REPORT OF THE PROCEEDINGS OF THE HOUSE OF ASSEMBLY

The Ninth Meeting of the First Session of the Tenth House of Assembly held in the House of Assembly Chamber on Tuesday 21st March 2006 at 2.30 p.m.

PRESENT:

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

GOVERNMENT:

The Hon J J Holliday - Minister for Trade, Industry, Employment and Communications
The Hon Dr B A Linares - Minister for Education, Training, Civic and Consumer Affairs
The Hon Lt-Col E M Britto OBE, ED - Minister for Health
The Hon J J Netto - Minister for the Environment
The Hon Mrs Y Del Agua - Minister for Social Affairs
The Hon C Beltran - Minister for Housing
The Hon F Vinet - Minister for Heritage, Culture, Youth and Sport
The Hon R R Rhoda QC - Attorney General
The Hon T J Bristow - Financial and Development Secretary

OPPOSITION:

The Hon J J Bossano - Leader of the Opposition
The Hon Dr J J Garcia
The Hon F R Picardo
The Hon C A Bruzon
The Hon S E Linares
The Hon L A Randall

ABSENT:

The Hon P R Caruana QC – Chief Minister

The Hon Miss M I Montegriffo

IN ATTENDANCE:

D J Reyes Esq, ED - Clerk of the House of Assembly

PRAYER:

Mr Speaker recited the prayer.

CONFIRMATION OF MINUTES

The Minutes of the Meeting held on the 9th December 2005, were taken as read, approved and signed by Mr Speaker.

DOCUMENTS LAID

The Hon the Financial and Development Secretary laid on the Table the following Statements:-

1. Consolidated Fund Supplementary Funding – Statements Nos. 2 and 3 of 2005/2006;

2. Consolidated Fund Pay Settlements – Statement No. 4 of 2005/2006;

3. Consolidated Fund Reallocations – Statement No. 5 of 2005/2006.

Ordered to lie.

ANSWERS TO QUESTIONS

The House recessed at 5.35 p.m.

The House resumed at 5.55 p.m.

Answers to Questions continued.

ADJOURNMENT

The Hon the Minister for Trade, Industry, Employment and Communications moved the adjournment of the House to Wednesday 22nd March 2006, at 10.00 a.m.

Question put. Agreed to.

The adjournment of the House was taken at 8.30 p.m. on Tuesday 21st March 2006.

WEDNESDAY 22ND MARCH 2006

The House resumed at 10.00 a.m.

PRESENT:

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

GOVERNMENT:

The Hon J J Holliday - Minister for Trade, Industry, Employment and Communications
The Hon Dr B A Linares - Minister for Education, Training, Civic and Consumer Affairs
The Hon Lt-Col E M Britto OBE, ED - Minister for Health
The Hon J J Netto - Minister for the Environment
The Hon Mrs Y Del Agua - Minister for Social Affairs
The Hon C Beltran - Minister for Housing
The Hon F Vinet - Minister for Heritage, Culture, Youth and Sport

OPPOSITION:

The Hon J J Bossano - Leader of the Opposition
The Hon Dr J J Garcia
The Hon F R Picardo
The Hon C A Bruzon
The Hon S E Linares
The Hon L A Randall

ABSENT:

The Hon P R Caruana QC – Chief Minister
The Hon R R Rhoda QC – Attorney General
The Hon T J Bristow – Financial and Development Secretary

The Hon Miss M I Montegriffo

IN ATTENDANCE:

D J Reyes Esq, ED - Clerk of the House of Assembly

ANSWERS TO QUESTIONS (CONTINUED)

The House recessed at 1.30 p.m.

The House resumed at 3.05 p.m.

Answers to Questions continued.

ADJOURNMENT

The Hon the Minister for Trade, Industry, Employment and Communications moved the adjournment of the House to Thursday 23rd March 2006, at 9.30 a.m.

Question put. Agreed to.

The adjournment of the House was taken at 4.30 p.m. on Wednesday 22nd March 2006.

THURSDAY 23RD MARCH 2006

The House resumed at 9.30 a.m.

PRESENT:

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

GOVERNMENT:

The Hon P R Caruana QC - Chief Minister
The Hon J J Holliday - Minister for Trade, Industry, Employment and Communications
The Hon Dr B A Linares - Minister for Education, Training, Civic and Consumer Affairs
The Hon Lt-Col E M Britto OBE, ED - Minister for Health
The Hon J J Netto - Minister for the Environment
The Hon Mrs Y Del Agua - Minister for Social Affairs
The Hon C Beltran - Minister for Housing
The Hon F Vinet - Minister for Heritage, Culture, Youth and Sport

OPPOSITION:

The Hon J J Bossano - Leader of the Opposition
The Hon Dr J J Garcia
The Hon F R Picardo
The Hon C A Bruzon
The Hon S E Linares
The Hon L A Randall

ABSENT:

The Hon R R Rhoda QC – Attorney General
The Hon T J Bristow – Financial and Development Secretary

The Hon Miss M I Montegriffo

IN ATTENDANCE:

D J Reyes Esq, ED - Clerk of the House of Assembly

ANSWERS TO QUESTIONS (CONTINUED)

BILLS

FIRST AND SECOND READINGS

THE FINANCIAL SERVICES (TRAINING AND COMPETENCE) ORDINANCE 2006

HON CHIEF MINISTER:

I have the honour to move that a Bill for an Ordinance to provide for a training and competence scheme in Financial Services in Gibraltar, be read a first time.

Question put. Agreed to.

ADJOURNMENT

The Hon the Chief Minister moved the adjournment of the House to Thursday 6th April 2006, at 10.00 a.m.

Question put. Agreed to.

The adjournment of the House was taken at 12.25 p.m. on Thursday 23rd March 2006.

THURSDAY 6TH APRIL 2006

The House resumed at 10.05 a.m.

PRESENT:

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

GOVERNMENT:

The Hon P R Caruana QC - Chief Minister
The Hon J J Holliday - Minister for Trade, Industry, Employment and Communications
The Hon Dr B A Linares - Minister for Education, Training, Civic and Consumer Affairs
The Hon Lt-Col E M Britto OBE, ED - Minister for Health
The Hon J J Netto - Minister for the Environment
The Hon Mrs Y Del Agua - Minister for Social Affairs
The Hon C Beltran - Minister for Housing
The Hon F Vinet - Minister for Heritage, Culture, Youth and Sport
The Hon K J Colombo - Attorney General (Acting)
The Hon T J Bristow - Financial and Development Secretary

OPPOSITION:

The Hon J J Bossano - Leader of the Opposition
The Hon Dr J J Garcia
The Hon F R Picardo
The Hon C A Bruzon
The Hon S E Linares
The Hon L A Randall

ABSENT:

The Hon Miss M I Montegriffo

IN ATTENDANCE:

D J Reyes Esq, ED - Clerk of the House of Assembly

OATH OF ALLEGIANCE

The Hon K J Colombo took the Oath of Allegiance.

BILLS

FIRST AND SECOND READINGS

SECOND READING

THE FINANCIAL SERVICES (TRAINING AND COMPETENCE) ORDINANCE 2006

HON CHIEF MINISTER:

I have the honour to move that the Bill be read a second time. Mr Speaker, the purpose of this Bill is relatively straight forward. It is a Bill that establishes in Statute a training and competency, known as a Skills Council, for Financial Services. The intention, as hon Members will be able to see from the Bill, is that although it will be statutory it will be tripartite in the sense that it will be all three of the Government, the Regulator and the industry that will meet, not just to establish the standards of training and competency that our Financial Services Centre should expect from those who operate within it but indeed to ensure that those courses are designed, that they are available and then to police compliance with it. It is a framework piece of legislation because this legislation does not itself establish that regime, it simply establishes the Council and the detail of how the Council would work. So it is envisaged it will be established by subsidiary legislation under clause 7 of the Bill now before the House. I think many Members in this House will welcome the principle of this Bill for which there is a significant degree of demand and support, not just from within the industry itself but indeed the Regulator supports it hugely, wants it and episodes that Gibraltar has gone through of late, not least the TEP Plans that we have so frequently discussed in this House, does suggest that a regime to establish standards and to police compliance with those standards in areas of the qualification, people who sell financial services products, I think is a useful addition to the infrastructure of our Financial Services Centre.

Hon Members will see that the Skills Council would be chaired by the Minister with responsibility for Financial Services and that it would be composed as set out in clause 3. In addition to the Chairman or such other person as he may designate to replace him, there would be a member nominated by the Financial Services Commission, the Director of the Finance Centre, an officer of the Department of Education and Training, in other words, a Training Officer and then eight other members appointed by the Minister, one from persons nominated by each of and then the hon Members will recognise in the list Roman (i) to (viii) most of the associations of the sector, if not all indeed the leading sector of the Financial Services Centre. The Bill enables or rather grants the Council legal personality, it gives its members immunity, indemnity in respect of suit in respect of any action taken or omission made by them acting in good faith. The rules of procedure of the Council amongst other things would be prescribed by rules made under clause 7. The duties of the Council are established there in clause 4 and they are described as being ‘to design and implement a training and competency scheme in financial services in Gibraltar to set down standards of competence which practitioners in financial

services feel it should achieve to determine what training courses, whether offered by external institutions or offered in-house by financial institutions in Gibraltar, will provide the required standards of competence and issue a letter of accreditation to the offerer of such course. To monitor the continuing development of any training courses and as appropriate issue further accreditation or withdraw an existing one. To keep standards of competence under review, issue statements of principles and codes of conduct.'

Mr Speaker, I believe that not in the form established by the Bill, because I say the Bill does not establish the regime it facilitates it sets up some of the basic infrastructure, but this Skills Council and the expertise that it will be able to call upon and the duties and functions that it will have once it has been set up and established will provide for that degree of on-going training, competency and testing of that which I think will not only help to protect domestic consumers of financial services products but indeed will serve to further enhance Gibraltar's reputation abroad amongst its international financial services client base, as a well-regulated jurisdiction with the interests of all stakeholders in the industry at heart. I commend the Bill to the House.

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

HON F R PICARDO:

Can I before doing anything else add my welcome to yours to the new Member sworn in today, Mr Colombo, who joins us today in the post of Acting Attorney, and can I then welcome also the Bill and say that it is a Bill which will enjoy the support of both sides of the House. Certainly this is the type of progress that highlights how our Finance Centre is changing, how it is becoming much more sophisticated, how the products that we offer are greater added value. I think it is important that we not just have a framework built to enable us to do the things that this Bill sets out to do but that we also back these sentiments up with action. In that respect I am informed that the Government have at different stages supported and financed and at other stages not financed, although I am sure supported, certain employees in the Finance Centre industry taking the courses offered by the Society of Trust and State Practitioners in Gibraltar, and perhaps he could tell us what the attitude of the Government in terms of funding of further education at that level would be after the implementation of this Ordinance which sets up the Council that will be monitoring people taking those courses et cetera. Otherwise, it is a Bill that will enjoy the support of the Opposition.

HON CHIEF MINISTER:

The Bill does not deal with the question of how the Council would be funded. The Government, as the hon Member has been good enough to recognise, do spend a considerable amount of effort and money in supporting training and qualification acquisition in various sectors of the economy, not just financial services. We do so in financial services but of course I think the Government's, for which the tax payers funds and the degree of them which are to be invested in things in which Gibraltar at large has an interest such as this, have also got to be tempered by the fact that this is a wealthy industry that makes a huge degree of money, thankfully for us all because they therefore employ people, and that the burden of initiatives such as this should not necessarily fall exclusively on taxpayers' shoulders but indeed, imaginative ways should be found of ensuring that those who will also benefit through better management, through better human resources to work within their own organisations should perhaps contribute. This is one of the factors that the Council will have to debate and come up with suggested financing models and then the Government would consider it. Certainly there would be financial implications for the Government in this training and competence in the Skills Council but I think that financial burden should be shared by

others who will benefit from it too, not the consumer but certainly financial services providers.

Question put. Agreed to.

The Bill was read a second time.

HON CHIEF MINISTER:

Could I just say which I omitted to do that at the Committee Stage I intend to move two very small and inconsequential amendments. I will not trouble the House with them now but they are not such as to change the meaning of any provision of the Bill, really just to correct language.

I beg to give notice that the Committee Stage and Third Reading of the Bill be taken later today.

Question put. Agreed to.

THE FINANCIAL SERVICES (CROSS-BORDER PAYMENTS IN EURO) ORDINANCE 2006

HON CHIEF MINISTER:

I have the honour to move that a Bill for an Ordinance to provide for effective sanctions in case of a breach of the provisions of Council Regulation (EC) No. 2560/2001 of the European Parliament and the Council of 19 December 2001 on cross-border payments in euro, be read a first time.

Question put. Agreed to.

SECOND READING

HON CHIEF MINISTER:

I have the honour to move that the Bill be now read a second time. Mr Speaker, this Bill is necessary only for the purposes of providing for sanctions for breach in Gibraltar of an EU Regulation which as hon Members know has direct legal application in Gibraltar. The Regulation relates to cross-border payments in euro and Regulation 2560 of 2001 lays down rules for cross-border payments and provides that charges for such payments have to be at the same rate as charges for payments in euro within a Member State. The Regulation is supported by a system of what are called in short 'IBANS' international bank account numbers and bank identifier codes. Indeed hon Members may have noticed on their cheque books that these things are now present on them, Gibraltar has its own IBANS number prefixed by the international country code GI. The Bill provides for penalties in the case of a breach of the European Regulations, in particular clause 3 provides that civil legal proceedings may be brought if an institution charges more for a cross-border electronic payment transaction, that is to say, cross-border cash withdrawals at a dispenser machine or cross-border transfers of funds effected electronically, or cross-border credit transfers, that is, a transfer of funds from one Member State to another, that a corresponding payment in euros transacted within Gibraltar. In other words, the principle behind the Regulation is that there cannot be higher bank charges for sending euros across EU country borders than are charged domestically by the bank within the country in which it operates. The important point to note about clause 3 is that it establishes a civil sanction. In other words, the sanction that it establishes is that it enables the affected bank customer, it gives the affected bank customer a claim of right in civil law against the bank.

Clause 4 provides that it will be an offence, so that is now a criminal sanction as opposed to a civil sanction, punishable with a fine not exceeding level 4 on the standard scale, which hon

Members may recall amounts to £2,000, for an institution to fail to make available to its customers written information on the charges levied for cross-border payments and domestic payments in euro or information on charges for exchanging currencies into euro, for an institution to fail to communicate to customers information relating to their IBAN, the bank's identifier code and any charges which may be levied as a result of a customer failing to communicate their IBAN or relevant identifier code. Or for a supplier which accepts payment by transfer to fail to communicate to customers information relating to their IBAN and bank identifier code. In other words, clauses 3 and 4 split the sanction regime. It is a criminal offence to fail to provide one's customers with the sort of information that they would need to see if their rights have been infringed but thereafter it is a civil matter to actually seek redress for any rights that may have been infringed. The logic of that is that it is no consolation to a bank customer that has been overcharged, perhaps on very significant transactions, that the State can prosecute and impose a fine. What the customer wants is the ability to recover the money that he has been overcharged. So the law through the criminal sanction ensures that the customer will always have the information that he needs so that he can execute his civil law remedies should he have suffered loss as a result of those breaches by the bank. Clause 5 provides for corporate criminal liability in the event of a breach of clause 4.

As I said at the outset, the effect of this Bill is simply therefore to provide teeth through sanctions to a body of law that already applies in Gibraltar without the need for this House to have implemented it, because hon Members know that unlike directives, Regulations of the EU have direct legal force throughout the territory of the whole EU without the need for national legislatures to transpose it into national law. I commend the Bill to the House.

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

HON F R PICARDO:

There is little to add to what the Chief Minister has said is obviously the purpose of this Bill, but I am a little concerned about the manner in which the extension of the offences created to partnerships and companies and unincorporated associations has been set out, because I think as presently phrased if there were a person who is an impostor on behalf of a company or a partnership, in other words, in clause 5(1)(a) 'or any person purporting to act in any such capacity', in other words, as a director, chief executive, manager, secretary or other similar offence of the body corporate or similarly in relation to a partnership a person purporting to act as a partner, or in an unincorporated association a person purporting to act in any such capacity as a Member of the governing body of the unincorporated association. What the Bill then goes on to say is that he, as well as the company partnership or association, is guilty of an offence. Now there may be circumstances where the company partnership or unincorporated association do not know that there is a person out there holding themselves out as a director or partner of that association et cetera, and there is no reason why they should be deemed to be guilty of an offence in those circumstances. Although if they do know that those circumstances are arising, or if they have given ostensible authority they would likely to be found to be guilty of the offence also. This is not dissimilar language to the language that is used routinely when offences are created for companies and partnerships and I simply flag the issue up as one that may bear looking at in greater detail to make explicit that it would only be in circumstances where the company and unincorporated association or partnership is aware or has created ostensible authority to that person to hold themselves out in that way, which is in breach of the offences created, that they should be deemed by the language of the Ordinance which says very clearly that they would be guilty of an offence that they should not be guilty when they have not acted in that way. I simply flag that up for us to have perhaps, if the Chief Minister wants to reply now, to look at in Committee when we are looking at the language used.

