

OFFICIAL RECORD OF PROCEEDINGS

Wednesday, 15 June 2016

The Council met at Eleven o'clock

MEMBERS PRESENT:

THE PRESIDENT

THE HONOURABLE JASPER TSANG YOK-SING, G.B.M., G.B.S., J.P.

THE HONOURABLE ALBERT HO CHUN-YAN

THE HONOURABLE LEE CHEUK-YAN

THE HONOURABLE JAMES TO KUN-SUN

THE HONOURABLE CHAN KAM-LAM, S.B.S., J.P.

THE HONOURABLE LEUNG YIU-CHUNG

THE HONOURABLE EMILY LAU WAI-HING, J.P.

THE HONOURABLE TAM YIU-CHUNG, G.B.S., J.P.

THE HONOURABLE ABRAHAM SHEK LAI-HIM, G.B.S., J.P.

THE HONOURABLE TOMMY CHEUNG YU-YAN, G.B.S., J.P.

THE HONOURABLE WONG KWOK-HING, B.B.S., M.H.

PROF THE HONOURABLE JOSEPH LEE KOK-LONG, S.B.S., J.P., Ph.D.,
R.N.

THE HONOURABLE JEFFREY LAM KIN-FUNG, G.B.S., J.P.

THE HONOURABLE ANDREW LEUNG KWAN-YUEN, G.B.S., J.P.

THE HONOURABLE WONG TING-KWONG, S.B.S., J.P.

THE HONOURABLE CYD HO SAU-LAN, J.P.

THE HONOURABLE STARRY LEE WAI-KING, J.P.

DR THE HONOURABLE LAM TAI-FAI, S.B.S., J.P.

THE HONOURABLE CHAN HAK-KAN, J.P.

THE HONOURABLE CHAN KIN-POR, B.B.S., J.P.

DR THE HONOURABLE LEUNG KA-LAU

THE HONOURABLE CHEUNG KWOK-CHE

THE HONOURABLE WONG KWOK-KIN, S.B.S.

THE HONOURABLE IP KWOK-HIM, G.B.S., J.P.

THE HONOURABLE PAUL TSE WAI-CHUN, J.P.

THE HONOURABLE ALAN LEONG KAH-KIT, S.C.

THE HONOURABLE LEUNG KWOK-HUNG

THE HONOURABLE ALBERT CHAN WAI-YIP

THE HONOURABLE WONG YUK-MAN

THE HONOURABLE CLAUDIA MO

THE HONOURABLE MICHAEL TIEN PUK-SUN, B.B.S., J.P.

THE HONOURABLE JAMES TIEN PEI-CHUN, G.B.S., J.P.

THE HONOURABLE NG LEUNG-SING, S.B.S., J.P.

THE HONOURABLE STEVEN HO CHUN-YIN, B.B.S.

THE HONOURABLE FRANKIE YICK CHI-MING, J.P.

THE HONOURABLE WU CHI-WAI, M.H.

THE HONOURABLE YIU SI-WING, B.B.S.

THE HONOURABLE GARY FAN KWOK-WAI

THE HONOURABLE MA FUNG-KWOK, S.B.S., J.P.

THE HONOURABLE CHARLES PETER MOK, J.P.

THE HONOURABLE CHAN CHI-CHUEN

THE HONOURABLE CHAN HAN-PAN, J.P.

DR THE HONOURABLE KENNETH CHAN KA-LOK

THE HONOURABLE CHAN YUEN-HAN, S.B.S., J.P.

THE HONOURABLE LEUNG CHE-CHEUNG, B.B.S., M.H., J.P.

THE HONOURABLE KENNETH LEUNG

THE HONOURABLE ALICE MAK MEI-KUEN, B.B.S., J.P.

DR THE HONOURABLE KWOK KA-KI

THE HONOURABLE KWOK WAI-KEUNG

THE HONOURABLE CHRISTOPHER CHEUNG WAH-FUNG, S.B.S., J.P.

DR THE HONOURABLE FERNANDO CHEUNG CHIU-HUNG

THE HONOURABLE SIN CHUNG-KAI, S.B.S., J.P.

DR THE HONOURABLE HELENA WONG PIK-WAN

THE HONOURABLE IP KIN-YUEN

DR THE HONOURABLE ELIZABETH QUAT, J.P.

THE HONOURABLE MARTIN LIAO CHEUNG-KONG, S.B.S., J.P.

THE HONOURABLE POON SIU-PING, B.B.S., M.H.

THE HONOURABLE TANG KA-PIU, J.P.

DR THE HONOURABLE CHIANG LAI-WAN, J.P.

IR DR THE HONOURABLE LO WAI-KWOK, S.B.S., M.H., J.P.

THE HONOURABLE CHUNG KWOK-PAN

THE HONOURABLE CHRISTOPHER CHUNG SHU-KUN, B.B.S., M.H., J.P.

THE HONOURABLE TONY TSE WAI-CHUEN, B.B.S.

THE HONOURABLE ALVIN YEUNG NGOK-KIU

MEMBERS ABSENT:

DR THE HONOURABLE LAU WONG-FAT, G.B.M., G.B.S., J.P.

THE HONOURABLE FREDERICK FUNG KIN-KEE, S.B.S., J.P.

THE HONOURABLE VINCENT FANG KANG, S.B.S., J.P.

DR THE HONOURABLE PRISCILLA LEUNG MEI-FUN, S.B.S., J.P.

THE HONOURABLE MRS REGINA IP LAU SUK-YEE, G.B.S., J.P.

THE HONOURABLE DENNIS KWOK

PUBLIC OFFICERS ATTENDING:

THE HONOURABLE GREGORY SO KAM-LEUNG, G.B.S., J.P.
SECRETARY FOR COMMERCE AND ECONOMIC DEVELOPMENT

MR RONALD CHAN NGOK-PANG, J.P.
SECRETARY FOR CONSTITUTIONAL AND MAINLAND AFFAIRS

THE HONOURABLE LAI TUNG-KWOK, S.B.S., I.D.S.M., J.P.
SECRETARY FOR SECURITY

DR THE HONOURABLE KO WING-MAN, B.B.S., J.P.
SECRETARY FOR FOOD AND HEALTH

THE HONOURABLE PAUL CHAN MO-PO, M.H., J.P.
SECRETARY FOR DEVELOPMENT

THE HONOURABLE LAU KONG-WAH, J.P.
SECRETARY FOR HOME AFFAIRS

MR JOHN LEE KA-CHIU, P.D.S.M., J.P.
UNDER SECRETARY FOR SECURITY

CLERKS IN ATTENDANCE:

MR KENNETH CHEN WEI-ON, S.B.S., SECRETARY GENERAL

MISS ODELIA LEUNG HING-YEE, DEPUTY SECRETARY GENERAL

MISS FLORA TAI YIN-PING, ASSISTANT SECRETARY GENERAL

MS DORA WAI, ASSISTANT SECRETARY GENERAL

PRESIDENT (in Cantonese): Will the Clerk please ring the bell to summon Members to the Chamber.

(After the summoning bell had been rung, a number of Members entered the Chamber)

TABLING OF PAPERS

The following papers were laid on the table under Rule 21(2) of the Rules of Procedure:

Subsidiary Legislation/Instruments	<i>L.N. No.</i>
Air Navigation (Hong Kong) Order 1995 (Amendment of Schedule 16) Order 2016	92/2016
Prevention of Bribery Ordinance (Amendment of Schedule 1) Order 2016	93/2016
Merchant Shipping (Safety) (Signals of Distress and Prevention of Collisions) (Amendment) Regulation 2016 (Amendment) Regulation 2016	94/2016
Dangerous Goods (Consignment by Air) (Safety) Regulations (Amendment of Schedule) Order 2016.....	95/2016
Public Health and Municipal Services Ordinance (Public Pleasure Grounds) (Amendment of Fourth Schedule) Order 2016	96/2016
Chinese Permanent Cemeteries (Amendment) Ordinance 2016 (Commencement) Notice	97/2016
Property Management Services Ordinance (Commencement) Notice 2016.....	98/2016
Declaration of Increase in Pensions Notice 2016	99/2016
Widows and Orphans Pension (Increase) Notice 2016.....	100/2016

ORAL ANSWERS TO QUESTIONS

PRESIDENT (in Cantonese): Questions. First question.

Development of More Tourist Attractions

1. **DR CHIANG LAI-WAN** (in Cantonese): *It is learnt that one of the reasons why many Hong Kong people like travelling abroad during holidays is that there are quite a number of tourist attractions overseas. On the other hand, some members of the tourism industry have relayed to me that Hong Kong's tourism industry has entered a harsh winter and is now facing acute competition from such places as Japan, Korea, Singapore, Taiwan, etc. As such, Hong Kong should develop more tourist attractions to, on the one hand, provide Hong Kong people with more leisure places to spend their holidays, thereby encouraging them to stay and spend in Hong Kong and, on the other, to attract more tourists to visit Hong Kong. In this connection, will the Government inform this Council:*

- (1) *as the "LED Rose Garden Display" at Dongdaemun Design Plaza in Seoul, Korea has been very well-received and the "Light Rose Garden — Hong Kong" held locally in February this year also attracted tens of thousands of people viewing the exhibition, whether the authorities will consider collaborating with local artists or arts organizations to produce LED lighting or art installations in other media forms and display them permanently at locations such as the Kai Tak Cruise Terminal, the West Kowloon Cultural District, etc., which will not only provide more room for the development of local creative arts but also attract tourists to visit Hong Kong; if they will, of the details; if not, the reasons for that;*
- (2) *as quite a number of overseas cities have used murals to beautify their cityscapes in recent years (e.g. the artistic murals in Penang, Malaysia, the Ihwa-dong Mural Village in Seoul, Korea and the Rainbow Military Dependents' Village in Taiwan), which are well-received by tourists, whether the authorities will consider transforming local street murals and mural villages currently found in districts such as Stanley, Sheung Wan, Sham Shui Po, Kwun Tong,*

Ping Che, etc. into new attractions, with a view to developing mural art, adding charm to old districts and promoting local culture; if they will, of the details; if not, the reasons for that; and

- (3) *as "flower viewing" and "flower photo-taking" have become popular in Hong Kong in recent years, with quite a number of members of the public visiting various places in the territory to appreciate and take pictures of flowers (e.g. the Bougainvillea Alley at Un Chau Estate, Cheung Sha Wan as well as the tabebuia chrysantha in Sha Tin Park and Nam Cheong Park) during the blooming season, whether the authorities have plans to plant various types of special flowers, complemented by designs of flower or tree galleries, in various parks and on roadsides for appreciation by the general public and tourists; if they do, of the details; if not, the reasons for that?*

SECRETARY FOR COMMERCE AND ECONOMIC DEVELOPMENT (in Cantonese): President, tourism is a pillar industry of Hong Kong. The Government attaches great importance to the tourism industry in Hong Kong and has devoted substantial resources to support its development. Starting from last year, the tourism industry in Hong Kong has been facing fierce competition due to the slowdown of global economy as well as depreciated currencies and relaxed visa requirements for Mainland visitors in neighbouring countries.

In view of the competition and challenges faced by the tourism industry, the Government allocated in the last year an additional funding of \$80 million to the Hong Kong Tourism Board (HKTB) for stepping up overseas promotion efforts. Subsequently, another \$10 million was allocated for setting up a one-off matching fund to encourage local tourist attractions for launching distinctive tourism products in collaboration with hotels, travel agencies, retail merchants, and so on. The Financial Secretary further rolled out a series of initiatives in the 2016-2017 Budget including an additional funding of \$240 million for the HKTB and the trade to promote the development of the tourism industry and to support the travel trade. Through the efforts of the Government and the trade, the number of non-Mainland visitors visiting Hong Kong has bounced back in recent months and recorded a year-on-year increase of 4.9% for the first four months of this year.

My reply to the three parts of the question, after consulting the Home Affairs Bureau, is as follows:

- (1) We subscribe to the idea that the hosting of different types of large-scale activities and mega events in Hong Kong can help boost our international image and appeal as a tourist destination. The events will not only attract more visitors but also entice them to extend their stay here. The Government has all along been supporting the organization of these events in Hong Kong in various ways, including through the Mega Events Fund. Any organization that is interested in holding events at venues managed by the Government (including those of the Leisure and Cultural Services Department (LCSD) or the Kai Tak Cruise Terminal) and the West Kowloon Cultural District Authority may apply to the departments/authorities concerned. The departments/authorities would consider providing appropriate facilitation having regard to the management and arrangement of individual venues. In fact, the display of "Light Rose Garden — Hong Kong", an art installation, at Tamar Park in February this year was organized with the approval of the LCSD. The Government will be pleased to consider any specific proposal from any organization regarding the display of art installations at venues such as the Kai Tak Cruise Terminal and the West Kowloon Cultural District.

On the other hand, the Art Promotion Office of the LCSD is committed to promoting the development of public arts in Hong Kong. Over the years, it has rolled out public arts projects of different scales and commissioned local artists to create artworks in different media to beautify public spaces. The projects have helped enhance the public's appreciation of and interests in arts, enriched the artistic ambience of our public spaces as well as helped attract more visitors to Hong Kong.

- (2) We note that an art group has, since 2014, been organizing annual street art festivals named "HKwalls" in Hong Kong which included displaying murals. This art group has organized such events at Sheung Wan, Stanley and Sham Shui Po in the past. The HKTB has promoted the "HKwalls" festival as one of the highlight activities of Hong Kong at the time. Separately, the LCSD has strived to

bring public arts to all sectors of the community under a variety of programmes. For instance, the "New Look for Public Places: Shanghai Street Public Art Project" and "Urban Art Project at the Back Alley in Kwun Tong" in old neighbourhoods such as those in Kwun Tong and Yau Ma Tei, have transformed the appearance of public buildings and alleys with murals and enhanced the artistic ambience of the community. The HKTB will also consider highlighting murals in promoting the attractions of individual districts.

- (3) The Government is committed to promoting greening, landscape and tree management. In view of the growing interests of the public and visitors in flower appreciation in recent years, the Government has endeavoured to identify more appropriate locations for suitable planting wherever possible.

The LCSD has adopted thematic planting designs for new parks and roadside planting areas. For existing parks with landscape plants due for replacement, special flowering plants would be introduced. For instance, the introduction of camel's foot trees in Hong Kong Velodrome Park, Yellow Pui in Nam Cheung Park and water lilies in Shing Mun Valley Park, has drawn flocks of the public to these parks during their flowering seasons every year. Moreover, the Agricultural, Fisheries and Conservation Department also introduces appropriate ornamental trees into country parks, such as sweet gum trees for Tai Tong at Tai Lam Country Park and cherry trees for the Rotary Park at Tai Mo Shan Country Park for appreciation by visitors.

Following the completion of greening works under the Greening Master Plans (the Plans) for the urban areas in 2011, the Civil Engineering and Development Department is currently implementing the greening works under the Plans at Sha Tin, Sai Kung, Tuen Mun and Yuen Long, involving mainly the existing pavements or roadsides to enhance the cityscape.

The Greening, Landscape and Tree Management Section of the Development Bureau has developed a mobile application, "Tree and Landscape Map", to facilitate the public's appreciation of flowering

plants. The mobile application features search functions for "thematic planting", the particular plant species in flower in different months (depending on the weather) and the locations of the relevant parks. By providing information on the plants that flower in different seasons in different districts of Hong Kong, it guides the general public and visitors to visit these attractions for flower appreciation.

DR CHIANG LAI-WAN (in Cantonese): *President, I thank the Secretary for his reply. But let me say that I do not intend to recommend the planting of such flower or tree galleries at Tai Lam Country Park, on the peak of Tai Mo Shan or in the New Territories. Instead, I hope more flower galleries and tree galleries can be planted in such urban areas as Kowloon City, Sham Shui Po, Yau Tsim Mong and Hung Hom with dense population whenever practicable, and along the streets, or even in new public housing estates, so that the people can feel an ambience of tree or flower corridors in these places after some years. Will the Government do so?*

PRESIDENT (in Cantonese): Which Secretary will reply? Secretary for Commerce and Economic Development, please.

SECRETARY FOR COMMERCE AND ECONOMIC DEVELOPMENT (in Cantonese): President, the "Light Rose Garden" exhibition or other similar events like street performance activities, art festivals and murals mentioned by Dr CHIANG Lai-wan just now were indeed held by private organizations. As to whether these events will be held in Hong Kong, the Government will discuss with relevant organizations and render its support if there are any specific proposals.

MR WONG TING-KWONG (in Cantonese): *President, as the authorities have expressed the intention of increasing non-Mainland tourist arrivals, can the Secretary explain in detail how to attract these tourists? What are the target countries?*

SECRETARY FOR COMMERCE AND ECONOMIC DEVELOPMENT (in Cantonese): In respect of tourism development, Mr WONG Ting-kwong is right. On top of drawing tourists from the Mainland, we wish to focus on diversifying tourist arrivals and developing non-Mainland markets. For example, upon securing additional subvention in the Budget this year, the HKTB will deploy around 39% of its marketing resources in the Mainland market, and around 61% in non-Mainland markets. This illustrates our objective to step up promotion in attracting non-Mainland visitors, overnight visitors in particular, in a bid to foster high value-added development in this area. As I already pointed out in previous meetings of the Legislative Council, apart from attracting tourists to shop in Hong Kong, we hope that more tourists can be drawn by our distinct culture and cuisine. Of course, development in infrastructure is also important. Therefore, Members can see that expansion projects are being carried out in such attractions as the Hong Kong Disneyland Resort or the Ocean Park. Together with traditional buildings throughout the territory, such as "Lumières Hong Kong" to be staged this year, we can further enrich Hong Kong's appeal to attract non-Mainland visitors.

MR WONG TING-KWONG (in Cantonese): *President, the Secretary has not answered my supplementary question about target regions and countries.*

SECRETARY FOR COMMERCE AND ECONOMIC DEVELOPMENT (in Cantonese): HKTB's major target markets include Taiwan, Japan, South Korea, South East Asia, India and the United States. Of course, other emerging cities are included as well. We will keep our eyes open for the trend of tourist arrivals and organize the right promotion activities according to the preference of tourists from these markets.

MISS CHAN YUEN-HAN (in Cantonese): *President, the Secretary has claimed about the efforts devoted on tourism, but I wish to tell him via the President that I feel perplexed by his remarks. As such a beautiful place where the East meets West, together with its rich heritage, Hong Kong should be an immensely attractive destination. True, we cannot say that the authorities have neglected their efforts, but these were merely gestures under which they briefly did something here and there. The Hong Kong Federation of Trade Unions cares much about grass-roots employment, and tourism is the industry which offers the*

greatest number of employment opportunities. We have raised our concerns for almost 20 years, and I myself have followed up with the issue for long, and upon a casual search we can see that, in other countries ... I am not even mentioning Japan, Taiwan or China which I know well ... simply considering Macao ...

PRESIDENT (in Cantonese): Miss CHAN, please raise your supplementary question and do not make lengthy remarks.

MISS CHAN YUEN-HAN (in Cantonese): *Alright. As the Secretary has claimed making hard efforts, I would like to ask him a question. Does he have any plan similar to the Macao Tourism Industry Development Master Plan recently published in Macao? It is because tourism covers many aspects, such as flower appreciation, culture, buildings, the countryside and religion, and so on. These elements are conducive for tourism promotion. Does he has any similar policies? He always speaks of his efforts, yet I cannot see how his efforts ...*

PRESIDENT (in Cantonese): Miss CHAN, you have already stated your supplementary question. Please let the Secretary answer.

MISS CHAN YUEN-HAN (in Cantonese): *Yes, Secretary, please answer.*

SECRETARY FOR COMMERCE AND ECONOMIC DEVELOPMENT (in Cantonese): I thank Miss CHAN Yuen-han for her supplementary question. I agree that tourism is essential to employment in Hong Kong, as it accounts for 5% of our Gross Domestic Product, creating around 270 000 jobs. Therefore, tourism development is highly important.

As the department taking care of tourism affairs, the Tourism Commission has been actively developing and matching up with various tasks in both terms of hardware and software. Therefore, we have formulated a very clear policy as mentioned just now, under which we aims to attract more visitors to Hong Kong on this year's theme of unique culture and cuisine in Hong Kong.

Throughout the years, Hong Kong has been developing tourism facilities and major scenic spots, as well as various complementary facilities, such as Hong Kong Disneyland Resort, Ngong Ping 360, Hong Kong Wetland Park and Kai Tak Cruise Terminal. We also have a clear-cut strategy in culture and creation to proactively revitalize historic buildings and introduce more tourist spots, such as PMQ, the Jao Tsung-I Academy and Tai O Heritage Hotel, and so on. In terms of new development, we will also attract tourists through such anime and manga-related facilities like the Ani-Com Park@Harbour"FUN" and the Comix Home Base.

Moreover, regarding scenic spots, Members may note from the media that the Hong Kong Disneyland Resort will add numerous new attractions this year and the next, including a brand new offering on the theme of the Star Wars movies and a new Iron Man themed area, as well as a new resort-style hotel. The Ocean Park will also add an all-around indoor water park, plus two new hotels opening respectively in 2017 and 2020. These complementary facilities are the outcome of years of efforts put in by the authorities and the sector. We will further introduce similar facilities depending on future development of the market.

MISS CHAN YUEN-HAN (in Cantonese): *The Secretary has not answered my supplementary question.*

PRESIDENT (in Cantonese): Please repeat your supplementary question.

MISS CHAN YUEN-HAN (in Cantonese): *He is simply singing his own praises. I have asked if he will introduce anything like the Macao Tourism Industry Development Master Plan recently implemented in Macao. Macao is better than Hong Kong ...*

PRESIDENT (in Cantonese): Miss CHAN, you have already repeated your supplementary question. Secretary, Miss CHAN asks if any master planning will be conducted for the tourism industry as in the case of Macao.

SECRETARY FOR COMMERCE AND ECONOMIC DEVELOPMENT (in Cantonese): President, we have all along been examining the latest trend and overall policy with the trade to identify the kinds of co-operation and adjustment required. At the moment, I do not see any need to further conduct any specific planning.

MR YIU SI-WING (in Cantonese): *President, speaking of tourism resources in Hong Kong, besides enhancement on arts exhibitions and flower appreciation, we must not overlook the Hong Kong Geopark which is a unique world-class facility. However, I believe that the Government has not really leveraged the Geopark as an attraction for promoting tourism. The Volcano Discovery Centre has lately established a shuttle coach service to the High Island Reservoir east dam, yet the service is only available on weekends with low frequencies, failing to optimize such a distinctive tourism resource. Of course, this is not within the purview of the Commerce and Economic Development Bureau, however, can the HKTB under the Bureau deploy any resources into the project, such as encouraging the trade to extend the service to weekdays, or organize guided tours to visit the east dam? If such steps can possibly be done, this will directly contribute to the diversification of tourism in Hong Kong.*

SECRETARY FOR COMMERCE AND ECONOMIC DEVELOPMENT (in Cantonese): President, Mr YIU has made a very good recommendation. The HKTB will introduce these unique attractions to tourists, such as the Hong Kong Geopark and the dam, and so on. Regarding the related travel arrangement, I will refer Mr YIU's opinion to the department concerned for its consideration.

DR ELIZABETH QUAT (in Cantonese): *It is believed that tourism in Hong Kong is beginning to face a hard time. In the face of such difficulties, it is even more important that the sector can attract tourists with higher quality. Many fine concerts have been held in Hong Kong recently, attracting a certain number of visitors. For example, the concert by Leon LAI has been immensely popular, setting a rather good example to similar events. However, concerts in Hong Kong are mainly held in the Hong Kong Coliseum and the Asiaworld-Expo, and outdoor concerts take place in venues like the Hong Kong Stadium or the temporary open space opposite Tamar Park. I would like to ask the authorities*

if relevant complementary measures will be adopted in the future to promote the development of the local entertainment industry, so as to attract more tourists. Regarding the development of concert venues, will there be any related studies or new policies, as well as any confirmed new venues?

PRESIDENT (in Cantonese): Which Secretary will reply? Secretary for Commerce and Economic Development, please.

SECRETARY FOR COMMERCE AND ECONOMIC DEVELOPMENT (in Cantonese): I agree that venues are needed for holding public entertainment events, and notice the positive impact of large scale events on attracting visitors. This is the direction for development on both tracks. That said, as these events involve public safety, we have to take into account existing regimes relating to the vetting and approval of Temporary Places of Public Entertainment Licences, as well as fire and structural safety standards, and so on. In this respect, I will relay the opinions concerned to various departments.

SECRETARY FOR HOME AFFAIRS (in Cantonese): President, I wish to add a point. In response to Dr QUAT's enquiry about venues for holding more entertainment performances, I am glad to tell Dr QUAT that, on top of the existing venues — we all know that there are not enough of them — among the three venues to be provided in the Kai Tak Sports Park which is going through planning and construction later on, one of the venues should have a seating capacity of 50 000, capable for holding sports events and entertainment performances. I hope the future venue can offer a platform for entertainers to fully perform their talents and attract more visitors to Hong Kong.

MR CHRISTOPHER CHUNG (in Cantonese): *I am not very satisfied with part (3) of the main reply, and hope the Secretary for Home Affairs can answer my question. The first Government since our return to China planted a lot of Bauhinia blakeana trees in the airport, yet I am not sure how many of those tens of thousands of trees are left now, as Bauhinia blakeana trees are in fact not suitable for open and windy locations. Therefore, I wish to ask the Secretary for Home Affairs, as he has mentioned greening in part (3) of the main reply, if he*

will consider conducting thorough studies in 18 districts across the territory to identify the types of flower trees or fruit trees suitable for each district, so as to attract both residents and tourists.

