of Practice have to be created and those are the Codes of Practice – they will no longer be known as Directions – that will govern all matters relating to party political broadcasts etc.

Mr Speaker, I assume that what should, additionally, happen, is that we will adopt Governor's Directions as the Directions of the Authority so that there isn't a moment in time where we are left with nothing. But I also would have thought that, as the process of modernisation proceeds, the Authority will seek to speak to all those who should be consulted, not least the Hon. the Leader of the Opposition, as much as the Chief Minister and other parties who he might consider it is appropriate to consult.

But may I refer the hon. Gentleman, Mr Speaker, in particular to clause 23, because clause 23 reads

> 'Schedule 3 shall apply in respect of radio and television broadcasts and any codes of practice issued under that schedule shall be deemed to have been issued under section 22 of this Act.'

That is in respect of political broadcasting so I do not think that this is a 'goodwill' – that the code will be required – my reading of the Act, and I believe the Authority's reading of the Act, is that there is a moment, when this Act becomes law, where the Governor's Directions become, in effect, adopted as codes of practice of the Authority and then there is consultation afterwards, if necessary.

Hon. P R Caruana: Mr Speaker, just two small points.

On the codes of practice point again, he has missed the point – I was not saying that there isn't *power* for the Authority to make a code of practice *requiring* party political broadcasts. Obviously, it is there: I pointed it out to him myself. The point is that he is not *obliged* to do so.

Nothing in this Bill *obliges* the Authority to have party political broadcasts, still less the terms on which to have them. Therefore, we shall have party political broadcasts *if* the Authority decides that we should have them and on the terms that the Authority decides that we should have them. My point is that that should not be so. We think party political broadcasts are such an important part of the landscape that

he should be *obliged* to issue guidelines and have party political broadcasts. To point to a section which gives him the power to do so, if he wants to, hardly addresses the point that I made.

On the slightly different point about the reasons why he might not have challenged and queried subsection (7) and (8) of 67 of the Communications Act: there may be many, amongst them may be the fact that, of course, that Act was drafted by the firm of which he was then a partner and he would have to criticise his own work.

Hon. Chief Minister: It is that sort of final snide remark that sometimes brings us to explosions of the sort that we then regret later during the course of the debate, so I shall do, Mr Speaker, what I should have done with the hon. Gentleman many years ago when he started making that sort of snide remark, ignore it and start dealing with the substance of what he says.

Hon. P R Caruana: He is right that he should do that, but he is wrong in the reasons why he has decided he should do that.

Mr Speaker, I have sat here, having given what I thought was a very helpful analysis. Indeed, he recognised that it was a very helpful analysis and I have sat doing exactly what he has now decided he is going to do himself, namely ignore the snide remarks. I have sat here, listening to him punctuate almost every answer that he has given with snide remarks about whether he ever had an AGM and about this and about that. I have not leapt to my feet on the first occasion in which I do what he has done on a dozen occasions today. He takes offence. Methinks the hon. Member takes offence just too easily!

Hon. Chief Minister: Mr Speaker look, it is just unnecessary to say your partner drafted this and therefore you would not have got up to challenge, which is to impute to me what I can only assume is an improper motive. Because if I had felt as strongly about sections of the Communications Act as the hon. Gentleman does, I would have been doing the people of Gibraltar a huge disservice if not of fraud, for not getting up and making those statements simply because Tony Provasoli might have happened to have drafted the Bill.

That would *never* have been the case, Mr Speaker, and that is why that sort of snide remark is outside what should be dealt with in this Parliament. If the hon. Gentleman wants to equate that with saying to him 'We have made exactly the same section that you made, so there can't be a concern of yours because you moved the Bill and did not have the concerns'…. or is it that the hon. Gentleman is saying that when he read the Bills before he moved them, he did not apply the level of scrutiny that he applies to them now? Mr Speaker, I am just going to pass from that sort of snide remark, which is totally unnecessary and really serves only to bring this place into disrepute.

Mr Speaker, I *also* questioned whether restricting religious entities from owning channels was necessary, if only because there seems to be a business in that and it may be wise to have that door open. The reason why we have not done so at the moment is because we are modelling ourselves on the United Kingdom precedent, not the European one. The European one does not require that that door be closed but let us, if the hon. Gentleman would excuse the expression, 'let's suck it and see' if anybody does come with such an application and then, if necessary, consider it. I do not actually think they would come because there are a *limited* number of transponders available, as he will know, and we already know the sorts of individuals and entities that are being attracted and are more likely to be of the rolling news character than they are of the … but it is a potential *business*, actually, for Gibraltar.

If the United Kingdom does not want to have such channels, I have absolutely no objection to them if they are not problematic in their own way – but they would require regulation. (**Hon. P R Caruana:** Yes.) The hon. Gentleman will know that there are, for example, if I may call them 'televangelists' in the United States which we might *not* want transmitting from Gibraltar to the rest of Europe for reasons which are ventilated in the more salubrious parts of the press.

But there are perfectly proper channels which transmit the beliefs of people to those believers and there would be no reason for excluding them from Gibraltar, in our view, if those, potentially, came in the future but, at the moment, we have adopted the model of the UK.

I will allow him to say a few words…

Hon. P R Caruana Yes, Mr Speaker, I am not inviting him, I just wanted to know… The point is this, that I do not know how the UK is affected in this respect by the fact that they now have the Human Rights Act but, of course, we have always been in a slightly different position of having a constitutional right to certain freedoms which include religious worship and things and I think it is only a matter of time before somebody challenges this prohibition as being a violation of the constitutional right not to be discriminated and not to have the rights of worship and religious expression curtailed.

I am not suggesting to the hon. Member that he should now change it. *We* would not have written this provision into the Bill, had we been on the other side of the House. The fact that it is in the United Kingdom legislation would have been neither here nor there to us.

There are channels that people watch in Gibraltar on satellite in this respect. They are not all televangelists: some of them are just religious programming without being somebody on a stage, sort of preaching. There is one called EWTN, there is another one called The God Channel, there is a Muslim version… I don't know if there is a Hindu version – if there is, I have not seen it. These things now proliferate and the idea that it should not be possible *in Gibraltar* to obtain… that if there is such a channel… I do not think it is true that such a channel could not exist… it is that it could not be owned by… religious bodies would be disqualified from owning it. I suppose they would have to hide behind some believer, but not being the religious body itself. It just seems, in this day and age, an unnecessarily restrictive provision.

Hon. Chief Minister: Mr Speaker, on that we can both agree, to keep that under review.

But paragraph 3 of that schedule – Schedule 2 – I do not agree can create the sort of problem that the hon. Gentleman alludes to with us, or any Government, funding 49.9% of a broadcaster where, by not going over the 50% of funding, we would somehow be able to avoid the licensing regime in an unaccountable way.

It is true that you could avoid the licensing regime by funding 40% of a broadcaster and not more than 50%, but you could not do it in an unaccountable way because the accounts of Gibraltar Plc are such that it would not be possible to hide that contribution. Indeed, when that *happened* in respect of the media it was not possible to hide it. The hon. Gentleman and I have had this debate on a number of occasions. He funded the *Seven Days* newspaper to the tune of £150,000 and he was properly accountable in this House for spending the money on it and, therefore, also more publicly to the electorate because the Opposition scrutiny on that subject was put to the electorate. So if somebody were – and, of course, he was saying he recognises it was not the intention it should be – in the future, in Government, to want to contribute just shy of 50% of the funding of a channel in order to somehow get it to do its bidding, I assume, but avoid the licensing aspects which affect public sector broadcasters, where there is an express carve-out only for GBC, well, Mr Speaker, they would be otherwise accountable. That is not something that I think is ever likely to happen.

Mr Speaker, paragraph 6 is also much like the issues relating to religious broadcasters, something that we have considered in the context of it being an identical provision to the UK. It is, actually, not less sophisticated or more sophisticated than the United Kingdom and I take the hon. Gentleman's point that there is nothing to stop *broadcasters* from becoming newspaper publishers whilst there is something that creates a hurdle, not to stop, but to create a hurdle, for discretion to be exercised when newspaper publishers wish to become public broadcasters. I think that is simply an historical issue. I think the Newspapers Act sets out the regulation of newspapers in a way that is relevant to the time when it was done and this modern media legislation sets out the position in respect of modern media, modern broadcasting media, in this way. It does not cause us a concern and I have specifically, in my speech, alerted the hon. Members to the fact that we would not think it is contrary to the public interest in Gibraltar for a newspaper proprietor to become a licensed broadcaster unless there were *specific* public interest reasons to kick in.

Hon. P R Caruana: Mr Speaker, if the hon. Member could give way, hopefully, for the last time because we're coming to the end. I am grateful to him.

I don't know whether the hon. Member just misses my point or whether he is determined to push this Bill through the House without acknowledging the merits of any of my points. The point that I have made here could not be more simple, could not be more uncontroversial, could not be more helpful and could not be more obvious, which is that, we in this House are – and I am not questioning it – passing a piece of legislation that says if you own a newspaper you are going to have all these difficulties getting a licence for broadcasting, so all people have to do it is in a different order. I will get the broadcasting licence first, then I will go for the newspaper and then there is nothing in the Bill to prevent it.

Mr Speaker, if the hon. Member is not willing to acknowledge even that *obvious* point, then he must be in the mood of being determined to concede *nothing* because it is not as if I am criticising. I am trying to make his own statutory measure effective and, even though it is as *plain as daylight* that it cannot be the intention of this Bill to affect the result depending upon the order in which you do two steps… If you do it in order one, you can have both the newspaper and keep your broadcasting licence but, if you buy your newspaper first, then you have much greater difficulty getting a broadcasting licence. If you do it the other way round, there is no power to revoke your licence, your broadcasting – it cannot be the intention of this Bill to bring that situation about.

I point that out to the hon. Member and, instead of just taking the point on board, he finds a couple of passing remarks to say that he does not agree. This is not something to agree on or not agree on, it is *plain fact*. It is not a judgement that I am making. I am not expressing an opinion upon which he might legitimately have a different one. It is incontrovertibly so. All I am saying is, does he want to take the opportunity to close the plainly unintended – I can only assume plainly unintended – sort of gap,

loophole, to avoid the consequence – which is purely what the Act wants to avoid – of, I suppose, dominant media and dominant press all coming together to create whatever they call it, multi media monopoly, or whatever the phrase is? Even on this, the hon. Member says that he does not think the consequence that I have said could arise. Well, how could it not arise? It will necessarily arise.

Mr Speaker, it will necessarily arise. If GBC tomorrow acquires a newspaper, there is no power in this Act for the Authority to revoke the licence that it would not have given to GBC had it had the newspaper when it applied for a licence. If the hon. Members are content for that to be the law of Gibraltar, given that they have a parliamentary majority, then that will be the law of Gibraltar but I can't imagine that it is what they really intend.

Hon. Chief Minister: Mr Speaker, I don't know whether the hon. Gentleman goes back to read *Hansard* but, if he does, he should look at what I said in my original speech and the first reply that I have given to the point he made before, because I have not said that what he suggested cannot happen. I have accepted that it can and I have explained to him why I think that is the case, in respect of the regulation of newspapers having happened, historically, first, and the regulation on broadcasting having happened, historically, second.

I have also told him that I do not share his concern because all that is happening here, Mr Speaker, is that, whilst a broadcaster can tomorrow acquire a newspaper, or commence publication of a newspaper, by simply paying £5, signing an affidavit and sending it to No. 6 Convent Place under the Newspapers Act, a newspaper proprietor has to go through a hurdle. As I have said during the course of my initial speech, and I have replied, that hurdle should only be there where there are specific instances of the public interest, engaging for a particular purpose. Therefore, we think this is not an issue where we need to depart from what has been a tested transposition of those directed requirements in the United Kingdom. We are therefore going to go with this draft, but I have not ignored anything the hon. Gentleman has said, for the reasons he suggests or otherwise. I have dealt with them.

I will assume he is just not happy with the way I have dealt with them and that is why he has had to say that I have either misunderstood, because I couldn't understand or because I wanted to misunderstand. So Mr Speaker look that is the position, we on this side of the House are perfectly happy with the way this is drafted, we are not being "bloody minded" in inverted commas in not accepting an amendment, it is that *we* – namely not us who have been sitting here through the debate, but me and the draftsman and the Cabinet when we considered it as it was, considered that it was appropriate to proceed in this way. *(Laughter and interjection by Hon. P R Caruana)* I know that the concept of Cabinet responsibilities is so alien that it even brings smiles to the hon. Gentleman's face, but anyway...

Finally, Mr Speaker, in respect of paragraph 2.(1) and (3) of the third schedule, I understand what he is getting at in respect of balance there but, again, already issues of balance are taken as a whole. He will know that, in the law of libel, an article has to be read as a whole not seen just in respect of a headline and, in the law of broadcasting, Mr Speaker, one cannot look at one part of a broadcast, or a broadcast on its own, one has to look at a whole series of broadcasts.

If I can just give him an example so that he might understand that I *have* understood his position, even if I don't share it, despite the continual disparaging remarks that he is making to those that lap them up to his right. The fact is, Mr Speaker, that during the course of an election campaign, for example, there are not just debate programmes, there are not just party political broadcasts, there are also, for example, phone-ins. He will recall that, during the last general election campaign, there were phone-ins and, in the phone-in, there are only members of one political party present, with a presenter from the relevant broadcaster. During the course of a – let us avoid GSD or GSLP Liberals – PDP phone-in, for example, a broadcaster may present a question, or may present the programme, in a way that might by the other parties be considered to be partial to the people who are in the studio: 'Here I am joined by the members of the PDP, who are asking members of the public to entrust them with their vote for this their manifesto, containing a new park etc etc.' On its own, that would be political bias during the course of a general election campaign but, with three political parties, or three political forces, contesting a general election and three similar programmes with three presenters, either the same one or a different one, presenting such a programme, making similar remarks at the beginning of the programme for each of the political parties contesting the election then, on balance, during the course of the campaign there would be no issue of bias. That, Mr Speaker, is one of the sorts of things that would be covered by this Directive, by these paragraphs.

Again, these paragraphs are –

Hon. P R Caruana: Is he speaking to Schedule 3?

Hon. Chief Minister: Yes.

These paragraphs are taken from the Broadcasting Act in the United Kingdom so, Mr Speaker, we are confident that there are, there *should be*, no concerns in respect of the operation of those paragraphs and

that there will always be free and fair elections in Gibraltar, with broadcasters respecting the rules of ballots.

Hon. P R Caruana: Mr Speaker, I am grateful for him giving way.

Mr Speaker: Order – is the Chief Minister giving way?

Hon. P R Caruana: Yes, it is clear that he is giving way, he is sitting down.
I do not want to further controversialise [*inaudible*]

Mr Speaker: No, I thought he had finished.

Hon. P R Caruana: He is not sitting down to rest.

Mr Speaker, here is an example of what I mean by his failure to deal with my comments adequately. Everything that he has just said is prefixed by the fact that 'I don't share his opinion'. I have not expressed an opinion and this is not about 'balance' and 'elections', it is about a *flagrant contradiction* in the language of two different bits of law within two inches of each other and within three lines of each other. It is not about *opinion*, it is about wanting to know which of the two is the law.

Paragraph 2.(1) says:

> 'The code of practice shall require that television and radio services shall exclude *all* expressions of the views or opinions of the person providing the services…'

In other words, on no occasion may any service provider on any programme express his own opinion.

Paragraph 2(3) a couple of inches further away says the requirement of everything that I have just read

> '…may be satisfied by being satisfied in relation to a series of programmes taken as a whole.'