HON CHIEF MINISTER:

I do not believe that the concern that the hon Member has articulated actually arises. It has got to be somebody within the organisation, we are talking about failure by in effect money transmission businesses to provide their clients with information about the transaction that they have carried out on behalf of their clients. It is not possible for an interloper outside of the organisation to be in a position to give or not to give the information. The bank or other money transmitting organisation is obliged to provide its clients with its tariff of fees for sending money out of Gibraltar on their behalf. Well, how can somebody outside of the bank fail to provide the information? What this says and what it envisages is that if there is somebody within the organisation it has to be purporting to be the case of the body corporate but the same point applies to all the other forms of legal person, is purporting to act as a director, or a chief executive or a manager or a secretary or other similar officer of the corporate body, or any person purporting to act in such a capacity. Well, an interloper from the street cannot act or purport to act in that capacity, and that is exactly what it is intended to cover. Remember, so that bodies corporate do not hide behind 'oh, the employee was not authorised'. It is up to those providing money transmission services for their clients to ensure, and particularly those who direct it, to ensure that the culture of compliance permeates throughout the organisation and that it will not be a defence for somebody to say 'ah, that is the office tea-maker who was not authorised to refuse to give somebody', it is about systems. Now, even if what I was saying to the hon Member was not right and that there was in the language something that was capable of being interpreted in the way that he has suggested, well, I think we then have to rely on the good sense of the Attorney General who in his capacity as Director of Public Prosecutions who would have to decide in all cases whether a prosecution is justified or not, so there is always that ultimate safeguard.

Question put. Agreed to.

The Bill was read a second time.

HON CHIEF MINISTER:

I beg to give notice that the Committee Stage and Third Reading of the Bill be taken later today.

Question put. Agreed to.

THE FINANCIAL SERVICES (MISCELLANEOUS PROVISIONS) ORDINANCE 2006

HON CHIEF MINISTER:

I have the honour to move that a Bill for an Ordinance to amend the Financial Services Ordinance 1989 and the Financial Services Ordinance 1998, be read a first time.

Question put. Agreed to.

SECOND READING

HON CHIEF MINISTER:

I have the honour to move that the Bill be now read a second time. Mr Speaker, this Bill as I have said amends the 1989 and 1998 Ordinances and is part of a package of legislation which will enable Gibraltar investment services to be passported into the United Kingdom. Hon Members will recall that that is the remaining element of the Investment Services passporting badge that remains to be put into place. The Bill introduces the following amendments to the Financial Services Ordinance 1989. Clause 3 amends the definition of 'relevant supervisory authority' to give it the definition set out in the Financial Services

Ordinance 1998. Clause 4 amends section 3(2) by excluding from the definition of 'carrying on investment business' those activities excluded by the new Schedule 2A and referring to new Schedule 2B which is the interpretation schedule. Clause 5 amends section 6 to limit the type of applications for licences from European authorised institutions in respect of items 7 to 12 of the business so listed. Clause 6 deals with licensing applications which could be a European subsidiary institution. It amends section 8 by deleting sub-section (3) which currently prevents the authority from considering the licensing applications which are not European authorised institutions and renumbers existing sub-section (4). Clause 7 inserts a new section 11B which allows the authority to direct that certain regulations shall not apply to authorised firms or licences or shall apply with modifications. Clause 8 deals with advertising regulations and in particular allows regulations to be made prohibiting or restricting the circumstances and manner in which licensees can promote investments or investment business to the public. Clause 9 introduces a new section 33A which allows the authority to request what are called 'skilled persons reports'.

Mr Speaker, I had given notice that in Committee I shall be proposing a small amendment in this clause by inserting a new sub-section (4) and I will say something to the House about that a little later. Clause 10 amends section 34 to allow the authority to request information and production of documents from an additional category of persons, that is, persons holding themselves out as carrying on an investment business or controlled activity. Clause 11 inserts a new section 35(1)(a) which allows the authority to direct persons who it considers "not fit and proper " to not carry out particular functions. Clause 12 amends section 42 to extend the categories of persons whom the Supreme Court may order to furnish information to cover "persons appearing to have information relating to any contravention". Currently this power exists only in relation to persons who appear to have contravened the provisions of sections 3 or 10. Clause 11 amends section 44 by inserting a new sub-section (ee) with the effect that the requirements of sections 44 and 45 are extended to cover directions by the authority under section 35. Clause 14 amends section 46(b) which deals with discretionary notices in the Gazette, to refer to section 35 instead of section 24. The effect is that the authority will have the power to publish in the Gazette decisions it makes cancelling or suspending a licence or directing that a person shall not carry out a specified function. Clause 15 amends section 53 to provide that regulations are to be made by the Minister with responsibility for Financial Services rather than by the Governor.

I have given notice that in Committee I shall be moving an amending to clause 51 so that the references to 'Governor' are replaced with references to 'Minister' throughout that section 53, which is the regulation-making power. Clause 16 amends section 56(1) which is the fees regulations to provide that fees shall be paid to the Financial Services Commission as opposed to the authority which is the Commissioner, and that fees may also be prescribed for authorised Gibraltar and European investment firms. Section 56(1)(d) which dealt with European firms is therefore deleted. Clause 17 inserts a new section 57(a) which allows the authority to issue guidance with respect to the Financial Services Ordinance 1989, Financial Services Ordinance 1998, the functions of the authority or other matters by which it seems to the authority desirable to give information or advice, and I am proposing amendments just to make it clear that those all have to be issues which are otherwise within the statutory competence of the Financial Services Commission under these or any other Ordinance. Clause 18 amends Schedule 2 which relates to activities constituting investment business and it particularly inserts new provisions dealing with custody of investments and the sending of dematerialised instructions. Clause 19 inserts two new Schedules, Schedules 2A and 2B. Schedule 2A sets out excluded activities and Schedule 2B is an interpretation schedule. Clause 20 amends Schedule 3. Paragraph 1(2) to clarify that the activities of a person as servant or agent of a licensed management company may be taken into account as well as the activities of a person as principal of such a company. Clause 21 amends Schedule 4 (exempted persons), to include, at new sub-paragraph (bb)

licensed insurers, and to limit the application of sub-paragraph (h) in respect of persons who are directors of other companies in certain circumstances therein set out.

The Bill also amends the Financial Services Ordinance 1998. Clause 23 amends the definition of 'Minister' in section 2(1) to refer to the Minister with responsibility for Financial Services rather than the Minister for Trade and Industry who used to hold the portfolio as part of that wider Ministry. Clause 24 amends the definition of 'authorised European investment firms' in section 18. Clause 25 inserts a new section 27A which allows the Minister to make regulations concerning the provision of investment services in the United Kingdom. This Bill, together with associated legislation, will enable Gibraltar amongst other things, investment firms, to passport investment services into the United Kingdom as was recently announced by the Government in a public statement. Hon Members will get, I suppose, a letter setting out the notice that I have given of amendments, I do not think any of them change the principles of the Bill and therefore it is probably just as well that we consider them at Committee Stage because if I take the hon Members through it we will in effect end up discussing the amendments now rather than at Committee Stage. I commend the Bill to the House.

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

HON F R PICARDO:

Of course this Bill will be supported by the Opposition although we make no comment on the way in which the ability to passport into the United Kingdom has come about. Of course we will support the Bill. I would simply say that when we have notices of amendment it would be useful to have them before the Chief Minister gets on his feet so that we can follow more clearly exactly what amendments he is going to make. I undertake to give him, if ever I am able to prepare my notice of amendment in writing, before I get on my feet so that he has them whilst I am speaking those notices, not that he might care much for my proposed amendments but in any event. The ability to disqualify wholly or in part what activity an individual may undertake is of course got to be welcomed in this House for reasons also related but not exclusively those that arose in the recent TEP Plan debacle. We welcome of course also the continued consolidation exercise which takes power from the Governor into the hands of the Minister. I will be asking the Chief Minister to look at the language of section 25 of the Bill which introduces the new section 27 because as presently drafted, perhaps this is an issue for Committee but I give notice of this now, I think it is designed perhaps by design or by mistake, I await the Chief Minister's comments to enable the Minister to make regulations affecting a specific authorised Gibraltar investment firm, when it may be that it was intended to have a power to direct authorised Gibraltar investment firms about the manner in which they must act once they are authorised in that way. At the moment the language is, 'the Minister may by regulation make specific provisions requiring an authorised Gibraltar investment firm to do certain things'. I think it should be 'to require authorised Gibraltar investment firms to do certain things' but I will be guided by him as to what the intention of the Government was when preparing that section. Other than that the Bill will be supported by the Opposition.

Question put. Agreed to.

The Bill was read a second time.

HON CHIEF MINISTER:

I beg to give notice that the Committee Stage and Third Reading of the Bill be taken later today.

Question put. Agreed to.

THE TRANSNATIONAL ORGANISED CRIME ORDINANCE 2006

HON CHIEF MINISTER:

I have the honour to move that a Bill for an Ordinance to make provision for the implementation of the United Nations Convention Against Transnational Organised Crime, be read a first time.

Question put. Agreed to.

SECOND READING

HON CHIEF MINISTER:

I have the honour to move that the Bill be now read a second time. Mr Speaker, the purpose of the Bill, as already has been said, is to transpose and give effect in Gibraltar to that United Nations Convention which has already been referred to, the Transnational Organised Crime Convention, which is sometimes referred to as the Palermo Convention. The international community regards this Convention as an important flank in the fight against international crime and therefore the Government view participation in this measure as a further step in reinforcing this jurisdiction's commitment to and reputation for being at the forefront of best practice. The Bill before the House does not define what constitutes a serious organised criminal group. The reason why this approach has been taken, as has been the case in other common law jurisdictions, perhaps might be of interest to the hon Members. The Convention defines 'organised criminal group' as follows. It says, 'organised criminal groups shall mean a structured group of three or more persons existing for a period of time and acting in concert with the aim of committing one or more serious crimes or offences established in accordance with this Convention in order to obtain directly or indirectly a financial or other material benefit'. This definition has several ingredients that can be broken down as follows. A group that is structured of at least three individuals, existing over a period of time, acting in concert, aiming to commit at least one crime with a view to obtaining a benefit. The multiplicity of ingredients would make a prosecution infinitely more difficult than if we were to proceed on the basis of our existing conspiracy laws which only requires two persons acting in concert with a view to committing a crime. In the circumstances a definition along the lines of the Convention text would actually weaken rather than strengthen current legal principles and current enforcement powers already available in Gibraltar in the context of the definition of the ingredients of the inchoate offence of conspiracy.

The House may wish to note that clause 3 sets out the administrative procedures that must be complied with in relation to any request for assistance relying on this Ordinance and therefore on this Convention. The key feature of this provision is that the Chief Secretary must be satisfied that a State is both a signatory to the Palermo Convention and will reciprocate a request for assistance in similar terms if made by Gibraltar. This is in keeping with the safeguards that are built into the Mutual Legal Assistance (International) Ordinance 2005 that is relied upon in Part 3 of the Bill. In other words, this Bill instead of creating yet a further mutual legal assistance regime for the use in the cases covered by the Palermo Convention, simply says the regimes created under the Mutual Legal Assistance (International) Bill, which hon Members may recall because we passed it not so long ago, will apply to these things too. Clause 4 sets out the offences to which the Ordinance will apply. They are relevant offences that are transnational in nature. A relevant offence is defined in clause 2 of the Bill as one carrying a term of imprisonment of at least four years. The transnational element is that the offence or its effect is either committed in one State but has effects in another State. Clause 5 grants jurisdiction to courts in Gibraltar over offences committed outside Gibraltar where the commission of that offence has an effect in Gibraltar. Parts 2 and 3 of the Bill respectively make

provision for extradition and mutual legal assistance. On both occasions rather than creating new structures, as I have just said to the hon Members, reliance is placed on the Fugitive Offenders Ordinance 2002 and the Mutual Legal Assistance (International) Ordinance 2005. In other words, our existing extradition regime and our existing MLA regime are applied to the serious transnational crimes regime set out and regulated by the Palermo Convention applied in Gibraltar by this Bill.

By availing ourselves of these structures the Government have intended to avoid the scenario where a multiplicity of structures, regimes and avenues exist for dealing with essentially the same matters. This in turn relieves the burden on the enforcement authorities and should avert unnecessary confusion, delay and even expense. Part 4 of the Bill, aptly entitled 'Miscellaneous', houses various clauses. Clause 10 allows for a prosecution for corruption under Part XIX of the Criminal Offences Ordinance to apply to officials of another sovereign State or power or Government. Clause 11 makes provision for a witness to be able to give evidence over a live television link subject to conditions being satisfied. The circumstances where the giving of evidence via this medium is contemplated is where a witness is overseas and fears intimidation were he to travel to Gibraltar. An application for the use of this procedure is further balanced by a need to show that it would be both in the interests of justice and not unfair to the accused. Witness protection under clause 12 is vested in the Commissioner of Police. In this clause the Commissioner of Police may take such steps as he deems necessary to secure the protection of a witness. Clause 13 relates to controlled deliveries. Hon Members will see that both the police and customs may participate in so-called controlled deliveries of consignments of illegal substances that they know or have reason to believe have illegal content. That is, where a controlled delivery is to be made the written authority of the Commissioner of Police or the Collector of Customs is required. Where the intention is that the consignment will transit Gibraltar prior to allowing this the competent authority of the State to which it will travel must accept responsibility for continued monitoring, or if it is in the State of destination that it will undertake the delivery. Obviously the purpose of this controlled deliveries regime is so as to create a situation whereby it is lawful to allow illegal consignments to enter Gibraltar for the purposes of tracing it and maximising the number of illegal participants in the transaction that can be caught and brought to justice. Clause 15 allows for rules of court to be made by the Chief Justice where these are required. Clause 16 permits the making of regulations by the Government.

I give notice, as I have in writing already, that I intend to move one small amendment. In the definition of 'State' in clause 2 of the Bill which presently reads, 'Gibraltar or a State that has ratified the Convention', I intend to add the words 'or a territory covered by such a ratification' because otherwise Gibraltar would not be able to give the benefit of this to places like the Channel Islands, or indeed other overseas territories which are not themselves a State that has ratified the Convention, they may be covered by another State's ratification. I think it would be undesirable that Gibraltar should not be able to cooperate on this basis with other countries which like ours is not itself a State that is able in international law and therefore has not ratified the Convention. I commend the Bill to the House.

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

HON F R PICARDO:

This is the first Bill I have seen in my time in this House that has not been published with an Explanatory Memorandum. The publication of the memorandum is not mandatory, it is a practice that always the Government publish an explanatory memorandum, some of them are very useful, some of them are just one line saying this Bill transposes or makes provision for the implementation of the United Nations Convention Against Transnational Organised Crime, which is what the title does. In any event I think that we have all got used to having an

explanatory memorandum which is of use to the House and I am surprised that there is not one with this Bill. There is no need for us to take into consideration articles 6, 7 and 14 of the Convention because those deal with money laundering, and despite all that may be said by those that like to criticise Gibraltar and its Finance Centre and Gibraltar generally, Gibraltar has been an example to many others in respect of money laundering having substantially provided all the legislation in that respect from 1993 onwards. There are many different definitions in our laws of what a serious crime is, we now find another one. A crime that carries at least four years of imprisonment as a sentence, that I was surprised to see when I read the Bill but comes directly from the text of the Convention. In section 16 the Government are taking the power to make regulations rather than a specific Minister. I think that the hon Gentleman has been effecting the practice of stipulating which Minister it is that is going to make regulations and I am surprised to see that there the power is generally to the Government, perhaps he can say something about that when he replies. In respect of the final amendments to be moved I could not agree more that a territory such as Gibraltar should be making provision for territories in similar provision to have the benefit of this type of legislation and Convention. I assume, nonetheless, that we will be asking all the other for example British Overseas Territories to take the same attitude to the provisions that they make in their law to be able to assist us, otherwise the clause that says that the Chief Secretary will not assist unless they reciprocate will mean that they are not entitled to the benefits of the Bill. The Opposition will be supporting the Bill.

HON CHIEF MINISTER:

Only to point out to the hon Member that which I thought he had by now spotted but obviously not. That is that where there is not a Minister with specific responsibility under our current system for the subject matter of legislation, the regulation-making power is given to the Government at large. There is not yet a Minister for Justice, when there is a Minister for Justice he will have responsibility for making regulations in this sort of area. Where there is not a Minister under our existing system of defined domestic matters, the regulation-making power is given to the Government at large which is then exercised by a Minister but they would be wrong to name a specific Minister who does not in law have responsibility for the subject matter of the Bill.

Question put. Agreed to.

The Bill was read a second time.

HON CHIEF MINISTER:

I beg to give notice that the Committee Stage and Third Reading of the Bill will be taken later today.

Question put. Agreed to.