SECRETARY FOR HOME AFFAIRS (in Cantonese): Mr CHUNG's proposal is really good. Members of the 18 District Councils and local residents have frequently offered us various recommendations, particularly because flower appreciation is popular these days. As a matter of fact, colleagues from the LCSD maintain close contact with members of District Councils. They also arrange the planting of different plant species in different parks based on the views from local residents. The public can check online the various planting themes in different parks. Some members of the public have reflected that recently the flowers have flourished well, but the quantity has not been enough. Therefore, I totally agree with Mr CHUNG and will continue deliberating this issue with various districts. We have our requirements on the one hand, and have to take expert advice on the other. As mentioned by Mr CHUNG just now, if certain plant species are not suitable for certain places, the experts will offer advice accordingly.

MR CHRISTOPHER CHUNG (in Cantonese): *The Secretary has not replied if fruit trees will be planted.*

PRESIDENT (in Cantonese): We have spent more than 23 minutes on this question. Members please follow up the matter on other occasions. Second question.

Regulation of Greening Projects

2. **MR TONY TSE** (in Cantonese): *President, on the 20th of last month, the entire green roof of the Chan Tai Ho Multi-purpose Hall, covering an area of more than 1 000 square metres, at the City University of Hong Kong collapsed abruptly. Some professionals have pointed out that accidents of such type are rare, and the roof being covered by green vegetation and thus being overloaded may be one of the causes of the accident. The accident has aroused concerns among various sectors of the community about the regulation and maintenance of*

various types of greening projects (including rooftop greening projects) for buildings and related matters. In this connection, will the Government inform this Council:

- (1) of the main government departments which are responsible for the regulation of the construction, vetting and approval of works, works supervision, acceptance, maintenance and environmental protection-related issues, etc., of greening facilities/features (including green rooftops) for buildings, and the main ordinances regulating such matters; whether it conducted inspections of completed greening projects regularly in the past three years; if it did, of the details, including the number of staff members from various departments tasked with the inspection work, the number of inspections conducted by them, whether such inspections were carried out on a sampling basis, and the follow-up actions taken (including the respective numbers of verbal and written warnings issued and the number of cases in which prosecutions were instituted) each year; if it did not conduct any inspection, the reasons for that and whether it will do so; whether it has provided guidelines and practice notes on the maintenance and management of greening facilities/features for property owners and property management companies;*
- (2) as the authorities have indicated that there are different ways of handling and different arrangements for greening projects (including rooftop greening projects) for uncompleted and existing buildings, of the differences between the two in regard to vetting and approval of works, works supervision, acceptance and maintenance, etc. as well as the reasons for such differences, and whether the authorities will review and revise the relevant arrangements; and*
- (3) whether there is a requirement that greening projects for buildings (including rooftop greening projects) must be carried out under the supervision and monitoring of authorized professionals, and the acceptance of related works must be done by them; if there is such a requirement, of the types of professionals involved and whether they include landscape architects; if there is no such requirement, the reasons for that?*

SECRETARY FOR DEVELOPMENT (in Cantonese): Good morning, President and Members. President, greening of buildings can bring many benefits on various aspects such as improving the environment and the ecology, saving energy, as well as enhancing people's quality of living. In view of all these benefits, the Government has been striving to promote greening of buildings, including roof greening, vertical greening, sky gardens, terrace planting, and so on. Greening has a wide scope, and may be of very different forms, locations and scales. Generally speaking, greening of buildings should pose no risk to safety, as long as it was suitably designed and constructed, and there are proper repairs and maintenance.

My reply to the three parts of the question is as follows:

- (1) With the paramount objective of ensuring building safety, the Government has in place different levels of regulatory control over the greening of private buildings. If the greening only involves placing of a few flower pots, it generally will not cause any structural risk. If the greening is of a substantial scale, the relevant owner should then consult authorized building professionals on matters such as loading of the building. The building professionals authorized by the Buildings Department possess professional expertise. They should advise the owners, where the greening involves building works, on the need for seeking the consent of the Buildings Department for the works taking into account their location, scope and scale. For works requiring its prior approval, the Department will assess the proposed works in accordance with the Buildings Ordinance, and will only give consent to its commencement upon being satisfied of the safety of the works.

There are currently over 40 000 private buildings in Hong Kong, of which greening may be of varying scope and scale. Therefore, the Buildings Department has not carried out inspections of the greening of buildings specifically. Nevertheless, in view of the greened roof collapse incident at the City University of Hong Kong last month, the Buildings Department has been ascertaining through various channels any roof greening of large area in the territory that might have been carried out without prior evaluation by building professionals. Immediate actions will be taken against any such

case found. In the course of its day-to-day handling of public reports on unauthorized building works and other matters and when conducting large-scale operation, the Buildings Department will take appropriate follow-up actions if any greening facilities which are unauthorized building works come to its attention. But I must point out that owners of private buildings are responsible for the timely inspection and maintenance of their properties, including any of their greening facilities, to ensure their safety. They should consult professional advice if in doubt.

Since the establishment of its Greening, Landscape and Tree Management Section in 2010, the Development Bureau has been formulating standards and guidelines on various types of greening, and particularly in relation to matters which schools should consider and consult professionals when carrying out roof greening. In addition, the Home Affairs Bureau has issued the Code of Practice on Building Management and Maintenance under the Building Management Ordinance to set out matters warranting the attention of owners' corporations and other building management bodies, including a chapter covering topics like roof/podium maintenance and repairs, for example, dealing with water ponding, waterproofing, overloading or misuse of rooftops. In view of the greened roof collapse incident at the City University of Hong Kong last month, the Buildings Department has issued notes on the provision of green roofs in school buildings to ensure safety of the premises and their occupants. The Buildings Department has also issued a circular to the building industry, setting out and reminding practitioners of the existing provisions under the Buildings Ordinance applicable to roof greening. The circular particularly reminds the relevant professionals and contractors of their duties to inform building owners of the actions to be taken during the design and construction of the greening facilities, the impact of greening on the structure of the subject building, and how to safely operate and properly maintain the relevant facilities after commissioning. To enhance public knowledge of the relevant subject, the Buildings Department is drawing up a guide for property owners and the general public on the common greening works of buildings in Hong Kong.

Furthermore, the Buildings Department and other relevant departments have arranged briefings for school administrators and other stakeholders to address their enquiries. If necessary, the Buildings Department stands ready to brief other sectors concerned, such as property management companies, on the relevant matters.

- (2) In principle, the same regulatory control with regard to building safety applies to greening irrespective of whether it was carried out during the construction or after the commissioning of the building. For works requiring its prior approval, the Buildings Department will assess the proposed works in accordance with the Buildings Ordinance, and will only give consent to its commencement upon being satisfied of the safety of the works. Greening of buildings, irrespective of when it was carried out, should pose no risk to structural safety, as long as it was suitably designed and constructed, and there are proper repairs and maintenance.
- (3) For building works governed by the Buildings Ordinance, the property owners concerned must appoint registered professionals and contractors to carry out the works, irrespective of whether they are greening works or not, in accordance with the extant requirements under the Buildings Ordinance where applicable. Broadly speaking, if the relevant works fall under Class II or Class III Minor Works (that is, those of moderate or relatively low complexity), owners are required to appoint registered contractors to arrange the works to be carried out. For Class I Minor Works (that is, more complicated ones) and works that require prior approval from the Buildings Department, owners must also appoint an Authorized Person to be responsible for the preparation of building plans for submission to the Buildings Department and other relevant tasks such as supervision and testing. Where structural details are involved, the appointment of a registered structural engineer is required for the preparation and submission of foundation plans or calculations to the Buildings Department. Moreover, the Authorized Persons concerned should consult the advice of professionals from other related disciplines (such as landscape architects) having regard to the requirements of the actual works.

MR TONY TSE (in Cantonese): *President, greening works carried out in new buildings certainly cause relatively fewer problems, but I wish to put a supplementary question to the Secretary. Regarding greening works carried out in old buildings, it is stated in the main reply that owners are required to consult authorized building professionals on matters such as the loading of their buildings. It is because the loading of a building may differ from its designed loading after a period of time, or some exempted works may have been carried out in the building after its construction. Regarding the aforesaid problem, may I ask the Secretary whether the authorities have requested these professionals to conduct tests on buildings (especially old buildings) to confirm whether their latest loading is the same as their designed loading?*

SECRETARY FOR DEVELOPMENT (in Cantonese): President, I thank Mr Tony TSE for his supplementary question. President, regarding this question, the public can actually find out from the Department's website the works projects which require submission of plans to the Buildings Department that have been carried out in their buildings. Information such as the plans and structural calculations of their buildings can be checked there. If the works projects concerned are exempted minor works, the Buildings Department's website may not have such information. Perhaps, I should say that in order to ensure the structural safety of works projects, building professionals who are engaged to conduct the projects with their professional knowledge should pay attention to matters such as the design or monitoring of the projects.

MR TONY TSE (in Cantonese): *My question is whether the Government will issue guidelines requiring building professionals to test the loading of buildings?*

SECRETARY FOR DEVELOPMENT (in Cantonese): President, I thank Mr Tony TSE for his suggestion, but at present, we do not ...

MR TONY TSE (in Cantonese): *Will the Government do so?*

SECRETARY FOR DEVELOPMENT (in Cantonese): President, I thank Mr Tony TSE for his suggestion, but at present, there is yet to be a requirement expressly requiring the building professionals to do so. As I have just said, this is about their common sense and is the basic knowledge of their profession.

PRESIDENT (in Cantonese): Secretary, Mr TSE's question is whether the Government will consider issuing some guidelines.

SECRETARY FOR DEVELOPMENT (in Cantonese): President, as to whether we will add this point to the guidelines that we plan to issue after completing the review on the incident, we will be glad to take this into consideration.

MR MARTIN LIAO (in Cantonese): *President, a sound regulatory system is instrumental to the effective regulation of greening works conducted in Hong Kong, but having a team to monitor these works projects is also indispensable. More importantly, the roles of the relevant parties should be defined. But regrettably, the Government all along seems to have neglected the importance of landscape architects.*

I thus wish to ask the Government a question. Regarding enhancing regulation of greening works, has the Government considered, or at least preliminarily considered, enlisting more support from related professionals, especially landscape architects, so as to enhance their participation and that of their professional bodies?

SECRETARY FOR DEVELOPMENT (in Cantonese): President, at present, building owners who carry out these works projects are not required to consult landscape architects under the requirements of the Buildings Department and the Buildings Ordinance. However, in our opinion, the building professional taking charge of the works project having considered the scale and complexity of the project, should seek the advice of professionals from other related disciplines professionals when necessary.

We are now working on the manpower requirements for greening and landscaping works, as well as for tree management under the Development Bureau, which includes setting the standard criteria for the qualification frameworks of these professions, such as landscape architects and horticulturists.

MR IP KIN-YUEN (in Cantonese): *President, regarding rooftop greening, Members should know that, apart from universities, primary and secondary schools also have many greened rooftops. I do not know whether this issue is under the portfolio of the Development Bureau, the Education Bureau or any other Bureau. Given that primary and secondary schools, unlike universities, do not have their own professionals who can take care of their building maintenance issues, can the Bureau concerned, or the Government, undertake that it will adopt active steps to inspect the greened rooftops in all primary and secondary school buildings to ensure their safety? Otherwise, parents and members of school management will all be very worried about this. The summer holiday will provide an opportune gap. Can the Government undertake to inspect all greened rooftops in primary and secondary schools to ensure their safety?*

SECRETARY FOR DEVELOPMENT (in Cantonese): I thank Mr IP for his supplementary question. Mr IP is very correct in saying that we must accord priority to rooftop greening works in schools because many students are having lessons in these school buildings and the structural safety of these buildings is thus very important. In fact, to prevent similar incidents from happening, the Buildings Department has been inspecting by stages since last month greened rooftops in Government facilities, schools (including Direct Subsidy Scheme schools and aided schools), public hospitals and other public organizations. Due to limited resources, we will prioritize the inspection based on risk assessments.

Mr IP asked just now whether the inspection can be completed within the summer holiday. I will instruct the departments concerned, including the Architectural Services Department and the Buildings Department, to complete the inspection within the summer holiday.

MISS CHAN YUEN-HAN (in Cantonese): *The issue that Mr IP pointed out just now is very important. I had a meeting with a school recently. When I mentioned the greened roof collapse incident, the school administrators were at a*

loss to know what to do. The Secretary has provided a very positive reply just now. At least, he has informed schools through the Education Bureau, so that this new issue can be brought to their attention.

President, I have this supplementary question for the Secretary. Apart from school administrators, members of the public are also very concerned about this issue. Some people may have conducted greening works on their own rooftops and they are very worried whether their rooftops will be overloaded. The problem now is that there is no designated department to provide enquiry services for the public. Of course, in his reply to Mr TSE just now, the Secretary says that the Buildings Department is drafting some guidelines on this subject to enhance the public's understanding of the related issues. But to many people, the question remains as to who they should turn to for enquiry before the guidelines are formulated. May I ask whether they should appoint a professional every time to conduct an inspection? Or, is there a government department, such as the Buildings Department, which can at least help them understand the related issues?

SECRETARY FOR DEVELOPMENT (in Cantonese): I thank Miss CHAN Yuen-han for her supplementary question. President, after the incident, the Buildings Department has issued detailed notes to schools through the Education Bureau on the things that they should take note of regarding rooftop greening works. Besides, the Department will arrange a series of briefings, and as far as I know, the first briefing will be held on 17 June and school representatives are welcomed to join. Apart from the Buildings Department, colleagues from other departments will also attend ...

PRESIDENT (in Cantonese): Secretary, Miss CHAN's question just now is that, apart from inspecting schools, which departments members of the public should seek help from if they run into related problems.

SECRETARY FOR DEVELOPMENT (in Cantonese): President, apart from seeking advice from professionals, they can certainly make enquiries at the Buildings Department. However, depending on the scale of the works, we suggest that it may be more appropriate to entrust a professional to conduct an inspection if the scale is large.

MR MA FUNG-KWOK (in Cantonese): *President, in part (3) of the main reply just now, the Secretary says that regarding "works that require prior approval from the Buildings Department, owners must also appoint an Authorized Person to be responsible for the preparation of building plans for submission to the Buildings Department and other relevant tasks such as supervision and testing." My question is as follows: A serious incident took place in the City University of Hong Kong, but strictly speaking, the works concerned was not found to have violated the requirements of the Buildings Ordinance before the incident took place. Then, how can we ensure that similar incidents will not happen in future?*

My supplementary question is whether the Government plans to standardize greening works for buildings? Can it clearly set out the required procedures and requirements for compliance by flat owners or owners' corporations which need to carry out such works? Does the Government have adequate resources to carry out these tasks? If the Government does not have such a plan, what are the reasons for that?

SECRETARY FOR DEVELOPMENT (in Cantonese): President, I thank Mr MA Fung-kwok for his supplementary question. As an investigation is in progress, I cannot comment on whether the greened roof collapse incident at the City University of Hong Kong has violated the relevant ordinance and who should be responsible for the incident. I thus have reservation about Mr MA's remark just now that the incident did not involve any non-compliance.

President, Mr MA asked whether different greening works could be monitored on a standardized basis. We will take this into consideration. But we also need to exercise caution because some rooftop greening works are simple and not very big in scale, which may involve simply placing a few pots of plant or adding some non-fixtures. If too many regulatory measures are placed on these greening works, or owners are required to appoint professionals to carry out these greening works, it will become a nuisance to the owners and add cost to the projects. This will stifle people's initiative in carrying out greening works. Yet, we do agree that more attention should be given to large-scale greening works. As I said in the main reply, the incident took place at the City University of Hong Kong is under investigation now and sampling of evidence is in progress

as well. We will conclude our experience from the result of the investigation and propose the way forward. What Members have said just now will also be the direction of our consideration.

IR DR LO WAI-KWOK (in Cantonese): *President, as the Secretary said in the last paragraph of his main reply, owner should appoint a registered structural engineer to prepare and submit foundation plans to the Buildings Department where structural details are involved. It is very easy for the structural engineer to find out the structure or calculate the loading and give relevant advice to the owner if the latter has questions about these issues. I thus agree with the Secretary's approach to entrust the Buildings Department to draw up a guideline for property owners and the general public on the common greening works of buildings in Hong Kong. I think this guideline is very important.*

But I am concerned about when the Building Department will be able to issue this guideline. It is because, as far as I remember, we also made similar proposals to the Government, and the Government also committed itself on making this guideline, but when can this guideline be issued? Besides, will the guideline clearly set out for property owners' reference the services the aforesaid professionals (including structural engineers) can provide and the functions they can serve in conducting greening works?

SECRETARY FOR DEVELOPMENT (in Cantonese): President, I thank Ir Dr LO Wai-kwok for his supplementary question. President, we target at completing the investigation within three months. We will also strive to announce within this week the preliminary progress of the investigation. However, as the area collapsed is rather large and the structure is unstable, the site poses a certain risk. That is why we have spent some time on stabilizing the structure of the building and then progressively taken samples from the site. We hope that we can complete the investigation in three months and then submit the report. We will set out the way forward and the guidelines as soon as feasible when we find out the cause to the incident.

PRESIDENT (in Cantonese): We have spent more than 23 minutes on this question. Third question.

Conservation Work of Government

3. **DR KENNETH CHAN** (in Cantonese): *President, recently, some community groups have relayed to me their grave concerns about the progress of projects of the Reassembly of the Queen's Pier (RQP) and Revitalization of the Former Central Police Station Compound (commonly known as the "Big Station"), as well as their dissatisfaction with the performance of the Government in handling the two projects. On the other hand, an external wall of the former married quarters for inspectors located inside the Big Station collapsed suddenly on the 29th of last month (the incident), which has stunned the public. In this connection, will the Government inform this Council:*

- (1) *given that after the incident, the authorities only entrusted the investigation work of the incident to the Hong Kong Jockey Club, which is responsible for the revitalization project of the Big Station, of the reasons why the authorities have not taken the incident and RQP project to the Antiquities Advisory Board (AAB) for discussion; whether the authorities will, in light of public concerns, expeditiously take the two projects to AAB for discussion and recommendations; if they will not, of the reasons for that;*
- (2) *given that when the authorities earlier conducted a public consultation on various options for RQP, the views received which were in support of RQP at or nearest to its original location (in-situ reassembly option) far exceeded those in support of the three reassembly options proposed by the authorities, whether the authorities will consider afresh the in-situ reassembly option; if they will not consider, of the justifications for that; if they will consider, whether the authorities will conduct relevant studies and consultation anew for this option; and*
- (3) *whether the authorities concerned will consider, in addition to inspecting the structural safety of various buildings inside the Big Station, inspecting the structural safety of all the outdoor public places of the Big Station concurrently; if they will, of the details of the inspection work; if not, the reasons for that; whether the authorities concerned will, upon the completion of various*

investigation and inspection work, make public the full report and identify in the report the party to be held responsible; if they will, of the specific arrangements; if not, the reasons for that?

SECRETARY FOR DEVELOPMENT (in Cantonese): President, the Government is gravely concerned with the partial collapse of the external wall of the Married Inspectors' Quarters of the Central Police Station (CPS) Compound, and takes the public views on the reassembly options of the Queen's Pier (QP) seriously. Our reply to the three parts of the question is as follows:

- (1) After the partial collapse of the external wall of the Married Inspectors' Quarters of the CPS Compound, the priority is to ensure the safety of the works site, including the other 15 historic buildings in the Compound. The Hong Kong Jockey Club (HKJC) will continue to work closely with the Buildings Department (BD). Other than the emergency strengthening works agreed by BD, the revitalization works in CPS Compound will only be resumed after it is certified safe. Given alteration and addition works are involved in the CPS Compound revitalization project, all design drawings must be approved by BD before construction works can commence. Since the start of the revitalization project, the Antiquities and Monuments Office (AMO) has been providing comments to BD from the heritage conservation perspective. As CPS Compound is a group of declared monuments, HKJC has to submit the heritage conservation measures and the method statement to AMO regarding the revitalization proposal in accordance with the Antiquities and Monuments Ordinance. AMO will consider the impact of the revitalization proposal on the heritage value of the monuments before giving approval. As a matter of fact, during the preparation and identification of the conservation management plan of the CPS Compound revitalization project, the Antiquities Advisory Board (AAB) was consulted. AMO is responsible for monitoring its subsequent implementation. In the meantime, HKJC and its revitalization team are actively drawing up the restoration plan of the Married Inspectors' Quarters, during which AMO will provide comments. Should the restoration plan significantly affect the heritage value of the monuments, AMO will request HKJC to

consult AAB at an appropriate juncture and seek the approval of the Antiquities Authority (that is, the Secretary for Development) before implementation.

As regards the proposal to reassemble QP, the Planning Department conducted two phases of public engagement exercise for the Urban Design Study of the New Central Harbourfront (UDS) in 2007 and 2008. There was extensive discussion on the location to reassemble QP, and AAB, the former Harbour-front Enhancement Committee, relevant professional bodies, 18 District Councils and the public were consulted during the process. UDS finally recommended that QP be reassembled between Central Piers Nos. 9 and 10 for commemorative purpose and to revive its pier function. It also recommended that Design elements be added at the original site of QP to commemorate the historical significance of QP.

The Government subsequently proposed to develop a new piazza at the original site of QP. Its key design features include shallow water features to reflect the old coastline; a new canopy at the original site of QP near the entrance to the piazza and a feature wall mounted with etched-on photos and text to explain the history of the old QP; and paving pattern to emphasize the central ceremonial axis facing the existing flag poles and parade stage.

As per the existing heritage impact assessment mechanism, since the area in the vicinity between Central Piers Nos. 9 and 10 does not have any historic building, or site or building with archaeological value, there is no need to conduct heritage impact assessment. In addition, the location for reassembly works went through extensive consultation during the UDS process, including consultation with the AAB, before it was recommended at the site between Central Piers Nos. 9 and 10. Hence, there is no need to consult the AAB again.

- (2) The Civil Engineering and Development Department (CEDD) conducted a community engagement exercise from March to May this year for the design of the reassembly of QP. Members of the public completed and returned 1 955 survey forms. Among them, 1 741 chose the design options for reassembling QP between

Central Piers Nos. 9 and 10 (317, 413 and 1 011 chose the three design options respectively). At the same time, CEDD also received 1 058 written submissions, mostly submitted via standard template, which considered that QP should be reassembled at its original location in front of the City Hall. We also note from the media that individuals have expressed different opinions on the reassembly location.

The Government is now carefully analysing and considering the public views received from the community engagement exercise before deciding on the way forward for the reassembly of QP. At the present stage, there has yet been any conclusion. However, we must point out that the location for QP reassembly was discussed extensively in the public engagement exercise of the UDS and its recommendation was to reassemble QP between Central Piers Nos. 9 and 10. I understand that some individuals may not agree with the proposed location but repeated studies and further consultations would not be constructive either.

Furthermore, according to CEDD, reassembly of QP at its original location at the current juncture is impractical from an engineering perspective. First, reassembly works at the original location will be in conflict with a number of existing or planned infrastructures, including that Lung Wo Road will need to be realigned, the existing box culvert underneath will need to be modified, and serious restrictions will be imposed on the planned overrun tunnel for the Tung Chung Line and the Airport Express, the proposed new North Island Line, as well as the future development of Site 4 of the new Central harbourfront. Furthermore, as the reassembly at the original location will involve the above-mentioned works and additional advance works for the overrun tunnel, higher costs are expected. These are relevant factors that the Government has to take into account when it considers the relevant proposal.

- (3) After the partial collapse incident, officers of BD promptly carried out site inspections of the overall structures of the remaining 15 historic buildings in CPS Compound and the open areas. No abnormalities were revealed and the initial assessment was that the risk of structural safety was not high. Notwithstanding the above,

all revitalization works in the entire Compound have been suspended for safety sake. The authorized person and registered structural engineer of the project will submit an assessment report to BD and the works will only be resumed after the safety of the overall structures of the historic buildings in the entire Compound and the open areas has been confirmed. In this regard, BD will continue to liaise closely with HKJC as well as its authorized person, registered structural engineer and registered contractor.

BD will conduct a detailed investigation into the cause of the partial collapse incident. As the investigation involves testing of the relevant building materials and samples can only be collected upon completion of the structural strengthening works in the collapsed parts of the building, it is expected that the investigation may take some more time to complete. BD will make public its findings as appropriate after completion of the investigation.

Apart from the investigation conducted by BD, HKJC will set up an independent review panel comprising professionals to conduct a thorough investigation on the cause of the incident and to make recommendations on necessary improvement measures in future.

DR KENNETH CHAN (in Cantonese): *President, my supplementary question will focus on the issue concerning RQP as mentioned in the main reply. The Secretary also notes that there are 1 058 written submissions which support the fourth option, and the figure is much higher than the most supported option of all the three options provided by the Administration, that is, the option for QP be reassembled between Central Piers Nos. 9 and 10. In other words, conservation groups have expressed distinct and strong view of the in-situ reassembly of QP.*

President, the Administration stated in the 2007 policy statement of the heritage Conservation Policy that it would maintain active communication with all stakeholders. I welcome what the Secretary has stated. That is, at the present stage, there has yet been any conclusion. Since the Government will develop a new piazza at Edinburgh Place near the original site, it should discuss with civil groups which are actively giving advice and input for Hong Kong's conservation policy wholeheartedly about the possible in-situ reassembly option,

instead of erecting some artificial features such as building a new canopy, placing some etched-on photos and paving pattern to emphasize the central ceremonial axis. Why can't it do so?