A series of programmes taken as a whole. If that means, as it can only mean, that there *can* be an expression of opinion by the service provided in some programmes, so long as he balances it with a contrary expression of opinion in another programme, it is a breach of (1) that says that it cannot happen on *any* occasion. All I am asking is, which of the two is it? It is not a matter of opinion to be agreed with or disagreed with.

Hon. Chief Minister: It is an opinion with which we disagree, Mr Speaker.

For the reasons I have already explained and I think are clear from the text and the purpose of the text.

So, in the context of broadcasting in Gibraltar, we are convinced that this Bill, despite the issues raised by the hon. Gentleman and with the explanations that I have provided, will improve and modernise the provision of broadcasting from Gibraltar to a *very* considerable extent, bringing broadcasting and the regulation of it into the 21st century, and finally delivering a digital transmission network properly regulated and exploited for the benefit of our people: something, Mr Speaker, which I will now have no hesitation in saying, given the tenor of the hon. Gentleman's interventions, as I said during the course of the Budget debate, had been much talked about by hon. Members when they were on this side of the House and yet they have done *absolutely nothing* and made not a *penny* of investment, when we were first elected last year. Something, nonetheless that our investment in broadcasting will deliver in time for the analogue shut off on 31st December this year, when we turn on on 1st January to digital broadcasting *inter alia*, hopefully, including the Gibraltar Broadcasting Corporation.

For all of those reasons, Mr Speaker, for the reasons I gave in my opening address in the Bill, for all the reasons I have dealt with in respect of the interventions made by the hon. Gentleman, I continue to commend the Bill to the House. (*Applause*)

Mr Speaker: I now put the question, which is that a Bill for an Act to make provision for the Gibraltar Broadcasting Corporation and to transpose into the law of Gibraltar Council Directive 2010/13/EU of 10th March 2010 of the European Parliament and of the Council on the co-ordination of certain provisions laid down by law, regulation or administrative action in member states, concerning the provision of audiovisual media services supplementing Directive 2007/65/EC of the European Parliament and the Council of 11th December 2007, and for connected purposes, be read a second time.

Those in favour. (**Government Members**: Aye.) Those against. (**Opposition Members:** No.) Carried.

Hon. P R Caruana: By Government majority.

Hon. Chief Minister: Mr Speaker, if it is convenient for the hon. Gentleman to make a point, I am quite happy to call for a division, if he likes.

Mr Speaker: Is a poll sought?

Hon. P R Caruana: [*Inaudible*].

Mr Speaker: Yes. The Clerk will call out the names of hon. Members in alphabetical order and Members are invited to respond 'aye' or 'nay'.

FOR	AGAINST
Hon. P J Balban	Hon. D J Bossino
Hon. C A Bruzon	Hon. P R Caruana
Hon. N F Costa	Hon. Mrs I M Ellul-Hammond
Hon. J J Garcia	Hon. D A Feetham
Hon. G H Licudi	Hon. S M Figueras
Hon. S E Linares	Hon. E J Reyes
Hon. F R Picardo	
Hon. Miss S J Sacramento	

Mr Speaker: The question that the Bill be read a second time is carried by 8 votes to 6.

Clerk: The Broadcasting Act 2012.

The Broadcasting Bill 2012
Committee Stage and Third Reading to be taken at this sitting

Chief Minister (Hon. F R Picardo): Mr Speaker, I beg to give notice that the Committee Stage and Third Reading of the Bill be taken today, if all hon. Members agree.

Mr Speaker: Do all hon. Members agree that the Committee Stage and Third Reading of the Bill be taken today? (**Members**: Aye.)

Mr Speaker: The Committee Stage and Third Reading of the Bill will be taken today.

Clerk: A Bill for an Act to amend the Births and Deaths Registration Act and related legislation. The hon. –

Hon. P R Caruana: The Hon. Mr Speaker has taken our silence as consent, has he? We do consent, but not that anybody did express it on this side. Our silence… This is not a majority vote. [*inaudible*] unanimous, as an affirmation [*inaudible*].

Mr Speaker: The Question that I put was, 'Do all hon. Members agree that the Committee Stage and Third Reading of the Bill be taken today?'

Hon. P R Caruana: And *all* hon. Members agreed?

Mr Speaker: Yes, and all I heard was 'yes'. I did not hear a single 'no'.

Hon. D A Feetham: You did not hear any 'yesses' from this side.

Mr Speaker: I heard only 'yesses' and I did not hear a 'no', therefore I took it that all Members *do* agree. There is no other interpretation for that, really.

Hon. Chief Minister: Mr Speaker, you are quite right to say that, because this has been the position in the House for some time, both with them there and us there, or some people answer a 'yea' or do not utter a 'yea' at this time, and if there is not a 'no' heard, the matter goes ahead.

Mr Speaker: I can only go by what I hear. If I hear a 'yes' and I do not hear a 'no', I cannot possibly pluck a 'no' out of the air.

Hon. P R Caruana: The hon. Member [*inaudible*] slightest provocation [*inaudible*] (*Interjections*)

Mr Speaker: Order, order. (*Interjections*) I think we have got enough sound effects outside these Chambers. (*Laughter*)

The Births and Deaths Registration (Amendment) Bill 2012
First Reading approved

Chief Minister (Hon. F R Picardo): Mr Speaker, I have the honour to move that a Bill for an Act to amend the Births and Deaths Registration Act and related legislation be read a first time.

Mr Speaker: I now put the Question, which is that a Bill for an Act to amend the Births and Deaths Registration Act and related legislation be read a first time.

Those in favour. (**Members**: Aye.) Those against. Carried.

Clerk: The Births and Deaths Registration (Amendment) Act 2012.

The Births and Deaths Registration (Amendment) Bill 2012
Second Reading approved

Chief Minister (Hon. F R Picardo): Mr Speaker, I have the honour to move that the Bill be now read a second time.

The purpose of the amendments contained in this Bill are to harmonise the position between the present legislation that governs the registration of stillbirths, as found under the Births and Deaths Registration Act, and the legislation defining a stillbirth for the purpose of employment rights under the Employment, Maternity and Parental Leave and Health and Safety Regulations 1996.

The current position is that there is a discrepancy in the legal definition of stillbirths under the aforementioned legislation. Under the Births and Deaths Registration Act, a stillbirth can only be registered if it occurred after 28 weeks of pregnancy whereas, under the Employment, Maternity and Parental Leave and Health and Safety Regulations, a woman is deemed to have given birth if she is delivered of a still-born child after 24 weeks of pregnancy.

This creates a conflicting situation and can cause distress. A woman may be deemed to have given birth under one piece of legislation, but is then prevented from registering the stillbirth under the other. This Bill remedies this by harmonising the definition of stillbirth to refer to 24 weeks of pregnancy throughout the different laws.

This Bill also amends supplemental provisions as to maternity grants contained in the Social Security (Insurance) Act at clause 3 by substituting 28 weeks of pregnancy to 24, thus bringing it on par with the Employment, Maternity and Parental Leave and Health and Safety Regulations and the proposed amended Births and Deaths Registration Act.

This Bill also contains certain transitional provisions, as set out in clause 4.(1), to allow for the voluntary registration of stillbirths which occurred during the time when the discrepancy was in effect and which fell within that window, i.e. stillbirths which occurred between the 24 and 28 weeks of pregnancy *and* between 1st January 1996 and the coming into force of the provisions of this Bill. The reason for making this legislation apply retrospectively in this way to 1996 is because this is when the age of viability in Gibraltar was initially changed from 28 to 24 weeks.

It is important to stress that registration of stillbirths that fall within this retrospective window is voluntary and that this Bill imposes no obligation whatsoever to register, in order to avoid further upset to those for whom, 16 years down the line, the process of registering the birth of their still-born child and the emotions that go hand in hand with that, may be more harmful than helpful.

This is of utmost importance and is made clear in clauses 4.(2) and 4.(6). If a person being the person who would otherwise have been required otherwise by the Births and Deaths Registration Act to give information concerning the birth wishes to register the birth of a still-born child in the supplementary register, he or she may apply to the Registrar, providing such information as set out in clauses 4.(4)(a) and (b), provided he does so within 12 months after the coming into force of this Bill, failing which written authority of the Minister responsible for personal status will be required. The remainder of the Bill deals with the form of the register etc.

Mr Speaker, hon. Members will note that the lead in respect of this matter has been taken by the Hon. Dr John Cortes. It was he, as Minister for Health, who received representations from representatives of

those affected. Constitutional responsibility, nonetheless, rests with me, as Minister with responsibility for personal status, and I therefore move the Reading of the Bill today.

I commend the Bill to the House.

Mr Speaker: Before I put the Question, does any hon. Member wish to speak on the general principles and merits of the Bill?

I now put the Question, which is that a Bill for an Act to amend the Births and Deaths Registration Act, and related legislation, be read a second time.

Those in favour. (**Members**: Aye.) Those against. Carried.

Clerk: The Births and Deaths Registration (Amendment) Act 2012.

The Births and Deaths Registration (Amendment) Bill 2012
Committee Stage and Third Reading to be taken at this sitting

Chief Minister (Hon. F R Picardo): Mr Speaker, I beg to give notice that the Committee Stage and the Third Reading of the Bill be taken today, if all hon. Members agree.

Mr Speaker: Do all hon. Members agree that the Committee Stage and the Third Reading of the Bill be taken today? (**Members**: Aye.)

Mr Speaker: The Committee Stage and Third Reading of the Bill will be taken today.

The Criminal Justice (Amendment) Bill 2012
First Reading approved

Clerk: A Bill for an Act to amend the Criminal Procedure and Evidence Act 2011 and the Crimes Act 2011.

The Hon. the Minister for Education, Financial Services, Gaming, Telecommunications and Justice.

Minister for Education, Financial Services, Gaming, Telecommunications and Justice (Hon. G H Licudi): I have the honour to move that a Bill for an Act to amend the Criminal Procedure and Evidence Act 2011 and the Crimes Act 2011 be read a first time.

Mr Speaker: I now put the Question, which is that a Bill for an Act to amend the Criminal Procedure and Evidence Act 2011 and the Crimes Act 2011 be read a first time.

Those in favour. (**Members**: Aye.) Those against. Carried.

Clerk: The Criminal Justice (Amendment) Act 2012.

The Criminal Justice (Amendment) Bill 2012
Second Reading approved

Minister for Education, Financial Services, Gaming, Telecommunications and Justice (Hon. G H Licudi): I have the honour to move that the Bill be now read a second time.

Mr Speaker, this Bill introduces several amendments to the Criminal Procedure and Evidence Act 2011 by clause 2 of the Bill and to the Crimes Act by clause 3 of the Bill.

As all hon. Members know, these two Acts were debated in Parliament at the end of July 2011. They were published, after receiving Assent, in the *Gazette* of 18th August 2011, but have not yet been brought into effect, except for a number of provisions which I will refer to in a moment.

During the course of the Second Reading of these two Acts, I indicated, on behalf of the Opposition at the time, that we welcomed the provisions to a very large extent. However, we were not able to fully support the Bills as a result of the provisions in the Criminal Procedure and Evidence Act in particular. I am talking of the Criminal Procedure and Evidence Act at the moment. We were not able to fully support that and vote in favour because of the sections which related to inferences from silence – essentially, what we regarded as the removal of the right to silence, the removal, or the abolishing, of a fundamental right.

In the circumstances, we abstained from the Second Reading in relation to the Bill.

We have done much work since we came into office, liaising with the relevant authorities and making sure that everybody was ready. It would have been our desire to have this not just on the statute books as it is, but commenced earlier, and we have had several discussions across the floor of this House since January of this year. It is now the position that we are ready to commence the two Acts in particular, and it is our intention – again, a slight qualification which I will mention later on – to have the two Acts, subject to the amendments – assuming that these are passed today – commence on 4th October 2012, which is next Thursday, on the publication of a notice in the *Gazette*. That, again, depends on the passing of the legislation today and the Assent being received and the necessary formalities being done during the early part of next week.

There are some provisions, Mr Speaker, in relation to the Criminal Procedure and Evidence Act, which have already commenced. By notice of commencement, which was published on 16th February 2012, we commenced, in particular, as from 8th March 2012, part 25 of the Criminal Procedure and Evidence Act, which deals with rehabilitation of offenders. We also had to commence, in order to make that possible – the effective commencement of part 25 – we commenced section 2.(1) of this Act which relates to definitions, section 698 and schedules 11 and 12. So all of those came into operation on 8th March 2012. It now remains for the rest of the Act to come into play.

It is not my intention, in moving the Second Reading of this particular Bill, to repeat all the arguments on our side that we put forward at the time of the Second Reading of the Bill in July of last year. Hon. Members will recall that the debates largely centred on what I have mentioned already relating to the right to silence and the inferences which could be drawn under *these* provisions from silence. Members will recall that, during the course of my intervention, I described this right as a fundamental right. I pointed out, in particular, that there was a Royal Commission in the United Kingdom in 1991, which reported to Parliament in 1993, which recommended *against* any changes which meant the removal of the right to silence or drawing inferences from silence. Notwithstanding those recommendations of the Commission, Parliament in England decided in 1994 to introduce amendments.

It is also useful to recall why those provisions in England were introduced, whereby inferences could be drawn from silence. They originated in Northern Ireland, where it was enacted in the first instance, and that arose simply in the fight against terrorism, where it was felt that inferences from silence should be drawn, specifically because of the need to combat terrorism and deal with terrorists. In England and Wales, again, part of the justification when this was introduced in the 1990s was to deal with terrorists and hardened criminals, criminals who used the system repeatedly and who were able to abuse the right to silence in order to obtain some advantage.

The history of the right to silence goes back a number of centuries, Mr Speaker. It can originally be traced back to the 17th century with the Star Chamber, when suspects were obliged to answer questions and they were locked up until they decided that they wanted to answer those questions. That then moved totally the other way in the history of the 19th century, when defendants were actually *forbidden* from giving evidence in their own defence. There was a famous pronouncement by a famous US jurist, John Henry Wigmore, when this principle emerged that 'no man is bound to incriminate himself on any charge, no matter how properly installed in any court, and that led eventually to what came to be known as the right to silence and it was enshrined in the judges' rules in 1912, exactly 100 years ago.

As far as the Government is concerned, and in line with the position that we took on the debate in the Second Reading of the Bill, as it was then, which is now the Criminal Procedure and Evidence Act, this is a fundamental right which ought to be preserved for Gibraltar. That is precisely what clause 2.(8) of the Bill does, and that is the fundamental provision, as far as this is concerned. Clause 2.(8) deletes sections 359 to 364. These are the sections which relate to inferences from silence, and therefore, by deleting these sections, it is clear that the right to silence is preserved and no inferences can be drawn from silence.

But that is not the end of the matter, Mr Speaker, because consequential on the deletion of the possibility of drawing inferences from silence, it necessarily follows that if someone has a right to be silent on arrest, at the police station, at trial, and no inferences can be drawn, and then has a right not to incriminate himself in any way and has a right not to give evidence and to put the prosecution to proof of its case – in other words, not to say anything at all throughout the whole trial process – in order for that right to be preserved, we also have to make a number of *further* amendments to the Act, and in particular those provisions of the Act which relate to disclosure of material. There are provisions introduced in part 12 of the Act which relate to disclosure of material both by a defendant and the prosecuting authority and, in particular, there is a provision which would require the *compulsory* disclosure by the defendant by producing a defence statement, and a defence statement would be required to set out a number of matters which are set out in the Act, including setting out the defence and setting out the defendant's… or the facts and points of law which the defendant takes issue with. We consider that leaving those provisions – a compulsory provision for the disclosure of the defence case – to be incompatible with the removal of the inferences from silence. So, if someone is entitled to be silent, then that person should not be obliged, or cannot be obliged, to make disclosure of a defence statement.