THE COLLECTIONS (AMENDMENT) ORDINANCE 2006

HON CHIEF MINISTER:

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

Question put. Agreed to.

SECOND READING

HON CHIEF MINISTER:

I have the honour to move that the Bill be now read a second time. Mr Speaker, this Bill comes to the House really as part of the Government's legislative updating consolidation and modernisation process. It does not really create a huge amount

of change to the system of street collections in Gibraltar, which is what the Bill refers to, but the changes that it does bring about are the following and they are achieved by way of amendments to an Ordinance which has not been amended since its enactment in 1948. The first amendment that the Bill introduces is that it establishes the concept of an authority and the Bill establishes the authority for the purposes of the Bill as the Chief Secretary or such other person as the Minister may from time to time designate by notice in the Gazette, the Minister being the Minister with responsibility for Public Finance. Hon Members may know that under the present 1948 Ordinance street collections are authorised not by the Government but by the Commissioner of Police, despite the fact that it does not really raise any policing or law enforcement issues. Under this amendment the Government take over responsibility for the authorising of flag days in common parlance through the person of the Chief Secretary, and this will facilitate obviously the keeping of registers and other administrative control of street collections. The amendments to section 4 are various and as I have already said it substitutes for references to 'the Commissioner of Police' in the Ordinance it substitutes them for references to the Authority as the authority for the approval of flag days. In sub-section 4(4) Governor is substituted by Minister as the person entitled to make regulations under the Ordinance. In section 6 after the words 'a police officer' the Bill seeks to insert 'and any other person designated by the Minister' because very often these Bills which create quasi-administrative offences are not usually policed by the police as such, very often they are policed like the Employment legislation, the Public Health legislation to name just two, they are usually policed by the officials that administer the legislation itself and that is what that is aimed at facilitating. In section 7 of the Bill there is in sub-section (7) an amendment to section 7 of the existing Ordinance simply to bring the fines up to date by reference to levels on the standard scale. I beg to give notice that in the Committee Stage I will be giving notice of a very small amendment which is really just to delete in clause 2(7)(iii) to delete the reference to sub-section (3) and replace it with a reference to sub-section (2). I commend the Bill to the House.

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

HON F R PICARDO:

Yes, of course we welcome the continuation of the consolidation exercise taking power to Ministers and the Government from the Governor which was commenced in 1988. Of course, in any such instance there must be an appropriate check and balance. We are concerned in this particular incidence that with power going to the authority of the Chief Secretary and the inclusion of the definition of Minister as it is at the moment, appeals from the decision of an authority who is the Chief Secretary at the moment unless somebody else is designated, will go to the Chief Minister and there is an element of proximity there which perhaps the hon Gentleman may well want to think about. Other than that the Bill will enjoy the Opposition's support.

HON CHIEF MINISTER:

Well I assume that by proximity the hon Member means physical proximity, namely, a reference to the fact that the Chief Secretary's office is in the same building one floor above mine. I do not suppose he means that the Chief Secretary, who is effectively the Head of the Public Administration in Gibraltar, is not independent of the Chief Minister in the exercise or indeed any other Minister, because of course to suggest that not the Minister with responsibility for Financial Services or Public Finances because he is the Chief Minister and works in the building but it would be all right if it were some other Minister of the same Government because he works in a building further up the Main Street, I do not think would be a logical, rational distinction. I think our whole system of Parliamentary, democratic public administration is based on the fact that Ministers make policy and pass laws and give policy steers and then the Chief Secretary or whichever public official the legislation designates, administers the law. I do not think there

is anything specific about the relationship between the Chief Secretary and the Chief Minister which I think would entitle this House to take a different view than it takes about the designation of any official in relation to his relationship with the Minister with which he works. That would be criticism of the whole system of Government both in Gibraltar and in the United Kingdom so I believe that this is perfectly okay.

Question put. Agreed to.

The Bill was read a second time.

HON CHIEF MINISTER:

I beg to give notice that the Committee Stage and Third Reading of the Bill be taken later today.

Question put. Agreed to.

THE INCOME TAX (AMENDMENT) ORDINANCE 2006

HON CHIEF MINISTER:

I have the honour to move that a Bill for an Ordinance to amend the Income Tax Ordinance in order to complete the transposition into the law of Gibraltar of Council Directive 2003/49/EC of 3 June 2003 on a common system of taxation applicable to interest and royalty payments made between associated companies of different Member States, be read a first time.

Question put. Agreed to.

SECOND READING

HON CHIEF MINISTER:

I have the honour to move that the Bill be now read a second time. Mr Speaker, the Bill before the House amends the Income Tax Ordinance in order to complete the transposition of the Interest and Royalties Directive. In addition, the Bill transposes Directive 2004/76 and 2004/66 and carries out consequential amendments to the Ordinance as follows. Clause 2(2)(a) the definition of 'a company' as set out in section 47A(1) of the Income Tax Ordinance leaves open to interpretation whether or not Gibraltar companies are included in the definition, and the amendment is intended to put the matter beyond doubt. Clause 2(2)(b) the definition of 'permanent establishment' refers to a permanent establishment having a fixed place of business situate in Gibraltar. This is not quite accurate, for example, it is not quite an accurate transposition of the directive. Section 47D(3)(c) refers to a permanent establishment situated elsewhere. The proposed amendment is intended to provide a more complete definition containing all the different permutations implicit in the directive. Clause 2(2)(c) deals with the definition of 'source State' which leaves open to interpretation whether or not Gibraltar is covered and this is now, again, put beyond doubt by clause 2(2)(c). Clause 2(3), that is sub-section (3) of clause 2, a number of amendments are proposed to section 47C(4). Firstly to prevent tax being deducted at any point, it is proposed to add 'at the time of payment' after the words 'deduction of tax at source'. Secondly, the phrase 'in his absolute discretion' is too extensive and risks being at odds with what is required by Article 1(1) of the Directive which states, and I quote from the Directive, 'interest or royalty payments arising in a Member State shall be exempt from any taxes imposed on those payments in that State, whether by deduction at source or by assessment, provided that the beneficial owner of the interest or royalty is a company of another Member State or a permanent establishment situated in another Member State of a company of a Member State'. In

other words, the taxation of interest and royalty payments in those circumstances is not and cannot be a matter for the Commissioner's discretion, it is a requirement. His role therefore needs to be limited to applying the principles set out in the directive and not giving him discretion to override those principles as the legislation as presently drafted gives him. It is therefore proposed to remove the words 'in his absolute discretion'.

Clause 2(4) implements Directive 2004/76 which provides for derogations for the new members in the same vein as those previously in existence for the then new members, Spain, Greece and Portugal. This is achieved by substituting the whole of existing section 47D with a new section reflecting the requirements of the 2004 directive, and this approach was preferred to just amending the existing section because the re-working of the section would have been too extensive and too difficult for everyone to follow and to apply. The proposed amendments principally relate to: (1) the different expiry dates of the section depending on the State concerned of their transition periods; (2) whether the derogations relate to interest, royalty or both, these differ depending on the State involved; and (3) the maximum tax deduction thresholds, once again these differ with each of the States mentioned in that section. Clause 2(5) amends section 47F as follows. Firstly, Belgium and Spain, in the case of those two countries the taxes set out in Article 1(5) need to be replicated in sub-section 2(b). This is because permanent establishments will otherwise not be treated as beneficial owners where the interest or royalty payment is subject to the relevant Belgian and Spanish taxes. Secondly, a new sub-section (3) is inserted to transpose Article 1(6) of Directive 2003/49. This amendment is required to ensure the deduction is not given twice to different incarnations of the same company. Clause 2(6) amends section 47(2) as follows. Firstly, the opening lines of sub-section (2) are amended to ensure full compliance with the opening lines of Article 1(13) of Directive 2003/49. Secondly, paragraph (a) is amended to ensure full compliance with paragraph (a) of that same Directive. Thirdly, the amendment to paragraph (b) is simply intended to ensure an appropriate cross-reference is inserted. Fourthly, Article 3A(iii) imposes the qualification that the company concerned has to be subject to certain taxes thereby excluding exempt status company. The amendment is therefore intended to include disqualification into the paragraph for the sake of clarity. Finally, a new paragraph (e) is inserted to transpose Article 1(13)(e). Clause 2(7) amends Schedule 2 to the Income Tax Ordinance in order to transpose Directive 2004/66. This Directive updates the 2003 directive to include the taxes and companies in existence in the new Member States. I commend the Bill to the House.

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

HON F R PICARDO:

Only to ask whether the decisions to make these amendments are decisions which are home-grown or whether the failure of the earlier transposition to comply would be requirements of the Directive, because it is not the directive it is the original directive that have been brought to our attention from elsewhere. Other than that, complying with a directive is not something that is going to be opposed by the Opposition.

HON CHIEF MINISTER:

In answer to the hon Member's questions, in the context of the usual discussions with the UK in relation to the new directives that are being here transposed, it was pointed out to us that certain provisions of our original transposition were open to challenge if discovered by the Commission and we were invited to correct them before it happened and of course we did.

Question put. Agreed to.

The Bill was read a second time.

HON CHIEF MINISTER:

I beg to give notice that the Committee Stage and Third Reading of the Bill be taken later today.

Question put. Agreed to.

THE INSURANCE COMPANIES (AMENDMENT) ORDINANCE 2006

HON CHIEF MINISTER:

I have the honour to move that a Bill for an Ordinance to amend the Insurance Companies Ordinance, be read a first time.

Question put. Agreed to.

SECOND READING

HON CHIEF MINISTER:

I have the honour to move that the Bill be now read a second time. Mr Speaker, the purpose of this Bill is short and simple. There are certain things which now can require regulations passed by the Minister to be done, they are substantially of an administrative and regulatory nature and the proposal of this Bill is that regulation-making powers are given to enable regulations to be made to delegate the power to do these things directly to the Financial Services Commissioner. So, for example, it will now no longer require regulations by the Minister to determine the manner in which accounts and balance sheets are to be audited. This is something that when the regulations are passed they will enable the Commissioner himself to determine that. Similarly, the persons by whom accounts and balance sheet, abstract statements, reports and other documents are to be signed, and finally the contents of any advertisements or invitations published by insurers or connected persons and linked contracts. There is not much more to say simply to repeat that if this Bill is passed, the Minister will have the power to make regulations authorising the Commissioner to do all these things himself rather than being subject to subsidiary legislation. I commend the Bill to the House.

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

Question put. Agreed to.

The Bill was read a second time.

HON CHIEF MINISTER:

I beg to give notice that the Committee Stage and Third Reading of the Bill be taken later today.

Question put. Agreed to.

THE TRUCK (AMENDMENT) ORDINANCE 2006

HON J J HOLLIDAY:

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

Question put. Agreed to.

SECOND READING

HON J J HOLLIDAY:

I have the honour to move that the Bill be now read a second time. Mr Speaker, this Bill is part of Government policy of modernising the laws of Gibraltar. In section 2(2) and (3) of the Bill the powers are moved from the Deputy Governor to the Director of Employment, and in sections 3 and 4 the fines are placed on the standard scale. I commend the Bill to the House.

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

Question put. Agreed to.

The Bill was read a second time.

HON J J HOLLIDAY:

I beg to give notice that the Committee Stage and Third Reading of the Bill be taken later today.

Question put. Agreed to.

THE PUBLIC HEALTH (AMENDMENT) ORDINANCE 2006

HON J J NETTO:

I have the honour to move that a Bill for an Ordinance to amend the Public Health Ordinance in order to transpose into the law of Gibraltar Directive 2003/105/EC of the European Parliament and of the Council of 16 December 2003 amending Council Directive 96/82/EC on the control of major-accident hazards involving dangerous substances, be read a first time.

Question put. Agreed to.

SECOND READING

HON J J NETTO:

I have the honour to move that the Bill be now read a second time. Mr Speaker, this Bill before the House transposes Directive 2003/105/EC of the European Parliament and of the Council amending Council Directive 96/82/EC on the control of major-accident hazards involving dangerous substances. Council Directive 96/82/EC was transposed in Gibraltar by the Public Health (Amendment) Ordinance 2000. The proposed amendment seeks to broaden the scope of the implementing provisions of the Council Directive 96/82/EC to better achieve its aims. Clause 2 amends section 95A to replace the definition of 'directive' to include the reference of the amending directive by the definition of 'notified' in order to be in writing. Clause 3 makes sections 95A to 95T and their Schedules not applicable to certain fields, including the exploration, extraction and possessing of minerals in mines, quarries or by means of boreholes, the offshore exploration and exploitation of minerals, including hydrocarbons and waste landfill sites. It also provides for some exceptions. Clause 4 amends section 95D and provides for a time limit for every operator to prepare and to keep major accident prevention policy documents. Clause 5 amends section 95E and provides for a notification to be sent by the operator to the competent authority within three months containing information specified in Schedule 8. Clause 6 amends section 95F and specifies the content of the report to be sent to the competent authority. Clause 7 amends section 95G and provides for a review of the report sent by the operator. Clause 8 amends section 95H and provides for the requirement of on-site emergency plans to be made before an establishment starts its operation if that establishment has not yet started to operate, and in other cases within a maximum period of one

year. Clause 9 amends section 95J and provides that in the case of a review of an offsite emergency plan, the competent authority shall consult the members of the public. Clause 10 amends section 95N and requires the operator of every establishment to supply regularly the information on safety measures at the establishment and on the requisite behaviour in the event of a major accident at the establishment to every person who is likely to be in an area in which, in the opinion of the competent authority, that person is liable to be affected by a major accident occurring at the establishment and every school, hospital or other establishment serving the public which is situated in such area. It also requires that such information be made permanently available to the public. Clause 11 replaces Schedule 6 that provides for dangerous substances to which Part 2A of the Ordinance applies. The main changes brought about by this Bill are contained in clause 2 which substitutes the existing Schedule 6 for a new one. The new Schedule 6 includes a re-definition of ammonium nitrate to cover a wider range of this substance with lower percentages composition and new clauses; a new category for potassium nitrate fertilisers not previously included; the inclusion of seven new carcinogens and raise threshold limits for all carcinogens; a new and wider category for petroleum products to include gasolines and nitrates, kerosenes including jet fuels and gas oils. The thresholds for these new categories are half those of the previous automotive petrol category. Lowering the qualifying threshold for substances dangerous for the environment; a re-definition of 'explosive' and a change of the aggregation rule when different substances are present in one location. Clause 12 amends Schedule 7, clause 13 amends Schedule 8 and clause 14 amends Schedule 9. This Bill will help the prevention of major accident hazards involving dangerous substances and limit their consequences to the public health and the environment. I commend the Bill to the House.

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

Question put. Agreed to.

The Bill was read a second time.

HON J J NETTO:

I beg to give notice that the Committee Stage and Third Reading of the Bill be taken later today.

Question put. Agreed to.

THE ANIMALS AND BIRDS (AMENDMENT) ORDINANCE 2006

HON J J NETTO:

I have the honour to move that a Bill for an Ordinance to amend the Animals and Birds Ordinance, be read a first time.

Question put. Agreed to.

SECOND READING

HON J J NETTO:

I have the honour to move that the Bill be now read a second time. Mr Speaker, this Bill is part of the Government's successful consolidation process of modernising the laws of Gibraltar. Section 2 places the fines on the standard scale. I commend the Bill to the House.

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

Question put. Agreed to.

The Bill was read a second time.

HON J J NETTO:

I beg to give notice that the Committee Stage and Third Reading of the Bill be taken later today.

Question put. Agreed to.

THE PRISON (AMENDMENT) ORDINANCE 2006

HON MRS Y DEL AGUA:

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

Question put. Agreed to.

SECOND READING

HON MRS Y DEL AGUA:

I have the honour to move that the Bill be now read a second time. Mr Speaker, the Bill amends the Prison Ordinance by inserting two new sections, section 49A and section 49B. Section 49A enables the Superintendent of Prison to authorise a Prison Officer to require any person held on remand or on temporary release to provide a urine sample, undertake a breath test, or a sample of any other description whether instead of or in addition to a urine sample or breath test. It is not proposed that this section apply to intimate body samples. Section 49B builds on new section 49A but extends it to prisoners. In other words, to those that are not on remand or on temporary release. Section 49B(1) enables a prison officer to test a prisoner for drugs in his body by requiring the prisoner to provide a sample of urine and/or any other samples which are not intimate samples. Section 49B(2) enables a prison officer to test a prisoner for alcohol in his body by requiring the prisoner to provide a sample of breath and/or any other samples which are not intimate samples. Pursuant to section 49B(3) intimate samples which are dental impressions may only be taken by a dentist. Other intimate samples may only be taken by a doctor or nurse. Examples may include blood or certain hair samples. Section 75, the regulation-making section, is also amended to enable subsidiary legislation to be made on the conduct of drugs and alcohol tests, the type of samples to be taken and the information to be given to the prisoner tested. I think it is important to highlight that the overall aim of bringing this legislation is to reduce both the supply of drugs and alcohol in prison, whilst at the same time offering inmates the chance of rehabilitation. The expectation, therefore, is that the introduction of mandatory drug testing will serve to identify those prisoners who misuse drugs and to respond accordingly, both in a punitive and supportive way. I have already given notice in writing that I will be moving some minor and I think inconsequential amendments at Committee Stage. I commend the Bill to the House.