SECRETARY FOR DEVELOPMENT (in Cantonese): President, I wish to thank Dr Kenneth CHAN for raising his supplementary question. President, it is very difficult to find a consensus between heritage conservation and the conservation of historic buildings. Different sides will consider the matter from a different perspective. Very often, views are varied. But, of course we will respect and modestly listen to different opinions.

With regards to RQP, the option that QP should be reassembled at its original location in front of the City Hall received the support from more than 1 050 people. Among the other three reassembly options, including that QP be reassembled between Central Piers Nos. 9 and 10, none has received no more support than the in-situ reassembly option, and only the third option is closer to this option, which is also the much simpler and less expensive option. But if we add up the total number of people who support the three options for QP be reassembled between Central Piers Nos. 9 and 10, there will be 1 700 people in total. We have also noted issues concerning the site selection for the reassembly. As I have mentioned in the main reply, the Government conducted two phases of extensive public consultations in 2007 and 2009. From the perspective of the Development Bureau, the site selection was virtually the final decision. The consultations conducted by CEDD in March and May were mainly about the design direction of the RQP between Central Piers Nos. 9 and 10.

I am aware that Dr Kenneth CHAN suggested just now we should consider afresh the reassembly option of QP. There is no harm in saying so. But I hope Members understand the difficulties in reality with regards to the in-situ reassembly of QP. It has been seven years since the site-selection exercises were conducted in 2007 and 2009. Everyone can see that Lung Wo Road is built and it has become a trunk road. Furthermore, I have pointed out in the main reply that the realignment of Lung Wo Road will cause severe impacts on various fronts. Since I have elaborated that in the main reply, I am not going to repeat them. Besides, the costs involved would be very high, and therefore we have reservation in the in-situ reassembly option of QP.

DR KENNETH CHAN (in Cantonese): *President, I am sorry. I hope the Secretary will clarify whether he will continue the discussion of the feasibility of in-situ reassembly option of QP with civil groups which support the fourth option.*

PRESIDENT (in Cantonese): Secretary, do you have anything to add?

SECRETARY FOR DEVELOPMENT (in Cantonese): President, I have pointed out in the main reply the difficulties of in-situ reassembly of the QP. Nevertheless, if the relevant parties want to raise their views to us, I will be glad to ask my colleagues to sit down and discuss with them in order to understand more about their views. However, I hope Members understand that as far as RPQ is concerned, we have spent many years on consultation. I do not want to engage in discussion without decision, to make decision without implementation and to keep on procrastinating.

MR JAMES TIEN (in Cantonese): *President, I wish to ask about the Revitalization of the Former Central Police Station Compound. I consider the popularity of the Government at present being low in society that on many occasions, people will have an impression that ... such as the lead-in-water incident, which is found to be a problem of the system, and it seems that no government department will be held responsible.*

What I want to ask is that this group of monuments, that is, the former married quarters for inspectors in the Former Central Police Station Compound, obviously needed to be revitalized, and many private developers are interested in it. Yet they consider revitalizing the old police station compound comprising 15 historic buildings a difficult task. Hence the Government eventually tasked HKJC to take charge of the revitalization works. Honestly speaking, being a voting member of HKJC, I know HKJC is the expert in horse racing. However, I wonder why it should be tasked with house construction and revitalization of monuments.

The Secretary pointed out in the main reply that apart from the investigation conducted by BD, HKJC would set up an independent review panel comprising professionals to conduct a thorough investigation on the cause of the incident. Since HKJC is not involved in the construction works while AAB is not in charge of the project either, may I ask the Secretary, in his opinion, who

should be held responsible for the collapse of the external wall of the former married quarters for inspectors? As it is a group of monuments, can the overall appearance of the collapsed external wall be restored in the re-construction? Or will the collapsed wall be left as it is? My supplementary question is, who should be held responsible for this incident?

SECRETARY FOR DEVELOPMENT (in Cantonese): President, I wish to thank Mr James TIEN for raising this supplementary question. President, as the incident is still under investigation, it will not be appropriate for us to jump to any conclusion and say who should be held responsible. Nevertheless, as far as the investigation is concerned, we will follow up the matter seriously. On the other hand, the investigation will involve tasks such as the gathering of evidence, laboratory tests, interviewing with the relevant parties, and so on.

As the project concerns revitalization of historic buildings, it is an important one with a larger scale among various conservation projects of Central. There were discussions on it in society years ago. The role of HKJC in this project is that it establishes a non-profit making organization to fund the revitalization project. Throughout the entire process, HKJC is nothing more than the initiator and capital contributor. The specific works have to be performed by various professionals. For that reason, the project has already covered people from various professional fields, including architects. Some of the participants are world-renowned architectural firms which are good at conservation of historic buildings.

MR TONY TSE (in Cantonese): *President, the Secretary pointed out in part (1) of the main reply that "HKJC has to submit the heritage conservation measures and the method statement to AMO regarding the revitalization proposal in accordance with the Antiquities and Monuments Ordinance. AMO will consider the impact of the revitalization proposal on the heritage value of the monuments before giving approval." May I ask the Secretary to clarify that in the course of assessing or considering the conservation, revitalization and restoration of these historic buildings, will there be a team of dedicated professionals within AMO to assess the stability of the buildings, the feasibility of the project, including the works procedures to be implemented, and so on?*

SECRETARY FOR DEVELOPMENT (in Cantonese): President, I wish to thank Mr Tony TSE for raising the supplementary question. President, in the course of implementing the revitalization works, BD is responsible for the structural safety, since BD has the professional staff with the professional knowhow in this area. As to the reason why AMO has participated in the project, our consideration is not only limited to the works itself during the implementation of alteration or modification works. We need to look into various feasible options and we need to assess the impact on the historic and heritage value on the historic building concerned after the revitalization.

Therefore, AMO's major task is to provide its comments to the impact on the cultural and historic value of the historic building after implementation of the works as well as the proposals being raised on the revitalization. After all, BD is responsible for the structural matters. We also know that the collapsed external wall that we have seen this time around is in fact the comparatively weaker part of the entire project. Relevant professionals have already put forward their fortification proposal to BD. In fact, before the collapse of the external wall, some of the fortification works were already underway. Therefore, I apologize for being unable to draw a final conclusion of the cause of the collapse. Nevertheless, we attach great importance to structural safety and personal safety during the conservation works of historic buildings.

DR KWOK KA-KI (in Cantonese): *President, we have waited for a long time to see the commencement of the revitalization project of the Former Central Police Station Compound. But what has shocked us most was that a collapse incident took place under the oversight of AMO, HKJC and the Government. Therefore, some people said that civil groups were so concerned that the Government would use this incident as a pretext to pull down other monument projects, including the old Central Market. May I ask whether the Government has a stance in this incident? If so, why should the Government allow this accident of such gravity to happen? Actually, have the relevant parties mentioned by the Secretary earlier, including BD, acted with gross negligence or committed serious dereliction of duty in the oversight process and led to the collapse incident?*

SECRETARY FOR DEVELOPMENT (in Cantonese): President, I wish to thank Dr KWOK Ka-ki for raising this supplementary question. President, this supplementary question is divided into two parts. The first part is about whether

this collapse incident will affect other projects such as the Central Market project. In this connection, it is not appropriate for us to extend this incident to any other projects for the time being. The recent collapse incident, which took place within the Central Police Station Compound, will not scare us off or draw us back from committing to other revitalization projects of historic buildings. We will never recoil. This is my reply to the first point.

Secondly, we are as shocked as Dr KWOK to learn the collapse incident which took place within the Central Police Station Compound. It was a rather unfortunate incident, and we absolutely do not want to see that happen. We will seriously follow up with the investigation work. Hopefully we can summarize the experience learned from the process to help us prevent future occurrences in other revitalization projects of historic buildings.

PRESIDENT (in Cantonese): We have spent more than 22 minutes and 30 seconds on this question. We will now proceed to the fourth question.

Prevention and Treatment of Influenza

4. **DR KWOK KA-KI** (in Cantonese): *In April this year, a boy infected with severe influenza was admitted to a public hospital at night, but he was not given a quick testing on influenza nor prescribed Tamiflu right away. The boy died of influenza-induced encephalitis within 24 hours after admission to the hospital. Upon review of the incident, the Hospital Authority (HA) has decided that, starting from this month, the laboratories of two designated public hospitals will provide quick influenza testing services during non-office hours for various public hospitals. Besides, some doctors have pointed out that the immunization coverage rate of children in Hong Kong is relatively low among the developed regions, and infection preventive measures have yet to be put in place in the medical wards in public hospitals during peak seasons of influenza. Such situations may accelerate the spread of influenza. In this connection, will the Government inform this Council:*

- (1) *whether it knows if HA has, upon implementation of the above new arrangements, compiled statistics on the respective average durations from the public hospital doctors deciding on arranging quick testing on influenza for patients at night-time to the samples*

concerned being delivered to the laboratories, and from the latter to the test reports being delivered to the doctors; how such average durations compare with those in respect of the process for similar tests at daytime;

- (2) *given that the bed occupancy rate in various public hospitals is extremely high (e.g. the bed occupancy rate of paediatric wards in Tuen Mun Hospital was about 140% early last month or even 300% at its peak, and during the last winter surge of influenza, the average bed occupancy rate of various medical wards was more than 110% and even exceeded 130% in some hospitals), whether it knows if HA has evaluated the probabilities of patients getting infectious diseases through cross-transmission when the wards are fully occupied; whether the Government has long-term measures to improve the situation of the wards in public hospitals being always fully occupied; if it does, of the measures; if not, the reasons for that; and*
- (3) *given that the Government has indicated its intention to cover primary school students under the Childhood Influenza Vaccination Subsidy Scheme in the next financial year, of the relevant details and implementation timetable?*

SECRETARY FOR FOOD AND HEALTH (in Cantonese): President, my reply to the question raised by Dr KWOK Ka-ki relating to influenza is as follows:

- (1) The Hospital Authority (HA) conducts routine rapid influenza tests in its seven cluster laboratories. Technical staff will process specimens in batches and test results are normally available within 24 hours. For urgent cases, laboratories will process individual specimens immediately and test results are available within eight to 12 hours.

The HA has, starting from 6 June 2016, arranged to conduct urgent influenza tests during night time (that is, from 5 pm every day to 9 am of the following day) centrally at the Queen Mary Hospital and the Prince of Wales Hospital. The time required for

conducting urgent influenza tests during night time is similar to that for handling urgent cases during day time. In both cases, tests can be completed with results available within eight to 12 hours.

The actual processing time required may vary having regard to the complexity of the case (such as specimen collection process) and other external environmental factors.

- (2) During the period from 1 January to 31 May 2016, the HA has received a total of four influenza outbreak reports at hospitals. So far, there is no conclusive scientific evidence showing that these four outbreaks are related to the congestion of hospital wards. Nor is there any scientific evidence showing the relationship between the congestion of hospital wards and the probability of cross-transmission among hospitalized patients.

Nevertheless, we agree that congested hospital wards are not an ideal environment to provide healthcare services. As such, the Government and the HA have formulated short, medium and long-term plans to increase service capacity to cope with the demand growth due to the ageing population and the prevalence of seasonal influenza.

In this connection, the short and medium-term measures taken by the HA include:

- (i) Increasing the number of beds, manpower and service capacity
- (a) providing 231 additional beds and continuing to recruit healthcare staff in 2016-2017. It is projected that the number of full-time equivalent doctors, nurses and allied health professionals for the year will be increased by 145, 411 and 234 respectively as compared to 2015-2016;
 - (b) providing special honorarium and leave encashment and hiring temporary undergraduate nursing students with the support of the Auxiliary Medical Service, and so on, to improve manpower situation;

- (c) expanding the services of general out-patient clinics (GOPCs) during long holidays;
 - (d) enhancing the overall healthcare service capacity upon commissioning of the Tin Shui Wai Hospital and the Hong Kong Children's Hospital in phases after the expected completion of their construction this year and the next year respectively;
- (ii) Managing service demand in the community
- (a) enhancing support for residential care homes for the elderly (RCHEs) so that simple cases can be handled outside hospitals through community geriatric assessment services, community nursing services and Visiting Medical Officer Scheme;
 - (b) increasing the number of visits to the RCHEs and arranging early post-discharge visits for the elderly;
- (iii) Facilitating early discharge of patients
- (a) expediting the transfer of patients in stable condition from acute to convalescent hospitals within cluster; and
 - (b) increasing ward rounds by senior clinicians to enhance service capacity during weekends and public holidays.

In the long run, the Government has earmarked a dedicated provision of \$200 billion for the HA to implement a hospital development plan for the next 10 years to enhance healthcare hardware facilities. Upon completion of the hospital and community health centre projects under the 10-year plan, about 5 000 extra beds, more than 90 additional operating theatres and additional annual capacity of around 410 000 GOPC attendances can be provided.

On the software side, the Government is conducting a strategic review of healthcare manpower planning and professional development in Hong Kong. The review aims to make

recommendations that would better enable our society to meet the projected demand for healthcare professionals and to foster healthcare professional development. We expect that the review will be completed in the second half of 2016. The Government will then publish the review report and consult stakeholders on the ways to take forward the recommendations accordingly. The HA will adopt appropriate measures to support the implementation of recommendations made in the strategic review.

- (3) The 2015-2016 winter season just past was predominated by influenza A (H1N1) and influenza B viruses. In general, the two viruses affect mainly the younger age group. The surveillance data of the Centre for Health Protection (CHP) showed that children were more affected in this season, including the facts that the influenza-associated hospitalization rate among children had been staying at a very high level, and most of the notified institutional influenza-like illness outbreaks occurred in primary schools and kindergartens/child care centres.

The Scientific Committee on Vaccine Preventable Diseases (SCVPD) under the CHP held a meeting on 25 May 2016 to examine the latest local epidemiology of seasonal influenza in 2016-2017, scientific evidence of seasonal influenza vaccines, recommendations of the World Health Organization as well as local vaccine coverage rates with a view to working out the list of priority groups for receiving seasonal influenza vaccination in 2016-2017 season. The SCVPD has recommended, among others, expanding the priority group of children from "the age of six months to less than six years" to "the age of six months to less than 12 years".

In view of the above, the CHP is preparing to expand the Childhood Influenza Vaccination Subsidy Scheme to cover children from the age of six months to less than 12 years. Moreover, the CHP is consulting and collecting views from representatives of local and international schools, school sponsoring bodies and medical sector with a view to exploring measures to further encourage children to receive seasonal influenza vaccination. We will announce the arrangements and implementation details of the scheme as soon as possible.

DR KWOK KA-KI (in Cantonese): *The Secretary's reply is apathetic and gravely disappointing. For your information, President, I have met with the family members of the deceased boy. As there were over 600 deaths in the influenza outbreak last year, I thought the Government would have learned the lesson and taken remedial measures. However, after several years of discussions, the Government still refuses to implement influenza vaccination scheme in schools and kindergartens despite our repeated requests. As for rapid influenza tests, President, I have conducted a survey which reveals that test results are available one hour or even as soon as half an hour after specimen collection in most private hospitals. According to the reply given here by the Government, however, such tests can only be completed with results available 11 hours later, and these tests are conducted in two hospitals only. Let us imagine that even specimens of suspected cases identified in Tuen Mun Hospital or Yan Chai Hospital would have to be sent to the Prince of Wales Hospital or the Queen Mary Hospital for processing, and this really is what the Secretary have told us.*

The bed occupancy rate of paediatric wards in Tuen Mun Hospital was 300%, and at the height of the influenza season, the bed occupancy rate of the entire hospital was 128%. The bed occupancy rate of Yan Chai Hospital was 144%, excluding medical patients sent to other wards. Judging from the Government's reply, there is practically no formal measure to handle the situation. There is no arrangement for children to receive influenza vaccination in schools, no measure to meet emergency cases and no increase in the number of hospital wards. What exactly is the Secretary doing then? With so many deaths in the entire influenza season, he just delivers to us an assignment with a score of zero point.

I would now like to put my question to the Secretary once again and I hope he will give me a formal answer. When will medical staff be sent to primary schools and kindergartens to provide influenza vaccination to school children in each of these institutions? 85% of the patients of serious influenza cases this year have never received influenza vaccination previously. Secondly, when will arrangements be made by the Secretary to practically conduct rapid influenza tests? The Secretary should not avoid my question and let doctors make prescriptions before test results are available on the one hand, and accuse doctors of prescribing antibiotics and Tamiflu recklessly on the other ...

PRESIDENT (in Cantonese): Dr KWOK, you have asked your supplementary question. Please let the Secretary answer.

DR KWOK KA-KI (in Cantonese): *President, the Secretary's reply is absolutely apathetic and unacceptable. I hope he will answer my question again.*

PRESIDENT (in Cantonese): Please let the Secretary answer your supplementary question.

SECRETARY FOR FOOD AND HEALTH (in Cantonese): President, as reflected from the supplementary question raised by the Member, what I said in my main reply has not been very well understood. Let me explain once again.

Firstly, as far as ward facilities in public hospitals are concerned, a clear answer has in fact been given already. With regard to the problems concerning congested hospital wards and high bed occupancy rate as pointed out by the Member, we have already stated very clearly that the problems of healthcare hardware facilities and insufficient ward facilities cannot be resolved overnight, and this should be a fact known to all. The current-term Government has been working very hard in this respect and a dedicated provision of \$200 billion has already been earmarked for the purpose. However, as the construction of hospitals takes time, different contingency measures should still be taken at the present stage.

With regard to the second issue, it is true that the huge service capacity of public hospitals has made them difficult to process specimens and reports of influenza tests as efficiently as private hospitals, and generally speaking, it may take a few hours for them to complete the tests with results available. However, healthcare staff generally understand that clinical diagnosis plays a key role when handling influenza cases. Patients who have been clinically diagnosed as having infected with influenza can actually be prescribed with the necessary drugs, such as Tamiflu, in accordance with their clinical needs within 24 to 48 hours after flu symptoms have developed, and they need not wait for the reports of influenza tests.

The third issue is to examine ways to further enhance vaccine coverage of children. I have already made it clear in the main reply that we have basically decided the way forward, and the SCVPD has also decided to expand the Childhood Influenza Vaccination Subsidy Scheme and the vaccination services provided by the Government to cover children less under 12 years of age. As for the detailed arrangements, I have also pointed out that we are now consulting the stakeholders, including school sponsoring bodies and the medical sector, and will announce the implementation details later.

Furthermore, influenza vaccination should normally be received before the beginning of an influenza season in winter and spring, that is, starting from around October every year. Hence, co-ordination work by the CHP and the HA has already commenced. Discuss are being held with the medical sector and schools on the relevant implementation details and the arrangements for healthcare personnel to provide vaccination services to children at schools. During the process, due respect should of course be paid to views expressed by school representatives.

Therefore, a clear explanation has in fact been given already. My thanks to the President for giving me a chance to provide an explanation clearly once again in respect of the three issues.

DR KWOK KA-KI (in Cantonese): *President, my supplementary question is very clear. Firstly, when will medical staff be sent to provide influenza vaccination services in schools? Secondly, how the Secretary will improve the conduct of rapid influenza tests? Will the Secretary please answer me clearly?*

PRESIDENT (in Cantonese): Secretary, do you have anything to add?

SECRETARY FOR FOOD AND HEALTH (in Cantonese): President, I have already done my best to offer an explanation in the reply given just now, and have nothing to add for the time being.

PROF JOSEPH LEE (in Cantonese): *President, part (2) of the main question is clearly related to the problem of patients getting infectious diseases through cross-transmission. According to the information provided by Dr KWOK Ka-ki, the bed occupancy rate is extremely high and has risen to over 110% and even 130%, paediatric wards and medical wards alike. However, the Secretary states in the main reply that there is no evidence showing that there is cross-transmission among hospitalized patients, and that the number of hospital beds has already increased. As I understand that there should be no change in the areas of hospital wards, I wonder where exactly have the additional hospital beds been placed.*

I raise this query because according to the guidance on infection control issued by the World Health Organization, hospital beds in a ward should at least be three feet apart to minimize the probability of cross-transmission. However, the Secretary said that there was no evidence showing that there was cross-transmission among hospitalized patients. As the number of hospital beds has already increased, I hope the Secretary can tell us clearly whether the distance among hospital beds in paediatric wards and medical wards at present is up to the standard recommended by the World Health Organization (that is, at least three feet apart), particularly during the peak influenza season?

SECRETARY FOR FOOD AND HEALTH (in Cantonese): *President, in my reply given just now, I have already made it clear from the very beginning that it is not an ideal environment to provide healthcare services in congested hospital wards, but the problem does not emerge overnight. Instead, it is a result of the cumulative effect of the delays in the provision of additional hospital beds. Hence, in the face of rapid growth of demand for public hospital beds due to the rapid ageing of our population, the increase of hospital beds and ward facilities has failed to cope with the rising demand. Under such circumstances, as I pointed out earlier, the problem has to be addressed with short, medium and long-term measures.*

In the long run, the most desirable approach is to supply sufficient hospital beds and ensure that there is enough space for circulation between them. However, as far as medium-term measures are concerned, it is true that we are caught in a dilemma. As Prof LEE may also understand, unlike some overseas places where patients' admission to a hospital may be refused on the ground that there is no vacant bed for them, we cannot do so in Hong Kong and patients in

need have to be admitted into the hospital for treatment. Therefore, in the face of this dilemma, we have no alternative but to provide healthcare services in a not very ideal and relatively congested environment, which has added to the burden of healthcare personnel because extra efforts have to be made to strictly observe various infection control measures.

PROF JOSEPH LEE (in Cantonese): *President, my supplementary question is very straightforward: Is the distance among hospital beds in public hospitals during the said period up to the standard of at least three feet apart? Otherwise, how can the Secretary claim that there is no cross-transmission among hospitalized patients?*

PRESIDENT (in Cantonese): Prof LEE, the Secretary has already answered your question, but it seems that you do not get it. Secretary, will you please clarify once again?

SECRETARY FOR FOOD AND HEALTH (in Cantonese): President, you are absolutely correct. I have already answered the supplementary question and therefore have nothing to add.

MR ALBERT HO (in Cantonese): *President, I have been assisting the family members of the boy who has unfortunately died in Yan Chai Hospital and have therefore attended meetings with the hospital management and referred to the relevant records. An understanding of the workflow involved has given me a strong feeling that with regard to severe influenza cases, it would indeed be very important to race against the clock during the golden time for treatment.*

This is the reason why I consider what the Secretary said in part (1) of the main reply has completely failed to address the problem raised because it would take eight to 12 hours the soonest to complete the influenza tests. For hospitals which cannot conduct such tests themselves, specimens collected would have to be sent to other hospitals for processing. Take North District Hospital as an example, it would take quite a number of hours to send the specimens collected there to other hospitals for influenza tests. It is therefore my opinion that the

Secretary also understands what the crux of the problem is, and as he has correctly pointed out, such cases should be handled having regard to the clinical conditions of individual patients. Such being the case, why drugs are not prescribed timely to patients of very severe influenza cases? To my knowledge, doctors share the same views with many pathologists in this regard and consider that drugs should not be prescribed recklessly, lest it will lead to resistance to drugs. Hence, drugs will only be prescribed to patients of really serious cases. However, President, it may already be too late if drugs are prescribed only when a patient's condition is critical.

Therefore, in raising my supplementary question, I would like to point out that as mentioned by Dr KWOK Ka-ki just now, apart from the type of rapid influenza tests currently used in public hospitals which produces more accurate results within 12 hours, another type of influenza tests is also in use in private hospitals or clinics which produces less accurate results within a shorter period of time, and it is still possible to use the test results thus produced for a certain indicative purpose. The accuracy of such tests may not compare favourably (only 30% or 40%) with tests conducted in public hospitals ...

PRESIDENT (in Cantonese): Please state your supplementary question.

MR ALBERT HO (in Cantonese): ... but together with clinical diagnosis, doctors may still find the test results useful. The question I would like to put to the Secretary is: Why this kind of express influenza tests cannot be used at the same time so that indicative test results may be produced within one hour for doctors' clinical judgment on the appropriateness of early prescription of drugs, thereby preventing the occurrence of such tragedies?

SECRETARY FOR FOOD AND HEALTH (in Cantonese): President, we should bear in mind that professional judgment is involved in determining what type of tests should be used clinically or under what circumstances should drugs be prescribed. I believe that there is sufficient professional representation on the part of the HA's professional team to issue guidance and undertake service co-ordination in respect of the type of tests to be conducted in accordance with a particular set of clinical standards under certain clinical circumstances.

As far as individual cases are concerned, doctors will act according to the established principles in determining whether drugs should be prescribed. I believe that in handling influenza cases, doctors fully understand that excessive use of a particular type of anti-bacterial or anti-viral drugs may induce drug resistance of flu virus. On the other hand, they also realize that at least for influenza cases, no concrete clinical standard is in place to specify that Tamiflu, the specific drug, should be prescribed only after a patient is confirmed to be infected by influenza through testing.

MR ALBERT HO (in Cantonese): *President, the Secretary has replied just now other types of influenza tests may be used clinically. But in actual fact, have these tests been really introduced? As it seems that the type of influenza tests I mentioned earlier is not used in public hospitals, can the Secretary make a clarification in this regard? What I mean is the type of tests conducted in private hospitals or by private doctors ...*

PRESIDENT (in Cantonese): Secretary, with regard to the type of influenza tests used in private hospitals, do you have anything to add?