We are preserving, nevertheless, in the Act, the provisions which relate to voluntary disclosure or defence statement, because we consider that that is right. At the moment, anybody has a right… It is not a statutory right, but there is nothing that prevents a defendant from showing his cards either at interview or during the course of proceedings in court, or simply by writing to the court and the prosecutor in advance of a trial and saying, 'This is my defence, please take it into account.' Sometimes that is done in an attempt to convince the prosecutor that the case does not stand up to scrutiny and should be withdrawn, but there is nothing preventing, at the moment, a defendant from sending a letter and setting out his defence in advance, if that defendant chooses to do so. What the statutory scheme does is create a mechanism whereby voluntary disclosure can be made of a defence statement which sets out certain matters, and if a defendant wants to avail himself of those provisions and make that voluntary disclosure, then there is no reason why that person should not be entitled to do so.

One of the consequences of removing the compulsory right and leaving the voluntary disclosure is that the defendant may *not* make voluntary disclosure – in other words, there may be no disclosure at all – and one of the items which is set out in the contents of this defence statement of the Act is the requirement to give particulars in relation to alibis which may be relied on. That is currently part of the common law. At the moment, there is a requirement for a defendant who wishes to rely on an alibi to give an alibi notice setting out certain matters that he intends to rely on, and because there is a possibility, without the compulsory disclosure and without the voluntary disclosure, that there will be *no* disclosure under the statutory scheme in relation to alibi, then what we do under the Bill which is before the… Act today, by clause 2.(7) is reintroduce the requirements of a notice of alibi *if* the defendant is going to rely on an alibi. Therefore we felt that that was consequential to the amendments and it was a necessary provision that we should have.

That, in a nutshell, Mr Speaker, is what clauses 2.(6), (7) and (8) of the Bill before Parliament today do.

There are a number of other minor amendments of an insignificant nature in relation to typographical errors, and a number of changes of numbering which we have realised.

We have also added, through clause 2.(2), a number of new definitions. These are simply additional definitions that are included for clarity and for certainty.

The other amendment we are proposing to make in relation to the Criminal Procedure and Evidence Act, Mr Speaker, is in clause 2.(10) and 2.(11) of the Bill. These matters relate to child witnesses, where those child witnesses are, as set out in the Act, the current provisions, in need of special protection. We found that there was no mention in the Act as to *when* the circumstances arise as to when a child is in need of special protection, and all we have done is clarify the circumstances as to when that child should be considered in need of special protection. That would arise in proceedings which relate to a sexual offence or an offence of violence, and what we have done by adopting that wording is simply reflect the provisions that currently exist under the Crimes (Vulnerable Witnesses) Act 2009, so I would hope that those are not controversial.

Mr Speaker, if I could turn to clause 3, which relates to amendments to the Crimes Act, part 7 of the Crimes Act, Mr Speaker, deals with hate crimes. In particular, it relates to religious and racial hatred. We have a manifesto commitment to legislate in respect of all areas of hate crimes, and therefore we will expand – not in this Bill, but in due course – on the provisions of part 7 so as to include hate crimes in respect of other matters, such as homophobia and disability. We are currently working on amendments to the Crimes Act, but what I wanted to do today, given that we are introducing a Bill to amend the Crimes Act, is simply put the House on notice that we are working on further amendments to part 7 and we will introduce those amendments, hopefully, very soon.

For the purposes of today, and in relation to part 12, which are the current provisions in relation to the Crimes Act, we are proposing an amendment to section 113 of the Crimes Act, and that is by clause 3.(2).

Section 113 of the Crimes Act, Mr Speaker, deals with racially aggravated offences and there is a reference… It creates an offence in its own right, a racially aggravated offence, but in respect of other offences, and the other offences, by 113.(1)(a) relates to an offence under section 166, which is wounding with intent to cause grievous bodily harm, or 167, which is malicious wounding. There is a separate offence… Where somebody commits the offence of wounding with intent to commit grievous bodily harm they commit an offence under section 166. There is a separate offence under section 113 where, in addition to the ingredients of that offence, there is racial aggravation, a separate offence. So it is not just that the aggravation is taken into account for the purposes of sentencing; it is a new, probably considered more serious, offence, because it has an aggravating feature.

What we discovered is, quite simply, an anomaly, which we are seeking to correct in this Act because, under section 166, which is wounding with intent to cause grievous bodily harm, the maximum penalty is life imprisonment whereas, under section 113, which is the racially aggravated wounding with intent to cause grievous bodily harm, the maximum penalty is seven years, and we therefore felt that it was anomalous, and probably simply an error, that an aggravated offence should have a much lesser sentence than the original offence of wounding with intent to cause grievous bodily harm. Therefore, we are

simply seeking to correct that by increasing the maximum penalty for the aggravated offence to the same level as it is for the original offence, which is life imprisonment.

We are also seeking to correct what we consider, again, an error by clause 3.(4) of the Bill where, in section 176.(a) of the Crimes Act we are substituting a sentence of 12 months for what is now considered to be a sentence of six months. Section 176, Mr Speaker, relates to assault occasioning actual bodily harm. We have a further section in the Crimes Act, section 175, which is common assault, and common assault, on summary conviction, has a sentence of nine months, whereas assault occasioning actual bodily harm, which is a more serious offence, we currently have, on summary conviction, a maximum penalty of six months. We consider that section 176 creates a more serious offence than section 175 and if, in 175, for common assault we have a maximum sentence of nine months on summary conviction, then the appropriate level of sentencing for assault occasioning actual bodily harm should be 12 months rather than six months. Again, we regarded this as simply an error which we are correcting.

Mr Speaker, clause 3.(5) of the Bill is an important amendment. It is a substantive amendment. Sections 306 to 316 of the Crimes Act introduce provisions for the first time in Gibraltar requiring notifications for the purposes of being entered into a sex offenders' registry. By section 308.(1), the provisions relating to notification and the requirement to be entered into the sexual offenders' registry have retrospective effect. We had some concerns as to the practical effect of the operation of this and we have consulted, particularly with the Royal Gibraltar Police, on this matter, and the concerns are that there may be persons in Gibraltar who committed an offence, maybe years ago, who are not required, because there was no legislation at the time, to go on a sex offenders' registry. Those persons may well have rebuilt their lives. Those persons may well have children or young families, and for now – next Thursday or next Friday – to have a police officer knock on their door, remind them of that and cause them to enter, go on the sex offenders' registry we felt could have a devastating effect, not so much for the person who committed the offence but for the family and perhaps young children and other children who, for all we know, may even be unaware of what had happened. We consider that the sex offenders' registry is a good thing – not just a good thing, it is a necessary provision that we need to have in Gibraltar – but it is also necessary, in our view, to draw a line and choose a date from which notification for the purposes of entry into the registry should apply, and we considered that that date should be the date of commencement of the Act.

There is an exception which we are introducing to that because there may be persons who are currently serving a sentence of imprisonment in respect of a relevant offence, for the purpose of notification and entry into the sex offenders' registry, and that conviction would have happened already before the commencement of the Act. Therefore, we are introducing amendments to make it clear that the notification requirements arise from the matters listed in the Act – and they have caution or conviction etc, but also on the date of release from prison on the service of a prison sentence. There are, as hon. Members will see, also in relation to the Crimes Act, a couple of other draftings for tidying-up provisions which are actually included.

Mr Speaker, by letter to you of 21st September, which I asked should be circulated to all the Members of the House, I gave notice that I will be moving a number of amendments to the Crimes Act at Committee Stage, and it is probably right at this stage, in looking at the general principles of the Bill, that I explain why it is that we are introducing these amendments.

These amendments create new offences. They are offences relating to pornographic performances involving children. The amendments arise as a result of the Council of Europe Convention on the Protection of Children Against Sexual Exploitation and Sexual Abuse, which we are currently considering and are in discussions for the purpose of having this extended to Gibraltar. All of the provisions of the Convention are already covered in our Crimes Act, except one specific provision in article 21. Article 21 of the Convention deals with offences concerning the participation of a child in pornographic performances and requires legislative measures to be taken for conduct to be criminalised which relates to recruiting a child into participation in pornographic performances or causing a child to participate in such performances, coercing a child into such performance or profiting or otherwise exploiting a child, and also knowingly attending a pornographic performance involving the participation of children.

Mr Speaker, we considered whether the existing provisions in our legislation and in the Crimes Act would be sufficient to encapsulate and cover the crimes which are envisaged and the offences which are envisaged by article 21 of the Convention. In particular, we considered three offences which might actually cover those provisions, and those offences would be causing a person to engage in sexual activity without consent, causing or inciting a child to engage in sexual activity – there is a provision about the ages and, thirdly, pay for sexual services of a child. So it is possible that what we are trying to introduce by these offences is already covered through other offences, but they do not relate specifically to engaging in pornographic performance, and we felt that a crime such as this, an offence such as this, would be so heinous as to justify a requirement to have self-standing offences which we believe strengthen the statutory and criminal provisions in the criminal… the Crimes Act in particular.

Therefore, we are introducing a number of offences which involve intentionally causing, encouraging or assisting a child to participate in a pornographic performance, using threats or coercion and doing that for payment or the expectation of payment, which takes care of the profiting side, which is mentioned in the Convention, and also knowingly attending a pornographic performance. Again, we consider that these offences are so heinous that they justify a very serious punishment, and a maximum offence which we are setting out in the amendment that I am proposing is of 14 years. Mr Speaker, as I mentioned earlier, it is our intention, subject to everything being in place, to commence this by notice, these provisions, again subject to the amendments… to commence these by notice, which we intend to publish on 4th October.

But I should mention one other provision in relation to the Criminal Procedure and Evidence Act, Mr Speaker, and that is section 85.

Section 85, Mr Speaker, deals with the right for a person arrested and held in custody in a police station, if he so requests, to consult a legal representative privately at any time; in other words, a statutory right to consult a lawyer. That provision was absolutely necessary and essential in the context of inferences from silences being drawn. It was absolutely necessary, because otherwise the statutory scheme simply would not work. There is case law and there had been provisions that would suggest that you cannot draw inferences from silence unless somebody has a right to consult a lawyer. So that is the rationale for including that in the first place in the Act.

We are removing the provisions relating to inferences from silence, so there is no absolute necessity, for the statutory scheme to work, for this provision to be there, but we actually believe that it is a good thing. It is good for a statutory right to be given for persons held in custody to have access to legal advice, to have the right to have access. It is not very different to what happens at the moment, where persons who are detained are informed that they are entitled to call a lawyer if they so choose, but this introduces a statutory right and a statutory right, once introduced, requires the provision of resources in order to make that right effective because, if what you would be saying to persons arrested is 'You have a right, *if* you can afford it', then it undermines the right or if you have a right, unless you make provision available for that right to be effective in practice then section 85 *could* turn out to be ineffective.

Therefore, what this requires is the putting in place of a duty solicitor scheme. We wanted to put in a duty solicitor scheme in any event, regardless of the provision although requirement to do so as a result of the right to the inferences which would be drawn from silence. We have consulted the Bar Council, I have consulted the Chairman and I have had a meeting with other representatives of the Bar Council. Following my initial consultation with the Chairman of the Bar Council, the Chief Executive of the Gibraltar Court Service sent out a circular to all chambers, inviting practitioners to put their names down for the scheme and setting out the payments which would be required. It is true that, following the issue of the circular, there has been some concern expressed by some practitioners as to the operation of this and, in particular, in relation to the level of fees. I should say that the fees which are set out in the circular and which are intended to be introduced as from next Thursday are, for all intents and purposes, almost identical and taken from what actually applies in the United Kingdom.

There is a police station advice and assistance fixed fee scheme which was introduced with effect – or rather, this version and these rates – were introduced with effect from 14th July 2008 and, subject to some tweeking because, although in the United Kingdom, they have a fee and five pence, we have rounded up the figures to produce the figures which are actually set out in the circular.

I acknowledge that there has been some concern and I can confirm today the commitment that I have given to the Bar Council which is to review these rates in conjunction with a review that we are currently undertaking in relation to the Legal Aid and reform of Legal Aid. It is important to state, Mr Speaker, that this scheme has nothing to do with Legal Aid it is something separate. It is a fixed fee scheme which people would be automatically entitled to, if they so request, without the requirement to be means tested or any other qualification – so it is separate from the provisions of the Legal Aid Scheme – it is an absolute entitlement.

But of course the success of the Scheme depends on the availability of practitioners on the list. Therefore, the qualification that I mentioned earlier is that if, come next Thursday, we find that we do not have lists, or insufficient numbers to make a scheme workable, then we will commence the rest but not section 85. We do not believe that it would be right, simply because this scheme is either not fully implemented, or not fully implementable, that we should leave everything else in abeyance and, therefore, what we would simply do is postpone the commencement of section 85. That would not mean that persons who are arrested are not entitled to their lawyer. In the same way as happens today persons who are arrested would be entitled to call a lawyer of their choosing and to engage a lawyer, either for the purposes of a telephone consultation or attendance at the police station. That is what happens now, that is what will continue to happen whether or not section 85 is commenced because someone who is arrested can say, 'Well, I don't want to avail myself of the Scheme. I don't want the next person on the rota system' – because the way this would work is that the Court Service would compile a list of practitioners, that list would be passed on to the Royal Gibraltar Police and the Royal Gibraltar Police would administer the list by simply calling the next person, if someone wants to avail themselves of this statutory right.

So it is not the case that someone would say 'Well, I want my own lawyer but I want him under the Scheme.' If someone wants a lawyer under the Scheme, then the next, the duty solicitor who happens to be on duty on that particular day by being the next person on the list, that person would be called. If there is a call, either the same night or another night, then the next person on the list would be called… so it does not change what currently happens and the entitlement to legal advice at the police station but we simply wouldn't be able to put in the statutory right accompanied by the duty solicitor scheme.

We are committed to making this Scheme work but it clearly requires, and we trust will have, sufficient support from practitioners. I have consulted with the Chairman, I had a meeting with other members of the Bar Council yesterday, I gave them the commitment which I told them that I would be making also public today, so that it is crystal clear that these are rates that we will give you when we review the Legal Aid provisions.

Mr Speaker, on that basis, I commend the Bill to the House.

Mr Speaker: Before I put the Question, does any hon. Member wish to speak on the general principles and merits of the amendment to the Bill.

The Hon. Daniel Feetham.

Hon. D A Feetham: Mr Speaker, yes.

This Bill amends two seminal pieces of legislation, the Crimes Bill and the Criminal Procedure and Evidence Bill – or Acts, because they were passed last year. At the time I described them as the most significant reforms of our criminal justice system in over a hundred years and I stand by that comment.

Mr Speaker, that does not mean that, seminal as they are, pieces of legislation cannot be improved upon and, indeed, my comments on this Bill that the Hon. the Minister for Justice presents to this House today. It could be that my comments – or the general categories in which I place them – could be transposed to other Bills, as follows.

There is a category of case, for example – or category of amendments, for example – where, clearly, amendments improve upon the legislation that we have already brought to this House and passed by this House, albeit with our majority, the amendments in relation to, for example, Child in Need of Protection. I accept that those are improvements that the Hon. the Minister for Justice is making in relation to the Bill – the Act – that I presented to the House last year. Indeed, there may be European obligations and, although the Hon. the Minister for Justice has very fairly outlined the fact that the offences in relation to the amendments that he wishes to bring to the Bill, that he presented before this House, on child pornography, may well be covered already by the Crimes Bill, I accept that it is preferable to actually bring amendments to make it absolutely clear and make the point beyond doubt on something as important as that than not bring the amendments at all.