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

HON F R PICARDO:

Of course the sentiments which are purported to give effect to by this Bill are to be welcomed by the House. I have some concern about the way that sections 49A and 49B refer to prisoners in different ways. Having heard the hon Lady it is clear that there is an intention to treat prisoners who are entirely confined and prisoners who are confined on remand or on temporary release in a different way. I have gone back to the

Prison Ordinance and I do not find anywhere there anything which is helpful to the type of differences that appear and are probably quite appropriate when dealing with this type of testing. Section 20 of the Prison Ordinance just talks about a prisoner being lawfully confined in a prison but it does not create different classes of prisoner. Section 49A(1) as presently drafted refers to any prison officer requiring a prisoner confined on remand or on temporary release. Now, I think that is designed to mean only prisoners who are on remand or on temporary release but because of their use of the reference 'confined' I do not know whether that could also be interpreted to include long-term prisoners, because when one goes to section 49B we then see the language 'a prisoner whilst in custody' without any differentiation between on remand, on temporary release or totally confined to the prison. In section 49(2) we have the reference to a prisoner confined to the prison. I am not objecting to what the hon Lady is suggesting that the Bill is intended to do, I am just asking that we ensure that we do it in the right way by perhaps adopting a clearer way of referring to prisoners who are wholly already serving a sentence, prisoners who are on remand and prisoners who may be on temporary release. It may be that the Minister or one of her Colleagues can assist me in understanding the way it has been done already. In any event, I think that at section 49B(1) we need to be talking not just about 'any prison officer may' but because of the regime that is being set up I think what we intend to say there is, 'any prison officer authorised by the Superintendent of Prison under section 49A(1) may', otherwise there seems to be a blanket power there to a prison officer to do things without the consent of the Superintendent of Prison. It may be that that is actually what was intended if the class of prisoner referred to in section 49B(1) is different to the class of prisoner intended to be referred to in section 49A. Namely, that one needs the consent of the Superintendent if dealing with a prisoner who is on remand or on temporary release but one does not need the consent of the Superintendent if dealing with a prisoner who is serving a sentence. Those are the only issues that I would take. I would add that I think, and this is not intended as a joke, that in the definition of 'intimate sample' at (c) I think we need to be referring to bodily orifices plural and not bodily orifice, because I think we have more than one other than our mouths. Apart from that the Bill will enjoy the support of the Opposition.

HON MRS Y DEL AGUA:

I actually raised exactly the same questions that the Hon Mr Picardo has just raised and I was assured by the law draftsman who drafted this legislation that there was a legitimate reason for distinguishing between prisoners on temporary release and the way the Bill had been drafted. The distinction is made, according to them, for legitimate reasons. Unfortunately those legitimate reasons were not properly explained to me when I asked the question, but I believe it has been taken from the UK legislation and brought into this legislation.

HON F R PICARDO:

I agree entirely with the Minister and I certainly can appreciate the reasons for differentiating between those classes of prisoners, and I am with her on everything she is saying at the moment. What I am questioning is whether the language actually does that what it appears it is intended to do. Perhaps it is something that we can look at in Committee rather than argue now.

HON MRS Y DEL AGUA:

Yes, I agree.

Question put. Agreed to.

The Bill was read a second time.

HON MRS Y DEL AGUA:

I beg to give notice that the Committee Stage and Third Reading of the Bill be taken at a later date.

COMMITTEE STAGE

HON ATTORNEY GENERAL:

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

1. The Financial Services (Training and Competence) Bill 2006;
2. The Financial Services (Cross-Border Payments in Euro) Bill 2006;
3. The Financial Services (Miscellaneous Provisions) Bill 2006;
4. The Transnational Organised Crime Bill 2006;
5. The Collections (Amendment) Bill 2006;
6. The Income Tax (Amendment) Bill 2006;
7. The Insurance Companies (Amendment) Bill 2006;
8. The Truck (Amendment) Bill 2006;
9. The Public Health (Amendment) Bill 2006;
10. The Animals and Birds (Amendment) Bill 2006.

THE FINANCIAL SERVICES (TRAINING AND COMPETENCE) BILL 2006

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

Clause 3

HON CHIEF MINISTER:

(1) In section 3(2)(d) add the words 'and Training' after the word 'Education' at the end of the sub-paragraph.

(2) In section 3(4) delete the word "letter" and insert 'notice'.

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

Clauses 4 to 7 – were agreed to and stood part of the Bill.

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

THE FINANCIAL SERVICES (CROSS-BORDER PAYMENTS IN EURO) BILL 2006

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

Clause 3

HON F R PICARDO:

In section 3 delete the word 'incidents' and insert 'matters'.

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

Clauses 4 and 5 – were agreed to and stood part of the Bill.

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

THE FINANCIAL SERVICES (MISCELLANEOUS PROVISIONS) BILL 2006

Clauses 1 to 6 – were agreed to and stood part of the Bill.

Clause 7

HON CHIEF MINISTER:

Mr Chairman, clause 7 introduces a new section 11A which gives the Financial Services Commissioner a new power which is a power to disapply the law from individual licensees and persons in the circumstances set out where, for example, he believes that the circumstances of the case do not relate to the issues that the laws were intended to be addressing. Given that the laws are made by the Minister the amendment that I am moving to our own proposal is that the exercise of the power by the Authority should be made subject to the consent of the Minister who made the regulation in the first place. So it would read, "The Authority may with the consent of the Minister ……". I do not think that it is good practice for laws that have been made by the Legislature, and in this context the Minister is part of the Legislature rather than part of the Executive, should be waived by administrators without reference to those who made the laws in the first place and then I am accountable in this House for giving my consent to the disapplication of laws to people where otherwise there is no accountability in the Legislature for the disapplication of laws.

Consequential thereto subsection (6) says that the Authority may (a) revoke a direction or (b) vary it, again with the consent of the Minister on the application. So any direction to disapply or any subsequent variation of that disapplication should be with the consent of the Minister so that there is accountability in this House for the way in which laws are applied differently to different people.

HON F R PICARDO:

Mr chairman, that makes a lot of sense but why then are we putting the words in the second amendment at (6)(b) 'with the consent of the Minister', after the words 'vary it' and not after the word 'may'. In other words the Authority as the amendment presently stands may of its own motion revoke a direction but only with the consent of the Minister vary it.

HON CHIEF MINISTER:

Well I did think of putting it after 'may' and then I thought that it was not necessary because the arguments that I have just given why I think it should be with the consent of the Minister really applied to the disapplication of the law. A revocation of it, in other words, making the person subject to the law again is not really something that invokes the principles that I have just described. In other words, I believe that it should require the consent of the Minister to disapply the law to somebody but if having given that consent and had the law being disapplied the Commissioner then wants to re-apply the law to that person, disapply the exemption, there is no good reason why that should require the consent of the Minister. I am perfectly happy to do it but it would look quite odd that the Minister's consent should be required for a decision to once again make the law applicable to somebody, as opposed to, make the law disapplicable to somebody in the first place. I think the last one should require Ministerial consent, the first one the arguments do not stack up in the same way.

HON F R PICARDO:

Except of course the Minister will have given consent for the direction disapplying the law and then the Authority will unilaterally revoke something which the Minister has consciously done……

HON CHIEF MINISTER:

So the Minister is not the doer, the Minister is only the consentor. If the hon Member feels that it would be better……

HON F R PICARDO:

I am quite satisfied for it to remain as proposed in the Chief Minister's amendment.

MR CHAIRMAN:

Is the heading to clause 7 strictly correct, this is the new section 11B not new A.

HON CHIEF MINISTER:

That is correct, yes.

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

Clause 8 – was agreed to and stood part of the Bill.

Clause 9

HON CHIEF MINISTER:

After section 33A(3) insert:

"(4) The costs of producing a report under subsection (1) shall be borne by the relevant person required to provide the report."

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

Clauses 10 to 14 – were agreed to and stood part of the Bill.

Clause 15

HON CHIEF MINISTER:

Replace section 15(1) as follows:

"15(1) In section 53 for all references to "Governor" substitute "Minister"."

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

Clause 16 – was agreed to and stood part of the Bill.

Clause 17

HON CHIEF MINISTER:

This clause is reworded as follows:

"Guidance.

57A(1) The Authority may issue guidance consisting of such information and advice as it considers appropriate-

(a) with respect to matters within its competence relating to the operation of this Ordinance or the 1998 Ordinance;

(b) with respect to any matters relating to the discharge by the Authority of its functions under this or any other Ordinance;

(c) with respect to any other matters within the statutory competence of the Authority about which it appears to the Authority to be desirable to give information or advice.".

Clause 17, as amended, was agreed to and stood part of the Bill.

Clause 18 – was agreed to and stood part of the Bill.

Clause 19

HON CHIEF MINISTER:

In Schedule 2B, section 2(1)(a) delete the word 'other'.

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

Clauses 20 to 24 – were agreed to and stood part of the Bill.

Clause 25

HON CHIEF MINISTER:

(1) In new section 27A delete the word 'an' appearing before 'authorised' and add an 's' to the word 'firm';

(2) In sections 27A(a) and (b) delete the 's' from the word 'provides'.

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

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

THE TRANSNATIONAL ORGANISED CRIME BILL 2006

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

Clause 2

HON CHIEF MINISTER:

In clause 2, in the definition of 'State', to add after the word 'Convention' 'or a Territory covered by such a ratification'.

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

Clauses 3 to 10 – were agreed to and stood part of the Bill.

Clause 11

HON F R PICARDO:

In subsection (2) there is reference to the prosecutor or the defence in any proceedings, I think in our legislation that should be a reference to the prosecution or the defence in any proceedings. In section 11(2) delete the word 'prosecutor' and insert 'prosecution'.

Clause 11, as amended, was agreed to and stood part of the Bill.

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

Clause 13

HON F R PICARDO:

In subsection (2) I think we are missing either the word 'if', 'when' or 'where' after the word 'consignment' in the penultimate sentence, otherwise it does not read. In section 13(2) after the words 'delivery of the consignment' add the word 'when'.

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

Clauses 14 to 16 – were agreed to and stood part of the Bill.

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

THE COLLECTIONS (AMENDMENT) BILL 2006

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

Clause 2

HON CHIEF MINISTER:

In (iii) where it says 'in subsection (3) delete the figure of '£25.00', that should read in subsection (2), the figure £25.00 does not appear in subsection (3) it appears in subsection (2).

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

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

THE INCOME TAX (AMENDMENT) BILL 2006

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

THE INSURANCE COMPANIES (AMENDMENT) BILL 2006

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

THE TRUCK (AMENDMENT) BILL 2006

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

THE PUBLIC HEALTH (AMENDMENT) BILL 2006

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

Clause 4

HON F R PICARDO:

There are a number of references in this Ordinance, two of which I have spotted, here in subsection (1) 'every operator shall without delay but at all events within three months', I think that should be 'but in any event within three months' that is the way it appears in the rest of our legislation. It appears again in section 6 in the new 8B at the very end of page 3. I think that should read 'but in any event'.
In section 4(1) delete the words "at all events" and insert "in any event".

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

Clause 5 – was agreed to and stood part of the Bill.

Clause 6

HON F R PICARDO:

In section 6(a) sub-paragraph (8B) delete the words 'at all events' and insert 'in any event'.

Clause 6, as amended, was agreed to and stood part of the Bill.

Clause 7 – was agreed to and stood part of the Bill.

Clause 8

HON F R PICARDO:

In section 8(a) sub-paragraph (d) delete the words 'at all events' and insert 'in any event'.

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

Clauses 9 and 10 – were agreed to and stood part of the Bill.

Clause 11

HON J J NETTO:

I did actually give notice that I wanted to do two amendments which are basically typographical errors. In clause 11 in column 1 of the Table in Part 2 of Schedule 6, references to "Note 8" shall be replaced by "Note 7" in four places in the consecutive rows. In the Table in Part 2 of Schedule 6, the second part of column 2 shall be deleted and the figure "25000" under petroleum products shall be shifted to column 3.

Clause 11, as amended, was agreed to and stood part of the Bill.

Clauses 12 to 14 – were agreed to and stood part of the Bill.

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

THE ANIMALS AND BIRDS (AMENDMENT) BILL 2006

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

Clause 2

HON J J NETTO:

Here again another typographical error. In clause 2(6) delete the words 'of' and 'at' and in section 2(12) delete the reference to 'section 25(2)' and insert 'section 25(3)'.

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

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

THIRD READING

HON ATTORNEY GENERAL:

I have the honour to report that the Financial Services (Training and Competence) Bill 2006, with amendments; the Financial Services (Cross-Border Payments in Euro) Bill 2006, with amendments; the Financial Services (Miscellaneous Provisions) Bill 2006, with amendments; the Transnational Organised Crime Bill 2006, with amendments; the Collections (Amendment) Bill 2006, with amendment; the Income Tax (Amendment) Bill 2006; the Insurance Companies (Amendment) Bill 2006; the Truck (Amendment) Bill 2006; the Public Health (Amendment) Bill 2006, with amendments; and the Animals and Birds (Amendment) Bill 2006, with amendments, have been considered in Committee and agreed to and I now move that they be read a third time and passed.

Question put.

The Financial Services (Training and Competence) Bill 2006;
The Financial Services (Cross-Border Payments in Euro) Bill 2006;
The Financial Services (Miscellaneous Provisions) Bill 2006;

The Transnational Organised Crime Bill 2006;
The Collections (Amendment) Bill 2006;
The Income Tax (Amendment) Bill 2006;
The Insurance Companies (Amendment) Bill 2006;
The Truck (Amendment) Bill 2006;
The Public Health (Amendment) Bill 2006;
The Animals and Birds (Amendment) Bill 2006,
were agreed to and read a third time and passed.

ADJOURNMENT

The Hon the Chief Minister moved the adjournment of the House to Wednesday 19th April 2006, at 9.30 a.m.

Question put. Agreed to.

The adjournment of the House was taken at 12.25 p.m. on Thursday 6th April 2006.

WEDNESDAY 19TH APRIL 2006

The House resumed at 9.45 a.m.

PRESENT:

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

GOVERNMENT:

The Hon P R Caruana QC - Chief Minister
The Hon J J Holliday - Minister for Trade, Industry, Employment and Communications
The Hon Dr B A Linares - Minister for Education, Training, Civic and Consumer Affairs
The Hon Lt-Col E M Britto OBE, ED - Minister for Health
The Hon J J Netto - Minister for the Environment
The Hon Mrs Y Del Agua - Minister for Social Affairs
The Hon C Beltran - Minister for Housing
The Hon F Vinet - Minister for Heritage, Culture, Youth and Sport
The Hon R R Rhoda QC - Attorney General
The Hon T J Bristow - Financial and Development Secretary

OPPOSITION:

The Hon J J Bossano - Leader of the Opposition
The Hon Dr J J Garcia
The Hon C A Bruzon
The Hon S E Linares
The Hon L A Randall

ABSENT:

The Hon F R Picardo
The Hon Miss M I Montegriffo

IN ATTENDANCE:

D J Reyes Esq, ED - Clerk of the House of Assembly

DOCUMENTS LAID

The Hon the Financial and Development Secretary laid on the Table:

1. The Statement of Supplementary Estimates No. 1 of 2005/2006;

2. The Report and Audited Accounts of the Gibraltar Heritage Trust for the year ended 31 March 2005.

Ordered to lie.

HON CHIEF MINISTER:

Mr Speaker, if I may on a point of order just before we proceed with the revised agenda for the House, the House will be aware that under the terms of the Constitution the Estimates of Revenue and Expenditure, the Schedule therefore to the Appropriation Bill for the forthcoming year has to be laid in the House before the end of April, in other words, within 30 days of the start of the new financial year. The House cannot convene during the last week of April, which is the earliest that the document can be ready, because a substantial part of it is travelling to the Commonwealth Parliamentary Association meeting in Malta. It is open to me to convene a meeting of the House with a minimum quorum, which is three on one side and two on another, and it would require a temporary Speaker given that Mr Speaker is accompanying the Gibraltar delegation to the CPA Conference. However, in prior discussion with the Leader of the Opposition he has indicated to me, for which I am grateful, that if a way can be found of avoiding the need for that meeting which would be limited, literally it would last just 30 seconds just lay the thing on the table and go away with a minimum quorum, but if a way can be found of avoiding that Opposition Members would be content. The Constitution speaks of laying, the document being laid in the House, but of course what constitutes laying a document in the House is a matter for Standing Orders, so we could if the House were content by Standing Orders resolve but on this occasion, so as not to create a general precedent for it, but on this occasion the Financial and Development Secretary's submission to the Office of the Clerk of the House, I say the Office of the Clerk because of course the Clerk himself will also be away, since submission to the Office of the Clerk of the House shall constitute laying on the Table of the House, even though the House will not then be in sitting it will be in meeting because we will not have adjourned sine die but it will not be in sitting, and then the Clerk can distribute it when he returns on the Tuesday morning, he can distribute it to all the Hon Members of the House but that the Financial Secretary will have complied with his constitutional obligations by laying, in accordance with the resolution of the House by submitting it to the Office of the Speaker before the end of April as it says he constitutionally must. I make that proposal for the consideration and if thought fit approval of the House.