SECRETARY FOR FOOD AND HEALTH (in Cantonese): President, let me reiterate once again that I will not comment on each and every type of influenza tests since clinical decisions have to be made professionally, but ...

MR ALBERT HO (in Cantonese): *Has this type of influenza tests been used in public hospitals?*

SECRETARY FOR FOOD AND HEALTH (in Cantonese): President, I have not yet finished with my reply.

PRESIDENT (in Cantonese): Secretary, please continue with your reply.

SECRETARY FOR FOOD AND HEALTH (in Cantonese): However, I have to emphasize once again that clinically speaking, a decision on whether drugs should be prescribed has to be made by doctors having regard to the clinical conditions of individual patients. In my opinion, it is not appropriate to specify at the management level that a certain kind of influenza tests should be conducted before a particular type of drugs can be prescribed by doctors.

PRESIDENT (in Cantonese): We have spent more than 23 minutes on this question. Fifth question.

False Testimonies Given by Police Officers at Court

5. **MR WONG YUK-MAN** (in Cantonese): *President, it has been reported that during the trial of a case in which a secondary school student was prosecuted for assaulting a police officer, the magistrate criticized the testifying police officer as a dishonest witness, and the student was subsequently acquitted and compensated for his litigation costs of \$500. Moreover, in May last year, an autistic man with moderate intellectual disabilities was arrested and charged with manslaughter by the Police. The family members of the man reproached the Police for handling the case improperly, including taking the first statement from the said mentally incapacitated person in the absence of his family member or guardian, and asking leading questions that caused him to make a statement against himself. In this connection, will the Government inform this Council:*

- (1) *of the measures in place to ensure that police officers collect evidence honestly during criminal investigations, and testify honestly during trials;*
- (2) *whether it will set up a mechanism to impose punishment on police officers who are proven to have testified dishonestly in trials; and*
- (3) *given that some police officers have been criticized by judges for testifying dishonestly in criminal cases, whether the authorities will consider exercising discretion to make compensations to persons who have been acquitted in such cases for their losses in terms of time and money, as well as their mental suffering arising from those cases; if they will not, of the reasons for that?*

SECRETARY FOR SECURITY (in Cantonese): President, the consolidated reply to Mr WONG Yuk-man's question is as follows:

Under the criminal justice system in Hong Kong, police officers carry out law-enforcement work such as conducting investigations and effecting arrest, and so on, the Department of Justice (DoJ) is responsible for prosecution while the Court is responsible for trial and giving verdict. These three kinds of work adopt different legal standards.

In respect of the Police, police officers are entitled to effect an arrest if they have a reasonable suspicion that the person in question has committed a relevant offence. For the DoJ, in handling prosecution work, prosecutors must, in accordance with the Prosecution Code, first consider whether there is sufficient evidence and next consider and balance all issues of public interest before deciding whether prosecution should be made. A prosecution shall not be commenced or continued unless there is a reasonable prospect of conviction. As for the Court, Judges will consider all evidence relevant to the case when hearing a criminal case. Such evidence would include evidence put forward by the prosecution and defence, circumstantial evidence and testimonies by witnesses, and so on. Judges will deliver a guilty verdict only if the offence is proved beyond reasonable doubt.

Based on the abovementioned different legal standards, the mere fact that an arrested person is not subsequently charged with any offence in certain cases does not necessarily mean that the Police have made a wrongful arrest; nor does it necessarily follow that the prosecutors have failed in their duty to commence prosecution. And as the Court adheres to the principles of "beyond reasonable doubt" and "the benefit of doubt should go to defendants" while handling criminal cases, the mere acquittal of a defendant does not necessarily mean that there is a problem with the arrest, prosecution or testimonies by certain witnesses. Defendants, if convicted, may lodge an appeal. This is indeed a manifestation of how the independent judicial system and rule of law in Hong Kong safeguard the rights of the public.

According to section 10 of the Police Force Ordinance (Cap. 232), the duties of the police force shall be to take lawful measures for preventing and detecting crimes and offences.

During police investigation of a case, the collection of evidence is a very important element. Depending on the nature of the case, and for the purpose of crime prevention and detection, the Police will, if necessary, request for information related to crime investigation from relevant people or organizations. In accordance with relevant legal requirements, the Police will also apply for a court warrant from the Court for entering premises and searching for, taking possession of or detaining relevant articles, such as seizing documents or information as evidence. In hearing individual cases, the Court will also follow the relevant provisions of the Evidence Ordinance (Cap. 8) and consider guidelines under the relevant court case precedents in determining the admissibility of the evidence of the witness(es) and other evidence.

Mr WONG's question asks about the measures which are in place to ensure that police officers will testify honestly during court hearings. Same as all people who testify during court hearings, a police officer shall give sworn evidence which he is satisfied to be true and accurate in court.

According to Chapter 45 of the Police General Orders, prior to the trial, prosecution witnesses (including police officers) are allowed to refresh their memories of what occurred from records (for example, their own statements, and so on). However, they should not have a pre-trial discussion of the evidence. In particular, police officers should not hold a meeting before the trial to look at each other's notebooks or statements, or to discuss the evidence. Nevertheless, police officers may follow the accepted practices of: (a) pooling their re-collections of events when making their notebook entries, either at the time of or shortly after those events when facts are fresh in their minds; (b) at the time of (a), signing each other's notebooks to indicate that these are true and that they agree with the records made; and (c) later, before giving evidence, refreshing their memories individually from the records made. In addition, a witness (including a police officer) must not speak to another witness who has not yet given evidence. Any communication or conversation on case-related or evidence-related topic amongst witnesses (including police or civilian) is strictly prohibited. Contravention by police officers will result in a full disciplinary investigation which may even lead to criminal charges.

Furthermore, a witness wilfully committing perjury in court and a witness being considered by a Judge as not giving credible testimonies can be two different situations. Currently, there are legal and administrative mechanisms to deter such from happening.

In respect of wilful perjury, under section 31 of the Crimes Ordinance (Cap. 200), if any person lawfully sworn as a witness, either generally or in a particular judicial proceeding, wilfully makes a statement in any judicial proceeding which is material in that proceeding and which he knows to be false or does not believe to be true, he shall be guilty of perjury and shall be liable on conviction upon indictment to imprisonment for seven years and to a fine.

If in certain cases, the Court considers that there is *prima facie* evidence suggesting perjury by a witness (including police officers), the Court may refer the case to the DoJ for follow-up. If the DoJ gives instructions after receiving referral from the Court, the Police will seriously handle any case of non-compliance where a police officer is suspected to have committed perjury. Depending on the investigation results, the officer concerned may be liable to criminal responsibility and also subject to disciplinary actions.

Separately, if a Judge considers that the testimonies given by a police officer in court are not credible, he may advise the DoJ to refer the case for follow-up by the Complaints Against Police Office of the Police and inform the Court in writing of the results of the case after it has been dealt with.

In respect of compensation, while hearing cases, the Court may give its rulings on the court costs. Besides, if there are sufficient grounds, relevant persons may also initiate a civil litigation to seek monetary compensation.

Mr WONG's question mentions a case related to a mentally incapacitated person (MIP). In June 2015, the Police formed a working group to, in collaboration with relevant government departments and experts, re-examine the policies for handling cases involving MIPs and the guidelines of investigation, explore the means to enhance and optimize investigation work, and study the ways to further augment frontline police officers' training in handling relevant tasks. The HKSAR Government has explained the work of the abovementioned working group at the Legislative Council Panel on Welfare Services in June last year, as well as in the reply to a Legislative Council written question in December last year.

The working group has already held a number of meetings. One of the work priorities is to give consideration to the more effective adoption of multi-agency co-operation, which includes the need to seek professional assistance in the handling of MIPs. Furthermore, as far as training is concerned, given that the current training programmes for front-line police officers on the

handling of MIPs are mainly conducted by instructors of the Police, the working group will consider stepping up co-operation with professionals of other departments as well as other stakeholders in the realm of training. In addition, the working group will review whether the current mode of training, mainly in the form of classroom instruction, is the most effective, including the need to strengthen other modes of training like role-playing and field training, so that front-line police officers will have a better grasp of the skills in handling cases involving MIPs.

MR WONG YUK-MAN (in Cantonese): *The Secretary has given a very long reply. The information he mentioned in the main reply, such as the provisions of the Crimes Ordinance, can actually be found on the Internet. He said that although a person has to swear to testify in court, the person can still lie. So, he has totally neglected my question. In the cases of alleged assaults on police officers which happened over the last year or two, the police officers had either conspired to ensure consistency in their statements or given testimonies that were not credible. They are telling lies in court with their eyes wide open, just like LEUNG Chun-ying. I am involved in a few cases. Of course I will pursue.*

What the Secretary has not replied is how the authorities would handle the circumstances involving infringement upon human rights, conspiring to ensure the consistency of statements and perjury. Such circumstances have seriously undermined the image of the Police. Earlier, the Secretary has wasted nine minutes to read out information that can be found on the Internet.

My main question is very clear. I asked the Government how it would handle such problems. The Secretary cannot just reply by saying that the Court can recommend what actions the Department of Justice (DoJ) can take, or the Complaints Against Police Office (CAPO) can follow up. These are all nonsense. Does the Police have put in place a mechanism to handle cases which have been ruled by Judges to be perjury, or where the testimonies given were not credible? Can the Secretary provide some data in this regard?

PRESIDENT (in Cantonese): Mr WONG, if you have asked your supplementary question, please sit down and let the Secretary reply.

MR WONG YUK-MAN (in Cantonese): *How many cases are there? Answer promptly!*

PRESIDENT (in Cantonese): Secretary, Mr WONG would like you to provide the relevant data.

SECRETARY FOR SECURITY (in Cantonese): As far as I know, there was one such case last year. If I am right, that was the case which Mr WONG mentioned in the main question. Regarding the case, the Judge has asked the DoJ to follow up and the DoJ has transferred it to the CAPO. The CAPO has finished its report and submitted it to the DoJ, which has replied to the Court as instructed.

Mr WONG has asked many questions just now and has also made allegations. I wish Mr WONG can support his allegations with facts. Any witness (including police officers) has to testify in court according to the law. In a hearing, both the prosecution and the defence can cross-examine the witness, during which they may pick up other circumstances from the testimony of the witness. However, this does not mean that the witness is making false testimony. Whether or not the witness is a police officer, he has to swear before giving testimony in court. Yet, as our memory is limited, we cannot immediately recount all that has happened like a video recorder. To answer Mr WONG's question, as I have said in the main reply earlier, it is important that the person giving testimony must be satisfied that his evidence is true and accurate. The Court will then make a ruling.

MR IP KWOK-HIM (in Cantonese): *President, in his reply just now, the Secretary mentioned police officers in particular. I believe the Hong Kong Police is made up of excellent police officers. Only a handful of them are involved in making testimonies in court that are not credible.*

I note that at present, it has taken the authorities over a year to consider whether or not to make prosecutions in many cases. Police officers have to handle many cases. Furthermore, as the Secretary has said earlier, our memory is limited and police officers may have forgotten some details which will affect

the Court's ruling. I would like to ask the Secretary: Does the Government have appropriate measures to improve the efficiency of the DoJ in offering its legal advice to ensure that the Court can bring the offenders to justice?

SECRETARY FOR SECURITY (in Cantonese): President, I would like to thank Mr IP for his supplementary question. If a crime has happened, the Police will surely do their best to obtain evidence, arrest the suspect and make recommendation on whether the suspect should be prosecuted after studying the case.

Very often, the Police have to hand over the case to the DoJ for legal advice. I believe colleagues of the DoJ will also do their best. Yet, at present, the circumstances and nature of many cases require extremely complicated considerations. According to the guideline on prosecution, the DoJ should comprehensively and carefully consider if there is sufficient evidence, if the person can be reasonably convicted and if there are other factors to be taken into account.

Mr IP, such cases involve complexities. I believe all colleagues will go all out with full mind and heart in their work. However, when we encounter cases which require detailed study, we need time to handle them. After we have come to a decision, the DoJ may require the Police to look for further information in certain aspects. Our colleagues in the police force are very willing to co-operate in order to seek the truth. Therefore, it is sometimes impossible for us to decide within a very short period of time whether prosecution should be instituted.

I agree with Mr IP that there is a time gap between making prosecution and conducting the court hearing, and this will affect the memory of the witness. Yet, we should strive to strike a balance. We should go to great lengths to handle the case. Meanwhile, we will do our best to expedite prosecution and evidence-collection. In addition, we will also continue to hold meetings with colleagues of the DoJ to examine if there are ways to increase efficiency.

DR FERNANDO CHEUNG (in Cantonese): *President, the Secretary himself may not be able to guarantee that all police officers who testify in court are totally honest. Actually, in the past, there were many cases in which the Judge remarked that testifying police officers were not honest and their testimonies were not credible. I think this has put the police force to shame.*

Yet, my main concern is the approach adopted by the Police in handling cases related to mentally incapacitated persons (MIPs). Over a year ago, the Police had wrongly arrested an intellectually disabled and autistic person in Mei Lam Estate. The case Mr WONG Yuk-man mentioned in the main question was another similar one. In the wake of the case, the Police have formed a working group. In the main reply, the Secretary also said that the working group has held a number of meetings.

This working group is by no means transparent. It is only working inside a "black box". I would like to ask the Secretary: First, who are sitting on this working group? Do they include representatives of family members and care-takers? Second, when will the review of internal guideline be completed? Upon completion, will the authorities tell the public how they will handle cases which involve MIPs?

SECRETARY FOR SECURITY (in Cantonese): President, in June 2015, the Police formed the working group led by the Assistant Commissioner of Police (Support) to re-examine the problem which Dr CHEUNG mentioned just now, as well as the policies for the handling of such persons and the guidelines on investigation. Members of the working group include clinical psychologists of the Police, representatives of relevant departments within the police force (for example, Support Wing and Crime Wing), as well as representatives of the training department and front-line officers. After operating for some time, the working group considers that it should include more experts. Thus, representatives of the Social Welfare Department and two psychiatric doctors have been invited to join the working group.

The working group has held a number of meetings, and has met many times with concern groups formed by parents and organizations concerned to exchange views on improvement measures which are considered after discussion. We can see that the working group has adopted the multi-agency approach, that is, apart from front-line colleagues of the law-enforcement department, there are also clinical psychologists of the Police and psychiatric doctors. It will work in four directions: improving the flow, enhancing training, improving measures and enhancing communication. If the measures can be adopted, the working group will implement them as soon as possible instead of waiting after the review has been completed. Moreover, the working group will also report the progress of the review to the Independent Police Complaints Council.

DR FERNANDO CHEUNG (in Cantonese): *He has not mentioned when the review will be completed and whether the result will be made public. Could the Secretary answer briefly?*

SECRETARY FOR SECURITY (in Cantonese): As the review is not conducted in a linear manner, no completion date has been specified. That said, we will finish it as soon as possible. As regards whether the result of the review will be made public, we will make appropriate consideration after the result is available.

MR NG LEUNG-SING (in Cantonese): *President, part (2) of the main question pointed out that police officers were dishonest when giving testimonies. I would like to ask my supplementary question from another perspective. Will police officers take law, reason and compassion into account when they testify so that the person concerned can be successfully prosecuted? Furthermore, will the police officers be awarded afterwards, and will they share their experience with their peers?*

SECRETARY FOR SECURITY (in Cantonese): A Member asked earlier if I could guarantee. We can see that during a trial, the Judge will make comments on individual witness. Regarding Mr NG Leung-sing's supplementary question, my reply is that all police officers must be satisfied that the evidence they give in court is true and accurate, and have to be cross-examined by the prosecution and the defence. I note that Judges have always praised police officers for giving trustworthy evidence.

Anyway, our instruction for all colleagues is that they should be honest when they testify. As regards whether some of their personal experience gained when giving testimony can serve as a reference for colleagues in the future, I believe this is a matter for the police force to consider. However, a very important point is that under all circumstances, police officers must tell the fact when they testify in court.

PRESIDENT (in Cantonese): We have spent more than 24 minutes on this question. Last question.

MR CHAN CHI-CHUEN (in Cantonese): *President, point of order. The next oral question to be raised by Dr LAM Tai-fai is about the Chief Executive and the performance of the SAR's political accountability team, and even includes some very serious allegations. However, there are no royalist Members in the Chamber now. I request a headcount.*

PRESIDENT (in Cantonese): Will the Clerk please ring the bell to summon Members back to the Chamber.

(After the summoning bell had been rung, a number of Members returned to the Chamber)

Public Confidence in and Support for Chief Executive and Government Officials

6. **DR LAM TAI-FAI** (in Cantonese): *There have been comments that Hong Kong is facing intensified social dissension and an unprecedentedly poor relationship between the executive authorities and the legislature. The Chief Executive (CE) stated earlier that the existing problems would remain unresolved even with the replacement of CE. When CE was asked by a reporter why he did not honour the promise he had made upon assumption of office (i.e. he will continue to go to the people with his governing team to listen to the people's views, bringing with him a stool, a notepad and a pen), CE replied that if there was any occasion which did not need a massive deployment of two to three hundred police officers outside the meeting venue to cordon off the area and stop people from running onto carriageways or hurling objects, and if at the meeting venue the attendees could have communication on supporting or opposing views, he would be very willing to visit districts to listen to public views. He also said that he had been creating opportunities for communication with the pan-democratic Members of this Council, but he was snubbed by some of them. Yet, when CE earlier issued invitations to a farewell banquet to be held for Members of this Council, some pan-democratic Members were not invited. On the other hand, according to the survey findings released earlier by the Public Opinion Programme of The University of Hong Kong, the popularity rating of CE is 36.2, which is an all-time low in his term of office and a net popularity of negative 46 percentage points, which is a new record low since he delivered the Policy Address in January this year. In this connection, will the Government inform this Council:*

(THE PRESIDENT'S DEPUTY, MR ANDREW LEUNG, took the Chair)

- (1) *whether it has assessed why it is the case that whenever the incumbent CE visited districts, there were a large group of people trying to surround and charge at him, as well as hurling abuses at, insulting and making personal attacks on him using vulgar languages, necessitating the authorities' massive deployment of two to three hundred police officers for maintaining order; if it has assessed, of the details; if not, the reasons for that; whether it has sought to understand from CE whether he has no intention to visit districts again during his remaining term of office as long as the aforesaid situation has not improved;*
- (2) *whether it has assessed the reasons why pan-democratic Members have snubbed CE by declining his invitations to the banquet, and whether it has sought to understand from CE the reasons why individual pan-democratic Members were not invited to the farewell banquet and if he has given up communicating with the pan-democratic Members; if it has assessed and sought to understand, of the details; if not, the reasons for that; and*
- (3) *whether it has assessed if the long-standing low popularity ratings of CE and the Government of the Hong Kong Special Administrative Region are attributable to the political accountability team being disunited, incapable, failing to do real work for Hong Kong, and unable to gain support and trust from the public; if it has assessed and obtained the findings, of the details, and how the authorities will make improvements; if not, the reasons for that?*

SECRETARY FOR CONSTITUTIONAL AND MAINLAND AFFAIRS (in Cantonese): Deputy President, our consolidated reply to Dr LAM's question, after consulting the relevant offices and departments, is as follows:

The Chief Executive always reaches out to different sectors of the community through a variety of means. These include attending activities organized by different organizations, meeting with relevant people on social issues and having exchanges with members of different sectors through various means such as inviting them to banquets. As to local personalities, the Chief

Executive hosted two banquets at Government House this year to exchange views on district issues with representatives of District Councils. The Chief Executive also attended different district activities at invitation to interact with local personalities.

As regards the Legislative Council, the Chief Executive always maintains close communication with the Legislative Council Members through a variety of means. These include meeting with different political parties and the independents to listen to their views when preparing the Policy Address each year, attending the Chief Executive's Question and Answer Sessions of the Legislative Council to answer Members' questions directly, meeting with various political parties and the independents to exchange views on individual issues, attending Legislative Council's banquets or receptions at invitation, and hosting banquets for Legislative Council Members at Government House. On the basis of rational communication and respecting Members' wishes, the Chief Executive will continue to make earnest efforts to communicate with different political parties and the independents in the Legislative Council.

The Chief Executive and the current-term Government strive to serve the community and work for the overall interests and long term development of Hong Kong under the key themes of "developing the economy and improving people's livelihood", Hong Kong Special Administrative Region (HKSAR) Government has made certain progress and achievements in increasing land and housing supply, helping the poor and the disadvantaged, caring for the elderly, responding to an ageing population, promoting education and youth development, improving the environment and enhancing conservation. Hong Kong being a pluralistic and open society, the HKSAR Government understands that there are often differing views on public affairs and social issues among different stakeholders. However, the HKSAR Government always acts in the overall and long-term interest of the Hong Kong community in formulating policies and will continue to enhance communication with the public so as to gain their trust and support.

DR LAM TAI-FAI (in Cantonese): *Deputy President, from the irrelevant reply of the Secretary, I believe that all of us, including Deputy President, can judge that the Government is deliberately evading all the questions in my main question. I hope that Deputy President can urge the Secretary to answer them.*

With the Secretary's reply, I agree more with LEUNG Chun-ying that the existing problems would remain unresolved even with the replacement of the Chief Executive. I also believe that the problems would remain unresolved even

with the replacement of a few Secretaries. Then, what is the best solution? The best solution is the replacement of 7 million people in Hong Kong, and then the problems can be resolved.

Deputy President, my question is that one's thoughts influence his behaviour, and his behaviour affects the results. If the Government does not examine, assess, understand, face up with, deal with or address the problems it encounters, they will keep aggravating. The Government will only come to a dead end with no cure at the end.

Deputy President, I would like to ask the Government a question which I hope the Secretary will listen clearly and will answer seriously and responsibly. The current-term Government has taken office for four years but why has it failed to gain the support and trust of the majority of people to date, why is social dissension still getting intensified, and why is the relationship between the executive authorities and the legislature getting poor? I hope that the Secretary can seriously examine this issue and will not evade my question. What are the reasons and how can the problems be resolved?

SECRETARY FOR CONSTITUTIONAL AND MAINLAND AFFAIRS (in Cantonese): Deputy President, as I said in the main reply, Hong Kong is a pluralistic society. It is a normal phenomenon that our society has different views on different affairs and issues.

In fact, since the current-term Government took office, we have dealt with many very complicated and long-standing problems, while we also have to face some new challenges due to social development. I think it is easy to understand that in this process, some people would support the Government's viewpoints and decisions while some other people would oppose them.

As in the past, we will continue to communicate and explain our policies with different sectors of society, including Legislative Council Members from different political parties, through various channels so as to strive for public support and trust. We highly respect the public who, in the process, express their different aspirations through lawful means. If public members find that we have not done well enough and give us some comments, while these suggestions are constructive and fact-based, we will surely listen to them carefully with an open mind and will continue to reflect on our work.

DR LAM TAI-FAI (in Cantonese): *Deputy President.*

DEPUTY PRESIDENT (in Cantonese): Dr LAM, which part of your supplementary question has not been answered?

DR LAM TAI-FAI (in Cantonese): *Deputy President, it cannot be more absurd than that. My question is so simple that I only ask the Secretary for the reasons. However, did you hear any reasons from his answer? I now repeat. My question to the Secretary is: As the current-term Government has taken office for four years, why has it failed to gain the support and trust of the majority of people to date, why is social dissension still getting intensified, and why is the relationship between the executive authorities and the legislature getting poor? Please tell me the reasons concerned.*

DEPUTY PRESIDENT (in Cantonese): Secretary, do you have anything to add?

SECRETARY FOR CONSTITUTIONAL AND MAINLAND AFFAIRS (in Cantonese): Deputy President, in fact I have already mentioned earlier that Hong Kong is a pluralistic society. It is very normal that the public have different views, either supporting or opposing, on different social issues and public policies. We will continue to work hard in the process.

If the public support us, we surely will feel encouraged. If the public do not support our policies and put forward their opposing views, we will also listen to their views with an open mind and explain to them our decisions with our best efforts. We respect the public who express their different views and aspirations in regard to our policies. We will seriously and carefully listen to the suggestions and criticisms from various sectors of society.

MS CLAUDIA MO (in Cantonese): *Not any answer will be more absurd than the answer from the Secretary earlier. I thought that the Secretary would say something more sincere, but it seemed to be impossible. Dr LAM Tai-fai asked why the Chief Executive was snubbed by the pan-democratic Members. Even if the Secretary knows the reason, he dare not answer Dr LAM. It is obvious that*

the Secretary does not understand our impression that LEUNG Chun-ying is deceptive, greedy and abuses his power. He is deceptive because he is a hypocrite. He is greedy because he has received \$50 million from the Australian company, UGL Limited ...

DEPUTY PRESIDENT (in Cantonese): Ms MO, please raise your supplementary question.

MS CLAUDIA MO (in Cantonese): ... *I have not finished. Besides, he has also abused his power. Look at the airport incident ...*

DEPUTY PRESIDENT (in Cantonese): Ms MO, please raise your supplementary question.

MS CLAUDIA MO (in Cantonese): ... *My supplementary question is that LEUNG Chun-ying has never honoured his promises. Before his assumption of office or during the election, he promised to defend freedom of the press. He also said that he would deal with the freedom of information law and archives law. We cannot even see the shadows of these promises now. Where have they gone? Can the Secretary answer whether the existing way is pluralistic or superfluous?*

SECRETARY FOR CONSTITUTIONAL AND MAINLAND AFFAIRS (in Cantonese): Deputy President, I very much hope that people from various sectors of the community, including Legislative Council Members, can concern themselves with facts and not with individuals during the process of discussion.