There are other classes of Bill: there is a second class of case and the second class of case may well be cases where *we* had made a particular policy decision in relation to a particular area. Often, policy decisions are taken, some of them are often very finely balanced, arguments are very finely balanced: we take a particular view of a particular policy, *they* are obviously entitled to take a different view. That does not mean that their view is not as valid as ours. The point I am making is that these are very often fine decisions that one makes and I can assure the Hon. the Minister for Justice that if, in future, he brings to this House a Bill or a particular amendment to our legislation that falls on the other side of the policy decision that we have taken, simply because we took a different decision does not mean that we will necessarily oppose the Bill. When one recognises that there are very fine arguments in reaching that policy decision, for the sake of being constructive and for the sake of moving things forward, we would certainly, in appropriate cases, support the Government even though we reached a different decision when we were in Government.

We certainly are not beyond being persuaded by the Hon. Minister or by the Government that the decision that we took, perhaps in the light of subsequent events, should no longer stand. I had hoped, in fact, that the amendments that the Hon. the Minister for Justice is moving in this Bill in relation to the Sexual Offenders Register might actually be one of those. I had hoped to, actually, be able to stand in this House today and say, having listened to the hon. the Minister for Justice, I am now persuaded that, in fact, the Register ought *not* to be made applicable retrospectively, but ought to be applicable prospectively. I have to say that, having listened to the Hon. the Minister for Justice, unfortunately I cannot agree with the arguments that he has advanced, for this reason: that you may have a very blatant – that probably is the wrong word… if you have been convicted of a sexual offence it is blatant – but you may have a serial sexual offender who has been convicted of a number of particularly heinous offences against children. Are we saying that simply because the conviction occurred ten years ago and the sentence has already been served, that he ought not to go on the Register simply because of the effect that it may have on his family. I do not think that that is a valid reason at all. Here our principal duty as legislators ought to be to protect society, to protect the community and, indeed, to protect also the victims of crime. In that kind of situation, I believe that the case would be compelling for inclusion on the Register, despite the fact that

the conviction occurred ten years ago and that the sentence had already been served.

There is a third class of case where the differences in policy, the differences in philosophy, the differences in approach between this side of the House and that side of the House are so marked, are so disparate and different that it is not possible, with all the will in the world, with all the desire on this side to obviously be constructive and conduct politics constructively, to support the Government. I am afraid that that applies in relation to the right to silence, although that is a misnomer because the Crimes Act or the Criminal Procedure and Evidence Act *did not* abolish the right to silence. It gave judges, in appropriate circumstances, the right to draw adverse inferences in the summing up to the jury. It did not abolish the right to silence.

But it is also equally applicable to the requirements that we introduced in the Criminal Procedure and Evidence Act in relation to defence disclosure and I do not agree and I refer the hon. Gentlemen to the Criminal Procedure – well to section 241 and also 243 of the Criminal Procedure and Evidence Act – in a moment. I will take him to that in a moment, and I do not agree that it necessarily follows that because the hon. Gentleman opposite – the Government – take a different view on the right to silence that they necessarily have to take a different view to us in relation to advanced disclosure. I will explain my views in a moment.

But, Mr Speaker, the Criminal Procedure and Evidence Act was a very carefully – in our respectful view – balanced piece of legislation that sought to balance the rights of the accused and the need to ensure that, as between the defence and prosecution, both parties enjoy, as much as possible, equality of arms in the trial process and also in the pre-trial process. It is also right that it sought to balance the rights of the accused with also the rights of the victims of crime and the rights of society to be protected against potential criminals. But this involved, Mr Speaker, a re-balancing of the trial system away from the accused in certain instances. Yes, it did and we, as a party, and the Opposition of the day, are unapologetic about it. Is it right that a judge, in appropriate circumstances, should be able to refer to the fact that the accused is relying on – I use it as an example, but it applies to other cases – an alibi defence at trial, when he failed to mention to the police in an interview 'It could not have been me, because I was not there. I was with Mr *x*, or Mrs *x*, or somebody else.' He could have mentioned that at a police interview. Is it right that a judge ought to be able to refer to the fact that he could have mentioned it at a police interview, did not do so, but relied on an alibi defence at trial? In our view, yes, it is. Is it right that the defence should have to provide advance disclosure to the prosecution in the same circumstances, that the prosecution has a duty to the defence? Yes, it is. Is it objectionable that the defence should be required to notify the prosecution of the names of defence witnesses, or the names of defence experts at trial, but before trial? No, it is not objectionable.

Mr Speaker, leaving aside the question of the right to silence, which was very fully ventilated in this House on the merits of the Second Reading of the Criminal Procedure and Evidence Bill last year, there is absolutely no conceivable reason, in our view, why the defence should not be subject to the same advance disclosure requirements as the prosecution. It is about time the trial process was, in our view, conducted with cards facing upwards on the table.

Mr Speaker, it is often said, in support of the position taken by the Government today on the obligations imposed on the defence for advanced disclosure that our system is adversarial, not inquisitorial; that we require the prosecution to prove its case and they should not be helped by disclosure made by the defence; that the defence *ought* to be able to ambush the prosecution at trial, at the eleventh hour with last minute defences.

Mr Speaker, I have always felt – I can see that Mr Costa is nodding, as a defence lawyer, saying, 'Yes, absolutely right' – that this argument relegates the desirability of achieving the right outcome based on all the evidence, on an equality of arms basis, to secondary importance. That cannot, in our respectful view, be right.

But can I take the hon. Gentleman to the Criminal Procedure and Evidence Act and, in particular, to section 241 and also 243. What section 241 does, which is the section on compulsory disclosure by the defendant, I just want to place the debate in context in relation to what the section means and also when it bites. Section 241.(1) actually says this.

> 'Subject to subsection (2) to (4), this section applies if –
> (a) this Part applies by virtue of section 238…'

and that lists the categories of cases, summary, cases of indictment, in some cases, and

> (b)

– this is important –

> 'the prosecutor complies with section 239 or purports to comply with it.'

In other words, it only bites if the prosecutor has complied with 239.

Now, 239 then says:

'The prosecutor must –
(a) disclose to the defendant any prosecution material which has not previously been disclosed to the defendant and which might reasonably be considered capable of undermining the case for the prosecution against the defendant or of assisting the case for the defendant; or
(b) give to the defendant a written statement that there is no material of any description mentioned in paragraph (a).'

It applies in circumstances where the prosecution has been provided with that advanced disclosure. It is not an obligation that applies across the board, but we also need to look at the scope and the extent of the obligation, because the Hon. the Minister for Justice said it necessarily follows, from the position that we have taken with relation to the right to silence, that these provisions ought also to go. I do not agree with that and, in fact, when one looks at the scope of the obligation on defence counsel for disclosure, one sees that they are eminently reasonable obligations on the defence.

They only bite when the prosecution has provided, itself, disclosure. For the scope –

Hon. G H Licudi: Could the hon. Member just give way on that point?

Hon. D A Feetham: Yes, of course.

Hon. G H Licudi: The hon. Member says this only bites when the prosecution *itself* makes the disclosure, but the first words of section 239(1) are

'The prosecutor *must*'.

In other words, it must be assumed that a statutory obligation on a prosecutor *will be complied with* and disclosure will be given by the prosecution. Therefore, section 241 would *always* bite.

Are there any circumstances in which the hon. Member can think of where the prosecutor is going to ignore a statutory obligation to provide disclosure? Does the hon. Member not agree, in any event, that the prosecutor *currently* has an obligation to provide that disclosure? What we are having now is a statutory obligation, which we are retaining; we are not intending to… but the suggestion that section 241 and the obligation to provide compulsory disclosure by the defendant is somehow *conditional* on something… It is not conditional on anything, because there is a statutory right, which the prosecutor *must* comply with.

Hon. D A Feetham: Mr Speaker, my understanding of the position is that it is not across the board that the prosecutor… but it makes absolutely no difference to the point I am making.

Section 241 applies where the prosecutor complies with section 239 or purports to comply with it *(Interjection by Hon. G H Licudi)* Right. It is a provision where there is reciprocity on the part of the defence to something that the prosecution has already done. In other words, there is an obligation on the prosecution to provide disclosure. The prosecution provides that disclosure, there is then an obligation on the defence, for the defence to provide disclosure, but we have also got to analyse… so it is not a situation, we are not talking about a situation here where defendants are required to do something effectively unilaterally in circumstances where the other side to that particular case has provided no disclosure itself. It is predicated on that basis, but we also need to analyse what is the disclosure? Is it *reasonable* disclosure? How onerous is the disclosure on the defence? I think, if one looks at section 243(1) contents of the defence, and in fact, the disclosure is the defence statement. That is the disclosure the defence provides.

The defence statement is then 243:

'For the purpose of this Part a defence statement is a written statement –
(a) setting out the nature of the defendant's defence, including any particular defences on which he intends to rely;'

That does not necessarily have an impact on the – it does not at all in our view – have an impact on a defendant's right not to take the witness stand, for example. Because if directed to a situation – just to give you an example – the defence may be, 'Well, it is not murder, but it is manslaughter by reason of the fact that diminished responsibility applies'. That does not affect the defendant's rights in terms of his ability not to go in the witness box, for example. We do not see anything wrong with the fact that a defendant is obliged to disclose to the prosecution the fact that the defendant is relying on a defence of diminished responsibility.

'(b) indicating the matters of fact on which he takes issue with the prosecution;'

But what are the facts on which he takes issue with the prosecution? Version of events, setting out the case of each matter, why he takes issue with the prosecution, setting out particulars of matters of fact on which he intends to rely for the purposes of his defence… Again, it does not impact on his ability not to give evidence at trial, he may not give evidence at trial but he may have somebody else giving evidence and he is relying on the facts of another witness. What is wrong with a defendant's providing advanced disclosure of that?

'(e) indicating any point of law (including any point as to the admissibility of evidence or an abuse of process) which he wishes to take…'

In other words, these are arguments of law that a defence counsel may ambush a prosecution at the eleventh hour and it is dealing with advanced disclosure of that. Then, in relation to 245, all that 245 – which is another section that is being repealed as a consequence of this Bill – all 245 actually does is deal with the notification of the intention to call defence witnesses, and 246 – which is another section that is being repealed – deals with notification of the names of experts instructed by the defendant. I cannot see why advanced notification of witnesses the defence wants to call or the name of an expert that the defence wishes to rely upon, why that has an impact on the right to silence. I do not. I just do not agree that it has an impact on the right to silence. In fact, that argument is even clearer than the arguments that I have postulated in relation to section 243.

Mr Speaker, I do not agree that one necessarily follows from the other and I do think that these are obligations that do balance the process up in terms of the defence and also the prosecution in circumstances where the prosecution has an obligation to provide the defence with disclosure. It is often said that the reason why… it is often said against this question of advanced disclosure and also, indeed, in relation to the adverse inferences that can be drawn – provisions allowing adverse inferences to be drawn from the exercise of the right to silence – that is necessary because the police somehow have *huge* resources at their disposal, whereas defendants do not. Now, Mr Speaker, in this jurisdiction – it is an argument which has been deployed in the United Kingdom – in this jurisdiction I am not sure that that is an apposite example and it is certainly *not true* across the board.

Mr Speaker, we have a very small police force; we have a small prosecuting team, as part of Her Majesty's Attorney General's Chambers. A team, both in terms of the police and also the prosecution, that does not have the resources, does not have the expertise that is available to counterparts in the United Kingdom. The hon. Gentleman changed, for example, the Legal Aid rules recently in order to allow complex fraud cases, effectively commercial funding of those cases in terms of lawyers here and also lawyers in the UK. There is a judgment from the Chief Justice dating some two years back, which *already* allowed the commercial… the outside counsel to charge commercial rates in criminal cases – *(Interjection by Hon. G H Licudi)* …but we do have a situation – *(Interjection by Hon. G H Licudi)*

Yes, but the hon. Gentleman is making – just for the benefit of the public – the point that it is not right to have outside counsel being able to charge commercial rates in criminal cases, but not Gibraltar counsel and Gibraltar lawyers. I accept that entirely, but of course, that is not the effect. The amendments that the hon. Gentleman made to the Legal Aid rules did not cure that particular loophole, because all it did was – in complex criminal cases it did, but not in relation to all the other cases. That is certainly wrong.

What we have is a situation… what we have in very complex fraud cases, for example, you have defendants now being able to charge hundreds of thousands of pounds – or lawyers being able to charge hundreds of thousands of pounds, both local lawyers and, indeed, accused having the benefit of some of the best QCs in the United Kingdom, coming to defend them at taxpayers' expense on their cases. Indeed, in relation to the effect of the judgment by the Chief Justice a couple of years ago, in non-fraud cases, again that is also possible. We do have a situation where, habitually, you have outside counsel coming into Gibraltar, very experienced counsel, specialist counsel, top counsel, coming to Gibraltar and being used in order to defend the accused in criminal cases.

The point I am making, Mr Speaker, is that that is all fine but I do not accept the argument that the system is weighted in favour of the police or the prosecution in Gibraltar across the board. That is not the case and that is often an argument that is deployed in favour of not having advance disclosure by the defence in criminal cases.

Mr Speaker, our Bill –

Hon. G H Licudi: Would the hon. Member give way on that point.

I acknowledge that the hon. Member simply says that is '*an* argument' that *can* be deployed. The hon. Member will not have heard me deploying that argument during the course of this debate for the purpose of presentation of this particular Bill.

It is *not* our position that, because of that argument, these provisions ought to go. Our position, as I

have explained, is that we consider that they are inconsistent with the other amendment we are doing, removing the inference from silence. We may take a different view but we consider these to be consequential provisions on that. We have no point of principle in relation to this matter, no point of policy, but we consider that the scheme, as it stands, without the inference from silence, with the right to silence, would simply be unwelcome. This is the position.

Hon. D A Feetham: Well, I am very grateful.

The arguments that I have outlined and that I have come prepared to meet in the context of the merits of this particular Bill bearing in mind that, in fact, the provisions about advanced disclosure did not form part of the substantive debate on the second reading of the Criminal Procedure and Evidence Act –

Hon. G H Licudi: Why is it a consequence of that?

Hon. D A Feetham: – because, as I recall, the Opposition then did not actually take a position in relation to advanced disclosure. Their position was… but I came here, obviously, to also meet the arguments that have been advanced in the United Kingdom by defence counsel in relation to this and also by academics like Professor Zander, who argued against advanced disclosure on precisely that basis but I am very grateful to the Hon. the Minister for Justice for clarifying that point.

Mr Speaker, in summary, our Bill, which was passed in Parliament last year and became the Criminal Procedure and Evidence Act – and I concentrate on that because, really, most of the controversy is in relation to that – very carefully balanced the rights of the accused and the need to ensure that the accused did not hide behind a system heavily stacked in their favour and away from protection of society and also from protecting victims of crime.

I think that this is a retrograde step and, therefore, we will certainly be voting against the Bill.

Mr Speaker: Does any other hon. Member wish to speak on the general principles and merits of the Bill?

Does the mover of the Bill wish to reply?

Hon. G H Licudi: Yes, Mr Speaker.

The hon. Member starts his contribution – I am grateful for his contribution, which is positive and constructive, where it has been possible for him to be positive and constructive, but clearly highlighting the fundamental difference that there is in terms of policy as between that side of the House and this side of the House… He starts by saying that these two Bills, taken together, represent, as he stated when he originally introduced the Bills last year, the most significant reforms of the criminal justice system.