HON J J BOSSANO:

Yes, as the Chief Minister has indicated, he has consulted me on this and I think it is unnecessary really for five Members to come here as he says for 30 seconds when in fact the purpose of the exercise is to comply with the constitutional requirements and to allow Members to be able to study the document before it is debated. I am quite happy to support him and I think it makes sense.

MR SPEAKER:

Given the measure of agreement by Members on both sides of the House, I am happy to rule that for the purpose of this occasion the constitutional requirement of laying before the House of the Estimates by the Financial and Development Secretary shall be satisfied by the delivery by the Financial and Development Secretary to the Office of the Clerk, of the Estimates for circulation by the Clerk in due course.

HON CHIEF MINISTER:

Obliged Mr Speaker and the hon Members.

BILLS

FIRST AND SECOND READINGS

THE COMMUNICATIONS ORDINANCE 2006

HON J J HOLLIDAY:

I have the honour to move that a Bill for an Ordinance to provide for the assignment or conferring of functions to a Minister and to the Gibraltar Regulatory Authority; to make provision for the regulation of the electronic communications sector and of the use of the electro-magnetic spectrum; to transpose and to make provision for the transposition of Directives 2002/19/EC, 2002/20/EC, 2002/21/EC, 2002/22/EC and 2002/58/EC of the European Parliament and Council and Directive 2002/77/EC of the European Commission; and for connected purposes, be read a first time.

Question put. Agreed to.

HON J J HOLLIDAY:

I wish to give notice that this Bill will not be proceeding to the Second Reading today.

THE CHILDREN AND YOUNG PERSONS (ALCOHOL, TOBACCO AND GAMING) ORDINANCE 2006

HON MRS Y DEL AGUA:

I have the honour to move that a Bill for an Ordinance to regulate the sale and supply of alcohol and tobacco to children and young persons and their use of gaming machines and for matters connected thereto, be read a first time.

Question put. Agreed to.

SECOND READING

HON MRS Y DEL AGUA:

I have the honour to move that the Bill be now read a second time. Mr Speaker, this Bill addresses three areas of concern which are encapsulated in the title, namely, the relationship of children with alcohol, tobacco and gaming machines. Before dealing in more detail with the different parts of this Bill it is important to highlight that the overall aim of this legislation is not to criminalise young persons, it is to protect them. It does, however, seek to more effectively reduce the sale and availability of these substances by creating new offences, by giving certain new powers to the police and by empowering the courts to impose a variety of penalties on suppliers or procurers, ranging from the imposition of restrictions, the imposition of heavy fines and the suspension or revocation of licences. The Bill contains five parts. Part 1 relates to the sale of alcohol. Clause 3 prohibits the sale of alcohol to persons under 16 years of age. The penalty for breaching this provision is a fine up to level 5 on the standard scale. The offence is not a strict liability offence, however, in order for a person to establish the defence provided in sub-clause (2), he must satisfy the court that (a) he believed the child to be 16 years or more; and (b) either he had taken all reasonable steps to establish the child's age or nobody would reasonably have suspected that the child was not at least 16 years old. A person who relies on clause 3(2)(b)(i) will also have to satisfy the court that he asked the child for evidence of his age and that such evidence as was provided would have convinced a reasonable person. The Bill at clause 7 also creates the offence of procuring alcohol for a person under the age of 16 in respect of which similar penalties and defences

apply as for the selling offence. In addition to the foregoing, the Bill makes provision in clauses 4 and 5 respectively for the erection of notices in premises where alcohol is being sold. The notice will state it is illegal to sell alcohol to, or procure alcohol for any one under the age of 16. The notice will have to be exhibited in a prominent position that is visible to persons at the point of sale. Minimum dimensions for the notice are provided for in addition to sanctions for failure to have a notice or one that does not meet with the prescribed criteria. Clause 6 relates to the consumption of alcohol in public places. It is an important measure which will assist the police in the execution of their duties. It provides them with the power to confiscate and dispose of alcohol where there is reason to believe that the person is under the age of 16 and is, has or intends to consume alcohol in a public place.

Part 2 of the Bill relates to tobacco. Clauses 9 to 13 replicate the regime created for the sale and procurement of alcohol to the sale and procurement of tobacco. Additionally, Part 2 under clause 14 makes provision for vending machines and in particular the need to have a notice displayed on vending machines. Under clause 16, where a vending machine is used by an underaged person, proceedings may be issued against the owner of the vending machine or the occupier of the premises upon which the machine is located. Additionally and perhaps of greater impact, where a complaint is made to the Magistrates' Court the court is given the power in clause 17 to make an order imposing conditions to prevent the further use of that vending machine by such persons, irrespective of whether the complaint is made out or not. Indeed, the court may even bar such machines from the premises in question.

Part 3 of the Bill makes provision for gaming machines. In this Part under clause 18, a person is guilty of an offence if being the owner of a gaming machine or the occupier of premises upon which such a machine is located, allows a person under the age of 18 to use the machine. A defence is available in the same terms as that which is available in relation to the sale of alcohol and tobacco. As with tobacco vending machines, gaming machines are required under clause 19 to carry a prescribed notice and a breach of this requirement constitutes an offence under clause 20. Clause 21 allows the Magistrates' Court to impose conditions relating to the gaming machine, including banning the gaming machine from the premises, again whether the complaint is made out or not. Part 4 of the Bill provides for repeat offenders. Clause 22 applies to licences issued under the Licensing and Fees Ordinance or the Leisure Area Licensing Ordinance 2001. Where a person is convicted for a second or subsequent time the court is required to consider suspending a licence for a specified period of time, or revoking a licence issued under either Ordinance. Part 5 of the Bill concerns amendments and repeals. Clause 23 amends section 6(6) of the Tobacco Ordinance 1997. The effect of this amendment is that the Collector of Customs is not permitted to issue or renew wholesale or retail licences under that Ordinance where that person has been convicted of an offence under clause 9, that is, the prohibition of the sale of tobacco to persons aged under 16. Clause 24 repeals section 264 of the Criminal Offences Ordinance. Those provisions are built upon and incorporated into this Bill. I have already given notice in writing that I will be making amendments at Committee Stage. I commend the Bill to the House.

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

HON S E LINARES:

Just to say that the Opposition is in favour and welcome this Bill.

Question put. Agreed to.

The Bill was read a second time.

HON MRS Y DEL AGUA:

I beg to give notice that the Committee Stage and Third Reading of the Bill be taken later today.

Question put. Agreed to.

THE SUPPLEMENTARY APPROPRIATION (2005/2006) ORDINANCE 2006

HON FINANCIAL AND DEVELOPMENT SECRETARY:

I have the honour to move that a Bill for an Ordinance to appropriate further sums of money to the service of the year ending on the 31 March 2006, be read a first time.

Question put. Agreed to.

HON FINANCIAL AND DEVELOPMENT SECRETARY:

I have the honour to move that the Bill be now read a second time. Mr Speaker, the Bill seeks an additional £3.1 million of Consolidated Fund contribution to the Gibraltar Electricity Authority as set out in the Bill and explained in the Explanatory Memorandum. This additional expenditure is covered by higher than anticipated Consolidated Fund revenue which will shortly be disclosed when the Estimates are laid before the House. The increased deficit of the Electricity Authority this year can be explained primarily by the higher than anticipated price of fuel. The cost of fuel, inclusive of handling charges, increased from £243 roughly per ton in March 2005 to £280 per ton in April 2005, peaking at nearly £356 per ton in September 2005. The additional monies are primarily required for that. There are also some elements related to a slightly increased overtime bill to the Electricity Authority, and in addition, the deficit carried forward from one year to the other we projected at zero but in actual fact it turned out to be about £300,000 which we are making good through this Bill. I commend the Bill to the House.

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

HON J J BOSSANO:

I note that the Financial and Development Secretary has told us that the main reason is the increased fuel costs, £300,000 being brought forward from the previous year whereas the Estimate produced for the year was that the £4.4 million last year would balance the books and produce a zero amount carried forward. So I take it that that means that in fact the expenditure last year was £300,000 higher than the amount in the estimate and I would like to know whether in fact what has been, I know we will know next week but since we are debating this now I would like to know whether there has been any change in the revenue estimate. The revenue was estimated to be £2 million higher from sales of electricity in the year ended last month compared to the 2004/2005 financial year. So even if the bulk of it is increased costs is there any element in terms of a shortfall of the estimated revenue from sales, or has that met expectations or is it higher? The Financial and Development Secretary has told us that in fact the £3.1 million extra appropriated from the Consolidated Fund will be met by higher income in the Consolidated Fund, I imagine from PAYE which we have seen in the monthly amounts has been higher than was originally projected at Estimates time. Does it mean then that this Supplementary Appropriation for this particular Fund is the only one that is required? That is, that the other Funds will not require supplementation?

HON CHIEF MINISTER:

I am speaking from memory of recently seen documents, I am almost certain my memory is correct on the point, but I think the

revenue was actually higher than estimated by a sum of the order of £1.4 million. So the figure of £3.1 million deficit is in fact a net figure. Revenue and expenditure were both higher, expenditure by more than this, but some of it was covered by higher revenue. The answer to the last point that the hon Member raised is yes, no other Fund will require supplementary. There is a small provision unspent, a very small provision unspent in the Supplementary Expenditure vote, the normal one, I think about £100,000 or £150,000 because the hon Member knows that sometimes the forecast outturns turn not to be exactly correct. So subject to that not being higher that has been allowed for, subject to that temporary inaccuracy not being higher than has been allowed for in the unspent bit, unallocated bit of the Supplementary Expenditure vote there would be no need for further supplementary appropriations in respect of the last financial year.

Question put. Agreed to.

The Bill was read a second time.

HON FINANCIAL AND DEVELOPMENT SECRETARY:

I beg to give notice that the Committee Stage and Third Reading of the Bill be taken later today.

Question put. Agreed to.

COMMITTEE STAGE

HON ATTORNEY GENERAL:

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

1. The Children and Young Persons (Alcohol, Tobacco and Gaming) Bill 2006;

2. The Supplementary Appropriation (2005/2006) Bill 2006.

THE CHILDREN AND YOUNG PERSONS (ALCOHOL, TOBACCO AND GAMING) BILL 2006

Clause 1

HON MRS Y DEL AGUA:

Although I have not given notice of this I would like to make an amendment. Remove the words 'on the day of publication' and substitute by 'on a date to be designated by the Government by notice in the Gazette'.

HON CHIEF MINISTER:

Could I just say that the purpose of that amendment is this, as we are passing this Bill in all its stages today, it may be that those who will be affected by this, basically retailers and wholesalers of alcohol and tobacco and operators of gaming machines, will need some time to become informed of and become aware of the provisions, and if we commence it as the Bill actually now says 'on the day of publication' then it is a little bit of a guillotine. This way it allows us to publicise the provisions of the Bill, the fact that it has been passed, have a period of public information and then commence it, rather as we have done for the Data Protection legislation but obviously on a shorter time scale.

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

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

Clause 13

HON MRS Y DEL AGUA:

I have already given notice of these amendments. In clause 13(1)(b) substitute the words 'this subsection' with 'section 12'.

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

Clause 14 – was agreed to and stood part of the Bill.

Clause 15

HON MRS Y DEL AGUA:

Similarly, in section 15(1)(b) substitute the words 'this section' with 'section 14'.

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

Clauses 16 to 19 – were agreed to and stood part of the Bill.

Clause 20

HON MRS Y DEL AGUA:

In clause 20(1)(b) substitute the words 'this subsection' with 'section 19'.

Clause 20, as amended, was agreed to and stood part of the Bill.

Clause 21

HON MRS Y DEL AGUA:

The penultimate line of clause 21(1), substitute the word 'vending' with 'gaming'.

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

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

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

THE SUPPLEMENTARY APPROPRIATION (2005/2006) BILL 2006

Clauses 1 and 2, the Schedule and the Long Title – were agreed to and stood part of the Bill.

THIRD READING

HON ATTORNEY GENERAL:

I have the honour to report that the Children and Young Persons (Alcohol, Tobacco and Gaming) Bill 2006, with amendments, and the Supplementary Appropriation (2005/2006) Bill 2006, have been considered in Committee and I now move that they be read a third time and passed.

Question put. Agreed to.

The Bills were read a third time and passed.

ADJOURNMENT

The Hon the Chief Minister moved the adjournment of the House to Monday 8th May 2006, at 2.30 p.m.

Question put. Agreed to.

The adjournment of the House was taken at 10.20 a.m. on Wednesday 19th April 2006.

MONDAY 8TH MAY 2006

The House resumed at 2.35 p.m.

PRESENT:

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

GOVERNMENT:

The Hon P R Caruana QC - Chief Minister
The Hon J J Holliday - Minister for Trade, Industry, Employment and Communications
The Hon Dr B A Linares - Minister for Education, Training, Civic and Consumer Affairs
The Hon J J Netto - Minister for the Environment
The Hon Mrs Y Del Agua - Minister for Social Affairs
The Hon C Beltran - Minister for Housing
The Hon F Vinet - Minister for Heritage, Culture, Youth and Sport
The Hon R R Rhoda QC - Attorney General
The Hon E G Montado CBE - Financial and Development Secretary (Acting)

OPPOSITION:

The Hon J J Bossano - Leader of the Opposition
The Hon Dr J J Garcia
The Hon F R Picardo
The Hon C A Bruzon
The Hon S E Linares
The Hon L A Randall

ABSENT:

The Hon Lt-Col E M Britto OBE, ED - Minister for Health

The Hon Miss M I Montegriffo

IN ATTENDANCE:

D J Reyes Esq, ED - Clerk of the House of Assembly

OATH OF ALLEGIANCE

The Hon E G Montado CBE took the Oath of Allegiance.

DOCUMENTS LAID

The Hon the Chief Minister laid on the Table the Ombudsman's – 6th Annual Report for the period January to December 2005.

Ordered to lie.

The Hon the Financial and Development Secretary laid on the Table:

1. Consolidated Fund Supplementary Funding – Statement No. 6 of 2005/2006;

2. Consolidated Fund Pay Settlements – Statement No. 7 of 2005/2006;

3. Consolidated Fund Reallocations – Statement No. 8 of 2005/2006;

4. Improvement and Development Fund Reallocations – Statement No. 1 of 2005/2006.

Ordered to lie.

BILLS

FIRST AND SECOND READINGS

THE INCOME TAX (AMENDMENT) (NO. 2) ORDINANCE 2006

HON CHIEF MINISTER:

I have the honour to move that a Bill for an Ordinance to amend the Income Tax Ordinance, be read a first time.

Question put. Agreed to.

SECOND READING

HON CHIEF MINISTER:

I have the honour to move that the Bill be now read a second time. Mr Speaker, the Bill makes a small amendment to section 82 of the Ordinance. The effect of the amendment is to make corporation tax for any year of assessment payable by the 28th February of that year, rather than 31st March as law stands today.

The purpose of the amendment is as follows. The present wording of section 82 of the Income Tax Ordinance provides that the 31 March, in other words, the last day of Government's financial year, is the due and payable date for the tax due on any assessment issued for a current year of assessment. The proposed amendment will principally impact on corporate taxpayers as an assessment for a current year of assessment will normally only be issued on companies given their previous year basis period. Following the Tax Office's efforts in the area of Corporation Tax assessments, a substantial proportion of the Corporation Tax payable in any financial year is now due on the 31 March. This is obviously inconvenient and any delay in payment by the big corporate payers, or in the processing of a payment, could result in distortions or shortfalls on the projected revenue for the financial year. Hence the bringing forward of such due and payable date by one month. I commend the Bill to the House.

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

Question put. Agreed to.

The Bill was read a second time.

HON CHIEF MINISTER:

I beg to give notice that the Committee Stage and Third Reading of the Bill be taken later today.

Question put. Agreed to.

THE COMPANIES (AMENDMENT) ORDINANCE 2006

HON CHIEF MINISTER:

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

Question put. Agreed to.