I believe that the public hope that we can resolve the problems rationally so that our society can continue to make progress. If our point of view or stance on an issue is being dominated by (*Ms Claudia MO was speaking in her seat*) certain human factors, I believe ...

(Ms Claudia MO stood up)

DEPUTY PRESIDENT (in Cantonese): The Secretary is giving his answer. Please sit down.

MS CLAUDIA MO (in Cantonese): *He is making a totally irrelevant answer.*

DEPUTY PRESIDENT (in Cantonese): Please sit down. Secretary, please continue with your answer.

SECRETARY FOR CONSTITUTIONAL AND MAINLAND AFFAIRS (in Cantonese): Deputy President, I believe that the attitude of personalizing the issue is not what the public are pleased to see.

(Ms Claudia MO kept speaking in her seat)

MR CHAN KIN-POR (in Cantonese): *Deputy President, there are many ways of communication. If one way does not work, you can try other ones. One of the important aims of communication is to show sincerity and to strengthen mutual trust. Has the Government taken any action which helps improve mutual relationship? For example, has it arranged all Members to have a study tour in the Mainland and to meet the high officials, or to negotiate with the Central Authorities so that those Legislative Council Members who do not have Home Visit Permits can obtain theirs?*

SECRETARY FOR CONSTITUTIONAL AND MAINLAND AFFAIRS (in Cantonese): Deputy President, we have been encouraging various sectors of the community, including Legislative Council Members, to get to know our country's development comprehensively and deeply, which includes the challenges and difficulties faced by the country, and the opportunities for future development of the country. In fact, the Chief Executive and the HKSAR have always been actively arranging visits and exchanges in the Mainland for Legislative Council Members, as well as meetings with the officials of the Central Authorities.

Please allow me to quote an example. In the course of promoting constitutional development over the past two years, we have arranged a number of opportunities for Legislative Council Members to meet officials of the Central

Authorities in Hong Kong and in the Mainland. In the interim, there were also officials of the Central Authorities coming to Hong Kong to explain the matters concerning constitutional reform. As another more recent example, the Legislative Council Panel on Development has proposed lately to visit Dongjiang of the Guangdong Province in order to understand the situation concerning Dongjiang water. I notice that our colleagues have quickly relayed their view to the authorities and have obtained a very affirmative and positive reply.

All these examples show that the Chief Executive and the HKSAR have always been playing the role of a facilitator. We will continue to do so in the future. In regard to the issue of Home Visit Permits, the Chief Executive has actually been making efforts to strive for the issuance of Home Visit Permits to those Legislative Council Members who have not had theirs yet. The Chief Executive will continue to work hard on this.

MR JAMES TO (in Cantonese): *Deputy President, the Government says that the Chief Executive is fond of communicating with various sectors, including the pan-democratic Members. However, in regard to the pan-democratic Members, the Chief Executive has told the public to "shout at them, vote them out". May I ask whether the Chief Executive is still adopting this way of communication and stance? May I ask the Secretary whether this is what you said as concerning themselves with facts and not with individuals?*

SECRETARY FOR CONSTITUTIONAL AND MAINLAND AFFAIRS (in Cantonese): Deputy President, I do not want to give specific comment on certain remarks. I only want to reiterate that, as I mentioned in the main reply earlier, the HKSAR Government and the entire political accountability team attach great importance to the relationship between the executive authorities and the legislature. We will endeavour to communicate with different political parties in the Legislative Council, and will conduct in-depth exchanges with them on issues of common concern.

The Chief Executive has been making use of different platforms or channels to exchange with Members by taking the initiative to create opportunities for communication and exchanges among various parties. We respect individual Member's decision to attend these occasions of exchanges or not. However, from the perspective of promoting a good development of the

relationship between the executive authorities and the legislature, we of course hope that Members of different political parties in the Legislative Council can take these opportunities for communication and exchanges as far as possible. We also hope that such communication can be conducted rationally. I believe this will better facilitate good management on the part of the Government. On the one hand, Legislative Council Members can fulfil their responsibility of relaying public views to the Government. On the other hand, when we take forward policies, we can take on board more public views so that the policies being formulated can be more in line with public expectations. I believe that this is what the public are delighted to see.

MR JAMES TO (in Cantonese): *Deputy President, he was just chanting scriptures but did not answer whether "vote them out" is the present stance and way of communication of the Government, and whether this is a rational basis of communication.*

DEPUTY PRESIDENT (in Cantonese): Secretary, do you have anything to add?

SECRETARY FOR CONSTITUTIONAL AND MAINLAND AFFAIRS (in Cantonese): Deputy President, as I reiterated earlier, we attach great importance to the relationship between the executive authorities and the legislature, and we want to meet and communicate with Members of different political parties in the Legislative Council. In regard to how voters will cast their votes during the election period, we fully respect the personal decisions of voters.

DR CHIANG LAI-WAN (in Cantonese): *Deputy President, in fact, it is nice of course to be able to communicate as far as possible with a political party, or different political parties and people with different political views. Nevertheless, if no means were available for communication with them, you could not help it. As we can see in the United States, not only the rival political party shows dissatisfaction with Donald TRUMP, one of the Republican presidential candidates in the early campaign at present, even members of his political party do not like him either. Hence, it is very normal to have no further communication in the lack of a favourable condition.*

Dr LAM Tai-fai said that all 7 million people should leave Hong Kong instead. It should not be like that. Why is Dr LAM Tai-fai not leaving Hong Kong? The living quality in Hong Kong is so good. People can live in big apartments and drive high-quality vehicles, right? The amount of money in the bank savings account is getting more ...

DEPUTY PRESIDENT (in Cantonese): Dr CHIANG, what is your supplementary question?

DR CHIANG LAI-WAN (in Cantonese): *Deputy President, my supplementary question is whether I can ask the Chief Executive to continue visiting districts with a stool and a pen. If it is not necessary for a massive deployment of a lot of police officers outside the meeting venue to cordon off the area and stop people from running onto carriageways or hurling objects ... can I ask the Chief Executive to continue visiting districts without massive deployment of a lot of police officers, or even conduct more informal district visits?*

SECRETARY FOR CONSTITUTIONAL AND MAINLAND AFFAIRS (in Cantonese): Deputy President, I have heard Dr CHIANG's view and will relay it to the Office of the Chief Executive. Admittedly, I think in any activity, whether it is the district visit by the Chief Executive or any other activity, the safety of participants is a very important consideration. Under this premise, as I said in the main reply earlier, the Chief Executive continues to communicate with personalities of various sectors in the community. On the district level, the Chief Executive will also continue to visit various districts upon invitation from different groups so as to have exchanges with local groups and to communicate with different local personalities. As previously mentioned, through District Councils, the Chief Executive has taken on board a number of opinions from local personalities. Finally, concerning the suggestion put forward by Dr CHIANG earlier, I will relay it to the Office of the Chief Executive.

MS EMILY LAU (in Cantonese): *Deputy President, as mentioned previously by the Secretary, the Chief Executive and government officials are pleased to have communication and contact with Members of different political parties in the Legislative Council. However, why did the Chief Executive forbid government officials to attend the anniversary celebration — I do not know the number of*

years for the anniversary — of the Liberal Party and the anniversary celebration of the Democratic Party? Deputy President, is the Chief Executive contacting and communicating with us in this manner?

SECRETARY FOR CONSTITUTIONAL AND MAINLAND AFFAIRS (in Cantonese): Deputy President, whether individual government officials will attend certain activities or will attend the activities by invitation, they always take their daily schedules and the needs for such activities into consideration.

MR LEUNG KWOK-HUNG (in Cantonese): *Deputy President, can you ask him to tell fewer lies, because LEUNG Chun-ying ...*

DEPUTY PRESIDENT (in Cantonese): Mr LEUNG, it is not your turn to speak.

MR LEUNG KWOK-HUNG (in Cantonese): *Yes, but since he is lying and I cannot stand it, I thus stand up and speak.*

DEPUTY PRESIDENT (in Cantonese): Please sit down.

MS EMILY LAU (in Cantonese): *Deputy President, this is now my turn to ask question. My supplementary question is why the Chief Executive forbade officials of the accountability team to attend the anniversary celebration of the Liberal Party and the Democratic Party. This is unrelated to whether the officials are making their own choice to attend or not.*

DEPUTY PRESIDENT (in Cantonese): Secretary, do you have anything to add?

SECRETARY FOR CONSTITUTIONAL AND MAINLAND AFFAIRS (in Cantonese): Deputy President, I already responded to the supplementary question of Ms Emily LAU earlier. I have nothing to add.

DEPUTY PRESIDENT (in Cantonese): Oral questions end here.

WRITTEN ANSWERS TO QUESTIONS**Promoting Organic Farming**

7. **MR ANDREW LEUNG** (in Chinese): *President, the Agriculture, Fisheries and Conservation Department launched the "Organic Farming Conversion Scheme" in December 2000 to encourage conventional farmers to switch to organic farming. As at February 2016, there were 556 organic farms in Hong Kong, including traditional family-operated farms, self-claimed organic farms, enterprise-operated farms, and educational/leisure farms. Last month, the Finance Committee of this Council approved the setting up of a \$500 million Sustainable Agricultural Development Fund to provide financial assistance to farmers, so as to enhance the promotion of technological research and manpower training in the agriculture industry, etc. In this connection, will the Government inform this Council:*

- (1) *whether there are new policies and measures to increase the number of organic farms; if so, of the details; if not, the reasons for that; and*
- (2) *in the coming three years, how the authorities will effectively promote organic farming and provide assistance to those organizations and bodies (such as schools, commercial organizations) which intend to practise organic farming?*

SECRETARY FOR FOOD AND HEALTH (in Chinese): President, our consolidated reply relating to the Government's work in promoting organic farming is set out below.

In view of increasing public demand for local organic products in recent years, the Agriculture, Fisheries and Conservation Department (AFCD) has been actively supporting farmers engaged in organic farming, as well as encouraging/assisting farmers to adopt organic farming practices away from using chemical pesticides and fertilizers. In December 2000, the AFCD launched the Organic Farming Conversion Scheme (later renamed as the Organic Farming Support Service) to facilitate, through the provision of technical support, local farmers engaged in commercial production to switch from traditional farming to organic farming. With the implementation of the Scheme, we have seen a steady increase in the number of commercial farms taking on organic

farming. The number of organic farms which participated in the Scheme has grown from 15 farms in two organic production zones in December 2000, to the current total of 282 farms spanning over seven organic production zones in Ng Ka Tsuen, Tai Kong Po, Ping Che, Fanling, Pat Heung, Sheung Shui and Tai Po.

To promote organic farming, the AFCD organizes various training programmes focused on technical skills, seminars and workshops, and offers on-site technical advice to help farmers overcome technical problems in production, such as those relating to pest and disease control, horticultural skills, soil fertility management, seed saving, and so on. Besides, the AFCD conducts field trials and technical studies with a view to enhancing farmers' productivity and the quality of their products. The AFCD also stands ready to share experience with members of the public in addressing technical issues associated with organic farming.

In the 2016 Policy Address, the Chief Executive announced that the Government would implement the New Agriculture Policy (NAP). The NAP is underpinned by a series of support measures that promote the modernization of local agriculture and its sustainable development, including establishing an Agricultural Park (Agri-Park); exploring the feasibility of designating agricultural priority areas; setting up the Sustainable Agricultural Development Fund (SADF); providing better support and assistance to help farmers move up the value chain in areas such as product marketing and brand building; and developing leisure and educational activities related to agriculture. Among the various measures, the SADF will provide financial assistance to facilitate modernization of local agriculture and enhance output and productivity. Local organic farms may benefit from the SADF through the subsidy provided to acquire farming equipment and materials. The SADF will also provide funding support to various projects for purposes that include promoting research and development that eases the application of technology to agricultural production, enhancing manpower training, improving agricultural infrastructure, strengthening marketing and branding of local agricultural produce and establishing farmers' markets, and so on. In addition, under the NAP the Government will set up an Agri-Park of around 75 hectares to 80 hectares to help nurture development in agro-technology and agro-business management. There will be a designated zone in the Agri-Park for promoting the development and advancement of organic farming.

LPG Filling Stations

8. **MR MICHAEL TIEN** (in Chinese): *President, the Government has provided sites for dedicated liquefied petroleum gas (LPG) filling stations (dedicated filling stations) at nil land premium in order to support the launch of the LPG Taxi Scheme. Under the relevant contracts signed between the operators of dedicated filling stations and the Government, LPG pump prices (pump prices) at dedicated filling stations are required to be capped by a Pricing Formula whereas non-dedicated filling stations are free to adjust their pump prices. There are currently 12 dedicated filling stations and 67 non-dedicated filling stations in Hong Kong. Quite a number of drivers of taxis and public light buses (PLBs) have relayed to me that LPG filling stations are highly insufficient and their geographical distribution is extremely uneven at present. As a result, quite a number of drivers often have to wait for a long time for refilling services, especially during peak hours. In this connection, will the Government inform this Council:*

- (1) *of the respective current numbers of (i) LPG PLBs, (ii) LPG taxis and (iii) diesel PLBs; the respective current numbers of dedicated and non-dedicated filling stations in each District Council district;*
- (2) *whether it has regularly monitored the pump price gaps between dedicated and non-dedicated filling stations; if it has, of the details;*
- (3) *given that some taxi drivers have relayed that refilling services at some LPG filling stations are frequently suspended due to regular inspections, whether the authorities have grasped the situation concerned; if they have, of the details;*
- (4) *whether the authorities will coordinate the schedules for various LPG filling stations to undergo regular inspections, in order to avoid concurrent suspension of refilling services due to inspections at a number of LPG filling stations in the same district, thereby reducing the inconvenience caused to the drivers concerned; and*
- (5) *given that some Lantau taxi drivers have complained to me that as there is no dedicated filling station on Lantau Island, they can only go to non-dedicated filling stations where pump prices are higher to*

have their taxis refilled, whether the Government has plans to set up dedicated filling stations on Lantau Island; if it does, of the details and implementation timetable?

SECRETARY FOR THE ENVIRONMENT (in Chinese): President, to improve roadside air quality and protect public health, the Government launched in 2000 the Liquefied Petroleum Gas (LPG) Vehicle Scheme to allow the taxi and public light bus trades to replace their diesel vehicles with LPG ones. To complement the Scheme, the Government had planned in parallel the setting up of dedicated LPG filling stations (dedicated stations) so as to form a LPG filling network the soonest possible and offered land without premium at strategic locations in the urban areas (that is, in proximity to the operating areas of the majority of the taxis) for setting up 12 dedicated stations. The LPG price at the dedicated stations is regulated by operation contracts.

To enhance the coverage of the LPG filling network, the Government has also encouraged oil companies to set up non-dedicated LPG filling stations (non-dedicated stations) operating on commercial principles (including capable of setting their own LPG price) for supplying petrol, diesel and LPG to motor vehicles. To further expand the LPG filling network, the Government has since 2011 been requiring operators, vide land sale tender for petrol filling station use, to provide LPG filling nozzles at a number of not less than 25% of the total number of petrol, diesel and LPG nozzles at the station, subject to safety requirements being met. There are now 458 LPG filling nozzles throughout Hong Kong, including those installed in dedicated and non-dedicated stations, with 90 nozzles installed in Hong Kong Island and 368 in Kowloon and the New Territories, of which 20 are installed in the non-dedicated stations in Lantau.

My specific responses to the questions raised by Mr Michael TIEN are as follows:

- (1) According to the vehicle registration records of the Transport Department as at 30 April 2016, there were 18 126 LPG taxis, 3 037 LPG public light buses (PLBs) and 1 305 diesel PLBs in Hong Kong. There are a total of 66 LPG filling stations, comprising of 12 dedicated stations and 54 non-dedicated stations, providing LPG

filling services to LPG taxis and PLBs. The geographical distribution of the dedicated and non-dedicated stations (by District Council districts) is detailed in Annex. The public can also find the locations of LPG filling stations on the Electrical and Mechanical Services Department (EMSD) website at: http://www.emsd.gov.hk/en/gas_safety/lpg_vehicle_scheme/publications/general/location_of_lpg_filling_station/index.html.

- (2) The LPG ceiling prices of the dedicated stations are set in accordance with the established formula stipulated in the operation contracts and are regulated by the EMSD. The pricing formula makes reference to two key elements, namely the LPG international price and LPG operating price. The LPG international price refers to the LPG international price of the preceding month while the LPG operating price is adjusted on the first day of February every year based on the change in the Composite Consumer Price Index of the previous year. The dedicated stations follow this mechanism to set the LPG ceiling prices on a monthly basis. To ensure transparency of the price adjustment mechanism, the EMSD has been announcing the LPG international prices and the LPG ceiling prices of the dedicated stations via issuing press releases and posting them on its website for the reference of the public and the trades.

For non-dedicated stations, their operators are awarded land grants via open tender and oil companies will set their own retail price for motor vehicle fuels, including LPG, on a commercial basis. Thus, the Government does not conduct regular monitoring on the LPG price gap between the dedicated and non-dedicated stations.

- (3) and (4)

To minimize the impacts on LPG filling services at the dedicated stations during maintenance and repair, the EMSD has regularly reminded and requested operators to schedule checking and routine maintenance of LPG nozzles during the non-peak hours as far as possible. Operators of dedicated stations will also follow the

established notification mechanism to inform drivers, a few days in advance, of any regular or planned maintenance and repair, and post notices at the stations for them to plan early. In case of emergency, such as emergency maintenance which affects operation of the bulk of the LPG nozzles, the operators will inform drivers immediately through taxi radio service stations and PLB fleet operators. The EMSD will continue to monitor the operation of dedicated stations and have regular meetings with their operators and LPG vehicle trades to review the LPG filling services, including the management and maintenance of dedicated stations so as to enhance the operational arrangements.

Similarly for non-dedicated stations, the operators would also inform drivers, prior to carrying out major replacement or maintenance works so as to allow them to get prepared early.

- (5) The current LPG filling network has a comprehensive coverage throughout Hong Kong and is sufficient in meeting the LPG filling demand of LPG taxis and PLBs. The Government has no plan to establish new dedicated station but will continue to further expand the LPG filling network by requiring petrol filling stations, via conditions in land grant, to install LPG filling nozzles, subject to safety requirements being met, to facilitate drivers to refill their LPG vehicles.

There are now four non-dedicated stations in Lantau, of which three are in Tung Chung and one at Chek Lap Kok, providing a total of 20 LPG filling nozzles. They are sufficient in meeting the demand of refilling services of LPG vehicles (that is, 57 Lantau taxis) operating in that area. According to LPG filling station operators, as Lantau is farther away from the LPG depots, the transportation cost is higher and there are also fewer LPG vehicles refilling in the area. Thus, the stations' operating costs are quite different from those in other areas and it is difficult to make a direct comparison in price.

Annex

Distribution of dedicated and non-dedicated stations by District Council districts

<i>District</i>		<i>Non-dedicated station</i>	<i>Dedicated station</i>	<i>Total</i>
Hong Kong	Central and Western	1	1	2
	Wan Chai	-	1	1
	Eastern	4	1	5
	Southern	3	-	3
Kowloon	Kowloon City	2	-	2
	Kwun Tong	5	2	7
	Sham Shui Po	1	1	2
	Wong Tai Sin	1	-	1
	Yau Tsim Mong	-	1	1
New Territories	Tai Po	1	1	2
	Tuen Mun	2	1	3
	Yuen Long	8	1	9
	North	3	-	3
	Sai Kung	6	-	6
	Sha Tin	3	1	4
	Tsuen Wan	2	-	2
	Kwai Tsing	8	1	9
	Islands (Lantau)	4	-	4
Total	54	12	66	

Note:

The non-dedicated station at Hong Kong International Airport Airside Filling Station No. 2 (serving only vehicles within the airport) is not included.

Private Recreational Leases

9. **MR GARY FAN** (in Chinese): *President, the Government has leased certain lands at nil or nominal premium to private sports clubs (clubs) to develop sports and recreational facilities for use by their members, and such leases for sports and recreational purposes are commonly known as private recreational*

leases (PRLs). I have repeatedly received complaints from members of the public that some lessees used club facilities for profit-making purposes, thus allegedly breaching the conditions of PRLs. On the other hand, the Home Affairs Bureau set up an inter-departmental working group in June 2014 to review the policy on PRLs. It is expected that the working group will complete the review in this year. In this connection, will the Government inform this Council:

- (1) of the information of the lands that are currently granted under PRLs, including (i) the names of lessees, (ii) the addresses of the clubs, (iii) the uses specified in the PRLs, (iv) the site areas, and (v) the expiry dates of the PRLs;
- (2) of the respective numbers of the following, in each of the past five years, (i) the complaints received by the authorities about lessees allegedly breaching the restrictions on uses specified in PRLs (lease-breaching) by conducting commercial activities or subletting club facilities, (ii) the suspected lease-breaching cases uncovered by the authorities during proactive inspections of these clubs, and (iii) substantiated lease-breaching cases;
- (3) of the details of and the procedure for the authorities' following up substantiated lease-breaching cases; whether the existing PRLs generally contain any provision empowering the Government to penalize lease-breaching lessees, such as charging land premiums and resuming the land; and
- (4) whether it has assessed if the aforesaid working group can complete the review on schedule, and whether the authorities will consult the public on the recommendations of the review report?

SECRETARY FOR HOME AFFAIRS (in Chinese): President, the practice of leasing lands to non-profit-making bodies by the Government under private recreational leases (PRLs) at nil or nominal premium for the development of sports and recreational facilities and relevant services has a long history. Currently, there are a total of 69 PRLs, of which the lessees include private sports clubs, uniformed groups, social and welfare organizations, "national sports associations", district sports associations and civil service organizations.

In order to encourage the lessees to better serve the Government's key policy objectives for sports development (namely promoting sport in the community, promoting elite sports development, and promoting Hong Kong as a centre for international sports events), we have required the lessees to further open up their sports facilities on PRL sites to outside bodies (including schools, non-governmental organizations, "national sports associations" and uniformed groups). At present, we monitor the usage of sports facilities on PRL sites through quarterly returns from the lessees and annual site inspections. We have also enhanced publicity by such means as providing detailed information about the opening-up schemes of sports facilities on PRL sites on the website of the Home Affairs Bureau, and placing advertisements in the newspapers at least once a year to publicize the availability of sports facilities on these sites for use by outside bodies.

Having consolidated the inputs from the Lands Department (LandsD), my reply to the four parts of the question is as follows:

- (1) Information on lands granted under PRLs, including names of the lessees, their addresses, site areas and expiry dates of PRLs, is at Annex. As for specified uses, PRLs contain lease conditions requiring that PRL sites shall only be used for approved recreational and designated purposes and not for other purposes (such as commercial activities or subletting). Members of the public may search such information of PRLs through the Land Registry.
- (2) In the past five years, the LandsD identified 51 cases of alleged breaches of user restriction (involving 28 PRLs) when handling complaints or via proactive inspections. As at May 2016, 12 cases were confirmed upon investigation as not having breached the lease conditions, 26 cases involved breaches already rectified by the lessees, two cases involved breaches being rectified by the lessees and one case involved a PRL not renewed, with the remaining 10 cases under investigation.
- (3) Land leases are private leases signed between the Government and the landowners, under which the landowners are required to ensure that their lands are used in compliance with related lease conditions. During investigation, the LandsD will, as necessary, seek legal

advice and/or consult relevant bureaux. If any breach of the lease conditions is confirmed, the LandsD will take appropriate lease enforcement actions, including issuance of a warning letter to the landowner concerned to require rectification of the breach. Failure of rectification within a specified period will result in further lease enforcement actions, including re-entry of the land concerned where appropriate, taken by the LandsD as necessary.

- (4) The Government's inter-departmental working group, comprising representatives from the Development Bureau, the LandsD and other relevant bureaux and departments, is conducting a comprehensive policy review on PRLs. Based on the current progress, we expect to complete the review in 2016. We will brief the Legislative Council Panel on Home Affairs thereafter and conduct consultation with the public and stakeholders on the findings of the review.