We recognise that is certainly the case and we acknowledge all the work that was done in putting this in place before December 2011. It was not possible, for reasons that the hon. Member clearly knows, to have introduced this before December 2011. Therefore, it fell to us to do so subsequently.

But these are really monumental changes to the way the criminal justice system has worked in Gibraltar for many, many years. Because they are monumental changes, it has taken, unfortunately, this long to get it right and be in a position to actually commence this. It is not just a question of time, it has taken a lot of effort by a lot of people to get systems in place, in particular Royal Gibraltar Police, Customs and other authorities, who have all been consulted and been part of the process in order to get training up to speed, the processes up to speed, to make sure that the drafting of the codes of practice was in place and could be published. So it has been – because it is such a significant reform – a monumental effort and I want to acknowledge that effort, firstly by that side in bringing this to the House in the first place and, subsequently, since December when all the agencies and professionals that we have dealt with in getting this to the stage where we are today.

Hon. D A Feetham: Mr Speaker, I want to associate myself entirely with the Hon. the Minister for Justice's words on that point because it really is a monumental effort by everybody concerned and I acknowledge entirely the work did not finish when we presented the Bills to the House last year.

Hon. G H Licudi: I am grateful for that.

Mr Speaker, there are really two fundamental points – perhaps three – that the hon. Member makes.

The first one is in relation to the sex offenders' registry, in relation to the possibility of retrospective effect. I mentioned that we have carried out consultation; this is a matter that we have deeply considered. It is not something that one does lightly without consideration and giving the matter deep thought. We are clearly on the same side when it comes to protection of victims, when it comes to protection of children, when it comes to protection of vulnerable persons in our society and we need to make sure that everything possible and everything necessary is done. But at the same time, the hon. Member has spoken of balance: we also have to balance rights of other people and that is precisely what we have done.

As the hon. Member well knows, the general principle in relation to the criminal law generally is that it should not have retrospective effect and that is generally applied specifically in relation to offences. You should not introduce an offence *now* in relation to acts that were done two years ago or three weeks ago, where the person perpetrating those acts did not know that he may have been committing an offence, at the time that whatever person has committed a crime – which is now a relevant offence – these provisions in relation to the registry would not have been there. We are not just thinking – and in particular to emphasise – we are not just thinking of the right of those particular persons but the rights of other people around that person who would be affected and after – I can honestly say to the hon. Member – very, very deep and careful consideration, we felt that the *right* thing in relation to the Register was to do it prospective rather than retrospective, but with the exception that we did not want to, let me put it colloquially, 'let off the hook' people who have been convicted recently and who are currently serving a prison sentence. That is the reason why we have done that.

In relation to the right to silence, we clearly disagreed at the time of the Second Reading of the Bill in July 2011, we disagree now, fundamentally on whether these provisions abolish the right to silence or not. We believe that they clearly do when you have inferences which can be drawn from silence, then that person no longer has the absolute right *without consequences* to remain silent. A right is a right without detriment. Where detriment is included, then that no longer becomes a right and that right goes out and is abolished.

I acknowledge that that is a matter that we disagree on but we were particularly conscious of, as I mentioned earlier, the provisions of the report which was made by the Royal Commission in the United Kingdom in 1993, which was made to Parliament, and we consider that they put together some very, very powerful arguments in their recommendation *against* making the changes which this Bill actually introduced causing those inferences and it may well be worth recalling because it is important to understand why we have this right and why we feel it is important to retain these rights. The arguments in favour of retaining the right to silence which was put by the Royal Commission in the report were:

(1) That circumstances of police interrogation are such that there can be no justification for requiring a suspect to answer questions when he or she may be unclear about both the nature of the offence which he or she is alleged to have committed and about the legal definitions of intent, dishonesty etc, upon which an indictment may turn.

(2) Innocent suspects' reasons for remaining silent may include, for example, protection of family or friends, a sense of bewilderment, embarrassment or outrage, or a reasoned decision to wait until the allegation against them has been set out in detail and they have the benefit of considered legal advice.

(3) Members of ethnic or other minority groups may have particular reasons of their own for fearing that any answers they give will be unfairly used against them.

(4) There is a risk that if the police were allowed to warn suspects to decline to answer their questions that they face the prospect of adverse comment at trial, such a power would sometimes be abused.

(5) It is now well established that certain people, including some who are not mentally ill or handicapped, will confess to offences they did not commit.

(6) The threat of adverse comment at trial may increase the risk of confused or vulnerable suspects making false confessions.

We felt at the time, and we continue to feel, that those are powerful arguments. Not that we endorse or condone or suggest that, in relation to one of the points that was made about the abuse by the police, that we fear that that is actually happening in Gibraltar –

Hon. D A Feetham: For the avoidance of doubt.

Hon. G H Licudi: – for the avoidance of doubt that that maybe happening in Gibraltar. I was simply reading what the arguments put forward by the Royal Commission, but that is not a concern that we have but we believe, on balance, there is a powerful argument.

So those are the reasons why we are removing those provisions which relate to the right to silence and inferences from silence. So our position at the second Bill, and subsequently in Government at the Second Reading of the Bill, subsequently in Government when we were considering the amendments that needed to be made to this Act in order to put our policy in place, was that we should simply remove those five or six sections that relate to inferences from silence.

We felt, well, that is what we fundamentally disagree with, then we remove those provisions. It was then, during the course of the process of the amendments, it was brought to our attention that there are these other provisions relating to the disclosure obligations. What do we do with them? Do we leave them; do we require the defence and provide that balance that the hon. Member has alluded to? We did not consider, as I said in my intervention earlier, that there were *independent* arguments why that balance does not need to be addressed, there is no objection in principle to the defence putting forward a defence statement… But we felt these provisions would simply be unworkable.

I explained earlier the provisions, they arise in relation to a response by the prosecution, which is a

statutory requirement and duty by the prosecution, because it says that 'the prosecution *must'*. Therefore, we must work on the assumption and the basis that the prosecution *will* in Gibraltar comply with all statutory duties and therefore this will also arise. What we felt was that it was simply unworkable where there is a right to silence and no inference can be drawn from that fact.

It is unworkable because, if the person has that particular right, the right not to say anything at all and no inferences can be drawn from that exercise, how can he then be obliged to set out his defence in advance? He has a right to silence, he has a right to be silent throughout the whole trial process and, in relation to the defence, he even has a right to say, 'Well, I don't say anything at all, I simply put the prosecution to proof'. They have the burden of proof: the standard, as we know, is beyond reasonable doubt, and it is – not often the case but it is certainly not unusual – that the defendant simply gets up at some stage during the trial process, sometimes in the middle of the case or when the prosecution has finished his case, and says 'The prosecutor's case simply doesn't stand up to scrutiny: it doesn't add up to prove beyond reasonable doubt. I didn't have to say anything, I don't say anything and I just leave it in the hands, first, of the court in a submission at half way, or leave it in the hands of the jury.'

We consider that the changes we are making in relation to disclosure are merely consequential but necessary because of the removal of the inferences from silence.

We do not consider that, in Gibraltar, we have a system which is so unbalanced as to be an unfair system, a system which creates an unfair advantage to those who are charged with criminal offences. We *all* want to see the guilty convicted, but it is a *very, very* serious matter for innocent people to be found guilty as a result of something which they may have said, or an inference that can be drawn or an act which they may have taken, and we believe it is absolutely necessary and fundamental that we protect those rights of the innocent who may be falsely charged, who may have said something perhaps out of order, perhaps because of the circumstances. It is fundamental that those rights also be preserved and, for all those reasons, Mr Speaker, we will stick with the amendments that we have proposed.

Mr Speaker: I now put the Question, which is that a Bill for an Act to amend the Criminal Procedure and Evidence Act 2011 and the Crimes Act 2011 be read a second time.

Those in favour. (**Government Members**: Aye.) Those against. (**Opposition Members:** No.) Carried by Government majority.

Clerk: The Criminal Justice (Amendment) Act 2012.

Criminal Justice (Amendment) Bill 2012
Committee Stage and Third Reading to be taken at this sitting

Minister for Education, Financial Services, Gaming, Telecommunications and Justice (Hon. G H Licudi): Mr Speaker, I beg to give notice that the Committee Stage and Third Reading of the Bill be taken today, if all hon. Members agree.

Mr Speaker: Do all hon. Members agree that the Committee Stage and Third Reading of the Bill be taken today? (**Members**: Aye.)

Mr Speaker: The Committee Stage and Third Reading will be taken today.

Chief Minister (Hon. F R Picardo): Mr Speaker, I am conscious of the fact that Members are able to come in and out of the Chamber, but that you and the Clerk are not. Is that a convenient moment to recess for a few minutes.

Mr Speaker: That is very convenient and very considerate of the Hon. the Chief Minister.

The House will recess for 10 minutes. Thank you.

The House adjourned at 7.10 p.m. and resumed its sitting at 7.25 p.m.

COMMITTEE STAGE

Broadcasting Bill 2012
Births and Deaths Registration (Amendment) Bill 2012
Criminal Justice (Amendment) Act Bill 2012

Clerk: Committee Stage and Third Reading, the Hon. the Chief Minister.

Chief Minister (Hon. F R Picardo): Mr Speaker, I have the honour to move that the House should resolve itself into Committee to consider the following Bills, clause by clause: the Broadcasting Bill 2012; the Births and Deaths Registration (Amendment) Bill 2012; the Criminal Justice (Amendment) Act Bill 2012.

In Committee of the whole Parliament.

Broadcasting Bill 2012
Clauses considered and approved

Clerk: A Bill for an Act to make provision for the Gibraltar Broadcasting Corporation and to transpose into the law of Gibraltar Council Directive 2010/13/EU of 10th March 2010 of the European Parliament and of the Council on the co-ordination of certain provisions laid down by law, regulation and administrative action in member states concerning the protection of audiovisual media services, Supplementary Directive 2007/65/EC of the European Parliament and of the Council of 11th December 2007, and for connected purposes.

Clause 1.

Chief Minister (Hon. F R Picardo): Mr Speaker, I would move to place before the House and hon. Members in Committee the amendments set out in my letter of 26th September 2012. I think all of them have been ventilated in debate and I would move to move the Bill with all of those amendments.

Mr Chairman: Is the Opposition content with that procedure to avoid having to read each one?

Hon. D A Feetham: Yes, Mr Speaker.

The Clerk has already spoken to me about this and we are content for the proposed amendments to be read as if they are part of the Bill, not only in relation to this one but also in relation to the Hon. the Minister for Justice's Bill later on.

Mr Chairman: Thank you.

In that case, all the proposed amendments contained in the Hon. the Chief Minister's letter to me dated 26th September will be deemed to have been formally tabled at the Committee Stage and *Hansard* will record the letter as part of the record of *Hansard*. Correct?

Hon. Chief Minister: I am obliged to the Members opposite.

Mr Chairman: Great.

THE CHIEF MINISTER 6 CONVENT PLACE GIBRALTAR

26th September 2012

The Hon H K Budhrani Q.C.
Speaker
Gibraltar Parliament
156 Main Street
Gibraltar

Dear Mr Speaker

AMENDMENTS TO BROADCASTING ACT 2012 [B. 11/12]

I beg to give notice that I shall be moving the following amendments to the Bill for a Broadcasting Act 2012 during Committee Stage, the amendments serve six main purposes.

In order to assist members, I am setting out the reasons for the most important amendments in this letter in anticipation of the debate on the Bill on Friday afternoon. Although there are quite a number of amendments they are mostly technical in nature and driven by advice of draftsman for the reasons more specifically set out below.

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First, they provide for the revocation of the current AVMS regulations by importing provisions contained in those regulations into this Act and harmonising the language used in this Act with the drafting style of those Regulations. It has been decided to do this in order to ensure that there is no confusion as to whether in a particular circumstance a person is covered by the Act or the regulations and at the same time to maintain a sense of continuity regarding the use of language which has been proven to work. The majority of the amendments fall into this category both in terms of numbers and volume.

Second, the amendments remove references to the Transmission Standards Directive and to issues relating to conditional access. On further consideration it is the Government's view that these areas would, due to their technical nature, be best dealt with by subsidiary legislation.

Third, the amendments provide for a greater transparency and independence in the appointment of the GBC Board. There is a proposed amendment which requires that the Chief Minister consult with the leader of the opposition before making any such appointment and there is a further amendment which removes from the Minister the power to appoint a particular auditor himself.

Fourth, further to there being a distinct possibility that operators outside Gibraltar may wish to use Gibraltar as a base for their

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broadcasting amendments are included making it clear that use of the Digital Terrestrial Network falls within the scope of the Bill.

Fifth, there are amendments included which either move powers and functions currently drafted as being in the hands of the Minister or the Minister and the Authority to being directly under the sole control of the Authority. This includes removing the need for the Authority to require the consent of the Minister before it acts in certain circumstances. It is intended that this will allow for greater independence in the regulation of the Act.

Sixthly, and finally, there are amendments which correct certain typographical, formatting and grammatical issues which have been noted since the Bill was first published. It is not intended that any of the amendments which fall within this category substantially change the content of the Bill, rather that they make it clearer.

The amendments are-

(1) in the long title after "11 December 2007" insert "amending Council Directive 89/552/EEC on the coordination of certain provisions laid down by law, regulation or administrative action in Member States concerning the pursuit of television broadcasting activities";

[This amendment corrects the reference to the Directive in the Long Title to include its full name.]

(2) in clause 2(1) insert the following definitions in the appropriate place in alphabetical order-

""DTT" means the national Digital Terrestrial Television network;";

""Non-European works" means works other than works within the definition of "European works";

"TFEU" means the Treaty on the functioning of the European Union";

[These amendments insert definitions which are used elsewhere in the Bill.]

(3) in clause 2(1) in the definition of "audio media service" for paragraph (b) substitute-

"(b) audio commercial communication;";

[This amendment and amendment (4) correct a formatting error where two definitions were merged into one.]

(4) in clause 2(1) for the paragraph which appears after paragraph (b) of the definition of "audio media service" substitute the following definition (which should appear in alphabetical order before the definition of "audio media service")-

""audio commercial communication" means sounds which are designed to promote, directly or indirectly, the goods or services or image of a natural or legal entity pursuing an economic activity and includes radio advertising and sponsorship;";

(5) in clause 2(1) delete the definition of "audiovisual commercial communication" and insert after the definition of "audio commercial communication" the following definition-

""audiovisual commercial communication" means images with or without sound which are designed to promote, directly or indirectly, the goods, services or image of a natural or legal entity pursuing an economic activity where such images accompany or are included in a programme in return for payment or for similar consideration or for self-promotional purposes and includes television advertising, sponsorship, teleshopping and product placement;";

[This amendment imports a definition from the AVMS Regulations.]

(6) in clause 2(1) in the definition of "AVMS Directive"-

(a) for "Directive 2010/13/EU of The European Parliament and of The Council of 10 March

2010" substitute "Directive 2010/13/EU of the European Parliament and of the Council of 10 March 2010";

(b) after "audiovisual media services" insert ", as amended from time to time";

[Amendment (a) corrects typographical errors relating to the use of capital letters. Amendment (b) makes clear that the use of the term AVMS directive includes any future amendments that may be made to it.]

(7) in clause 2(1) in the definition of "Commission" for "Commission of the European Communities" substitute "European Commission";

[This amendment and amendments (8) and (9) correct typographical errors.]

(8) in clause 2(1) in the definition of "editorial responsibility" for "election" substitute "selection";

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(9) in clause 2(1) in the definition of "European works" in paragraph (b) for "sub-regulation" substitute "subsection";

(10) in clause 2(1) in the definition of "media service provider" after "audiovisual media service" insert "(including but not limited to DTT services)";

[This amendment makes clear that provision of DTT services falls into the definition of "media service provider".]