SECOND READING

HON CHIEF MINISTER:

I have the honour to move that the Bill be now read a second time. Mr Speaker, the Bill makes provision consequential to the coming into force of the Financial Services (Experienced Investor Funds) Regulations, 2005 which came into force in August of last year. Clause 2(a) inserts new subsections (3) and (4) into section 40 of the Companies Ordinance. This amendment addresses the problem created by the fact that it is of benefit to the Experienced Investor Fund industry for such vehicles to constitute private companies due to the lower cost associated with these, but that private companies cannot market shares to the public. The proposed new clauses solves this problem by enabling the constituting documents of such funds to conflict with section 40(1)(a) until they are authorised or licensed as a fund, as the case may be, but creating the statutory implication that, notwithstanding the conflict, the subsection applies until then. So those are the sort of provisions that section 40 of the Companies Ordinance presently makes. Of course this makes it impossible for private companies to be used as experienced investor fund vehicles because experienced investor fund vehicles will have more than 50 experienced investors and they need, under the terms of the Collective Investment Schemes Ordinance, they need to publish the equivalent of the prospectus yet section 40 of the Companies Ordinance says that a private company cannot issue a prospectus. So the effect of these amendments to section 40 of the Companies Ordinance is in effect to exclude the application of section 40 as it presently applies to private companies to exclude its application from private companies that are authorised under the Collective Investment Schemes Ordinance by the Financial Services Commission to carry on business as an experienced investor fund. Therefore, clause 2(b) disapplies the provisions of the Companies Ordinance relating to prospectuses and clause 2(c) makes amendments consequential to that made by clause 2(a). Section 41 is amended to enable the Articles of Association of a fund to conflict with section 40 without by that token losing the status of private company. Clause 2(d) inserts a new section 96A on the subject of fractional shares. This is an amendment which the industry has requested the Government to make, so for example what happens is that the value of shares in an experienced investor fund company will reflect the on-going value of its underlying fund. If an investor says, 'well please invest £100,000 in this fund', and the shares are only whole shares then the investor has to give his instructions by reference to buy so many shares and not by reference to invest such a sum of money, because one may not divide equally into the other. So this clause 2(d) allows for funds to issue what are called 'fractional shares'. In other words, shares can be issued in wholes of one or in fractions of one, so if an investor says 'invest £100,000 in the fund' that may buy one 9¾ share, or 9.65 share so one share would be a fraction of a share and not a whole share. It is just a way of giving a little bit more flexibility because these funds do not normally deal in shares of £1, normally the shares are small in number and high in value because they are for experienced investors. So that is the effect of clause 2(d) of the Bill, inserting as it does a new section 96A. The new clause enables, as I say, the issue of these fractional shares provided that its Articles of Association allows it to do so. In those circumstances such fractional shares will carry with them the corresponding fractional rights that the full share would enjoy.

I do not suppose that this Bill is controversial, it reflects fine tuning of legislation that we approved last year in order to give a further string to the bow of the Finance Centre, and that is that the concept of experienced investor funds, which hon Members may recall, are collective investment schemes which do not suffer the same degree of tight regulatory control as would enjoy funds aimed for retail investment by ordinary private investors who cannot be attributed a particularly keen knowledge of investment matters and whom the law therefore protects to a greater degree by a more robust regulatory regime. These are funds which exist only and are restricted to so-called experienced investors, which are defined in the legislation that we have passed, and they are investors which by their degree of wealth and experience in investment matters are deemed not to require the same degree of regulatory protection as the ordinary citizen needs and for whose benefit the normal regulatory regime is required. I commend the Bill to the House.

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

Question put. Agreed to.

The Bill was read a second time.

HON CHIEF MINISTER:

I beg to give notice that the Committee Stage and Third Reading of the Bill be taken later today.

Question put. Agreed to.

THE COMMUNICATIONS ORDINANCE 2006

SECOND READING

HON J J HOLLIDAY:

I have the honour to move that a Bill for a Communications Ordinance, be read a second time. Mr Speaker, the Bill before the House implements and sets out the framework for the further implementation of a package of six directives adopted by the European Community in July 2003 on electronic communications. It also makes provision for connected matters. The six directives in question are sighted in the preamble to the Bill. Foremost amongst these is the Framework Directive, EC Directive 2002/21, this is the umbrella instrument. It sets out the harmonised framework and general principle for the regulation of the electronic communications sector. The Framework Directive is accompanied by the Authorisation EC Directive 2002/20, Access EC Directive 2002/19 and Universe Service Directives, EC Directive 2002/22, jointly referred to as 'the specific directives' which give effect to the general principles set out in the Framework Directive. Two further directives form part of the 2003 packages. These are the Competitive Directive (which is the EC Directive 2002/77), the Privacy Directive (Directive 2002/58). This 2003 package of EC directives is the second wave of measures adopted by the European Community with a view to regulating the telecommunications and related sectors.

The first wave of such measures was adopted progressively throughout the 1990's and is commonly referred to as 'the 1998 package'. That package was implemented in Gibraltar by the Telecommunications Ordinance 2000 and subsequent legislation adopted under it. The six directives in the 2003 package repeal and replace the 26 directives that make up the 1998 package. Only one measure, which did not in any event apply to Gibraltar, survives. In the same way, the Bill deals with

the Telecommunications Ordinance and its subsidiary legislation although some of their provisions are maintained. The extent of the repeal is set out in the Schedule to the Bill. Such an extensive repeal has been necessary in Gibraltar, like in other Member States, by virtue of the very substantial changes introduced by the 2003 package. The most important of these are the following ones.

1. Convergence.

The 2003 package takes full account of the convergence of the telecommunications media and information technology sector. It therefore sets a common regulatory framework for all three sectors, referred to jointly as the 'electronic communications sector'. This means that unlike the 1998 package which only applied to telecommunications sector, the 2003 package applies to telecommunications, broadcasting, information technology, internet based services and spectrum management. It establishes common rules for all telecommunications network, fixed or wireless, as well as for broadcasting network, terrestrial satellite and cable, internet access and IP services. The 2003 package, however, only applies to transmission and not the content of service delivered over electronic communications network. It does not therefore regulate broadcasting content of certain information society services. One small manifestation of convergence in the drafting of the Bill is that the word 'telecommunications' does not appear once.

2. Technological neutrality

Linked to convergence the 2003 package introduces technological neutrality. This means that all networks and services are governed by the same regulatory framework and rules. The 1998 package was not technologically neutral, therefore, different rules applies to services provided over mobile and fixed telecommunications networks.

3. Single system of general authorisation

The current dual system of individual licences and general authorisation is abolished. Henceforth all electronic communications services and networks are to be provided under a regime of general authorisation. This means that a person wishing to provide an electronic communications service or network is only required to notify the regulator of his intention to do so. He does not need an explicit decision of entitlement. That is, the current individual licence to provide the service for network. However, all such persons will have to comply with general conditions that are applicable to the provision of this service or network. This will also still have to apply for and be granted (a) a licence if they require the allocation of radio spectrum; and (b) an individual right if they require the allocation of numbers. They will also be required to make an application to the Minister if they need to be granted rights of way to install facilities. In addition, specific obligation can still be imposed ex ante on (a) individual operators in relation to access and interconnection; (b) operators who are designated as having significant market power; and (c) operators who need to comply with universal service obligations. The fourth issue is the new SMP definition. One of the aims of the 2003 package is to bring the electronic communications sector more in line with general competition laws. Consistently with this aim, the 2003 package changes the way in which operators with significant market power, SMP, will be identified and regulated. This means that whereas under the 1998 package SMP determination was based on a fixed test of over 25 per cent market share, allowing the regulator some discretion to take other factors into account, the 2003 package requires the regulator to define the concept of SMP by reference to the general competition law concept of dominance under Article 82/EC Treaty. This will require the regulator to define relevant markets, carry out market analysis and make determinations as to dominance.

Related to the new SMP definition the 2003 package introduces the following new provisions. The regulator will be under an obligation to remove SMP obligations where it finds that a given

market is effectively competitive. The European Commission may in certain circumstances prevent the regulator from defining a market in the way it proposes to do, notably, where the regulator seeks to depart from a European Commission recommendation on market definition. The fifth issue is public consultation with other regulatory authorities and with the European Commission. Numerous provisions of the 2003 package require the regulator to carry out a public consultation before he can adopt a measure. In Gibraltar's case this will apply to measures with which the Minister and the GRA intend to adopt. In addition, the regulatory authorities in the European Community are required to consult with each other and with the European Commission, much more than under the 1998 package, notably whenever they intend to adopt a measure which (a) identifies a relevant market; (b) makes an SMP determination; (c) relates to the setting, modification or revocation of an access related condition; or (d) relates to the setting, modification or revocation of an SMP obligation and which will affect trade between Member States. The sixth issue is access and interconnection. Whereas in the 1998 package the obligation to negotiate access and interconnection was only placed on a certain category of operator, described in Schedule 2 of the Telecommunications (Interconnection) Regulation 2001, the 2003 package extends this obligation to all operators of public electronic communications network. In addition, various provisions of the Access Directive prohibits linkage to be made between the interconnection charges payable by a new entrant and its degree of investment in network infrastructure. The seventh issue is the general system of appeal. The 2003 package requires Gibraltar and all the Member States for the first time to ensure that an effective appeal mechanism is in place for virtually all decisions taken by the national regulatory authority. This new requirement has required a significant enlargement of the scope of application of the current appeal procedure contained in section 32 of the Telecommunications Ordinance, which under that Ordinance only applies to the decision taken by the Minister in relation to the electro-magnetic spectrum.

I would now like to analyse the Bill by clauses. The Bill does the following. Firstly it implements the Framework Directive, the Competition Directive and the general provisions of the other directives in the 2003 package. The more detailed provisions in the other directive will be implemented by regulations to be adopted once the principal Ordinance enters into force. In this way the same structure as that adopted by the European Community has been retained. Mainly, one framework measure, the Bill in this case, and various specific measures, the various regulations, in our case. Secondly, to the extent that it maintains provisions of the Telecommunications Ordinance and to the extent that such provisions were based on UK legislation, notably the Telecommunications Act 1984 and the Wireless Telegraphy Acts of 1949 and 1998, it updates and amends such provision whenever the UK provisions have been updated or amended. Thirdly, it introduces new provision in connection with the new regime which it puts in place.

I will now turn to an examination of the provisions of the Bill. Clause 1 (Title and Commencement) only contains minor amendments to section 1 of the Telecommunications Ordinance. Clause 2 (Interpretation) replaces section 2 of the Telecommunications Ordinance, which has been almost completely redrafted in view of the numerous new terms and concepts introduced by the 2003 package. Clause 2(2) to (14) contains various explanations of the meanings to be given to certain terms in the Bill. Clause 3 (Duty of the Minister and the Authority) in subsection (1) only minor amendments to section 3 of the Telecommunications Ordinance are made. Clause 3(2) is new. Clauses 4 to 6 are information gathering provision. They either maintain Telecommunications Ordinance provision as amended, or implement the requirements of the 2003 package. Clauses 7 and 8 (Power to establish Advisory Bodies and Annual Reports) are amending the Telecommunications Ordinance provision. Clause 9 (Regulations) contain the regulation-making power. Amongst other things it allows the Minister to adopt regulations setting out the procedure and principles for the imposition of financial penalties on a person who fails to comply with a condition or obligation imposed on

that person under or pursuant to the Bill, or with any other requirements specified under or pursuant to the Bill. Clauses 10 and 11 (Directions by the Minister and the Authority and Administrative Notes) are amending the Telecommunications Ordinance provisions. Clause 12 (Power of the Authority to issue notices) is new. It grants the GRA powers to issue notices. The insertion of this provision has been deemed useful in view of the numerous documents which the GRA will be required to issue under the new regime, and in order to ensure that all such documents carry one title and are identifiable to specific powers granted to the GRA under the Bill. Clause 13 (Public Consultation Procedure) introduces the new public consultation procedures required under Article 7 of the Framework Directive and Article 14(1) of the Authorisation Directive. Clauses 14 to 17 are new. They are administrative provisions concerning the manner in which documents have to be served and includes provisions on the service of documents in electronic form and on the timing and location of things done electronically.

Clause 18 (General Functions of the Authority) sets out the functions of the GRA. It supplements section 4 of the Telecommunications Ordinance with the requirements under the 2003 package. Subsection (4) empowers the Minister to adopt regulations requiring the payment of administrative charges for the purposes of meeting expenses properly incurred by the GRA in the discharge of its duties and functions. It is an adapted version of section 29(3) of the Telecommunications Ordinance which applied to licence fees. The actual regime on administrative charges will be contained in regulations to be adopted once the Ordinance enters into force. Clause 19 (Objectives of the Authority) sets out the objectives of the GRA as required by the implementation of Articles 7 and 8 of the Framework Directive. It is a new aspect of the 2003 package. Clauses 20 and 21 (Standardisation and Harmonisation Procedures) implement provisions of the 2003 package which requires the GRA to ensure compliance with relevant international standard and to take due account of any recommendations issued by the European Commission seeking the harmonised application of the Framework Directive or the specific directive.

Clauses 22 to 24 sets out the procedure for cooperation between the GRA, the European Commission and the regulatory authority in the Member State. This is an important new aspect of the 2003 package of Article 7 Framework Directive. The effect of this provision is that whenever the GRA intends to adopt a measure referred to in section 22(1), these concern measures on market definition, SMP determinations or the settings modification or revocation of access related condition or SMP obligation where such a measure will, in the GRA's opinion, affect trading services between Gibraltar and one or more Member States. It must first send a copy of its proposed measure to the European Commission and to the regulatory authority in the Member State. Clause 23 implementing Article 7(4) Framework Directive prevents the GRA from adopting a proposed measure if the European Commission is opposed to it. Clause 24 allows the GRA to disregard the procedure set out in clauses 22 and 23 whenever it needs to act on an urgent basis. Clauses 25 to 27 sets out the GRA's general information function. The most important of these provisions is clause 26, which implements Articles 5(2) and (3) of the Framework Directive. Clause 26 requires the GRA to provide the European Commission with such information as the Commission considers necessary to allow it to carry out its task under EC law. The Commission is entitled to pass on such information to regulatory authorities in Member States, although the GRA may oppose this in clauses 26(2) and (4). Article 5(2) Framework Directive also requires the GRA to pass on information upon request to other regulatory authorities.

Under Part IV the Electronic Communications Networks and Services the vast majority of the provisions in this part of the Bill implement requirements of the 2003 package. This part effectively replaces Part III of the Telecommunications Ordinance. Clauses 28 to 31 sets out the provisions liberalising the electronic communications sector. They implement various provisions of the Competition Directive and Article 13 of the

Framework Directive. Clauses 32 to 34 sets out the basic regulatory framework for the electronic communications sector. These sectors set out the general principle contained in the Authorisation Directive, the Access Directive and the Universal Service Directive and which will be spelt out in the regulations adopted once the Ordinance enters into force. Clause 32 deals with general authorisation. As explained in my introduction, one of the key changes introduced by the 2003 package is the removal of the regime of individual licence which is replaced by a single regime of general authorisation. However, the operator will still have to comply with the following. Firstly, they will still have to comply with general conditions. This will be set out in regulations to be adopted and in a notice to be issued by the GRA once the Ordinance enters into force. Secondly, clause 32(2) allows the Minister to impose restrictions which are justified under EC law in respect of public interest, public security et cetera. Clauses 35 to 37 sets out the provisions on numbering. Clauses 35 and 36 implement requirements under the 2003 package and take over regulation 13 of the current Telecommunications (Interconnection) Regulations 2001. Clause 37 is new, it sets out the procedure for bidding for numbers. Bidding for numbers is envisaged by recycled 23 and Article 5 (the Authorisation Directive). The procedure in clause 37 is adapted from that currently contained in section 29(22) of the Telecommunications Ordinance in relation to bidding for a telecommunications licence which was in itself based on section 3 of the Wireless Telegraphy Act of 1998. Clauses 38 to 41 set out the SMP procedures. As explained in my introduction, these concern a key change introduced by the 2003 package. Clauses 38 to 41 sets out the procedure the GRA would have to follow in order to define markets and assess whether any given person, or combination of persons dominant in that market, in accordance with Article 82 of the EC Treaty. Clause 41 applies whenever a market is for the time being identified by the European Commission as being a transnational market. In such a case the GRA will be required to enter into arrangements with the regulatory authority or authorities in the Member States or State concerned in order to make an SMP determination. Clauses 42 to 44 deal with miscellaneous matters on electronic communications, prohibitions and restrictions applying to lessees with respect to electronic communications, and retain as amended provision of the Telecommunications Ordinance. Clauses 45 to 48 deal with offences under Part IV. These provisions retain, as amended and restructured, provisions of the Telecommunications Ordinance.

Part IV of the Bill takes over from sections 17 to 20 and 46 of the Telecommunications Ordinance. Clauses 49 and 50 (Right to Install Facilities and the Power to modify rights, conditions and procedures with regard to the installation of facilities) are new and implement requirements under the 2003 package. Clauses 51 to 55 also implement requirements under the 2003 package and largely retain, as amended, provisions of the Telecommunications Ordinance and regulation 12 of the Telecommunication (Interconnection) Regulation 2001. The most important change concerns clause 54 on the electronic communications code. That is, a code setting out rights and obligations on right of way. This scope was the subject matter of two very long provisions in the Telecommunications Ordinance, sections 17 and 18. Experience under the Telecommunications Ordinance indicate there is no need for such a code in Gibraltar. Clause 54 is therefore much more streamlined and it essentially grants the Minister the power to adopt the code when and if it is considered necessary to do so.