Annex

List of private sports clubs and other organizations
operating facilities on land granted under PRLs

	<i>Name of PRL Lessees</i>	<i>Lot Number and Location</i>	<i>Site Area (about sq m)</i>	<i>Expiry Date of Lease/ Holding-over Letter[#]</i>
1.	Area Committee of the Hong Kong Sea Cadet Corps	NKIL 6535, Fung Shing Street, Diamond Hill	2 462	30.6.2027
2.	Area Committee of the Hong Kong Sea Cadet Corps	Lot 719 in DD 256, Tsam Chuk Wan, Sai Kung	1 858	30.6.2027
3.	Aberdeen Boat Club Limited	AIL 454, Shum Wan Road, Brick Hill	2 277	25.12.2021
4.	Boys' and Girls' Clubs Association of Hong Kong	Lot 676 in DD 257, Wong Yi Chau, Sai Kung	9 250	30.6.2027

	<i>Name of PRL Lessees</i>	<i>Lot Number and Location</i>	<i>Site Area (about sq m)</i>	<i>Expiry Date of Lease/ Holding-over Letter[#]</i>
5.	Catholic Diocese of Hong Kong (formerly known as The Bishop of the Roman Catholic Church in Hong Kong)	Lot 1870 in DD, Cheung Chau	6 744	30.6.2027
6.	Chinese Recreation Club, Hong Kong	IL 9040, Tung Lo Wan Road	16 490	25.12.2026
7.	Clearwater Bay Golf and Country Club	Lot 269 in DD 241, Po Toi O, Sai Kung	1 256 765	30.6.2027
8.	Club De Recreio	KIL 11098 RP, No. 20 Gascoigne Road	24 073	25.8.2016
9.	Craigengower Cricket Club	IL 9031, No. 188 Wong Nai Chung Road	12 203	25.12.2026
10.	Directors of the Chinese Young Men's Christian Association of Hong Kong	Lot 195 SD5, Mau Wu Tsai, Hang Hau	13 300	30.6.2027
11.	Directors of the Chinese Young Men's Christian Association of Hong Kong	Lot 76 in DD 254, Wong Yi Chau, Sai Kung	29 400	30.6.2027
12.	Directors of the Chinese Young Men's Christian Association of Hong Kong	STTL 366, No. 2 On Chun Street, Sha Tin	111 690	30.6.2047
13.	Directors of the Young Men's Christian Association of Hong Kong	KIL 11219, Off Gascoigne Road, King's Park	4 843	25.12.2026
14.	Filipino Club	KIL 11222, Wylie Road	2 819	25.12.2026
15.	Hebe Haven Yacht Club Limited	Lot 1138 and Extension in DD 217, Pak Sha Wan	19 796	30.6.2016

	<i>Name of PRL Lessees</i>	<i>Lot Number and Location</i>	<i>Site Area (about sq m)</i>	<i>Expiry Date of Lease/ Holding-over Letter[#]</i>
16.	Hong Kong Award for Young People (formerly known as The Duke of Edinburgh's Award)	TPTL 220, Hang Ha Po, Tai Po	7 200	30.6.2027
17.	Hong Kong Buddhist Association	Lot 175 in DD4, Cheung Tung Road, Tung Chung, Lantau Island	4 877	30.6.2027
18.	Hong Kong, China Rowing Association (formerly known as Hong Kong Amateur Rowing Association Limited)	STTL 220, Yuen Wo Road, Sha Tin	2 475	30.6.2016
19.	Hong Kong Chinese Civil Servants' Association	KIL 11224, No. 8 Wylie Road	3 090	25.12.2026
20.	Hong Kong Country Club	RBL 1195, No. 188 Wong Chuk Hang Road	21 090	3.4.2027
21.	Hong Kong Cricket Club	IL 9019, No. 137 Wong Nai Chung Gap Road	18 448	30.6.2023
22.	Hong Kong Football Club	IL 9033, No. 3 Sports Road, Happy Valley	29 537	25.12.2026
23.	Hong Kong Girl Guides Association	IL 9034, No. 141 Wong Nai Chung Gap Road	4 418	25.12.2026
24.	Hong Kong Girl Guides Association	Lot 1754 in DD 122, Ping Shan, Yuen Long	2 076	30.6.2027
25.	Hong Kong Girl Guides Association	Lot 2544 in DD 92, Hang Tau Road, Kwu Tung South, Sheung Shui	2 831	31.8.2016
26.	Hong Kong Girl Guides Association	KIL 10734, Junction of Gascoigne Road and Wylie Road	2 357	25.12.2056

	<i>Name of PRL Lessees</i>	<i>Lot Number and Location</i>	<i>Site Area (about sq m)</i>	<i>Expiry Date of Lease/ Holding-over Letter[#]</i>
27.	Hong Kong Golf Club	RBL 1194, Deep Water Bay	66 500	25.12.2026
28.	Hong Kong Golf Club	Lot 942 RP in DD 94, Sheung Shui	1 706 106	31.8.2020
29.	Hong Kong Gun Club	TWTL 419, Chuen Lung, Tsuen Wan	64 900	30.6.2027
30.	Hong Kong Jockey Club	STTL 13, Sha Tin	682 333	31.12.2016
31.	Hong Kong Jockey Club	IL 8847, No. 1 Sports Road and Wong Nai Chung Road	92 000	23.6.2034
32.	Hong Kong Model Engineering Club Limited	Lot 2416 in DD 118, Tai Tong, Yuen Long	34 955	3.11.2024
33.	Hong Kong Playground Association	Lot 739 in DD 2, Mui Wo, Lantau Island	14 983	30.6.2027
34.	Hong Kong Red Cross	Lot 147 in DD 319, Shek Pik, Lantau Island	7 181	30.6.2027
35.	Hong Kong Softball Association	KIL 11226, Tin Kwong Road	8 360	24.12.2026
36.	Hong Kong Young Women's Christian Association	Lot 752 in DD 332, Cheung Sha, Lantau Island	10 780	30.6.2027
37.	Hong Kong Youth Hostels Association	Lot 235 in DD Ngong Ping, Ngong Ping	7 300	31.10.2016
38.	Hong Kong Youth Hostels Association	TPTL 133, Tai Mei Tuk	1 000	19.8.2016
39.	India Club, Kowloon	KIL 11223, Gascoigne Road	3 656	25.12.2026
40.	Indian Recreation Club	IL 9039, No. 63 Caroline Hill Road, So Kon Po	11 855	25.12.2026
41.	Jardine's Lookout Residents' Association	IL 8895, No. 2 Creasy Road, Jardine's Lookout	12 406	25.11.2016
42.	Kowloon Bowling Green Club	KIL 11217, Austin Road	7 311	25.12.2026
43.	Kowloon Cricket Club	KIL 11216, Cox's Road	25 203	25.12.2026

	<i>Name of PRL Lessees</i>	<i>Lot Number and Location</i>	<i>Site Area (about sq m)</i>	<i>Expiry Date of Lease/ Holding-over Letter[#]</i>
44.	Kowloon Tong Club	NKIL 6528, No. 113A Waterloo Road, Kowloon Tong	8 886	24.12.2026
45.	Kowloon Tsai Home Owners Association	NKIL 6529, No. 10A Cambridge Road	5 716	25.12.2026
46.	Mong Kok District Cultural, Recreational & Sports Association Limited	KIL 11165, J/O Ivy Street and Beech Street	234	9.9.2018
47.	Municipal Services Staff Recreation Club Limited	KIL 11225, Wylie Path, King's Park	4 402	25.12.2026
48.	Outward Bound Trust of Hong Kong Limited	Lot 718 in DD 256, Tai Mong Tsai, Sai Kung	23 800	30.6.2027
49.	Pakistan Association of Hong Kong, Limited	KIL 11220, Princess Margaret Road	2 236	25.12.2026
50.	Po Leung Kuk	Lot 2419 DD 118, Tai Tong, Yuen Long	129 573	5.11.2026
51.	Po Leung Kuk	Lot 675 in DD 257, Pak Tam Chung, Sai Kung	48 261	30.6.2027
52.	Royal Hong Kong Yacht Club	ML 709, Kellett Island	18 738	19.2.2056
53.	Royal Hong Kong Yacht Club	RBL 1181, Middle Island	2 940	24.5.2021
54.	Royal Hong Kong Yacht Club	Lot 341 and Extension in DD 212, Che Keng Tuk	11 820	8.9.2016
55.	Scout Association of Hong Kong	NKIL 6530, No. 11 Rutland Quadrant	420	25.12.2026
56.	Scout Association of Hong Kong	Lot 1207 in DD 217, Pak Sha Wan, Sai Kung	2 405	30.6.2027
57.	Scout Association of Hong Kong	STTL 592, Sha Tin	36 191	30.6.2027
58.	Scout Association of Hong Kong	IL 8961, Mansion Street, North Point	471	25.12.2016

	<i>Name of PRL Lessees</i>	<i>Lot Number and Location</i>	<i>Site Area (about sq m)</i>	<i>Expiry Date of Lease/ Holding-over Letter[#]</i>
59.	Scout Association of Hong Kong	Lot 131 in DD 60, Au Tau, Yuen Long	65	18.1.2024
60.	Scout Association of Hong Kong	TPTL 190, Tung Tsz, Tai Po	30 200	24.6.2025
61.	Scout Association of Hong Kong and Hong Kong Girl Guides Association	KCTL 511, No. 308 Wo Yi Hop Road, Kwai Chung	690	30.6.2027
62.	Scout Association of Hong Kong and Hong Kong Girl Guides Association	STTL 591, Shui Chuen Au Street, Sha Tin	9 549	30.6.2027
63.	South China Athletic Association	IL 9041, No. 88 Caroline Hill Road, So Kon Po	32 480	25.12.2026
64.	South China Athletic Association	KIL 11218, Wylie Path	5 309	25.12.2026
65.	Tai Po Sports Association Limited	TPTL 216, On Cheung Road, Tai Po	3 051	30.6.2027
66.	The Post Office and Cable & Wireless Recreation Club Limited	IL 8597 RP, No. 108 Caroline Hill Road, So Kon Po	4 814	Quarterly term
67.	Victoria Recreation Club	Lot 316 in DD 252, Sai Kung	14 100	30.11.2016
68.	Yau Yat Chuen Garden City Club Limited	NKIL 6508, No. 7 Cassia Road, Yau Yat Chuen	5 917	25.12.2026
69.	Yuen Long District Sports Association Limited	YLTL 520, Yuen Long	1 163	18.10.2031

Note:

Holding-over letter is issued as a transitional arrangement to cover the period from the expiry of a PRL to the completion of renewal procedures.

Decline in Domestic Loans

10. **MR NG LEUNG-SING** (in Chinese): *President, credit data released by the Hong Kong Monetary Authority shows that the total domestic loans from banks in Hong Kong in March 2016 dropped year-on-year by 1.5% for the first time since September 2009. Total trade finance registered negative growth since the fourth quarter of 2014, while total loans to three major sectors (namely trade financing, manufacturing, as well as wholesale and retail trade) all reported declines in the first quarter of this year as compared to the last quarter, and only the total property lending maintained a steady growth. In this connection, will the Government inform this Council:*

- (1) whether it has explored the main causes for the recent decline in total domestic loans; if it has, of the details; if not, the reasons for that;*
- (2) whether it has projected the movements in total domestic loans in the medium and short term; if it has, of the details; if not, the reasons for that; and*
- (3) whether it has assessed the impact of the decline in total domestic loans on Hong Kong's overall economic performance this year; if it has, of the details; if not, the reasons for that?*

SECRETARY FOR FINANCIAL SERVICES AND THE TREASURY (in Chinese): President,

- (1) and (2)

According to the statistics from the Hong Kong Monetary Authority (HKMA), the total loans of Hong Kong's banking sector decreased by 0.2% in end March 2016 as compared with end 2015. The loan size rebounded to HK\$7,543.7 billion in end April 2016, up by 0.1% as compared with end 2015. Trade finance and loans for use in Hong Kong increased by 0.9% and 0.7% respectively, while loans for use outside Hong Kong decreased by 1.3%, mainly due to a reduction in loans for use on the Mainland.

The HKMA understands from banks that the slowdown of loan growth this year, as compared with the same period last year, was mainly attributable to the uncertainties over the global and Hong Kong's economic outlook (for example, a slower growth in local retail sales and the sluggish international trade flows), coupled with a slower economic growth on the Mainland. Corporates have become more conservative in borrowing, thus weakening the loan demand. Although the banking sector generally expects the loan demand to remain on the weak side in the near future, it has not changed its risk appetite and tightened the underwriting standards.

- (3) Hong Kong's overall economic performance is mainly constrained by external developments. With the unsteady external economic environment, global economic growth has recently been the slowest since 2009. As a result, economic growth in Hong Kong has slowed down since mid-2015. In the first quarter of 2016, the economy grew by 0.8% year-on-year in real terms. The slowdown of economic growth contributed to the weakening demand for loans to a large extent. In the near term, global economic growth is likely to remain modest and subject to uncertainties. In mid-May, the Government forecasted that economic growth in Hong Kong would be at 1% to 2% in 2016.

Sealing Joints of Slabs on Pavements

11. **MR CHAN CHI-CHUEN** (in Chinese): *President, it has been reported that several days before the visit by a member of the Standing Committee of the Political Bureau of the Communist Party of China Central Committee cum Chairman of the Standing Committee of the National People's Congress (the Chairman) came to Hong Kong last month for inspection, contractors engaged by the Highways Department applied glue to seal the joints of the slabs on the pavements along Tim Mei Avenue in Admiralty and Harbour Road in Wan Chai (joint sealing works). It is learnt that as the joints of the slabs had been sealed with glue, puddles of water appeared on the surfaces of the slabs when it rained (including the period during which the Red Rainstorm Warning Signal was issued last month), increasing the chances for pedestrians to slip and fall. In addition, large quantities of white powder on the surfaces of such slabs, allegedly*

originating from the glue, drifted with the wind from time to time, thereby causing inconvenience to pedestrians. In this connection, will the Government inform this Council:

- (1) regarding the joint sealing works, of the area of pavements and expenses involved, the number of workers deployed, as well as the composition and quantity of various types of materials used;*
- (2) of the objective and effectiveness of the joint sealing works carried out by the authorities;*
- (3) prior to carrying out the joint sealing works, whether the authorities have taken into account the fact that the drainage capability of the surfaces of the slabs will be reduced by the use of glue; if they have, of the details; whether the authorities have reviewed the effectiveness of such type of glue following the rainstorm last month; if they have, of the details; whether such type of glue has been used in similar works by the authorities;*
- (4) as there are views that the joint sealing works were related to the security arrangements for the Chairman's visit to Hong Kong, and that the carrying out of such works reflected that the authorities blew up the visit and were too anxious about it, whether the authorities have responded to such views; if they have, of the details;*
- (5) of the policy bureaux and government departments that participated in making the decision to carry out the joint sealing works; whether the decision was related to the security arrangements for the Chairman's visit to Hong Kong; and*
- (6) regarding the various joint sealing works carried out by the authorities in each of the past three years, of the respective streets and roads involved, works implementation methods, expenses incurred, numbers of workers deployed, types of materials used and reasons for carrying out such works (set out in a table)?*

SECRETARY FOR TRANSPORT AND HOUSING (in Chinese): President, my reply to the various parts of Mr CHAN Chi-chuen's question is as follows:

Footpaths in Hong Kong are mainly classified into two types: footpaths paved with concrete and footpaths paved with paving blocks (paving block footpaths), as well as some footpaths paved with other materials (such as bituminous). The Highways Department (HyD) is responsible for the maintenance of footpaths under its purview. The HyD will conduct routine inspections and arrange appropriate maintenance work for footpaths to maintain them in good condition, hence ensuring the safety of users.

As regards paving block footpaths, one of the maintenance works conducted by the HyD is to consider whether to conduct paving block strengthening works in light of the actual conditions of the paving block footpaths.

The structure of paving block footpaths consists of four layers: the bottommost layer is soil; on top of soil is a layer of granular sub-base; a layer of sand bedding is laid on the layer of granular sub-base; and paving blocks are laid at the topmost layer. The gaps between paving blocks are filled by sand. In considering whether to conduct paving block strengthening works, the HyD will consider the conditions of paving block footpaths at different locations, including: pedestrian flow, whether underground soil is likely to subject to uneven settlement, whether illegal parking is frequent which increases the chance of settlement and damages, and whether they require frequent use of high-pressure water jets for cleansing (for example, paving block footpaths that are hygienic black spots), causing the loss of sand in the layer of sand bedding and between gaps, whether there are frequent growth of moss and grasses in the gaps between paving blocks due to environmental factors, and whether they are located in crowded areas which may be subject to risk of artificial damages, and so on.

In general, the HyD will adopt the following two methods in conducting paving block strengthening works:

- (i) The use of joint stabilizing sealant (JSS) to seal up the gaps between paving blocks. This is the "joint sealing works" stated in Mr CHAN's question where glue was applied to seal the joints of the slabs on paving block footpaths. The JSS will be filled in the gaps between paving blocks, through which the blocks will be adhered

together, thus reducing the loss of sand in the gaps between paving blocks, and thereby strengthening the stability of the paving block footpaths and reducing the chance of settlement.

The major component of JSS is a non-water-based proxy, which is a chemical commonly found in the commonly-known "superglues". JSS is a light brown viscous liquid which is commonly known as glue. When compared with the glue for everyday use, the JSS has a higher viscosity. When using JSS in strengthening paving blocks, it is not necessary to excavate the existing paving block footpath. JSS is first filled in the gaps between paving blocks, and is left until the JSS is completely dried and hardened, during which the filled JSS needs to be appropriately protected. For instance, by temporarily covering it up using a curing material in the form of white powder called quartz sand for relatively large-scale works, and by temporarily fencing off or temporarily covering it up by wooden or plastic plates for relatively small-scale works, in order to avoid damages to JSS from the outside (for example, being stepped on by pedestrians) before it is fully dried and hardened. Once the JSS is completely dried and hardened, it will fully fill the original gaps between paving blocks, and adhere the blocks together. The HyD will then clear up or remove the temporary protective measures.

- (ii) The use of sand mixed with cement to construct the layer of sand bedding under paving blocks: this method aims to increase the strength of the layer of sand bedding under paving blocks, thus increasing the stability of paving block footpaths and reducing the chance of settlement. When carrying out the works, the existing paving block footpaths will first be excavated (including the sand bedding layer). The sand bedding layer will be constructed using sand mixed with cement, and the gaps between paving blocks will also be filled with sand mixed with cement to assist in stabilizing the paving blocks. When compared with the use of JSS, this method involves more procedures and takes longer time to complete. Therefore, this method is usually adopted for relatively large-scale reconstruction of paving block footpaths. However, in terms of sealing up the gaps between paving blocks and adhering paving blocks together, this method performs less effectively than the use of JSS.

Both of the above two methods in strengthening paving blocks do not affect the drainage function of footpaths.

Over the past three years (from April 2013 to April 2016), the HyD has conducted joint sealing works in 16 districts in Hong Kong (including Central and Western District, Wan Chai District, Kowloon City District, Kwun Tong District, Wong Tai Sin District, Yau Tsim Mong District, Sham Shui Po District, Islands District, Kwai Tsing District, North District, Sai Kung District, Sha Tin District, Tai Po District, Tsuen Wan District, Tuen Mun District and Yuen Long District). The works involve a total of 167 sections of paving block footpaths (details at Annex), with a total cost of works of about \$13 million. Since these joint sealing works are mostly of relatively small scale and the number of works involved is large, the HyD is unable to provide information related to cost, manpower, and so on, of individual joint sealing works.

As regards the joint sealing works conducted by the HyD in certain paving block footpaths in Admiralty and Wan Chai in early May this year, in order to meet the security requirements of the Police, the HyD conducted joint sealing works at six sections of paving block footpaths in the aforementioned locations. As the works area was relatively large, the HyD used quartz sand as curing material.

The aforementioned joint sealing works conducted by the HyD involved footpaths of a total area of about 12 000 sq m. The contractor deployed about 40 workers to conduct the works on the aforementioned footpath sections, and used about 9 cu m of JSS. The HyD is still finalizing the cost of works. The works were completed in mid-May this year, and the paving blocks of the footpaths concerned have been strengthened properly.

On 10 May this year (the day when the Red Rainstorm Sign was hoisted), after the HyD learnt from the Internet and the media the situation of the sites concerned of the aforementioned joint sealing works, the HyD conducted a site visit to the concerned sites in the morning of the same day, and confirmed that the white materials flushed by rain was quartz sand. The HyD then conducted another site visit in the afternoon when it was less rainy, and confirmed that there was no ponding water on the concerned paving block footpaths. The HyD cleared up the quartz sand on the same day.

Footpath sections with joint sealing works conducted
(April 2013 to April 2016)

	<i>Footpath sections</i>
1	Queen's Road Central (between Wing Kut Street and Jervois Street)
2	Queen's Road Central (between Wing Kut Street and Jubilee Street)
3	Hillier Street (between Des Voeux Road Central and Bonham Strand)
4	Mercer Street (whole section)
5	Burd Street (between Mercer Street and Hillier Street)
6	Cleverly Street (between Wing Lok Street and Jervois Street)
7	Hillier Street (between Burd Street and Mercer Street)
8	Wing Lok Street (between Man Wa Lane and Hillier Street)
9	Hillier Street (between Bonham Strand and Wing Lok Street)
10	Cleverly Street (between Jervois Street and Bonham Strand)
11	Wing Lok Street, section outside Golden Centre
12	O'brien Road (between Hennessy Road and Johnston Road)
13	Heng Lam Street (whole section)
14	Ping Ting Road (whole section)
15	Wing Ting Road (whole section)
16	On Ting Road (whole section)
17	Fung Shing Street (between Po Kong Village Road and Hilltop Gardens)
18	Ma Tau Wai Road (between Wuhu Street and Station Lane)
19	Pak Tai Street (between Mok Cheong Street and Sung Wong Toi Road)
20	Waterloo Road No. 82-82B
21	Cumberland Road (between Boundary Street and Surrey Lane)
22	Soares Avenue (whole section)
23	Liberty Avenue (whole section)
24	Nga Tsin Wai Road (between La Salle Road and College Road)
25	College Road (whole section)
26	Peace Avenue (whole section)
27	Victory Avenue (whole section)
28	Fat Kwong Street (between The Open University of Hong Kong and Princess Margaret Road)
29	Sheung Hing Street (between Princess Margaret Road and Fat Kwong Street)
30	Pui Ching Street (between Man Fuk Road and Man Fung Path)

	<i>Footpath sections</i>
31	Section of Hau Wong Road outside Kowloon City Market
32	Broadcast Drive No. 1-91
33	Broadcast Drive No. 32-44
34	Waterloo Road (between Argyle Street and Soares Avenue)
35	Waterloo Road (between Argyle Street and Pui Ching Road)
36	Wang Chiu Road (between Kai Lok Street and Bus Terminus)
37	Kwun Tong Road (between lamp post No. AB0001 and AA2081)
38	Wang Chiu Road (between lamp post No. AB3910 and AB3915)
39	Ngau Tau Kok Road (between Amoy Gardens House No. 77 and Block A)
40	Tsui Hing Street (between lamp post No. GF0931 and GF0934)
41	Section of Lam Fung Street outside Zero Carbon Building
42	Section of Wang Chiu Road outside Zero Carbon Building
43	Section of Sheung Yuet Road outside Zero Carbon Building
44	Section of Wang Kwong Road outside Zero Carbon Building
45	New Clear Water Bay Road (between Fung Shing Street and Clear Water Bay Road)
46	Tsui Ping Road (between Kai Lim Road and Lei Yue Mun Road)
47	Tsui Ping Road (between lamp post No. CF1356 and AA1049)
48	Tsui Ping Road (between lamp post No. AA1047 and AA6845)
49	Hiu Yuk Path (whole section)
50	Tsui Ping Road (between lamp post No. AA0433 and AA0899)
51	Kai Lim Road (between lamp post No. AA0433 and AA0436)
52	Tak Tin Street (between On Tin Road and Lin Tak Road)
53	Lei Yue Mun Road at Ingress of Lam Tin Public Transport Interchange
54	Shung Shun Street (between Sze Shan Street and Yan Yue Wai)
55	Section of On Tin Street outside Lam Tin North Bus Terminus
56	Junction of Lei Yue Mun Road and Tseung Kwan O Road (between lamp post No. AA8637 and AA8638)
57	Lei Yue Mun Road at emergency vehicular access of Kowloon East Government Offices
58	On Tin Street (between Ping Tin Street and S. K. Lee Shiu Keung Primary School)
59	Lei Mun Road (between Kai Tin Road roundabout and Wai Fat Road)
60	Lei Yue Mun Road (between ingress of Lam Tin Public Transport Interchange and Kai Tin Road)
61	Lei Yue Mun Road (between Tseung Kwan O Road to ingress of Lam Tin Public Transport Interchange)

	<i>Footpath sections</i>
62	Ping Tin Street (between Ping Chun House and Ping Tin Ancillary Facilities Block)
63	On Tin Street (between Methodist Primary School and Ping Tin Street)
64	Shun Ning Road (between Cheung Fat Street and Wing Lung Street)
65	Ki Lung Street (between Cedar Street and Portland Street)
66	Dundas Street (between Nathan Road and Sai Yeung Choi Street South)
67	Haiphong Road at run-in/out outside temporary refuse collection point
68	Austin Road at run-in/out outside Tak Shun School
69	Mody Road (side lane adjacent to Hotel Nikko) (between lamp post No. DF0091 and DF0092)
70	Kwun Chung Street at run-in/out of Municipal Services Building
71	Ngan Shing Street (between Cheung Shing Street and Pak Tak Street)
72	On Luk Street (between lamp post No. EB4128 and EB4129)
73	Section of Tin Sam Street outside Carado Garden Shopping Arcade
74	Tsuen Nam Road (between lamp post No. N5956 and N0634)
75	Fo Tan Road (between lamp post No. EB0345 and EB0349)
76	Tong Chun Street near junction with Tong Tak Street
77	Kin Fung Circuit (between lamp post No. GD1693 and AD7803)
78	King Sau Lane (between lamp post No. AD2337 and AD2343)
79	Wu Chui Road (between Mei Lok Lane and Wu King Road (northbound))
80	Castle Peak Road-Castle Peak Bay (between lamp post No. CD0153 and H0423)
81	Tsing Ho Square (between lamp post No. BD2269 and GD0336)
82	Tsing Chui Path (between Tseng Choi Street and Tsing Hang Path)
83	Tsing Min Path (between lamp post No. H0895 and DD0904)
84	Tsing Chui Path (between lamp post No. H0893 and H0897)
85	Yan Ching Street (between Tuen Mun Heung Sze Wui Road and lamp post No. H3850 (eastbound))
86	Tsing Min Path (between lamp post No. AD3511 and AD3512)
87	Tuen Shun Street (whole section)
88	Tseng Choi Street (between Tsing Pak Path and Tsing To Path)
89	Tuen Kwai Road (between lamp post No. DD0217 and FB7603)
90	Kai Fat Path (between Yan Ching Street and lamp post No. AD2388)
91	Shek Pai Tau Road (between lamp post No. DD0966 and DD0972)
92	Tsing Ho Square (between lamp post No. AD0449 and FB2180)
93	Kai Man Path (between Yan Ching Street and lamp post No. AJ1906)
94	Wo Ping Path (between Yan Ching Street and Kai Man Path)