(11) in clause 2(1) delete the definition "Transmission Standards Directive";

[This amendment relates to the matter I mentioned above regarding the preference to deal with matters under that directive by means of secondary legislation.]

(12) after clause 2(1) insert the following-

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"(1A) For the purposes of the definition of the term "European works" in subsection (1), the following provisions shall apply–

(a) the application of the provisions in paragraphs (b) and (c) of the definition shall be conditional on works originating in the European Union not being subject to discriminatory measures in the third country concerned;

(b) the works referred to in paragraphs (a) and (b) of the definition are works mainly made with authors and workers residing in one or more of the places referred to in those paragraphs provided that they comply with one of the following three conditions–

(i) they are made by one or more producers established in one or more of those places;

(ii) the production of the works is supervised and actually controlled by one or more producers established in one or more of those places;

(iii) the contribution of co-producers from those places to the total co-production costs is preponderant and the coproduction is not controlled by one or more producers established outside those places;

(c) works that are not European works but that are produced within the framework of bilateral co-production agreements concluded between Gibraltar or Member States and third countries shall be deemed to be European works provided that–

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(i) the co-producers from the European Union supply a majority share of the total cost of production; and

(ii) the production is not controlled by one or more producers established outside the European Union.

(1B) All media service providers under Gibraltar jurisdiction shall comply with this Act and with all other laws in force in Gibraltar applicable to media services intended for the public.

(1C) For the purposes of this Act, the media service providers under Gibraltar jurisdiction are any of the following–

(a) those established in Gibraltar in accordance with subsection (2);

(b) those to whom subsections (3) or (4) apply.";

[This amendment imports provisions from the AVMS regulations as to the definition of "European works" and makes it clear which media service providers fall within the Act and within Gibraltar jurisdiction.]

(13) in clause 2(2) for paragraphs (c) and (d) substitute-

"(c) if a media service provider has its head office in Gibraltar but decisions on the audiovisual media service are taken in a third country, or vice-versa, it shall be deemed to be established in Gibraltar, provided that a significant part of the workforce involved in the pursuit of the audiovisual media service activity operates in Gibraltar; or

(d) if the media service provider is established in a third country and is licensed under the provisions of this Act (including where it has been licensed to provide a broadcasting service on DTT (which may include Non-European works)).";

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[This amendment corrects a typographical error in (c) and clarifies that (d) includes providers of DTT services licensed in a third country.]

(14) in clause 2(4) for "EC Treaty" substitute "TFEU";

(15) after clause 2(5) insert the following-

"(6) This Act does not apply to audiovisual media services which–

(a) are intended exclusively for reception in third countries; and

(b) are not received with standard consumer equipment directly or indirectly by the public in Gibraltar or in one or more Member States.

(7) For the avoidance of doubt the GBC is a media service provider under Gibraltar jurisdiction within the meaning of this Act and as such is subject to the provisions of this Act subject to any exemptions included within this Act.";

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[This amendment clarifies the scope of the Act to (a) exclude certain broadcasts intended for third countries only and not receivable in Gibraltar or a Member State and (b) include the GBC.]

(16) in clause 6(1) for "respectively upon them" substitute "upon it";

[This amendment and amendments 17, 18, 19 and 20 correct typographical errors etc.]

(17) in clause 6(1)(a) for "either of them" substitute "it";

(18) the formatting of clause 8(1) shall be as follows-

"8.(1) Subject to the following provisions of this section, no information with respect to a particular business which–

(a) has been obtained under or by virtue of this Act; and

(b) relates to the private affairs of any individual or to any particular business,

shall during the lifetime of that individual or so long as that business continues to be carried on, be disclosed without the consent of that individual or the person for the time being carrying on that business.";

(19) in clause 8(2)(e) for "Community" substitute "Union";

(20) delete clause 12(2) and remove the label "(1)" from the remaining subsection;

(21) in clause 13(1)-

(i) in subsection (1) for ", the Minister may, after consultation with the Authority," substitute "the Authority may";

(ii) in subsection (1) delete "the Minister or";

(iii) in subsection (1) delete "or both, as the case may be,";

(iv) in subsection (1) for "their respective" substitute "its";

(v) in subsection (2) for "the Minister may, after consultation with the Authority" substitute "the Authority may";

[These amendments remove powers and functions from the Minister and allow them to remain solely in the hands of the Authority.]

(22) in clause 13(2) for "Community" substitute "Union";

(23) in clause 14-

(a) delete ", with the consent of the Minister,";

(b) for "Community" substitute "Union";

[This is an example of an amendment where a requirement for Ministerial consent in the operation of a power by the Authority is removed.]

(24) in clause 15(1) for the words upto and including "Gibraltar" substitute "A media service provider under Gibraltar jurisdiction";

[This amendment is to bring the Bill closer to the language used in the AVMS regulations.]

(25) in clause 15(2) for "the Act" substitute "this Act";

[This amendment and amendments 26-33 correct various typographical, grammatical and formatting issues.]

(26) in clause 15(5) for "Licence" substitute "licence";

(27) in clause 16(2) for "The provisions of" substitute "For the avoidance of doubt,";

(28) in clause 18(1) for "do all that it can to secure" substitute "ensure";

(29) in clause 18(2)(a)(i) delete "(a)";

(30) in clauses 18(2)(c) and (d) for "them" on the three occasions it appears substitute "it";

(31) in clause 18(2)(c) for "(a)(iii)" substitute "(a)(ii)";

(32) in clause 18(2)(d) the words which appear after sub-paragraph (ii) should be reformatted to be text following from sub-paragraph (d);

(33) the formatting of clause 18(3) shall be as follows-

"(3) Where the Authority–

(a) revokes the award of any licence in pursuance of subsection (2)(b), or

(b) determines that any condition imposed by him in relation to any licence in pursuance of subsection (2)(c) has not been satisfied,

any provisions of this Part relating to the awarding of licences of the kind in question shall (subject to subsection (4)) have effect as if the person to whom the licence was awarded or granted had not made an application for it.";

(34) in clause 18(7) for-

(a) "the Minister" substitute "the Authority";

(b) "they" substitute "it";

[This is an example of a power invested in the Minister being transfessed to the Authority.]

(35) in clause 19(4) for "This section" substitute "For the avoidance of doubt, this section";

[This amendment and amendments 36-38 correct various typographical and grammatical issues (including bringing the provisions closer to the language used in the AVMS regulations.]

(36) in clause 20(6) for "Subsections" substitute "For the avoidance of doubt, subsections";

(37) in clause 21(6) for "licence holder" substitute "licensee";

(38) in clause 22-

(a) in subclause (1) for "licensed or authorised under this Act, including the GBC," substitute "under Gibraltar jurisdiction";

(b) in subclause (2) after "shall apply" insert "as if the failure to comply with the code of practice were a failure to comply with a licence condition";

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(39) in clause 23 for "codes of practice issued under that Schedule shall be incorporated into any issued under section 22 of this Act" substitute "code of practice issued under that Schedule shall be deemed to have been issued under section 22 of this Act";

[This amendment clarifies the effect of a code issued under a Schedule rather than under section 22. It was thought that the previous language was confusing.]

(40) in clause 27 for "licensed or authorised under this Act, including the GBC," substitute "under Gibraltar jurisdiction";

(41) after clause 28 insert the following clause-

"**Accessibility.**
28A. The Authority shall encourage media service providers under Gibraltar jurisdiction to ensure that their services are progressively made accessible to people with disabilities affecting their sight or hearing or both.";

[This is a requirement under the AVMS directive.]

(42) for clause 29 substitute-

"Audiovisual commercial communications.
29.(1) The following are prohibited in Gibraltar–

(a) surreptitious audiovisual commercial communication;

(b) all forms of audiovisual commercial communications for cigarettes and other tobacco products;

(c) all forms of audiovisual commercial communications for medicinal products and medical treatment available only on prescription.

(2) Media service providers under Gibraltar jurisdiction shall ensure that the audiovisual commercial communications they provide–

(a) are readily recognisable as such;

(b) do not use subliminal techniques;

(c) do not–

(i) prejudice respect for human dignity;

(ii) include or promote any discrimination on grounds of sex, racial or ethnic origin, nationality, religion or belief, disability, age or sexual orientation;

(iii) encourage behaviour prejudicial to health or to safety;

(iv) encourage behaviour prejudicial to the protection of the environment.

(3) Audiovisual commercial communications for alcoholic beverages shall comply, in addition to subsection (2), with the following criteria, that is to say, they shall not–

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(a) be aimed specifically at minors ;

(b) encourage immoderate consumption of alcoholic beverages.

(4) Audiovisual commercial communications shall not cause moral or physical detriment to minors, and shall therefore comply with the following criteria for their protection, that is to say, they shall not–

(a) directly exhort minors to buy or hire a product or a service by exploiting their inexperience or credulity;

(b) directly encourage minors to persuade their parents or others to purchase the goods or services being advertised;

(c) exploit the special trust minors place in parents, teachers or other persons;

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(d) unreasonably show minors in dangerous situations.

(5) The Authority shall encourage media service providers under Gibraltar jurisdiction to develop codes of conduct regarding inappropriate audiovisual commercial communications, accompanying or included in children's programmes, of foods and beverages containing nutrients and substances with a nutritional of physiological effect excessive intakes of which in the overall diet are not recommended, and such nutrients and substances shall include, in particular, fat, trans-fatty acids, salt/sodium and sugars.

Basic requirements on television advertising and teleshopping.

29A.(1) Television advertising and teleshopping shall–

(a) be readily recognisable and distinguishable from editorial content; and

(b) without prejudice to the use of new advertising techniques, be kept quite distinct from other parts of the programme by optical, acoustic or spatial means or any combination of those means.

(2) Isolated advertising and teleshopping spots, other than in transmissions of sports events, shall remain the exception.

Insertion during programmes.

29B.(1) Television advertising and teleshopping may be inserted during a programme provided that they are inserted in such a way that–

(a) the integrity of the programme, taking into account natural breaks in and the duration and nature of the programme ; and

(b) the rights of the rights holders,

are not prejudiced.

(2) The transmission of films made for television (excluding series, serials and documentaries), cinematographic works and news programmes may be interrupted by television advertising or teleshopping once for each scheduled period of at least thirty minutes.

(3) The transmission of children's programmes may be interrupted by television advertising or teleshopping once for each scheduled period of at least thirty minutes, provided that the scheduled duration of the programme is greater than thirty minutes.

(4) No television advertising or teleshopping shall be inserted during religious services.

Teleshopping for medicinal products or treatment.

29C. Teleshopping for medicinal products which are subject to a market authorisation within the meaning of Directive 2001/83/EC of 6 November 2001 on the Community Code relating to medicinal products for human use, as the same may be amended form time to time, as well as teleshopping for medicinal treatment, shall be prohibited.

Television advertising and teleshopping for alcoholic beverages.

29D. Television advertising and teleshopping for alcoholic beverages shall comply with the following criteria, that is to say, they shall not–

(a) be aimed specifically at minors or, in particular, depict minors consuming these beverages;

(b) link the consumption of alcohol to enhanced physical performance or to driving;

(c) create the impression that the consumption of alcohol contributes towards social or sexual success;

(d) claim that alcohol has therapeutic qualities or that it is a stimulant, a sedative or a means of resolving personal conflicts;

(e) encourage immoderate consumption of alcohol or present abstinence or moderation in a negative light; and

(f) place emphasis on high alcoholic content as being a positive quality of the beverages.";

[This amendment imports provisions from the AVMS regulations.]

(43) for subclauses (3) to (5) of clause substitute-

"Teleshopping windows.
30A. Teleshopping windows shall be clearly identified as such by optical and acoustic means and shall be of a minimum uninterrupted duration of 15 minutes.

Television broadcasts intended only for Gibraltar.
"30B. Without prejudice to section 72B, and with due regard for European Union law, the Authority may lay down conditions other than those laid down in section 29B(2) to (4) and section 30 in respect of television broadcasts intended exclusively for reception in Gibraltar and which are not capable of being received, directly or indirectly, in one or more Member States.";

[This amendment imports provisions from the AVMS regulations.]

(44) in clause 31

(a) after subclause (1)(a) insert the following paragraph-

"(aa) viewers shall be clearly informed of the existence of a sponsorship agreement;";

(b) in subclause (1) for "it" the first time it appears in paragraphs (b) and (c) substitute "they";

[This amendment imports an AVMS provision and corrects a grammatical error.]

(45) in clause 33-

(a) the words up to and including parargraph (b) shall be renumbered as subclause (1) of that clause with its corresponding paragraphs (a) and (b);

(b) for paragraph (c) substitute the following subclause-

"(2) Sections 29B(2), (3) and (4), section 30 and section 30A shall not apply to these channels.";

[This amendment corrects a formatting error.]

(46) in the newly numbered clause 33(1)(a) for "teleshopping, and advertising ;" substitute "teleshopping and advertising;";

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[This amendment corrects a formatting error.]

(47) in the newly numbered clause 33(1)(b) for the semi-colon substitute a full-stop;

[This amendment corrects a typographical error.]

(48) in clause 35

(a) in subclauses (1) and (2) delete the words "under this Act, including the GBC,";

(b) in subclauses (1) and (2) for "licensed or authorised" substitute "under Gibraltar jurisdiction";

[This amendment changes the language used to that in the AVMS regulations.]

(49) in clause 36(1)(b) for "jurisdiction" substitute "Member State";

[This amendment corrects an error in terminology.]

(50) in clauses 36(1)(b), 36(1)(c), and 44 and in the explanatory memorandum for "Broadcasting Directive" substitute "AVMS Directive";

[This amendment corrects an error in terminology.]

(51) after clause 36 insert the following two clauses (as part of Part IV)-

"**Proportion of distribution and production of television programmes.**

36A.(1) Broadcasters under Gibraltar jurisdiction shall ensure, where practicable and by appropriate means, that they reserve for European works a majority proportion of their transmission time, excluding the time allotted to news, sports events, games, advertising, teletext services and teleshopping.

(2) Having regard to any responsibilities of broadcasters under Gibraltar jurisdiction to its viewing public in respect of information, education, culture and entertainment, the proportion referred to in subsection (1) shall be achieved progressively, on the basis of criteria judged suitable for this purpose.

(3) Where the proportion referred to in subsection (1) cannot be attained, the proportion of transmission time, as defined in subsection (1), reserved for European works shall not be lower than the average for 1988.

(4) Broadcasters under Gibraltar jurisdiction shall ensure, where practicable and by appropriate means, that they reserve at least 10% of their transmission time, excluding the time allotted to news, sports events, games, advertising, teletext services and teleshopping, or alternatively, at the discretion of the Authority, at least 10% of their programmes budget, for European works created by producers who are independent of broadcasters.

(5) Having regard to any responsibilities of broadcasters under Gibraltar jurisdiction to its viewing public in respect of information, education, culture and entertainment, the proportion referred to in subsection (4) shall be achieved–

(a) progressively, on the basis of criteria judged suitable for this purpose by the Authority;

(b) by earmarking an adequate proportion for recent works, that is to say works transmitted within five years of their production.

Reporting to the Commission.

36B.(1) Notwithstanding the repeal of section 10B(6) of the Gibraltar Broadcasting Corporation Act, the Authority shall continue to ensure that the Commission is provided every two years with a report on the application of section 36A.

(2) The report required by subsection (1) shall include, in particular, a statistical statement on the achievement of the proportions referred to in sections 36A(1) and (4) for each of the television programmes provided by broadcasters under Gibraltar jurisdiction, the reasons, in each case, for the failure to attain that proportion and the measures adopted or envisaged in order to achieve it.";

[This amendment imports provisions from the AVMS regulations.]