Part VI of the Bill replaces Part IV of the Telecommunications Ordinance. Under the Telecommunications Ordinance the Minister retains responsibility under this part. Part IV of the Telecommunications Ordinance integrated Gibraltar's Wireless Telegraphy Ordinance, which was itself based on the UK Wireless Telegraphy Act of 1949. Part VI of the Bill maintains these provisions as amended to take into account the many amendments which the UK has made to the Wireless Telegraphy Act of 1949 since then. Clauses 56 to 59 sets out the basic provisions on the control of the use of the electronic magnetic spectrum, largely implementing requirements under the 2003 package. Clauses 60 to 66 sets out the framework for the general grant of the licences. The Telecommunications

Ordinance term 'telecommunications licence' is now simply replaced by the term 'radio communications licence, which in itself simply refers to as licence, since the individual licence under the Telecommunications Ordinance regime no longer exists. All of these provisions are either an implementation of requirements under the 2003 package or redrafted versions of equivalent provisions in the Telecommunications Ordinance. The bidding procedures in section 29(22) of the Telecommunications Ordinance is now contained in clause 65 of the Bill. It has been amended and updated in the light of the various amendments made to section 3 of the Wireless Telegraphy Act of 1998, on which section 29(22) of the Telecommunications Ordinance was based. Clauses 67 to 81 sets out the regime for dealers of radio communications, operator offences and limited number of miscellaneous matters. They all take over existing Telecommunications Ordinance provisions as amended or restructured, and otherwise update them with the changes made in the UK to the equivalent Wireless Telegraphy Act 1949 provision. The only new provision is clause 77 of the Bill which introduces a new offence of deliberate interference consistently with changes made to the Wireless Telegraphy Act of 1949. Clauses 82 to 85 specify the type of regulations that may be adopted for the purpose of this part.

Part VII, Offences, Appeals and Dispute Resolution, clauses 86 to 90 restructures and groups together various general provisions and offences which were previously spread out throughout the Telecommunications Ordinance. Clause 91 sets out the procedures for appeal to be made against decisions of the Minister or the GRA. It is almost entirely based on section 32 of the Telecommunications Ordinance with new amendments made. The principal change in accordance with the requirement contained in Article 4 of the Framework Directive and Article 2(5) second paragraph of the Competition Directive, is that the appeal procedure now applies to virtually every decision taken by the Minister or the GRA. As stated in my introduction, such an extension of the appeal procedure is an important change introduced by the 2003 package. Clauses 92 to 98 sets out the procedure for the resolution of disputes between operators. These sections implement Articles 20 and 21 of the Framework Directive, which requires regulators to resolve the dispute when requested to do so by the operators. Clause 96 sets out the procedure for the resolution of a dispute involving Gibraltar and one or more Member State. Clause 96(6)(b) provides that where the GRA is called upon to resolve a dispute, it may require the parties to the dispute to make payments to the GRA in respect of costs and expenses it incurs in resolving the dispute.

Part VIII which is the final provision, covers clauses 99, 101 and 102, largely maintained provisions from the Telecommunications Ordinance. Clause 100 is new. It ensures that unless otherwise specified by the Minister with responsibility for Public Finances, as provided for in that clause, any monies receivable by the Minister with responsibility for Communications or the GRA under the Bill, shall be paid into the Consolidated Fund. I commend the Bill to the House.

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

HON L A RANDALL:

The Opposition will be supporting the Bill. However, the Bill establishes the framework, as the Minister alluded to, and the detail will be established by subsidiary legislation. In this respect I would like to refer to number portability which is referred to in Article 30 of the Universal Service Directive, and encourage the Government to follow the practice set by some Member States who provide this facility to subscribers free of charge.

HON F R PICARDO:

I note that the definition of 'the Crown' means the Crown in right of Her Majesty's Government in the United Kingdom and in right of Her Government of Gibraltar, and I note that in section 101 there is a provision that this Ordinance binds the Crown. The provision at section 101 is a provision that we are familiar with in this House but the definition of Crown to include both the Crown in right of Her Majesty in the Government of the United Kingdom and in the Government of Gibraltar is an unusual one, especially given the provisions of the Crown Proceedings Ordinance, and I would be grateful for some clarification as to how that mechanism and that definition will work. I note that there is a small typographical error in section 84(1)(b) where there will be a need for renumbering, which we can deal with more substantively at Committee Stage. Also, in section 86 which deals with offences, in subsection (3) there is a reference not dissimilar to the reference in section 92 of the Criminal Procedure Ordinance, as to the provisions which relate to the need to give an alibi notice at least seven days before proceedings before examining justices have been completed. My concern here is that there is provision for notice of a defence to be filed and the Ordinance at present says, 'within a period ending seven clear days before the hearing'. The term 'hearing' I cannot find a definition of and I think there is authority that the term 'hearing' can include a reference to the first appearance in the Magistrates' Court or any subsequent appearance. Those of us who are lawyers will know that often those are referred to as 'mentions' but in fact there is authority that each of them is separately a hearing. The way that this issue is dealt with in section 92 of the Criminal Procedure Ordinance is that there is a very clear provision as to when the seven clear days must run from, and that is seven clear days before the end of the hearing before examining justices. I think we would benefit there from having a better definition of when those seven days are up. For example, changing the words 'the hearing' to the words 'the trial', which is also language which is more commonly used when such periods are being set out in our Criminal Procedure Ordinance. Other than that, nothing else to add.

HON CHIEF MINISTER:

Only to comment that whatever may or may not be the merits of the hon Member's comments in respect of section 86(3), it is not new, it is contained in section 49(5) of the present Telecommunications Ordinance and is a simple re-enactment of the present law.

HON F R PICARDO:

I was not in this House when the Telecommunications Ordinance was passed, I am looking at the sections now. I know that that Ordinance has not actually been an Ordinance in respect of which, at least I think it is not an Ordinance in respect of which there has been many prosecutions et cetera, so simply telling me that this is the way that it was done before might not address the substance of the points I am raising. Perhaps the hon Gentleman may wish to consider doing so.

Question put. Agreed to.

The Bill was read a second time.

HON J J HOLLIDAY:

I beg to give notice that the Committee Stage and Third Reading of the Bill be taken later today.

Question put. Agreed to.

COMMITTEE STAGE

HON ATTORNEY GENERAL:

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

1. The Income Tax (Amendment) (No. 2) Bill 2006;

2. The Companies (Amendment) Bill 2006;

3. The Communications Bill 2006.

THE INCOME TAX (AMENDMENT) (NO. 2) BILL 2006

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

THE COMPANIES (AMENDMENT) BILL 2006

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

THE COMMUNICATIONS BILL 2006

Clauses 1 to 83 – were agreed to and stood part of the Bill.

Clause 84

HON F R PICARDO:

In section 84(1)9b)(i) the second roman (i) appearing therein should be renumbered (ii).

Clause 84, as amended, was agreed to and stood part of the Bill.

Clause 85 – was agreed to and stood part of the Bill.

Clause 86

HON CHIEF MINISTER:

Mr Chairman, the hon Member makes the point in respect of section 86(3). This can only mean the trial, I cannot imagine that the words 'the hearing' could be interpreted to mean anything else. It means the hearing at which the alibi, just to use a shorthand language, is going to be put up. I do not think it is open to the interpretation that it could be the first mention in court, which I suppose would be Monday morning after one has been arrested or charged. I do not think it could possibly mean that, it probably is a phrase 'the hearing' that is used widely through our criminal administration legislation. So I do not wish to concede by expressing a willingness to just put it beyond a shadow of doubt, I do not wish Hansard to be produced in connection with any other Ordinance in any other place, to suggest that there is any ambiguity on what the word 'hearing' in a context similar to this means. I think it can only mean the substantive hearing at which the matter is to be adjudicated. In this case it would be the trial on the indictment, if it is an indictment, or the substantive hearing if it is a summary offence before the Magistrates' Court. That said, and therefore for those purposes, without conceding that wherever this language appears in any other Ordinance it is open to that ambiguity, I do not mind altering the word 'the hearing' in this particular Bill to read 'the trial date' if that is amongst the options that he proposed for dealing with this point, which I think is what the words 'the hearing' is intended to mean here, but there is no harm done by making it clearer.

HON F R PICARDO:

I believe that there is authority that the words 'the hearing' can mean the date other than the trial date, so I am grateful for the Chief Minister's indication. As to what it might mean in other Ordinances is a matter really no longer for us but for the court interpreting those Ordinances. So, in section 86(3) delete the word "hearing" and insert the words "trial date".

Clause 86, as amended, was agreed to and stood part of the Bill.

Clauses 87 to 102, the Schedule and the Long Title – were agreed to and stood part of the Bill.

THIRD READING

HON ATTORNEY GENERAL:

I have the honour to report that the Income Tax (Amendment) (No. 2) Bill 2006; the Companies (Amendment) Bill 2006; and the Communications Bill 2006, with amendments, have been considered in Committee and I now move that they be read a third time and passed.

Question put. Agreed to.

The Bills were read a third time and passed.

ADJOURNMENT

The Hon the Chief Minister moved the adjournment of the House to Friday 26th May 2006, at 11.00 a.m.

Question put. Agreed to.

The adjournment of the House was taken at 3.40 p.m. on Monday 8th May 2006.

FRIDAY 26TH MAY 2006

The House resumed at 11.00 a.m.

PRESENT:

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

GOVERNMENT:

The Hon P R Caruana QC – Chief Minister
The Hon J J Holliday – Minister for Trade, Industry, Employment and Communications
The Hon Dr B A Linares – Minister for Education, Training, Civic and Consumer Affairs
The Hon Lt-Col E M Britto OBE, ED - Minister for Health
The Hon J J Netto – Minister for the Environment
The Hon Mrs Y Del Agua – Minister for Social Affairs
The Hon C Beltran – Minister for Housing
The Hon F Vinet – Minister for Heritage, Culture, Youth and Sport

OPPOSITION:

The Hon J J Bossano - Leader of the Opposition
The Hon Dr J J Garcia
The Hon F R Picardo
The Hon C A Bruzon

The Hon S E Linares
The Hon L A Randall

ABSENT:

The Hon R R Rhoda QC - Attorney General
The Hon T J Bristow - Financial and Development Secretary

The Hon Miss M I Montegriffo

IN ATTENDANCE:

D J Reyes Esq, ED - Clerk of the House of Assembly

BILLS

FIRST AND SECOND READINGS

THE STAMP DUTIES (AMENDMENT) ORDINANCE 2006

HON CHIEF MINISTER:

I have the honour to move that a Bill for an Ordinance to amend the Stamp Duties Ordinance 2005, be read a first time.

Question put. Agreed to.

SECOND READING

HON CHIEF MINISTER:

I have the honour to move that the Bill be now read a second time. Mr Speaker, this Bill does not introduce any substantive changes to the new Stamp Duties Ordinance that the hon Members will recall we passed last year. The most significant thing that it does is, out of an excess of caution and not that the Government think that there is any doubt about it at the moment, but some of the more theoretically minded lawyers or at least one or two of them have expressed the view to the Government that as real property is presently defined it leaves open for argument, we do not agree, but they say it leaves open to argument whether the present definition of 'real property' is wide enough to include leasehold property. We do not share that view but in order to dispel whatever doubts some people might have in their minds, there is a new definition of 'real property in Gibraltar' which simply is just a longer form version of what before used to be done by reference to the phrase 'real property', that is clause 2(2) of the Bill. Clauses 2(3) and 2(4) contain no amendments of substance whatsoever, they simply serve to insert words inadvertently left out of the 2005 Ordinance and also some incorrect punctuation.

I will take the hon Members through both changes that it makes. At section 25 of the present Bill it presently reads, 'for the sale of any equitable estate or interest in property' and it should read, 'sale of any legal or equitable estate' et cetera so we are just adding the words 'legal or' in section 25. In the Schedule at the definition of 'mortgage, bond, debenture and covenant' a line has just been left out. In fact this may well be a printing error. It says at the very bottom of the page there it says, 'and also where any further monies added to the' and that should read 'money already secured'. This is just literally that a line of the print was left out. So there is no substantive amendment, all the amendments are either to correct the Ordinance in the sense of words left out, or to clarify the definition of 'real estate in

Gibraltar' to make it clear to those to whom it was not already clear, which does not include the Government or their advisers, that it is not already done by the current definition. I commend the Bill to the House.

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

HON J J BOSSANO:

Well, since there are in fact no new principles and it is just correcting something we have already approved unanimously in the House, we have nothing further to add.

Question put. Agreed to.

The Bill was read a second time.

HON CHIEF MINISTER:

I beg to give notice that the Committee Stage and Third Reading of the Bill be taken later today.

Question put. Agreed to.

THE INCOME TAX (AMENDMENT) (NO. 3) ORDINANCE 2006

HON CHIEF MINISTER:

I have the honour to move that a Bill for an Ordinance to amend the Income Tax Ordinance, be read a first time.

Question put. Agreed to.

SECOND READING

HON CHIEF MINISTER:

I have the honour to move that the Bill be now read a second time. Mr Speaker, this Bill does three things, it introduces the definition of 'Minister' as being the Minister with responsibility for Public Finances; it endows on the Minister rather than on the Governor the powers appearing in the Ordinance to deal with income tax issues; and it does to the Interest and Royalties Directive what we amended recently for the Parent and Subsidiary Directive. Hon Members may recall that I recently brought an amendment to that legislation to eliminate a period of qualification during which shares in a company had to be held before it could be regarded as an associate. There was a two year qualification so to speak or eligibility period. This is, as I explained at the time that we amended this for the Parent and Subsidiary Directive, for the case of dividend payments between such companies. This is an option that the directive allows Member States, in other words, before a parent can have the benefit or a subsidiary the benefit of this regime, which is in effect the right to be exempted from tax, the relationship of parent and subsidiary had to be in existence for at least two years beforehand. It does not suit Gibraltar that that should be the case because what we are trying to do is attract companies to Gibraltar to establish such structures in Gibraltar, it serves no purpose of Gibraltar or of the Government exchequer indeed, that this qualification period should be required, and just as we eliminated it from the Parent and Subsidiary Directive so too now through the amendments to section 47C(2)(a) in this Bill are we eliminating the two year qualification period from the legislation that we passed to transpose the Interest and Royalties Directive. In other words, that now neither will require this qualification period, this minimum period of two years, during which the relationship of associate or parent and subsidiary must have existed before the group corporate structure can avail itself of these facilities in Gibraltar. I commend the Bill to the House.

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

Question put. Agreed to.

The Bill was read a second time.

HON CHIEF MINISTER:

I beg to give notice that the Committee Stage and Third Reading of the Bill be taken later today.

Question put. Agreed to.

THE GIBRALTAR HEALTH AUTHORITY (COMPLAINTS REVIEW PANEL) ORDINANCE 2006

HON LT-COL E M BRITTO:

I have the honour to move that a Bill for an Ordinance to amend the Gibraltar Health Authority (Complaints Review Panel) Ordinance 2004, be read a first time.

Question put. Agreed to.

SECOND READING

HON LT-COL E M BRITTO:

I have the honour to move that the Bill be now read a second time. Mr Speaker, the Bill now before the House replaces section 17 of the Ordinance in order to make certain important amendments to the workings of an independent review panel which may be appointed as part of the complaints procedure. The guiding philosophy of the GHA's internal complaints procedure is to provide a person making a complaint with a comprehensive reply upon the completion of an internal investigation within a pre-determined time frame. On receipt of a complaint by the GHA a clock begins to tick and the final response to the complainant should be provided within 20 working days, and if there is any delay, the complainant is kept updated on a weekly basis up to a maximum of eight weeks. Thus, the whole emphasis is on a comprehensive investigation of complaints within strict time limits in order to provide prompt answers to those who may feel aggrieved by an act of the GHA. Similarly, the Ordinance creating the Complaints Review Panel adopts the rationale of thorough investigation by an independent panel within a strict time limit of 12 weeks, with a final report being prepared in the ensuing two weeks, a total of 14 weeks. After representations from review panels it was considered necessary to seek this amendment of the Ordinance giving the Ombudsman, when requested to do so by a review panel, authority to extend the time limit for an investigation up to a total of 26 weeks. Circumstances may arise when an investigation cannot be conducted by a review panel within the 12 week period for simple reasons such as the independent medical expert appointed to assist the panel not being able to come to Gibraltar until after a date when the prescribed time limit may have expired. The Ombudsman can either accept or reject the request to extend the time limit from the review panel. Where the Ombudsman allows a request the maximum extension of time he can give is not longer than 26 weeks from the date of the referral of the complaint to the review panel. The new maximum time limit of 26 weeks which the Ombudsman may allow is in keeping with the Government's objective of producing an independent report of an investigation to the aggrieved person within a reasonable time and thus avoiding prolonged delays. I commend the Bill to the House.

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

HON J J BOSSANO:

The House will recall that when the Government introduced in 2004 this procedure we took the view that we were maintaining a neutral position on the procedure. Frankly we do not know to what extent this additional change is required and therefore we are continuing with the position that we adopted in 2004.