	<i>Footpath sections</i>
95	Ng Lau Road (between lamp post No. AD7542 and CD0998 (northbound))
96	Leung Tak Street (between lamp post No. FA2434 and FC0621)
97	Leung Wan Street near Tsing Tin Playground
98	Tsing Ling Path (between Tsing Pak Path and Tsing Hang Path)
99	Tsing Hang Path (whole section)
100	Tsing Kwai Path (whole section)
101	Tsing Pak Path (between lamp post No. DD1594 and DD0929)
102	Tsing To Path (between lamp post No. DD0931 and DD0932)
103	Tsing Chui Path (between lamp post No. H0898 and DD0912)
104	Tsing Ling Path (between Tsing Pak Path and Tsing To Path)
105	Tsing Wu Square (between lamp post No. FB2783 and AD0444)
106	Tsing Hoi Circuit (between lamp post No. FB2786 and CD1895)
107	Tuen Mun River Channel (between Kin Fung Circuit and Choi Yee Bridge Road)
108	Lung Chak Road (between lamp post No. AD0395 and AD0389)
109	Pak She Preya Road (between Pak She Third Lane and Pak She Fourth Lane)
110	King Cho Road (between Lai King Hill Road and Cho Yiu Chuen)
111	Shek Yam Road (between lamp post No. W3693 and W3695)
112	Tai Pak Tin Street (between lamp post No. FB4929 and FA4423)
113	Shek Li Street (between lamp post No. FA4435 and FC2822)
114	Shek Pai Street (between lamp post No. FA4423 and FA4403)
115	On Chuk Street (between lamp post No. FA4400 and FA4403)
116	Wah King Hill Road (between Regency Park and Wonderland Villas)
117	Shek Pai Street (between Wai Kek Street and Lei Pui Street)
118	Tai Ha Street (between No. 1 and No. 39 and between lamp post No. FA4770 and CC0867)
119	Kwai Fuk Road (between lamp post No. DC0103 and CC0236)
120	Ta Chuen Ping Road (between lamp post No. FB2906 and FB2908)
121	Tam Kon Shan Road (between lamp post No. FC1940 and FB6156)
122	Tsing King Road (between lamp post No. FC2255 and FC2257)
123	Lui Ming Road (between lamp post No. EA1904 and EA1906)
124	San Cheung Street (between House No. 1 and House No. 27 and between House No. 2 and House No. 28)
125	Sha Tau Kok Road Section (between San Uk Tsuen and Hung Leng)
126	Tai Kwong Lane No. 6-10
127	Heung Sze Wui Street No. 3-7

	<i>Footpath sections</i>
128	On Fu Road No. 14-16
129	Wai Yi Street No. 2-4
130	Shek Wai Kok Road (between Cheung Pei Shan Road and Wai Tsuen Road)
131	Lo Wai Road (between Hilltop Road and Wing Wah Terrace)
132	Wo Yi Hop Road (between Wo Yi Hop Interchange and Ho Fung College)
133	Lo Wai Road (between Hilltop Road and Yi Pei Chun Road)
134	On Yat Street (whole section)
135	Luen Yan Street (between Yeung Uk Road and Kwu Hang Road)
136	Yeung Uk Road (between Wo Tik Street and Chuen Lung Street)
137	Wai Tsuen Road (between Shek Wai Kok Road and Tsuen Kam Interchange)
138	Hau Tei Square (whole section)
139	Texaco Road (between Shing Mun Road and Tsuen Kam Interchange)
140	Mei Wan Street (between Public Transport Interchange and Discovery Park)
141	Ma Tau Pa Road (between Yeung Uk Road and Texaco Road)
142	On Yin Street (between the Church of the Annunciation and Tsuen King Circuit)
143	Junction of Tai Tong Road and Ma Tong Road (between lamp post No. BD4367 and H2211)
144	Junction of Tai Tong Road and Shap Pat Heung Road (between lamp post No. BD1462 and BD1451)
145	Junction of Fung Cheung Road and Ma Tong Road (between lamp post No. BD1517 and GD0093)
146	Kam Sheung Road (between lamp post No. U8343 and U8354)
147	Kin Yip Street (between Yau San Street and Fung Cheung Road)
148	Tung Wui Road (between lamp post No. AD5630 and AD3143)
149	Long Yat Road (between lamp post No. FA7843 and GD2847)
150	Ngau Tam Mei Road (whole section)
151	Kam Tin Bypass (between lamp post No. BD1776 and FC0123)
152	San Tam Road (between lamp post No. FA9262 and FA9275)
153	Yu Wing Path (between lamp post No. FB5844 and FB5848)
154	Castle Peak Road-Yuen Long (between lamp post No. CD0750 and CD0968)
155	Castle Peak Road-Yuen Long (between lamp post No. H2437 and H2434)
156	Kam Tin Bypass (between lamp post No. VA0445 and AD5663 and between AD5552 and AD5561)
157	Kam Sheung Road (between lamp post No. U8437 and U8446)

<i>Footpath sections</i>	
158	Ma Tong Road (between lamp post No. BD1391 and FA3552)
159	Castle Peak Road-San Tin (between lamp post No. BD2540 and EA2965)
160	Lok Ma Chau Public Transport Interchange (between lamp post No. BD1022 and BD1025)
161	Tin Kwai Road (between lamp post No. BD0792 and AJ1324)
162	Hung Tai Road (between lamp post No. AD6063 and AD6067)
163	Shap Pat Heung Road (between lamp post No. CD0191 and AD0501)
164	Tin Wu Road (between lamp post No. CD0805 and FA6557)
165	Tin Ying Road (between lamp post No. DD3238 and DD3250)
166	Ma Tin Road near lamp post No. BD1387
167	Ping Ha Road (between lamp post No. DD1109 and DD1119)

Torture/Non-refoulement Claimants Committing Crimes in Hong Kong

12. **MR CHAN HAN-PAN** (in Chinese): *President, it is learnt that the number of people who lodged torture claims/non-refoulement claims under the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment immediately upon entry into Hong Kong unlawfully has been on the rise recently. Some members of the public have relayed to me that some of the claimants are actually "bogus refugees" who have abused the mechanism for making such claims in order to stay in Hong Kong to engage in illegal activities that endanger the personal safety of members of the public and undermine the law and order, such as taking up illegal employment, stealing and trafficking drugs. In this connection, will the Government inform this Council:*

- (1) *of the respective average, shortest and longest time taken by the authorities to handle the aforesaid claims in each of the past three years;*
- (2) *of the respective numbers of cases in which the aforesaid claimants were prosecuted and convicted, in each of the past three years, for allegedly having committed crimes;*
- (3) *given that the authorities are conducting a study on setting up a closed camp for detaining claimants to reduce their incentives to come to Hong Kong, of the progress of the study;*

- (4) *whether it will consider introducing legislative amendments to empower the authorities to repatriate claimants to their countries of origin immediately upon conviction; if it will, of the details; if not, the reasons for that; and*
- (5) *given that the claimants are mainly from South Asian countries such as Pakistan and Bangladesh, whether the authorities will implement measures to encourage and help local ethnic minorities to apply for vacancies of police officers with a view to handling crimes involving claimants more effectively; if they will, of the details; if not, the reasons for that?*

SECRETARY FOR SECURITY (in Chinese): President, foreigners who smuggled themselves into Hong Kong, and visitors who overstayed their limit of stay allowed by the Immigration Department (ImmD) or who were refused entry by the ImmD upon arrival in Hong Kong (collectively "illegal immigrants") are liable to be removed from Hong Kong in accordance with the Immigration Ordinance, Cap. 115 (the Ordinance). To safeguard immigration control and for public interest, they should be removed as soon as practicable.

However, pursuant to multiple court rulings since 2004, if a foreigner claims to face a risk of being subjected to such risks as torture, cruel, inhuman or degrading treatment or punishment (CIDTP), or persecution, and so on, upon being removed to his country of origin, the ImmD cannot remove him there unless his claim is determined to be unsubstantiated under procedures which meet high standards of fairness.

The Government reiterates that the United Nations Refugee Convention has never been applied to Hong Kong; non-refoulement claimants in Hong Kong are not to be treated as "refugees". Their illegal immigration status will not change and they may not settle in Hong Kong, regardless of the result of their claim. They will be removed to their country of origin when their claim is rejected or when the risk they face ceases to exist.

Since 2014, there has been a continuous and worsening influx of illegal immigrants lodging non-refoulement claims to resist removal from Hong Kong. The public expenditure and the social and public order implications arising from illegal immigration, their abuse of our screening system and the worsening crime

situation have caused considerable public concern. Injecting further resources to enhance screening output alone is unable to contain and reverse the situation. The Chief Executive has announced, in the 2016 Policy Address, that the Government will launch a comprehensive review on the strategy of handling non-refoulement claims from four major dimensions including (1) pre-arrival control, (2) screening procedures, (3) detention, and (4) enforcement and removal to address fragilities in our present system.

My reply to the various parts of Mr CHAN's question is as follows:

- (1) The Government commenced the unified screening mechanism (USM) in March 2014. As at end May 2016, the ImmD has decided on 4 211 claims. The average time taken to arrive at a decision (from the time when the screening procedure commences) is 28 weeks. The time required to screen each claim may vary depending on the complexity of the case. According to record, the shortest time required to decide on a case was two weeks whereas the longest required 49 months. (According to record, the claimant in that case returned his claim form four months after screening commenced. In the 29 months that followed, the claimant failed to attend his screening interview repeatedly for various reasons, including his poor psychiatric condition (but without medical proof), request for psychiatric examination, feeling physically unwell, his legal representative was unable to attend, and so on. When the USM commenced, the claimant was given a further 28 days to provide supplementary information, but he did not provide such information until three months later. In the 12 months that followed, the claimant again refused to attend his screening interview repeatedly. In summary, the screening interview was completed 48 months after the screening procedure commenced, and was decided within one month thereafter.) During the comprehensive review, we will consider how to minimize such room for abuse.
- (2) According to the Police's record, since 2013, the number of non-ethnic Chinese (NEC) persons on recognizance (mostly non-refoulement claimants) arrested for criminal offences are tabulated below:

<i>Offences</i>	<i>2013</i>	<i>2014</i>	<i>2015</i>	<i>2016 (as at end May)</i>
Shop Theft	78	147	277	170
Serious Drugs Offences	79	79	159	54
Miscellaneous Theft	80	86	110	56
Wounding and Serious Assault	100	67	100	44
Serious Immigration Offences	30	34	85	26
Forgery and Coinage	31	40	80	48
Disorder/Fighting in Public Place	35	43	64	16
Other offences	175	169	238	128
Total	608	665	1 113	542

Separately, section 38AA of the Ordinance prohibits illegal immigrants or persons who are subject to removal or deportation orders from taking any employment or establishing/joining in any business. According to the ImmD's records, since 2013, the number of NEC persons on recognizance arrested for breach of section 38AA is tabulated below:

<i>Year</i>	<i>Number of persons arrested</i>
2013	165
2014	166
2015	232
2016 (as at end May)	133

The Government does not maintain figures relating to prosecution and conviction.

- (3) The Government notes that recently, there are suggestions that we should draw reference to the experience of handling the Vietnamese boat people crisis in the 1980s and re-introduce closed camps in Hong Kong.

The power vested in the Government under the Ordinance to detain Vietnamese boat people is applicable only to those Vietnamese boat people who arrived Hong Kong in or before January 1998. Since

the 1980-1990s, the Court has made a number of rulings in relation to the detention of illegal immigrants. In particular, the Court of Final Appeal (CFA) ruled in 2014 in *Ghulam Rbani vs the Director of Immigration* [2014] HKCFA 21 that, although Article 5 of the Hong Kong Bill of Rights (HKBOR) (not subjected to arbitrary detention) does not affect the ImmD's statutory power to detain illegal immigrants, but such power is subject to the common law Hardial Singh principle, that is, if the ImmD cannot complete the removal procedures (including the screening procedure for non-refoulement claim) within a reasonable time, then the illegal immigrant cannot continue to be detained. The suggestion also gives rise to other challenges from land and manpower resources perspectives.

That being said, during the comprehensive review of the strategy for handling non-refoulement claims, we will research into proposals to empower the ImmD to detain more claimants that would conform to legal and operational requirements, so as to deter them from coming to Hong Kong and delaying the removal/screening procedures.

- (4) The Government commenced the USM to meet with the rulings of the Court. In particular, in December 2012, the CFA ruled in *Ubamaka Edward Wilson vs the Secretary for Security* [2013] HKCFA 60 that the right not to be subjected to CIDTP under Article 3 of the HKBOR is absolute and non-derogable. Therefore, no matter how undesirable or dangerous the conduct of an individual is, the Government may not remove him to another country where he has a real and substantial risk of being subjected to CIDTP.

Pursuant to the Court's ruling, if an illegal immigrant claims that he has a risk of being subjected to torture, CIDTP, and so on, at another country, even if he has committed a crime in Hong Kong, the ImmD cannot remove him there in contravention of Article 3 of the HKBOR unless his claim is determined by the ImmD to be unsubstantiated under procedures which meet high standards of fairness.

- (5) Adhering to the principle of equal opportunities all along, the Police are committed to the recruitment of suitable candidates into the Police. Candidates who meet the appointment requirements, possess the competences required of a police officer, share the same values of the Police, and endeavour to become a professional police officer to serve the community are welcome to apply to join the Police, irrespective of their races.

From May 2011, candidates with Level 2 (that is, grade E before 2007) or above in five subjects in the Hong Kong Certificate of Education Examination (including English), or equivalent, may apply for the post of Police Constable (PC), even without relevant certifications in Chinese language proficiency. Such candidates will, however, be referred to sit for the Government Standard Examination conducted by the Civil Service Examinations Unit. A pass in the examination is considered equivalent to meeting the Chinese language proficiency requirement.

Candidates for the post of PC with foreign language skills, such as Hindi, Urdu, Nepali, Tagalog, French, German, Korean or Japanese, will be awarded additional scores upon passing an assessment.

Furthermore, ethnic minorities (EM) are engaged by the Police as Police Community Liaison Assistants (PCLA) to enhance liaison with EM communities. To date, there are 15 PCLA posts in 14 Police Districts.

Residents Affected by Redevelopment Projects

13. **DR FERNANDO CHEUNG** (in Chinese): *President, the new Urban Renewal Strategy promulgated in February 2011 stipulates that the aim of the Urban Renewal Authority (URA) in carrying out redevelopment is to "reduce the number of inadequately housed people", and the principles to which URA strictly adheres in carrying out redevelopment include the one that "tenants affected by redevelopment projects should be provided with proper rehousing". Since the establishment of URA in 2001, the Hong Kong Housing Authority (HA) has been able to provide URA with an annual quota of up to 1 000 public housing/interim*

housing flats for the purpose of rehousing households affected by redevelopment projects. URA is required to pay to HA monthly reservation fees and also the cost of the flats concerned when the rehousing of households actually takes place. In addition, given that in the past, quite a number of tenants affected by redevelopment projects had been requested by their landlords to move out upon the expiry or termination of their tenancies before URA acquired the affected properties successfully (evicted tenants), URA launched the Domestic Tenants Compassionate Assistance Programme (DTCAP) in 2011 to enable affected tenants to receive an ex-gratia payment after the completion of URA's acquisition or government resumption of the affected properties. Tenants who are ineligible for DTCAP but are in hardship may be granted the Relocation Assistance by URA at its discretion after they have been assessed by the Urban Renewal Social Service Team for the project concerned. In this connection, will the Government inform this Council if it knows:

- (1) the following information of each redevelopment project commencing in each of the financial years from 2001-2002 to 2015-2016: (a) the total number of households at the time of the Freezing Survey, with a breakdown by category of households, i.e., (i) owner-occupiers, (ii) domestic tenants, (iii) occupiers of rooftop structures and (iv) occupiers of other categories, and (b) the number of households who were offered rehousing or compensation, with a breakdown by rehousing/compensation arrangement, i.e., (v) those rehoused to public housing flats provided by HA, (vi) those rehoused to public housing flats provided by the Hong Kong Housing Society, (vii) those rehoused to flats provided by URA, (viii) those being offered the basic ex-gratia payment and a cash incentive, (ix) those being offered an ex-gratia payment equivalent to the Government's Ex-Gratia Allowance because they were ineligible for basic ex-gratia payment and (x) those who moved in after the date of the Freezing Survey and were offered a compensation in the form of ex-gratia payment equal to two times the prevailing ex-gratia allowance offered by the Lands Department on resumption, and set out such information in Table 1 by project name; if the aforesaid information is not available, whether it can provide the relevant information on the redevelopment projects commencing in the financial years from 2011-2012 to 2015-2016;*

Table 1: Information on households affected by redevelopment projects

<i>Financial year</i>	<i>Project number</i>	<i>Project name</i>	<i>Number of households of various categories at the time of the Freezing Survey</i>					<i>Number of households offered rehousing or compensation</i>						
			<i>(i)</i>	<i>(ii)</i>	<i>(iii)</i>	<i>(iv)</i>	<i>Total</i>	<i>(v)</i>	<i>(vi)</i>	<i>(vii)</i>	<i>(viii)</i>	<i>(ix)</i>	<i>(x)</i>	
2015-2016	DL-11: YTM	Ash Street, Tai Kok Tsui												
...														
2001-2002	K3	Cherry Street, Tai Kok Tsui												

(2) *the following figures relating to the PRH flats provided by HA in each of the financial years from 2001-2002 to 2015-2016 (set out in Table 2):*

- (i) *the total number of public housing flats disposable by URA (i.e. the sum total of the flats which had been reserved in the past but not yet used for rehousing plus those which were newly reserved in that year),*
- (ii) *the aggregate number of PRH flats reserved by HA,*
- (iii) *the number of PRH flats actually used by URA,*
- (iv) *the number of PRH flats returned to HA by URA,*
- (v) *the amount of reservation fees paid by URA to HA, and*
- (vi) *the amount of money paid by URA to HA when rehousing of households actually took place; and*

Table 2: Figures relating to the public housing flats provided by HA to URA over the years

<i>Financial year</i>	<i>(i)</i>	<i>(ii)</i>	<i>(iii)</i>	<i>(iv)</i>	<i>(v)</i>	<i>(vi)</i>
<i>2015-2016</i>						
<i>...</i>						
<i>2001-2002</i>						

(3) *the following figures relating to evicted tenants in respect of the redevelopment projects commencing in each of the financial years from 2010-2011 to 2015-2016 (set out in Table 3 by project name):*

- (i) the number of tenants who applied for DTCAP,*
- (ii) the number of tenants who were rehoused,*
- (iii) the number of tenants who received compensation in the form of ex-gratia payment, and*
- (iv) the number of tenants who were ineligible for DTCAP but were granted the Relocation Assistance?*

Table 3: Figures relating to evicted tenants

<i>Financial year</i>	<i>Project number</i>	<i>Project name</i>	<i>(i)</i>	<i>(ii)</i>	<i>(iii)</i>	<i>(iv)</i>
<i>2015-2016</i>	<i>DL-11: YTM</i>	<i>Ash Street, Tai Kok Tsui</i>				
<i>...</i>						
<i>2010-2011</i>	<i>KC-006</i>	<i>Pak Tai Street/San Shan Road, Ma Tau Kok</i>				

SECRETARY FOR DEVELOPMENT (in Chinese): President, on the basis of the information provided by the Urban Renewal Authority (URA), my reply to the three-part question is as follows:

- (1) The information on the URA's redevelopment projects of which acquisition and rehousing have been completed in the financial years from 2010-2011 to 2015-2016 is tabulated as follows. Regarding

the other redevelopment projects, as acquisition and rehousing work are still underway, no definite information can be provided at the moment.

Year of commencement	Project code	Project name	Numbers of various categories of households at the time of the Freezing Survey					Numbers of households offered rehousing or compensation					
			(i)	(ii)	(iii)	(iv)	Total	(v)	(vi)	(vii)	(viii)	(ix)	(x)
2013-2014	DL-8: KC	Kai Ming Street, Ma Tau Kok	27	39	1	0	67	11	0	0	15	5	6
2013-2014	DL-4: SSP	Kowloon Road/Kiu Yam Street, Sham Shui Po	22	89	0	0	111	39	2	0	25	10	12
2012-2013	DL-1: SSP	229A-G, Hai Tan Street, Sham Shui Po	32	26	0	0	58	13	0	0	6	1	9
2012-2013	DL-2: SSP	205-211A, Hai Tan Street, Sham Shui Po	34	74	1	0	109	30	1	0	12	9	12
2012-2013	DL-3: YTM	Pine Street/Oak Street, Tai Kok Tsui	46	80	1	1	128	48	0	0	13	5	8
2011-2012	KC-007	Kowloon City Road/Sheung Heung Road, Ma Tau Kok	34	144	9	2	189	67	4	0	82	26	6
2010-2011	SSP-014	Fuk Wing Street, Sham Shui Po	14	96	0	0	110	48	1	0	11	11	16
2010-2011	KC-006	Pak Tai Street/San Shan Road, Ma Tau Kok	41	88	0	2	131	42	5	0	30	5	15
2009-2010	TKW/1/002	Ma Tau Wai Road/Chun Tin Street, Ma Tau Kok	50	196	33	4	283	49	11	0	57	53	95
2009-2010	SSP/3/001	Shun Ning Road, Sham Shui Po	8	50	7	4	69	14	0	0	10	1	19
2009-2010	MTK/1/002	San Shan Road/Pau Chung Street, Ma Tau Kok	34	71	5	6	116	33	2	0	24	11	12

Year of commencement	Project code	Project name	Numbers of various categories of households at the time of the Freezing Survey					Numbers of households offered rehousing or compensation					
			(i)	(ii)	(iii)	(iv)	Total	(v)	(vi)	(vii)	(viii)	(ix)	(x)
2008-2009	MK/01	Shanghai Street/Argyle Street, Mong Kok	13	40	6	0	59	16	0	0	9	2	23
2007-2008	TKT/2/002	Anchor Street/Fuk Tsun Street, Tai Kok Tsui	25	83	2	4	114	31	0	1	25	3	20
2007-2008	TKW/1/001	Chi Kiang Street/Ha Heung Road, Ma Tau Kok	15	118	6	1	140	33	3	0	57	14	11
2007-2008	MTK/1/001	Pak Tai Street/Mok Cheong Street, Ma Tau Kok	23	86	3	0	112	38	0	0	29	8	17
2007-2008	K28	Sai Yee Street, Mong Kok	89	54	6	7	156	9	1	0	36	7	3
2007-2008	K1	Nga Tsin Wai Village, Wong Tai Sin	6	21	0	36	63	15	0	1	43	0	0
2007-2008	H18	Peel Street/Graham Street, Sheung Wan	158	138	1	13	310	7	14	0	84	10	19
2006-2007	K7	Kwun Tong Town Centre (Phases 2 to 4)	659	154	58	69	940	48	3	0	90	43	18
2005-2006	H14~	Sai Wan Ho Street, Shau Kei Wan~	Not applicable										
2005-2006	K9*	MacPherson Stadium, Mong Kok*	Not applicable										
2005-2006	SSP/1/003-005	Hai Tan Street/Kweilin Street and Pei Ho Street, Sham Shui Po	114	412	27	16	569	203	8	0	49	74	244
2005-2006	TKT/2/001	Fuk Tsun Street/Pine Street, Tai Kok Tsui	32	82	0	0	114	30	0	1	38	21	22

Notes:

No definite information is available for the redevelopment projects of which acquisition and rehousing work are still underway in the financial years from 2010-2011 to 2015-2016. These projects include: Ash Street, Tai Kok Tsui (DL-11:YTM); Chun Tin Street/Sung Chi Street, Kowloon City (KC-008A); Hang On Street, Kwun Tong (DL-10:KT); Castle Peak Road/Un Chau Street, Sham Shui Po (SSP-016); Fuk Chak Street/Li Tak Street, Tai Kok Tsui (DL-6:YTM); Tung Chau Street/Kweilin Street, Sham Shui Po (DL-5:SSP); Tonkin Street/Fuk Wing Street, Sham Shui Po (SSP-015); Reclamation Street/Shantung Street, Mong Kok (YTM:010) and Prince Edward Road West/Yuen Ngai Street, Mong Kok (MK/02).

~ The Hong Kong Housing Society returned this project to the URA for redevelopment in 2011. The URA acquires the industrial building concerned and does not have information on the relevant households.

* The project involves redevelopment of a former stadium and there is no information on households.

- (2) According to the Memorandum of Understanding entered into between the Hong Kong Housing Authority (HA) and the URA in June 2002 and revised in June 2012, public rental housing (PRH) units will be reserved for rehousing eligible households affected by the redevelopment projects of the URA, and the URA shall pay the HA reservation fees equivalent to the amount of monthly rents payable for the units reserved and the actual rehousing expenses.