(52) for clause 37 substitute-

"Exclusive rights to major events.

37.(1) The Minister may draw up a designated list of events ("the list") which he considers to be of major importance for Gibraltar and which shall not be broadcast on an exclusive basis in such a way as to deprive the public in Gibraltar of the possibility of following such events by live coverage or deferred coverage on free television.

(2) The Minister may prescribe that events on the list shall be made available by whole or partial live coverage or, where necessary or appropriate for objective reasons in the public interest, whole or partial deferred coverage.

(3) The list shall be drawn up in a clear, transparent and timely manner.

(4) The Minister shall ensure that the Commission is immediately notified of the list and of any additions or amendments thereto, and, subject to any legal challenge, shall revoke such elements in the list, including listed events and any additions or amendments to the list, as the Commission rules to be incompatible with European Union law.";

[This amendment and amendments (53) and (54) import provisions from the AVMS regulations which were transposed differently in the Bill.]

(53) in clause 38 for subsections (2) to (5) substitute-

" (2) The requesting broadcaster shall have access on a fair, reasonable and non-discriminatory basis, to the events referred to in subsection (1).

(3) The requesting broadcaster may freely select short extracts from the transmitting broadcaster's signal with, unless impossible for practical reasons, at least the identification of the source, and use such extracts in short news reports.

(4) The requesting broadcaster–

(a) shall use the short extracts solely for general news programmes;

(b) may use the short extracts in on-demand audiovisual services but only if it offers the same programme on a deferred basis.

(5) The transmitting broadcaster shall be entitled to compensation from the requesting broadcaster in the

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amount of the additional costs directly incurred in providing access.

(6) Where a broadcaster under Gibraltar jurisdiction makes a similar request from a transmitting broadcaster in a Member State, the Authority shall, if requested, ensure that the equivalent rights of the transmitting broadcaster under Article 15 of the Audiovisual Media Services Directive are upheld.

(7) The Authority may issue guidelines regulating access conditions for the purposes of this section and such guidelines shall cover the following matters-

(a) the establishment of a procedure, other than the one set out in this section, which achieves access on a fair, reasonable and non-discriminatory basis ;

(b) the modalities and conditions for the provision of short extracts, including–

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(i) compensation arrangements;

(ii) the maximum length of short extracts;

(iii) time limits regarding the transmission of short extracts.";

(54) for clause 39 substitute--

Right of reply.

39.(1) All broadcasters under Gibraltar jurisdiction shall provide to any natural or legal person, regardless of nationality, whose legitimate interests, in particular reputation and good name, have been damaged by an assertion of incorrect facts in a television programme, a right of reply or a remedy judged by the Authority to be an equivalent remedy to a right of reply.

(2) Where a person (in this section referred to as "the complainant") is of the view that he is entitled, by virtue of subsection (1), to a right of reply or equivalent remedy, the complainant may require the broadcaster to

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make the arrangements necessary for that right to be exercised.

(3) The arrangements referred to in subsection (2)–

(a) shall be at no cost to the complainant; and

(b) shall not be of such a nature as to hinder the actual exercise of the right of reply, or equivalent remedy, notably, by the imposition of unreasonable terms or conditions.

(4) Where the request for a right of reply or equivalent remedy is justified, the broadcaster concerned shall transmit the reply within a reasonable time after the request was substantiated and at a time and in a manner appropriate to the broadcast to which the request relates.

(5) The broadcaster may refuse to provide a right of reply or an equivalent remedy if such a reply–

(a) is not justified by reference to the provisions of subsection (1);

(b) would render the broadcaster liable to prosecution;

(c) would render the broadcaster liable to civil proceedings; or

(d) would transgress standards of public decency.

(6) Where–

(a) the broadcaster refuses to give a right of reply; or

(b) the complainant is dissatisfied with the arrangements in respect of the exercise of his right of reply,

the complainant may, within 28 days of the broadcast or the failure of arrangements, as the case may be, about which he is complaining refer the matter in writing to the Authority who shall itself or, in the event that it is unable to meet in the required time, by three persons appointed by the Authority for this purpose, consider any written representations made by the complainant and by the broadcaster.

(7) The complainant, at the time that he makes a complaint to the Authority, shall pass a copy of the complaint and any materials attached thereto to the broadcaster and the broadcaster shall provide any written representations it wishes to make to the Authority within 14 days of having received the complaint.

(8) The decision of the Authority shall be given and conveyed in writing to the complainant and to the broadcaster within 14 days of the receipt by the Authority of the written representation from the broadcaster or within 28 days of the receipt by the Authority of the complaint, whichever is the sooner.

(9) The broadcaster shall comply with the decision of the Authority within 14 days of the receipt of that decision.

(10) The provisions as to time set out in subsections (5) to (9) may be varied by the Authority where it is satisfied that it is appropriate to do so in order to give an effective right of reply to persons resident or established in a Member State.

(11) The Authority may require the broadcaster to provide a right of reply or a remedy equivalent thereto in respect of material broadcast by a programme contractor where in the opinion of the Authority such action is the only effective way to provide a right of reply and in such case the provisions of this section shall apply by substituting the broadcaster for the programme maker.";

(55) for the heading for Part VII substitute-

"**REGULATION OF EUROPEAN UNION BROADCASTS";**

[This amendment and amendments (56) – (59) import provisions from the AVMS regulations and amend clauses of the Bill in order to ensure consistency.]

(56) for the section heading to clause 40 substitute-

"European Union Broadcasts.";

(57) in clause 40(1) for "other Member States" substitute "a Member State";

(58) in clause 40 for subclauses (2) to (7) substitute-

"(2) The Authority shall have the power to take measures provisionally derogating from subsection (1) in respect of television broadcasts from Member States if the following conditions are fulfilled–

(a) in the judgment of the Authority the broadcast includes–

(i) any programmes which might seriously impair the physical, mental or moral development of minors, in particular programmes that involve pornography or gratuitous violence;

(ii) any programmes which in the opinion of the Authority are likely to impair the physical, mental or moral development of minors, except where the Authority is satisfied that by means of the time of the programme concerned or by any technical measure, including any acoustic warning or visual identification, minors will not normally hear or see such programmes;

(iii) no incitement to hatred at all whether on grounds of race, sex, age, sexual orientation, religion, nationality or otherwise;

(b) during the previous 12 months, the broadcaster has infringed paragraph (a) on at least two prior occasions;

(c) the Authority has notified the broadcaster and the Commission in writing of the alleged infringement and of its intention to restrict retransmission should any such infringement occur again; and

(d) consultations with the transmitting Member State and the Commission have not produced an amicable settlement within 15 days of the notification provided for in paragraph (c), and the alleged infringement persists.

(3) The measures that the Authority may adopt pursuant to subsection (2) shall include the provisional suspension of retransmissions of television broadcasts or any restrictions on such retransmissions.

(4) The Authority shall, as a matter of urgency, put an end to any measure it adopts pursuant to subsection (2) if the Commission informs it, in accordance with Article 3 (2) of the AVMS Directive, that the measure is contrary to European Union law.

(5) Any person who continues to retransmit broadcasts contrary to a measure adopted by the Authority pursuant to subsection (2) commits an offence.

(6) A person who commits an offence under this section is liable–

(a) on summary conviction, to imprisonment for a term not exceeding six months or to a fine not exceeding level 5 on the standard scale or to both; or

(b) on conviction on indictment, to imprisonment for a term not exceeding 2 years or to a fine or both.";

(59) for clause 41 substitute-

"**Special provisions in respect of on-demand audiovisual media services.**

41.(1) Subject to the provisions of this section, no person shall interfere with the freedom of reception in Gibraltar of on-demand audiovisual media services from Member States for reasons which fall within the fields co-ordinated by the AVMS Directive.

(2) The Authority shall have the power to take measures provisionally derogating from subsection (1) in respect of a given on-demand audiovisual media service if the following conditions are fulfilled–

(a) the measure is necessary for one of the following reasons–

(i) public policy, in particular the prevention, investigation, detection and prosecution of criminal offences, including the protection of minors and the fight against any incitement to hatred on grounds of race, sex, age, religion, nationality and violations of human dignity concerning individual persons;

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(ii) the protection of public health;

(iii) public security, including the safeguarding of the security and defence of Gibraltar;

(iv) the protection of consumers, including investors;

(b) taken against an on-demand audiovisual media service which prejudices the objectives referred to in paragraph (a) or which presents a serious and grave risk of prejudice to those objective; and

(c) is proportionate to those objectives.

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(3) The measures that the Authority may adopt pursuant to subsection (2) shall include the immediate cessation of the service or its cessation within a stated time frame.

(4) Subject to subsection (5), the Authority shall take a measure pursuant to subsection (2) where the following conditions are satisfied–

(a) the Member State under whose jurisdiction the provider falls has been asked to take measures and that Member State has not taken such measures, or, if it has, they were inadequate;

(b) the Commission and the Member State under whose jurisdiction the provider falls have been informed of the Authority's intention to take such measures;

(c) where the reason for the intended adoption of a measure is the safeguarding of the internal security or defence of Gibraltar and is of such a nature as to fall within the Governor's constitutional responsibilities and the Governor has informed the Minister that the measure needs to be taken who so directs the Authority.

(5) The Authority may take a measure pursuant to subsection (2) without complying with the requirements of subsection (4) (a) and (b) where it deems the matter to be of urgency, but shall, in such cases, ensure that the Commission and the relevant Member State, are notified as soon as practicable of the measure taken, and indicate the reasons for the urgency.

(6) The Authority shall–

(a) put an end, as a matter of urgency, to any measure it adopts pursuant to subsection (2);

(b) refrain from adopting a proposed measure pursuant to subsection (2),

where the Commission informs it, in accordance with Article 3(6) of the AVMS Directive, that the measure, or proposed measure, is contrary to European Union law.

(7) Where an on-demand audiovisual media service provider under Gibraltar jurisdiction is in breach of a legislative or administrative provision in a Member State which is equivalent to subsection (2) above, that on-demand audiovisual media service provider commits an offence under this Act.

(8) Any person who continues to provide an on-demand audiovisual media service contrary to a measure adopted by the Authority pursuant to subsection (2) commits an offence.

(9) A person who commits an offence under subsections (7) or (8) is liable–

(a) on summary conviction, to imprisonment for a term not exceeding six months or to a fine not exceeding level 5 on the standard scale or to both; or

(b) on conviction on indictment, to imprisonment for a term not exceeding 2 years or to a fine or both.

European works (on-demand audiovisual services).
41A.(1) On-demand audiovisual media services provided by media service providers under Gibraltar jurisdiction shall promote, where practicable and by appropriate means, the production of and access to European works.

(2) The promotion referred to in subsection (1) may relate, in particular, to the financial contribution made by such services to the production and rights acquisition of European works or to the share or prominence of European works in the catalogue of programmes offered by the on-demand audiovisual media service.

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(3) The Authority shall ensure that reports are sent to the Commission in accordance with the AVMS Directive on the implementation of this section.";

(60) in clause 42(1)(a) for "Government of Gibraltar" substitute "Government";

[This amendment and amendment 61 correct typographical errors. In respect of Section 41(4)(c) wording is inserted to clarify how the Authority will act when the Governor considers a measure should be taken for internal security purposes; which will require the Minister to communicate that requirement to the Authority]

(61) in clause 42(4)-

(a) in paragraph (b) for "applied" substitute "be applied";

(b) in paragraph (d) for "Community" substitute "European";

(62) delete clause 43;

[This amendment and amendment (63) are made as it is thought that such matters if legislated for would be best suited to secondary legislation.]

(63) delete Part VIII (Conditional access consisting of clauses 45 and 46);

(64) in clause 47(2) for "the Minister" substitute "the Chief Minister, after consultation with the Leader of the Opposition,";

[This amendment is to impose a requirement on the Chief Minister to consult with the Leader of the Opposition before making any appointment to the GBC board.]

(65) in clause 53(2) for "corporation" substitute "GBC";

[This amendment and amendments (66) and (67) correct errors in terminology.]

(66) in clause 54(1) for "corporation" substitute "GBC";

(67) in clause 54(4) for "GBC" substitute "the GBC";

(68) for clause 57(2) substitute-

"(2) The accounts of the GBC shall be audited by an auditor who shall be a person or firm registered in Part I, or II in the case of firms, of the Register maintained under the provisions of the Auditors Approval and Registration Act 1988.";

[This amendment provides for greater independence of the GBC in that the Minister will no longer be able to impose his choice of auditor upon them.]

(69) in clause 61 for "of the Authority under this Act or any Regulations made under it" substitute "of this Act";

[This amendment is to clarify the language used in the original Bill.]

(70) in clause 67-

(i) in subsection (4)(b) delete "the Minister or";

(ii) in subsection (6) for "the Minister" substitute "the Authority";

(iii) in subsection (9) for "the Minister or the Authority, as the case may be, "substitute "the Authority";

[These amendments are examples of the transfer of powers from the Minister to the Authority.]

(71) for clause 69 substitute-

"**Offences.**

69.(1) It is an offence for any person to be responsible for any act or omission contrary to the provisions of this Act or required to be done by the Authority pursuant to the provisions of this Act.

(2) Any person found guilty of an offence contrary to subsection (1) is punishable on summary conviction to a fine not exceeding twice level 5 on the standard scale.".

[This amendment and amendments (72) to (74) import provisions from the AVMS regulations.]

(72) after clause 70 insert-

"Continuation of the offence.

70A. Without prejudice to the right to bring separate proceedings for contraventions of this Act taking place on separate occasions, a person who is convicted of an offence under this Act shall, where the offence continues after the conviction–

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(a) be deemed to commit a separate offence in respect of every day on which the offence so continues; and

(b) be liable on summary conviction or on conviction on indictment as the case may be, together with such liability as may be stipulated in this Act, to a fine not exceeding level 5 on the standard scale for each such day.";

(73) after clause 71 insert-

"Civil proceedings.

71A. Subject to Part XII, nothing in this Act shall limit any right of any person to bring civil proceedings in respect of any act or omission rendered unlawful by any provision of this Act, and, without prejudice to the generality of the preceding words, compliance

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with the provisions of this Act, contraventions of which are declared to be offences under this Act, shall be enforceable by civil proceedings by the Authority for an injunction or for any other appropriate relief.";

(74) after clause 72 insert-

"**Regulatory Co-operation.**
72A.(1) The Authority shall cooperate with the regulatory bodies in the Member States which are responsible for ensuring compliance with the AVMS Directive in their Member States, particularly when necessary–

(a) to carry out its duties under this Act;

(b) to assist the regulatory bodies in the Member States in the exercise of their duties pursuant to the AVMS Directive;

(c) to provide each other with the information necessary for the application of the AVMS Directive and in particular Articles 2, 3 and 4 thereof.

(2) The Authority shall notify the Commission of any information it provides pursuant to paragraph (c) of subsection (1).

Co-operation with Member States.
72B.(1) Where the Authority–

(a) receives, under Article 4 of the Audiovisual Media Services Directive, a request from a Member State relating to a relevant broadcaster, and

(b) considers that the request is substantiated,

it must ask the broadcaster to comply with the rule identified in that request.

(2) The Authority shall enforce the rule referred in subsection (1) as if it were a rule provided for under this Act.

(3) In this section "relevant broadcaster" means a broadcaster who is under Gibraltar jurisdiction.";

(75) after clause 73(2) insert-

" (3) The Audiovisual Media Services Regulations 2011 are revoked.";

[This amendment revokes the AVMS regulations, the necessary parts of which have been moved into the Bill itself.]