HON LT-COL E M BRITTO:

Quite honestly I find the Opposition's position disappointing, not to put it more strongly. This amendment is designed to strengthen the case of the complainant. It is designed to make the procedure better so that, as has already been the case or is in the process of being the case, if an independent review panel cannot complete its work because the legislation stipulates that the investigation is guillotined at 12 weeks, and if has already happened, an independent expert has been unable to come to Gibraltar at the request of the Independent Review Panel because he has not been available, if the legislation were not to be amended in those circumstances it would mean that the complainant would not have the satisfaction or would not be able to have access to a fully completed investigation. Therefore, what this amendment does is allow the Ombudsman, not the Minister, not the Government, not anybody else, it allows the Ombudsman if it is requested by the Review Panel, not by the Government, not by the Minister, not by anybody else but by the Review Panel to extend the original 12 weeks, it allows the Ombudsman to do so and this is in keeping with the Government's philosophy of giving every facility to a complainant to have his complaint fully investigated. In those circumstances I would urge the Opposition to think again and to support what is a measure designed to improve the Complaints Procedure for the benefit of the complainant.

Question put. The House voted.

For the Ayes:
The Hon C Beltran
The Hon Lt Col E M Britto
The Hon P R Caruana
The Hon Mrs Y Del Agua
The Hon J J Holliday
The Hon Dr B A Linares
The Hon J J Netto
The Hon F Vinet
The Hon R R Rhoda

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

The Bill was read a second time.

HON LT-COL E M BRITTO:

I beg to give notice that the Committee Stage and Third Reading of the Bill be taken later today.

Question put. Agreed to.

COMMITTEE STAGE

HON CHIEF MINISTER:

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

1. The Stamp Duties (Amendment) Bill 2006;

2. The Income Tax (Amendment) (No. 3) Bill 2006;

3. The Gibraltar Health Authority (Complaints Review Panel) (Amendment) Bill 2006.

THE STAMP DUTIES (AMENDMENT) BILL 2006

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

THE INCOME TAX (AMENDMENT) (NO. 3) BILL 2006

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

THE GIBRALTAR HEALTH AUTHORITY (COMPLAINTS REVIEW PANEL) (AMENDMENT) BILL 2006

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

Clause 2

HON LT-COL E M BRITTO:

I have just noticed a small typographical error in section 17(7)(c) where at the end of the sentence there should be a semi-colon and not a full-stop and I would therefore propose the amendment accordingly.

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

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

THIRD READING

HON CHIEF MINISTER:

I have the honour to report that the Stamp Duties (Amendment) Bill 2006; the Income Tax (Amendment) (No. 3) Bill 2006; and the Gibraltar Health Authority (Complaints Review Panel) (Amendment) Bill 2006, with amendment, have been considered in Committee and I now move that they be read a third time and passed.

Question put.

The Stamp Duties (Amendment) Bill 2006; and the Income Tax (Amendment) (No. 3) Bill 2006, were agreed to and read a third time and passed.

The Gibraltar Health Authority (Complaints Review Panel) (Amendment) Bill 2006 –

The House voted.

For the Ayes: The Hon C Beltran
The Hon Lt-Col E M Britto
The Hon P R Caruana
The Hon Mrs Y Del Agua

The Hon J J Holliday
The Hon Dr B A Linares
The Hon J J Netto
The Hon F Vinet

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

The Bill was read a third time and passed.

PRIVATE MEMBERS' MOTION

HON J J BOSSANO:

I beg to move a motion of which I gave notice, namely:

"THIS HOUSE:

1. **ACKNOWLEDGES** the sustained and lifelong commitment of the Hon Peter J Isola to the development of the people of Gibraltar in the positions he held in the Legislative Council, in this House and in his contribution to the public life in this City over many decades;

2. **RECOGNISES** the importance of his appearance at the United Nations assemblies on decolonisation alongside Sir Joshua Hassan's in the defence and promotion of the legitimate aspirations and interests of Gibraltar and its people;

3. **AND** in recognition thereof and gratitude therefore resolves to bestow on him posthumously the Honorary Freedom of the City of Gibraltar."

Mr Speaker, as Members of the House know, particularly those of us who were on the Constitutional Committee and involved in the recent negotiations, it was a sad and unpleasant experience to see in the middle of this work one of our members taken away from us. In fact, I think we all expressed at the time our appreciation and our admiration for his work and his commitment to Gibraltar and to what we were collectively engaged in. In acknowledging in this motion the role of Peter Isola I think perhaps it is in the context of the issues of decolonisation and constitutional change that Peter has been or was involved from a very long time, from well before in fact I was a Member of this House, because he was originally the Chairman of the committee that made the recommendations that led to previous constitutional changes. In fact, in 1964 I think it is worth recalling, we are talking about 42 years ago, the position that was adopted then by unanimity by the House that was elected as a result of the 1964 Constitution, which was at the time considered to be the penultimate step before full decolonisation. The Legislative Council under the preceding Constitution had taken a unanimous position on the way ahead, which was described as close association, and the newly elected Chamber under the 1964 new Constitution which brought a change in bringing for the first time the concept of Ministerial Government and by reducing the number of Elected Members was taken by Peter Isola and Sir Joshua Hassan with the support of the United Kingdom Government to the Committee of 24 as the basis for decolonisation within the term of the then legislature which was then a five year term. So by 1969 the Elected Representatives of Gibraltar were expecting, with the support and involvement and the help of the United Kingdom Government, that they would be able to come up with a final Constitution that would decolonise Gibraltar finally. Peter, of course, was involved in that exercise and therefore in laying together with Sir Joshua I think the foundation stone for

everything that has happened subsequently in our continued drive to get our right to self-determination and decolonisation recognised internationally, and particularly at a stage frankly where the United Kingdom was more forthcoming and more supportive and more clear cut in its position in the United Nations than it has been in recent years in that respect.

I stood for election in 1972 with Peter Isola and we parted ways before the 1976 elections and I think an important element of what we should look for in the political life of our City is that one can have respect for other peoples' views even if there is an ideological gap, as there certainly was in many issues, other than perhaps the fundamental issue of making sure that Gibraltar would not become Spanish, which practically the whole of Gibraltar is agreed, on many issues of policy, domestic areas, in matters of Trade Union organisation, in the ideological dimension between the left and the right there was a big gap but nevertheless it was possible to put that ideological difference on one side and have a deep affection and personal friendship and acknowledge that from different ideological perspectives one can have a different perception of what is in the best interest of our people and our country, and still acknowledge that that difference does not prevent us from working together for the common good and for a common objective. I think when we look at the political history post-War of Gibraltar, there is no doubt that alongside Sir Joshua and alongside Bob Peliza, Peter Isola was one of the great figures of Gibraltar's political life and of the evolution of the Gibraltarian in increasingly producing people giving political leadership and a sense of direction to Gibraltar and its people. We feel that it is right that we should honour his memory in the only way that this House can, which is in fact by giving to him the same honour that we have given to the other two great figures in Gibraltar's political life, one of whom is no longer with us, Bob is still with us and I hope he will be for many more years to come. Therefore, there is this conviction, we discussed it at the level of Elected Members, we felt that this was something that we should bring forward and that would enjoy the support of the people of Gibraltar and that is the reason for bringing this motion to the House. I commend the motion to the House.

HON CHIEF MINISTER:

The Government will be voting against the motion. As we have already indicated publicly, we do not believe that the Freedom of the City should, and indeed it is probably true that it cannot under the terms of the applicable legislation in Gibraltar, be awarded posthumously. If I can just deal with the legalities first, I should however say that that is not the basis upon which we have made the decision but it is a reason to, we could have amended the legislation in order to eliminate this point had we wanted to, but the fact of the matter is that under the provisions of the Freedom of the City Ordinance, which I think few people remember exists, indeed judging by some of the blank looks on the Opposition Side I suspect that some of them may not have known that it existed, but under the terms of that it says 'the Government may, following a Resolution of the House of Assembly, admit to be Honorary Freemen of the City of Gibraltar persons of distinction and persons who have rendered eminent service to the City', there are no provisions relating to deceased persons who are in a sense no longer in the present persons and indeed if the House wanted to grant posthumously, for which incidentally there is no precedent, if the House wanted to be free to award posthumous Freedoms of the City then I think we would have to start by amending the Freedom of the City Ordinance to make it perfectly clear that we are able to do so. Always bearing in mind that under that Ordinance it is the Government that bestow the Freedom following a Resolution in this House and not the other way around.

We would have preferred that there should have been consultation with us given that this Resolution cannot be carried without Government support, so that we could have expressed these views to Opposition Members before they had published the motion and before perhaps putting the Government in the position of having to take action which is certainly, in a sense,

awkward but which nevertheless cannot be avoided in terms of doing what the Government believe is the right thing. As I say, there is no precedent for the grant of the Freedom to anybody posthumously, and of course if the House wanted not only to break with precedent but indeed establish legislation to grant the Freedom of the City posthumously, there would then be many such potentially deserving cases for such a posthumous award. I think it would be invidious to mention any other names here but one can readily think of people who if we were going to go back to square one and do things posthumously, may also fit even into the category of person that the hon Member has drawn out in describing Peter Isola's contributions to the community. Indeed, by that definition there are even people alive today who would be equally meritorious, so the question of posthumous awards, apart from whatever legalistic thing would need for it to be fixed, but of course the House could do that, the House could bring legislation if it wanted to, to be able to award. Another question is whether we should in fact award the Freedom of the City, which I think pre-supposes that there is somebody around to exercise the freedom, this is not a medal, this is a civic honour which intrinsically cannot be enjoyed by somebody who is not around to enjoy it. Therefore the concept of posthumous Freedoms of the City are, I think, something which would need to be carefully considered, for example, in the United Kingdom, not that we are bound by what the United Kingdom does, but in the United Kingdom civic awards are not granted posthumously. Some military awards for bravery are granted posthumously when, Colonel Jones in the Falkland Islands or someone goes out with all guns blazing and gets it posthumously because it was the very reason for granting him the award resulted in his death. So when the reason for giving the award is an act of bravery in which one loses one's life then either one gets it posthumously or does not get it at all I suppose. So that is the position in the UK, so the Government actually do not believe that the Freedom of the City should be awarded posthumously, except perhaps in exceptional circumstances where, let us assume for a moment that this House were debating or the Government and the Opposition were in consultation about giving the Freedom of the City to Mr 'A' or Mrs 'B', then alive, and before we finish our business and before we go to the procedures and before we pass the Resolution, or before the ceremony takes place, Mr 'A' or Mrs 'B' dies, in other words, that death intervenes in a process, that is the sort of exceptional case where the Government may be persuaded posthumous awards are appropriate. But certainly we do not think it is appropriate when we have all had plenty of time, if we had wanted to, to recognise somebody's achievements and for no reason we wait until he has died in order to bring a motion for the Freedom of the City. Perhaps I could articulate the point that I am trying to make in this sense just by reference to the hon Member's motion. The Motion cites two reasons. One is the development of the people of Gibraltar in the positions he held in the Legislative Council, well look it is well over 20 years that Peter last held a seat in the Legislative Council, and the second was his trips to the United Nations, important as they were, with Sir Joshua, also much more than 20 years ago. Those are the two reasons that are cited for bestowing the Freedom of the City. All of these are qualifications which were already in existence 25 years ago, so the only thing that has happened since he acquired these qualifications and today that we are debating the motion, is that sadly Peter has passed away. Frankly, passing away is not of itself a sufficient reason for granting somebody the Freedom of the City posthumously.

Mr Speaker, the Government do not think that the facts of this case fall into the exceptional category that we think should prevail in the considerations of granting awards posthumously. The death in this case has not intervened in a process which was already afoot or which would have taken place in any event. Nothing of what I am saying should be interpreted as a negative view of Peter Isola's contribution to political life in Gibraltar, indeed to his visits to the United Nations, to membership of this House for several years, to his office as Leader of the Opposition, and indeed to his considerable political skill, experience and judgement. Skill, experience and judgement which I, on behalf of this Government, took every opportunity to harness and recognise by inviting Peter to

contribute that political skill, experience and judgement when my Government had need for it. For example, he was part of the Foreign Affairs Advisory Council, which I created to advise me at the time of the joint sovereignty challenge and of course I invited him to serve on the Gibraltar delegation for constitutional reform negotiations. However, the issue of the regard in which we held him collectively, and indeed in which I personally held him, is not the issue, is not the criteria which can properly be applied to decide whether the Freedom of the City should be awarded posthumously. If this motion had been brought on a timely basis, as indeed it could have been done by the hon Member when he was Chief Minister, or indeed by me when I have been Chief Minister since 1996, or by himself between 1988 or by any of us, one does not have to be the Chief Minister or the Leader of the Opposition to bring a motion. It could have been brought at any time by anybody we would have debated then, presumably and preferably and indeed one of the things that I regret here is that there was not a degree of private consultation between us first that would have enabled the Opposition to have the benefit of our views and at least decide whether they wished to proceed in the knowledge of what those views were going to be, but if at least it would have been brought on a timely basis and whilst Peter was still amongst us, then we would have been debating this on the basis of the merits of Peter's contribution to the community over the years. But we are not, we are discussing it after Peter has passed away in the context of a motion that was presented after Peter had passed away and therefore what we are debating today is the appropriateness of a posthumous award, and that is the basis upon which the Government feel that they have to oppose this motion. So it is with regrets and with a sense of sadness that we should have been put in a position of perhaps having to risk causing offence to Peter's family, which is the last thing that we would wish and intend to do, but nevertheless the Government feel that the circumstances in which they have been placed by the bringing of this motion and whatever difficulty there might be to the Government in adopting this position, cannot dictate whether the Government do what they consider is the right thing or not the right thing. Therefore, in those circumstances we regret that we shall oppose this motion in order that the Freedom of the City should not be granted posthumously because it is posthumous.

HON J J BOSSANO:

Well, obviously we knew that the Government were going to defeat the motion because there was a press release issued yesterday afternoon saying that that is what was going to happen. Let me say that the fact that the motion cannot be carried without the support of the Government because the Government have the majority in the House, is not something peculiar to this motion or peculiar to the fact that we are seeking to make the award posthumously. That is to say, every motion that the Opposition bring to the House can only be carried if the Government support the motion, that does not prevent the Opposition from bringing motions and has never prevented the Opposition from bringing motions to the House in the knowledge that it could well be defeated, because if the Opposition only brought motions to the House that were guaranteed to be passed, they might as well leave the Government to bring the motions in the first place and be done with it.

Secondly, I think that what the Chief Minister has said is true. That is to say, that it could have been brought before while Peter was still with us by anybody else and nobody else thought of doing it. It seems to me to say well look, because we did not think of it while he was still with us we cannot consider doing it now that he is not. If there is merit in the possibility of the House wanting to honour him in this way while he was still alive, then I do not see why the merit disappears when he has passed away, and to say well look, the fact that the person has passed away is of itself not enough to grant it posthumously then I do not see how else it could be granted posthumously if he has not passed away. But certainly it is true that I was not aware that the interpretation of the law that provides for the Government to grant the Freedom of the City to a citizen or an organisation required that the person, presumably given that the person

includes the Royal Engineers, the Royal Marines, the Christian Brothers and the Loreto Sisters, all of which cannot cease to exist presumably……

HON CHIEF MINISTER:

Under the Interpretation and General Clauses Ordinance the word 'person' includes natural or legal person.

HON J J BOSSANO:

Yes I am aware of that, the point that I was making and was about to go on to say is that given that none of these organisations presumably can pass away, then the constraint only exists on physical persons and not on entities. I am not sure that the legislation was intended to discriminate between a person that is a physical person and an entity that is deemed to be a person by the Interpretation and General Clauses Ordinance, but we will certainly look at that legislation given the view and the position that the Government have taken on it and form our own view as to whether to enable the House to do so there is a real need to change the legislation or the interpretation put on that legislation is capable of being different. We believe that it is something that is perfectly reasonable to do at this stage. Perhaps it would have been better if somebody else had thought of doing it to have done it earlier but we do not accept that that is sufficient reason for not doing it now. There is an old saying that better late than never and we believe this applies in this case. So we regret that the Government have got a different view and clearly what I am saying now would not have been any different, and our position would not have been any different, if the arguments that we have heard in public had been put to me in private prior to moving the motion because I do not accept the logic of that argument and do not share it. Therefore, if it does not happen now it will happen at a future date.

Question proposed. The House divided.

For the Ayes:
The Hon J J Bossano
The Hon C A Bruzon
The Hon Dr J J Garcia
The Hon S E Linares
The Hon F R Picardo
The Hon L A Randall

For the Noes:
The Hon C Beltran
The Hon Lt-Col E M Britto
The Hon P R Caruana
The Hon Mrs Y Del Agua
The Hon J J Holliday
The Hon Dr B A Linares
The Hon J J Netto
The Hon F Vinet

The motion was defeated.

ADJOURNMENT

The Hon the Chief Minister moved the adjournment of the House sine die.

Question put. Agreed to.

The adjournment of the House sine die was taken at 11.55 a.m. on Friday 26th May 2006.