(76) in Schedule 1 for "Section 16" substitute "Section 17";

[This amendment corrects a cross referencing error.]

(77) in Schedule 1 delete paragraph 1 and renumber the following paragraphs as paragraphs 1 to 9;

[This amendment is consequential on the removal of references to the Transmission Standards Directive.]

(78) in Schedule 2 for "Section 17" substitute "Section 18";

[This amendment corrects a cross referencing error.]

(79) in Schedule 2 in paragraph 3 for "the Minister" substitute "the Authority";

[This amendment and amendment (80) are consequential to the passing of powers etc from the Minister to the Authority etc.]

(80) in Schedule 2 paragraph 6 delete ", in consultation with the Minister,";

(81) in Schedule 3 for "section 22" substitute "Section 23";

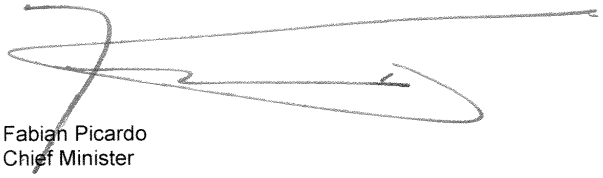
[This amendment corrects a cross referencing error.]

(82) in the explanatory memorandum delete the second sentence.

[This amendment removes references to certain directives no longer relevant to the Bill from the explanatory memorandum.]

I shall look forward to the debate on Friday.

With best wishes, as ever,



Fabian Picardo
Chief Minister

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Clerk: Shall I read out clause 1 to clause 75?

Mr Chairman: Sorry, did you say to 75 or 25?

Clerk: Clauses 1 to 75.

Mr Chairman: Does any hon. Member on either side of the House wish to raise any particular clause – in that entire Bill, virtually?

In that case, clauses 1 to 75, as amended in terms proposed by the Hon. the Chief Minister in his letter to me of yesterday's date, stand part of the Bill.

Clerk: Schedules 1 to 3.

Mr Chairman: Schedules 1 to 3, again as amended, if indeed there are any amendments there – yes, there are. Schedules 1 to 3, as amended, stand part of the Bill.

Clerk: The long title.

Mr Chairman: The long title, as amended, stands part of the Bill.

Births and Deaths Registration (Amendment) Bill 2012
Clauses considered and approved

Clerk: A Bill for an Act to amend the Birth and Deaths Registration Act and related legislation.
Clauses 1 to 4.

Mr Chairman: Clauses 1 to 4 stand part of the Bill.

Clerk: The long title.

Mr Chairman: The long title stands part of the Bill.

Criminal Justice (Amendment) Bill 2012
Clauses considered and approved

Clerk: A Bill for an Act to amend the Criminal Procedure and Evidence Act 2011 and the Crimes Act 2011.
Clauses 1 to 3.

Minister for Education, Financial Services, Gaming, Telecommunications and Justice (Hon. G H Licudi): Mr Chairman, in clause 3 –

Chief Minister (Hon. F R Picardo): The whole thing stands.

Hon. G H Licudi: So I do not have to move the –

Mr Chairman: No, unless there are any –

Hon. G H Licudi: Yes, I am just moving the amendment –

Mr Chairman: Formally.

Hon. G H Licudi: – formally for the record.

Hon. Chief Minister: For all of them.

Hon. G H Licudi: I am certainly not going to read them all out, but after clause 3.(4) we insert the provision which is set out attached to my letter to you, Mr Chairman, of 21st September 2012.

Mr Chairman: In that case, we will treat the amendments proposed in the Hon. the Minister for Justice's letter to me of 21st September as having been formally tabled and, again, *Hansard* will record the letter as part of its record.

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H.M. GOVERNMENT OF GIBRALTAR
Ministry of Education, Financial Services, Gaming, Telecommunications and Justice
Suite 771, Europort
Gibraltar

21 September 2012

Your Ref:
Our Ref: GOG 3

The Hon H K Budhrani QC
Speaker
Gibraltar Parliament
156 Main Street
Gibraltar

Dear Mr Speaker

RE: AMENDMENT TO CRIMINAL JUSTICE (AMENDMENT) ACT 2012 [B. 13/12]

I beg to give notice that I shall be moving the amendments attached at Appendix 1 to the Bill for a Criminal Justice (Amendment) Act 2012 during Committee Stage.

Yours sincerely

Gilbert Licudi QC MP
Minister for Education, Financial Services, Gaming, Telecommunications and Justice

Enc.

Telephone No: (350) 200 52557 - Fax No: (350) 200 47677 Centrex Fax 2442 - Email: mefs@gibraltar.gov.gi

Appendix 1

(1) After Clause 3(4) insert the following subclause-

After section 266 insert the following-

"*Pornographic performances involving children*

Pornographic performances involving children.

266A.(1) A person (A) commits an offence if-

(a) he intentionally causes, encourages or assists another person (B) to participate in a pornographic performance, in any part of the world; and

(b) either-

(i) B is under 18, and A does not reasonably believe that B is 18 or over; or

(ii) B is under 13.

(2) A person (A) commits an offence if-

(a) he intentionally uses force, threats (whether or not relating to violence) or any other form of coercion to force another person (B) to participate in a pornographic performance, in any part of the world; or

(b) he intentionally causes, encourages, assists or coerces another person (B) to participate in a pornographic performance, in any part of the world and he does so for or in the expectation of payment for himself or another person;

and

(c) either-

(i) B is under 18, and A does not reasonably believe that B is 18 or over; or

(ii) B is under 13.

(3) A person (A) commits an offence if-

(a) he knowingly attends a pornographic performance in any part of the world involving the participation of another person (B); and

(b) either-

(i) B is under 18, and A does not reasonably believe that B is 18 or over; or

(ii) B is under 13.

(4) A person who commits an offence under this subsection (1), (2) or (3) is liable-

(a) on summary conviction, to imprisonment for 12 months or the statutory maximum fine or both;

(b) on conviction on indictment, to imprisonment for 14 years.

(5) In this section-

"payment" has the same meaning as in section 262(2);

"pornographic performance" means a live exhibition aimed at an audience, including by means of information and communication technology, of:

(i) a child engaged in real or simulated sexually explicit conduct; or

Appendix 1

(ii) a child and is indecent.".".

(2) After Clause 3(9) insert the following subclauses-

"(10) In Schedule 2, Part A, in paragraph 1(c) after the entry for sections 262 to 265 of the Act insert the following entry-

"- section 266A (Pornographic performances involving children)".

(11) In Schedule 3 after paragraph 30 insert the following paragraph-

"30A. An offence under section 266A (Pornographic performances involving children) if the offender-

(a) was 18 or over; or

(b) is or has been sentenced in respect of the offence to imprisonment for not less than 12 months.".".

Mr Chairman: Clauses 1 to 4 stand part of the Bill. Sorry, was that 44?

Clerk: Clauses 1 to 3.

Mr Chairman: Sorry, clauses 1 to 3 stand part of the Bill.

Clerk: The long title.

Mr Chairman: The long title stands part of the Bill.

BILLS FOR THIRD READING

Broadcasting Bill 2012
Births and Deaths Registration (Amendment) Bill 2012
Criminal Justice (Amendment) Bill 2012
Third Reading approved; Bills passed

Clerk: The Hon. the Chief Minister.

Chief Minister (Hon. F R Picardo): Mr Speaker, I have the honour to report that the Broadcasting Bill 2012; the Births and Deaths Registration (Amendment) Bill 2012; and the Criminal Justice (Amendment) Bill 2012 have been considered in Committee and agreed to, with amendments, and I now move that they be read a third time and passed.

Mr Speaker: I now put the question, which is that the Broadcasting Bill 2012; the Births and Deaths Registration (Amendment) Bill 2012; and the Criminal Justice (Amendment) Bill 2012 be read a third time and passed.

Those in favour of the Broadcasting Bill 2012. (**Government Members**: Aye.) Those against. (**Opposition Members:** No.) Carried by Government majority.

Those in favour of the Births and Deaths Registration (Amendment) Bill 2012; (**Members**: Aye.) Those against. Carried.

Those in favour of the Criminal Justice (Amendment) Bill 2012. (**Government Members**: Aye.) Those against. (**Opposition Members:** No.) Carried by Government majority.

Tribute to the Speaker

Clerk: The Hon. the Chief Minister.

Chief Minister (Hon. F R Picardo): Mr Speaker, before I move the amendment this afternoon – this *evening* (**Several Members:** Adjournment.). Sorry, before I move the adjournment this evening – *(Interjection)* No more amendments! I think it is apposite to say a few words about the service you have given this Chamber.

Today will be your last day in the Chair as a matter of your own choice, expressed to us after the election, that your wish was to have done eight years in that Chair. Perhaps that is a salutary message for those who occupy the Chair *I* now occupy.

Mr Speaker, I can say no more about the way that you have discharged your functions to *all* of the Members of this place and to this place and our community, other than to record the history of your appointments. From this side of the House, when we were opposite, when you were first proposed as Speaker, we abstained on your appointment for the reasons that are set out in the *Hansard*. When you were next proposed as Speaker, we were very happy to explain why we would support you. And on the third appointment, I was actually *honoured* to recommend you.

Mr Speaker, if we had any concerns at the time that you were first appointed, you quickly allayed them, treating every Member of this House fairly and bringing your honesty and integrity to the discharge of your functions for Gibraltar, not just in this place but everywhere that you represented this Parliament and the people of Gibraltar abroad. Your conduct as Speaker has been, I am sure, despite the many disagreements you may have had with Members of both sides of the House, everything that the House expected from you and that any House in the Commonwealth can expect from a Speaker appointed for the purpose that holding that Chair requires.

The reasons that you leave Parliament are totally unconnected in *our* minds to the matters which were ventilated in the press, in our view, so unfairly, earlier this year, and those do not in any way mar the service that you have given this community and this Chamber. You leave, Mr Speaker, of your own volition, I trust with the support, I am sure, of all Members of this House and with recognition of what it is that you have managed to do, and if I may say so, important in that context that you are the first Hindu person in our community to be appointed to the chair and I trust that you will not be the last.

Mr Speaker, for those who are listening I think it is important to explain that, with the guidance of yourself and the Clerk, we have agreed that you will remain Speaker of this Parliament until after the deadline for submitting Questions for the next session so that there is a Speaker in place who can rule on the admissibility of Questions; that you will vacate the chair on the eve of the next meeting; and that Mr Adolfo Canepa, whose name I have already consulted the Leader of the Opposition on, will assume the chair, subject to the vote of this House, on the next sitting of this House in October.

All I can say, Mr Speaker, on behalf of the Government and of the people of Gibraltar, and I trust on behalf of all Members in the Chamber, is thank you, not just for what you have done but also for how you have done it. *(Applause)*

Mr Speaker: The Hon. the Deputy Leader of the Opposition.

Hon. D A Feetham: Mr Speaker, thank you very much.

Mr Speaker, it is not often – and I wish that it *were* different – that myself and the Hon. the Chief Minister are *ad idem* and are in agreement in relation to something, and this is certainly one of those issues.

We have had our disagreements, Mr Speaker. I have taken one or two raps on the knuckles myself – perhaps some less gracious than others. Some I have felt that perhaps they were not merited but I am absolutely certain that every comment that you have made has always been made in good faith and that you have discharged your duties in good faith to the best of your abilities and in a way that you have believed to be impartial and fair, and on the whole, certainly, the Opposition agrees with that.

It only leaves me to associate myself entirely with the words of the Chief Minister and certainly, on this occasion, he not only speaks on behalf of the Government but he speaks on behalf of the entire House. *(Applause)*

Mr Speaker: If I may, I gratefully acknowledge the very kind and generous sentiments expressed both by the Hon. the Chief Minister and by the Hon. the Deputy Leader of the Opposition.

If I may be permitted a few words for the last time in this Chair before I formally accede to the motion for the adjournment… if I may say a few words.

Rarely, if ever in life, does the unsolicited opportunity present itself quite out of the blue to serve one's country at its highest level, but that is precisely what happened to me when the then Chief Minister, the Hon. Peter Caruana, telephoned me on 3rd August 2004 to ask whether I would be willing to accept

appointment as Speaker of the House of Assembly, as this august body was then known. Needless to say, without a moment's hesitation, I gratefully accepted the huge honour that had unexpectedly been bestowed upon me and I set off with relish to face what I perceived would be the greatest challenge of my life.

Although the Opposition, at the time led by the Hon. Joe Bossano, had its reservations as to the suitability of my appointment and voted accordingly, in keeping with the best traditions of our parliamentary democracy, the office to which I had been appointed was at all times treated with the utmost respect and deference by all the elected Members, and it goes without saying every kindness and courtesy was extended to me at a personal level.

I was particularly gratified when the Opposition, having kept an open mind during the three years that followed, were able to support my reappointment in 2007, and I was humbled when the Hon. Fabian Picardo, as Chief Minister, proposed my further reappointment last December.

While I had some theoretical general knowledge of the workings of parliaments based on the Westminster model, I will always be indebted to the late Dennis Reyes, who, as Clerk, guided me in my early days through the practices and procedures of our own legislature, and to Melvyn Farrell, who has since continued in that office to provide invaluable support and assistance to me in the performance of my duties. *(Applause)* I am also grateful to Kevin Balban, Frances Garro, and before her Audrey Gomez – I think she is now Lopez – and to Stephen Bonich, who make up the rest of our parliamentary complement, for the courtesies extended to me as they have cheerfully and efficiently gone about their work largely behind the scenes.

Apart from my duties here, I have had the honour to represent Gibraltar at no less than 10 Commonwealth Parliamentary conferences – plenary, regional and of Speakers – around the globe, when I have had the privilege to meet hundreds of parliamentarians from 55 countries and the heads of state of Kenya, Malta, Nigeria, India, Trinidad and Tobago and Sri Lanka, and of course our own sovereign, Her Majesty the Queen. My attendances at these conferences have enabled me to learn something about how other parliaments conduct their business, but what has given me the greatest pleasure and sense of purpose was the opportunity to tell those out there about Gibraltar, its institutions and the mature and stable parliamentary democracy that we enjoy.

To summarise, in the words of a well-known song, 'I've had the time of my life', but as with everything else in life, there must come a time to call it a day. Although our Constitution confers upon a Chief Minister the choice, subject to consultation with the Leader of the Opposition and approval by the Elected Members, of Speaker following the election of a new Parliament, we follow the convention that has long prevailed at Westminster that, in order to avoid politicising the office, the incumbent is usually reappointed as often as he is willing and able to carry on in the Chair. The onus, therefore, is upon the Speaker to ensure that he does not overstay his welcome. In that context, I have long held the view that the Speaker should serve about two parliamentary terms, and certainly no more than 10 years, if the incumbent is not to become too closely identified with the office. That is the view I expressed to the Chief Minister last December and I believe the time has now come for me to relinquish this distinguished office, which I do on the eve of the next sitting of Parliament.

I conclude by invoking, as it has been my honour and privilege to do in the prayer recited by me at the commencement of each sitting of this House these last eight years, divine guidance on all your deliberations for the good of our City. *(Applause and banging on desks)*

Hon. Chief Minister: If I may be allowed to add, Mr Speaker, I am sure that your service to Gibraltar has not ended today.

Adjournment

Chief Minister (Hon. F R Picardo): I have the honour to move, Mr Speaker, that this House do now adjourn *sine die*.

Mr Speaker: I now propose the question, which is that this House do now adjourn *sine die*.

I now put the question, which is that this House do now adjourn *sine die*. Those in favour. (**Members**: Aye.) Those against. Passed.

This House will now adjourn *sine die*.

The House adjourned at 7.45 p.m.