In drawing up its annual PRH Allocation Plan, the HA will estimate the numbers of different categories of flats for allocation in the coming year. The numbers of PRH flats reserved for the URA redevelopment projects under the approved PRH Allocation Plans for the past five years, the numbers of PRH flats actually used by the URA for rehousing purposes, the amount of reservation fees paid by the URA to the HA and the amount of money paid by the URA to the HA for rehousing of households are tabulated below.

<i>Year</i>	<i>Aggregate numbers of PRH flats reserved by the HA</i>	<i>Numbers of PRH flats actually used by URA</i>	<i>Amount of reservation fees paid by URA to HA</i>	<i>Amount of money paid by URA to HA for rehousing of households</i>
2015-2016	240	161	\$2,395,642 ^{Note}	\$27,257,778 ^{Note}
2014-2015	150	227	\$8,099,940	\$34,033,667
2013-2014	280	153	\$6,272,866	\$19,460,031
2012-2013	180	105	\$4,941,890	\$11,967,863
2011-2012	180	131	\$6,653,261	\$15,899,918

Note: Provisional figure

As the progress of the URA's redevelopment projects changes from time to time, the URA needs to make corresponding adjustments with the HA in the actual number of PRH units to be reserved. Hence, the URA does not maintain any other related statistics.

- (3) The information on evicted tenants in the redevelopment projects of the URA in the financial years from 2010-2011 to 2015-2016 are tabulated below.

<i>Year of commencement</i>	<i>Project code</i>	<i>Project name</i>	<i>(i)</i>	<i>(ii)</i>	<i>(iii)</i>	<i>(iv)</i>
2015-2016	DL-11: YTM	Ash Street, Tai Kok Tsui	0	0	0	0
2014-2015	KC-008	Chun Tin Street/Sung Chi Street, Kowloon City	The project was withdrawn on 6 May 2016 and terminated immediately. It was replaced by KC-008(A) which was commenced on the same day. Statutory consultative and planning procedures are underway.			
2014-2015	DL-10: KT	Hang On Street, Kwun Tong	2	0	0	1
2013-2014	SSP- 016	Castle Peak Road/Un Chau Street, Sham Shui Po	1	0	0	0
2013-2014	DL-8: KC	Kai Ming Street, Ma Tau Kok	0	0	0	0
2013-2014	DL-6: YTM	Fuk Chak Street/Li Tak Street, Tai Kok Tsui	0	0	0	0

<i>Year of commencement</i>	<i>Project code</i>	<i>Project name</i>	<i>(i)</i>	<i>(ii)</i>	<i>(iii)</i>	<i>(iv)</i>
2013-2014	DL-4: SSP	Kowloon Road/Kiu Yam Street, Sham Shui Po	0	0	0	0
2013-2014	DL-5: SSP	Tung Chau Street/Kweilin Street, Sham Shui Po	4	1	0	2
2012-2013	SSP-015	Tonkin Street/Fuk Wing Street, Sham Shui Po	4	0	0	0
2012-2013	DL-1: SSP	229A-G Hai Tan Street, Sham Shui Po	2	0	2	0
2012-2013	DL-2: SSP	205-211A, Hai Tan Street, Sham Shui Po	0	0	0	0
2012-2013	DL-3: YTM	Pine Street/Oak Street, Tai Kok Tsui	1	0	0	0
2011-2012	YTM-010	Reclamation Street/Shantung Street, Mong Kok	4	0	1	1
2011-2012	KC-007	Kowloon City Road/Sheung Heung Road, Ma Tau Kok	0	0	0	0
2010-2011	SSP-014	Fuk Wing Street, Sham Shui Po	0	0	0	0
2010-2011	KC-006	Pak Tai Street/San Shan Road, Ma Tau Kok	0	0	0	0

Aircraft Noise

14. **MR ALBERT CHAN** (in Chinese): *President, in reply to my question at the meeting of this Council on 27 May last year, the Government indicated that to reduce the impact of aircraft noise on the districts near the flight paths, the Civil Aviation Department had implemented a series of aircraft noise mitigating measures in accordance with the balanced approach to aircraft noise management promulgated by the International Civil Aviation Organization (ICAO), and the measures included requiring aircraft to avoid overflying populated areas, to adopt the noise abatement departure procedures prescribed by ICAO during take-off and the Continuous Descent Approach for landing, etc., in the small hours as far as possible. Yet, I have learnt that aircraft noise during the period between 11 pm to 7 am the next day still often causes nuisance to the residents of quite a number of housing estates to date, making it difficult for them to fall asleep. In recent months, I have even received complaints from quite a number of members of the public pointing out that quite a number of aircraft still overfly Ma Wan at an altitude of less than 5 000 feet after take-off, in contravention of the authorities' undertaking made years ago that all departing aircraft will overfly Ma Wan at an altitude of not less than 7 000 feet. In addition, some aircraft overfly the urban areas at an altitude of less than 7 500 feet, resulting in residents in the urban areas suffering greatly from aircraft noise nuisance. In this connection, will the Government inform this Council:*

- (1) *of the respective numbers of departing aircraft overflying Ma Wan last year at altitudes of (i) less than 5 000 feet, (ii) 5 000 to 7 000 feet, and (iii) more than 7 000 feet (set out in a table);*
- (2) *of the monthly data recorded between May 2015 and May 2016 by the various aircraft noise monitoring terminals on aircraft noise levels which reached 70 to 74, 75 to 79, and 80 decibels (dB) or above during the aforesaid period;*
- (3) *among last year's departing aircraft, of the types of those aircraft with noise levels reaching 80 dB or above, and the names of the airline companies to which such aircraft belonged; and*
- (4) *whether it will further enhance the existing aircraft noise mitigating measures to reduce the nuisance caused to residents in the districts concerned; if it will, of the details?*

SECRETARY FOR TRANSPORT AND HOUSING (in Chinese): President, in accordance with international standards and recommendations, the design of flight paths takes into account factors including terrain environment and required obstacle clearances. To ensure aviation safety, departing aircraft are required to comply with the minimum climb gradient requirements specified in the departure procedures published in the Hong Kong Aeronautical Information Publication (HKAIP). The departure procedures published in the HKAIP are designed in accordance with the safety requirements of the International Civil Aviation Organization (ICAO). According to the relevant requirements, departing aircraft are required to fly at an altitude of not less than 1 800 ft in the vicinity of Ma Wan. The actual climb gradient of departing aircraft is dependent on various factors such as the payload and performance characteristics of individual aircraft and weather conditions, and so on. Generally speaking, apart from the requirements set out in the HKAIP as far as minimum climb gradient is concerned, the Civil Aviation Department (CAD) would not specify additional requirement for departing aircraft.

Our reply to the various parts of Mr Albert CHAN's question is as follows:

- (1) The number and altitude of aircraft flying overhead of Ma Wan between 11 pm and 7 am the following day when departing to the northeast of the Hong Kong International Airport (HKIA) in 2015 are set out at Annex 1.
- (2) The CAD has 16 noise monitoring terminals (NMT). The aircraft noise events recorded between 11 pm and 7 am the following day by these terminals from April 2015 to March 2016 by month are set out at Annex 2. The data for April and May 2016 are pending verification and thus not available yet.

The noise data recorded at the Ma Wan NMT between 2011 and 2015 show that the number of noise events of 70 decibels (dB) or above at night has decreased. Those of 80 dB or above have also been decreasing during the night period since 2011, representing a reduction of 75% in 2015 compared with 2011. This shows the effectiveness of the aircraft noise mitigating measures adopted by the CAD, the details of which are elaborated in part (4) below.

- (3) In 2015, among departing aircraft, aircraft with noise events of 80 dB or above recorded between 11 pm and 7 am the following day, and the operating airlines and aircraft types concerned are set out at Annex 3.
- (4) The CAD has implemented a series of aircraft noise mitigating measures in accordance with the balanced approach to aircraft noise management promulgated by the ICAO. These measures include requiring aircraft to avoid overflying populated areas, to adopt the noise abatement departure procedures prescribed by the ICAO during take-off and the quieter Continuous Descent Approach for landing, and so on, in the small hours as far as possible. The CAD has also implemented a new set of flight procedures since 2012 to allow aircraft equipped with satellite-based navigation technology to adhere closely to the nominal centre line of the flight track when departing to the northeast of the HKIA and making south turn to the West Lamma Channel, thereby keeping the aircraft at a distance away from the areas in the vicinity of the flight paths, and reducing the impact of aircraft noise on these areas.

Apart from implementing the aircraft noise abatement operational procedures mentioned above, the CAD has prohibited aircraft not meeting the relevant aircraft noise standards from landing and taking off in Hong Kong. Since 2002, aircraft not complying with the noise standards in Chapter 3 of Volume I, Part II of Annex 16 to the Convention on International Civil Aviation (Chapter 3 noise standards) are not allowed to operate in Hong Kong. To strengthen this aircraft noise mitigating measure, starting from 2014, the CAD has imposed further restrictions on aircraft which are marginally compliant with the Chapter 3 noise standards⁽¹⁾ to land and take off in Hong Kong. The CAD will review this arrangement from time

(1) Volume I, Part II of Annex 16 to the Convention on International Civil Aviation sets out the aircraft noise standards formulated by the ICAO at different times. The aircraft noise standards of Chapter 3, which were formulated at a later stage than those of Chapter 2, were more stringent. Generally speaking, the noise levels of Chapter 3-compliant aircraft were lower than those of Chapter 2-compliant aircraft. Aircraft marginally complying with Chapter 3 noise standards refer to an aircraft which is in compliance with Chapter 3 noise standards, but its noise level is relatively close to the upper limit prescribed in Chapter 3.

to time and closely monitor the latest developments of the ICAO, the international aviation industry and the operation of the HKIA in considering the need to step up the relevant requirement.

With the advancement of aviation technology, aircraft engines are quieter than before, and the improved design of airframe has also helped reduce noise significantly. To reduce the impact of aircraft noise on the areas near the flight paths, many airlines are replacing their aircraft with quieter models progressively. The CAD will continue to monitor the progress made by airlines in aircraft fleet replacement and deployment of quieter aircraft for night time operations, as well as the effectiveness of such measures.

On the basis of the 24-hour operation of the HKIA, and by adopting the guidelines relating to aircraft noise charges issued by the ICAO, the Airport Authority Hong Kong is studying in detail the introduction of environmental charges/incentive schemes as a means of encouraging more airlines to use quieter aircraft. Subject to the findings of the study, the aviation industry and the stakeholders will be consulted accordingly.

Annex 1

Number of aircraft flying overhead of Ma Wan
when departing to the northeast of the HKIA in 2015
(between 11 pm and 7 am the following day)

<i>Altitude when flying overhead of Ma Wan</i>	<i>Number of departing aircraft</i>
5 000 ft or below	1 190
5 001 to 7 000 ft	931
7 001 ft or above	47
Total	2 168

NMT	Noise Level (dB)	2015										2016		
		April	May	June	July	August	September	October	November	December	January	February	March	
9. Ma Wan Marine Traffic Control Station, Ting Kau	70-74	139	541	605	444	500	204	11	5	51	27	30	1	
	75-79	2	12	11	15	16	2	0	0	5	1	0	0	
	≥80	0	1	0	0	0	0	0	0	1	0	0	0	
10. Park Island, Ma Wan	70-74	516	513	448	537	451	377	436	425	522	360	477	557	
	75-79	126	120	83	81	62	63	95	89	84	101	90	123	
	≥80	4	10	1	7	3	2	3	3	1	13	5	7	
11. Tai Lam Chung Tsuen	70-74	3	15	18	2	5	5	6	11	9	24	9	13	
	75-79	0	2	0	0	0	0	0	0	0	0	0	0	
	≥80	0	0	0	0	0	0	0	0	0	0	0	0	
12. Yau Kom Tau, Tsuen Wan ^{Note}	70-74	19	196	292	263	225	90	1	0	22	2	7	0	
	75-79	1	8	7	13	5	2	0	0	3	0	0	0	
	≥80	0	0	0	0	0	0	0	0	0	0	0	0	
13. Cheung Hang Estate, Tsing Yi	70-74	46	136	236	171	173	41	6	0	1	3	3	0	
	75-79	3	3	4	7	3	4	0	0	0	0	0	0	
	≥80	0	0	0	0	0	0	0	0	0	0	0	0	
14. MTR Siu Ho Wan Depot, Sunny Bay	70-74	239	139	92	139	127	195	225	243	270	225	237	222	
	75-79	11	7	13	12	7	16	13	9	11	15	6	6	
	≥80	0	0	0	0	0	0	0	1	0	0	0	0	
15. Mount Butler Road, Jardine's Lookout	70-74	0	6	1	0	0	0	9	0	1	0	1	4	
	75-79	0	0	0	0	0	0	2	0	0	0	0	0	
	≥80	0	0	0	0	0	0	0	0	0	0	0	0	
16. Mount Haven, Liu To Road, Tsing Yi	70-74	1	12	20	10	13	6	2	0	0	5	0	0	
	75-79	0	0	1	0	0	0	0	0	0	1	0	0	
	≥80	0	0	0	0	0	0	0	0	0	0	0	0	

Note:

The NMT at Yau Kom Tau, Tsuen Wan has been relocated from Greenview Court to Yau Kom Tau Water Treatment Works with effect from 2 February 2016.

Annex 3

Departure flights with noise events of 80 dB or above recorded in 2015
Aircraft types and operating airlines
(between 11 pm and 7 am the following day)

<i>Airlines</i>	<i>Aircraft Type</i>
Air Hong Kong	Airbus A300-600
	Boeing B747-400
Air Atlanta Icelandic	Boeing B747-400
Air France	Boeing B777-300ER
AirBridge Cargo Airlines	Boeing B747-400
Asiana Airlines	Boeing B777-200
Atlas Air	Boeing B747-400
British Airways	Boeing B777-300ER
Cargolux Airlines International	Boeing B747-400
	Boeing B747-8
Cathay Pacific Airways	Airbus A330-300
	Boeing B747-400
	Boeing B777-300ER
China Airlines	Boeing B747-400
Emirates	Boeing B747-400
	Boeing B777-300ER
Hong Kong Airlines	Airbus A330-200
	Airbus A330-300
Dragonair	Airbus A330-300
Kalitta Air	Boeing B747-400
Korean Air	Boeing B747-400
	Boeing B777-200
	Boeing B777-300ER
Polar Air Cargo	Boeing B747-400
Qatar Airways	Airbus A330-200
Raya Airways	Boeing B727-200
Saudi Arabian Airlines	Boeing B747-400
Singapore Airlines	Boeing B777-300ER
Singapore Airlines Cargo	Boeing B747-400
South African Airways	Airbus A340-300
UPS Parcel Delivery Services	Boeing B747-400
	McDonnell Douglas MD-11

Traffic Distribution for Three Road Harbour Crossings

15. **MR FRANKIE YICK** (in Chinese): *President, the Eastern Harbour Crossing Legislation (Amendment) Bill 2015 passed by this Council on the 19th of last month provides the legal basis for Government's takeover of the Eastern Harbour Crossing (EHC) when EHC's franchise expires on 7 August of this year. EHC's prevailing toll levels will not be affected when the Government takes over it. On the other hand, the Secretary for Transport and Housing has stated on several occasions that upon taking over EHC, the Government will immediately commence a study on the rationalization of the traffic distribution among EHC, Cross Harbour Tunnel (CHT) and Western Harbour Crossing (WHC), collectively referred to as the three road harbour crossings (RHCs). The study will be completed in 2017-2018 and the toll adjustment proposals will be submitted to the Panel on Transport of this Council for discussion. In this connection, will the Government inform this Council:*

- (1) *of the specific plans for and work schedule of the aforesaid study;*
- (2) *whether the Government has formulated any new plans and measures, to be implemented before the implementation of the toll adjustment proposals, to alleviate the traffic congestion problem in Central and its adjacent areas; if it has, of the details; if not, the reasons for that;*
- (3) *given that in respect of daily throughput, CHT is currently running over its design capacity and EHC's capacity is near saturation, while WHC has only reached about half of its design capacity, of the authorities' specific measures to improve the traffic distribution among the three RHCs prior to the implementation of the toll adjustment proposals; and*
- (4) *whether the Government will consider afresh buying back WHC so as to facilitate its integrated adjustment of the traffic distribution of the three RHCs; if it will, of the details; if not, the reasons for that?*

SECRETARY FOR TRANSPORT AND HOUSING (in Chinese): *President, my reply to the various parts of Mr Frankie YICK's question is as follows:*

- (1) As I have stated clearly on various occasions, upon taking over the Eastern Harbour Crossing (EHC) in August this year, the Government will immediately commence a study on the overall strategy and feasible options for the rationalization of traffic distribution among the three road harbour crossings (RHCs). When delivering the speech on resumption of Second Reading debate of the Eastern Harbour Crossing Legislation (Amendment) Bill 2015, I undertook that the Government would complete the study and submit toll adjustment proposals covering the three RHCs to the Legislative Council Panel on Transport for discussion within the 2017-2018 legislative year. In this connection, the Transport Department (TD) has commenced preparatory work for the engagement of a consultant, and will conduct the relevant tendering exercise as soon as practicable.
- (2) The Government has been adopting a multi-pronged approach in tackling road traffic congestion. In March 2014, the Government invited the Transport Advisory Committee (TAC) to conduct a study on the causes of, and solutions to, road traffic congestion in Hong Kong. In end 2014, TAC submitted to the Government a report on its study. The Government accepted the report, and will implement in phases a series of short, medium and long-term measures recommended by TAC (see the Annex for details), having regard to stakeholders' views, feasibility of available options and overseas experiences, and so on.

As regards the traffic congestion situation in Central and its adjacent areas, we believe that the traffic on the existing trunk road connecting the eastern and western parts of Central (that is, Connaught Road Central) will be improved upon the commissioning of the Central-Wan Chai Bypass. Regarding traffic congestion within Central, one of the main causes of the problem is rampant illegal parking, picking up/setting down of passengers, and loading/unloading of goods; and combating such illegal activities is one of the Police's key enforcement priorities for this year. In order to alleviate traffic congestion in Central and its adjacent areas in the long run, we commenced a three-month public engagement exercise

on the Electronic Road Pricing Pilot Scheme in Central and its adjacent areas at the end of last year. We will appoint a consultant to conduct an in-depth feasibility study and formulate detailed options for public discussion.

To maintain smooth traffic, the TD has been putting in place feasible traffic management measures for Central and its adjacent areas having regard to specific local circumstances. Examples of such measures include designating restricted zones to prohibit kerbside activities (picking up/setting-down, and loading/unloading) of all or specific vehicles at peak hours; imposing yellow boxes at busy road junctions to avoid blockages which cause traffic congestion; and modifying traffic signals at signalized junctions to maximize vehicular flow thereat and minimize traffic delays. The TD will continue to keep in view the traffic conditions, review the effectiveness of the traffic management measures concerned, and implement suitable traffic management measures to alleviate traffic congestion where appropriate.

- (3) Of the three RHCs, the daily traffic volume of the Cross-Harbour Tunnel has already exceeded its design capacity by nearly 50%, while that of EHC is also close to saturation. The traffic flow of the Western Harbour Crossing (WHC) is, though currently running below its design capacity, constrained by the traffic conditions at its connecting roads. As such, in formulating proposals for rationalizing traffic distribution among the three RHCs, the Government must take into account the toll levels of all three RHCs (including different options of toll adjustment) in a holistic manner, in order to develop strategies which rationalize traffic distribution effectively.

The TD has been closely monitoring the traffic conditions at the RHCs and their adjacent areas. Various appropriate measures have been put in place, including the Journey Time Indication System which provides the estimated journey time for different cross harbour routes so that motorists could make informed route choices with reference to the most updated traffic conditions.

- (4) The Government's ownership of WHC is not the prerequisite for the implementation of a toll adjustment scheme to rationalize traffic distribution among the three RHCs. There are other possible ways for the Government to achieve the rationalization of cross-harbour traffic distribution, for example, to consider effecting toll adjustment of WHC through reimbursement arrangements when necessary. WHC will be vested in the Government in 2023, and the Government currently does not have any plan to buy back the WHC.

Annex

The 12 Measures Proposed by the TAC in December 2014

<i>Measures</i>	<i>Proposed Time Frame</i>
I. Short, Medium-term measures	
<i>Managing the Private Car (PC) Fleet Size</i>	
1. Raise PC's First Registration Tax and Annual Licence Fee	Short-term
2. Tighten up standards for environment-friendly petrol PCs	Short-term
3. Raise "fuel levy" for diesel PCs	Short-term
<i>Efficient Use of Limited Road Space</i>	
4. Start planning for a congestion charging pilot scheme	Medium-term
5. Increase meter parking charges	Short-term
<i>Stringent Penalty and Enforcement of Traffic Offences</i>	
6. Enhance publicity and education	Short-term
7. Restore deterrent effect of fixed penalty for congestion-related offences	Short-term
8. Strengthen enforcement action	Short-term
9. Make more use of information technology in enforcement	Medium to long-term
II. Long-term measures	
10. Review parking policy and disseminate real-time information on parking vacancies	Long-term
11. Encourage on-street loading and unloading outside peak hours	Long-term
12. Provide more park-and-ride facilities	Long-term

Provision of Spaces to Facilitate Shop Operators to Do Businesses

16. **MR STEVEN HO** (in Chinese): *President, currently, law enforcement officers may institute prosecutions, by way of summons under section 4A of the Summary Offences Ordinance (Cap. 228), against those persons who cause obstruction of public places (street obstruction). When the relevant amendments to the Fixed Penalty (Public Cleanliness Offences) (Amendment) Ordinance 2016 (Ord. No. 4 of 2016) come into operation on 24 September this year, law enforcement officers may also issue fixed penalty notices to the aforesaid offenders. Some members of the public are concerned that if the authorities take law enforcement actions vigorously, quite a number of shop operators may have difficulties in doing businesses and even close down their businesses, which may result in the districts concerned losing their distinctiveness. Hence, they consider that the Government should improve the planning of such districts, and strike a balance between addressing the problem of street obstruction caused by shop operators and maintaining spaces for operators of small shops to do businesses. In this connection, will the Government inform this Council:*

- (1) *whether it will consider consulting various stakeholders, as soon as possible and before the commencement of the aforesaid legislative amendments, on the following proposals: on specified days (e.g. Valentine's Day and Lunar Year End) and on the premise of not causing danger to road users, to grant discretionary permission for operators of flower retail shops at the flower market in Mong Kok (Flower Market) to use their shop-front areas for placing flowers, and to prohibit access of vehicles to that area for temporary designation of that area as pedestrian precinct and flower distribution area, so as to maintain and enhance the distinctiveness of that area; if it will, of the details; if not, the reasons for that;*
- (2) *as the Government indicated in March this year that the law enforcement departments concerned had embarked on formulating law enforcement guidelines in respect of the implementation of the aforesaid legislative amendments with a view to avoiding unnecessary confrontations between law enforcement officers and shop operators, and that it would carry out publicity work on such amendments before they came into operation, of the relevant details and work progress;*

- (3) *as flowers grown locally accounted for about 27% of the fresh flowers consumed in the territory in 2015, whether the Government will consider setting up a wholesale market for local flowers near the Flower Market or in other locations, so as to provide sufficient spaces for conducting flowers wholesaling activities and creating new and unique tourist attractions; if it will, of the details; if not, the reasons for that;*
- (4) *whether the authorities will consider allocating idle spaces (e.g. those underneath flyovers or at street corners) with good pedestrian flows to operators of small and unique businesses (such as cobblers, watch repairers, knife sharpening service providers and locksmiths) who cannot afford high rents to enable them to set up shops; if the authorities will, of the details; if not, the reasons for that; and*
- (5) *as the shop operators from the Flower Market and other similar areas have relayed to me that business spaces of their shops had shrunk as a result of street widening works carried out by the authorities in such areas years ago, and they are forced to place flowers and goods in their shop fronts, thus causing street obstruction, whether the authorities will conduct replanning for such areas in order to strike a balance between the needs of shop operators and road users?*

SECRETARY FOR HOME AFFAIRS (in Chinese): President, with a view to enhancing measures to tackle shop front extensions (SFEs), the Government conducted a four-month public consultation exercise in 2014 to solicit public views. Among the total of about 1 100 submissions received, most of the respondents supported that a fixed penalty system should be introduced as an additional enforcement tool against SFEs. Subsequently, the Fixed Penalty (Public Cleanliness Offences) (Amendment) Ordinance 2016 (the Ordinance) was gazetted on 24 March 2016. To allow time for the industry and other stakeholders to make necessary preparations, the Government has stated in the Ordinance that the fixed penalty system will come into operation on the expiry of six months beginning on the day on which it is published in the Gazette, that is, from 24 September 2016. My answers to the respective parts of the question are as follows:

(1) and (3)

In general, cases where business activities are conducted beyond the confines of shops that constitute a distinct characteristic and contribute to the vibrancy of the district without causing any danger to pedestrians and other road users may be designated as a "tolerated area", subject to the due consideration of relevant government departments, District Councils (DCs) and/or District Management Committees, and on the condition that the shop operators can exercise self-discipline by adhering to a level of extension agreed.

As regards the case of Mong Kok Flower Market (Flower Market), being a major flower wholesale and retail distribution centre, a sightseeing location and a prime leisure spot in Hong Kong, it has already become one of the current "tolerated areas". Over the years, the Government has continued to liaise with the shop owners of the Flower Market and their trade associations, with a view to facilitating business while minimizing nuisance caused to nearby residents. In this regard, the Government is grateful for the co-operation of the shop operators, and look forward to their continued self-discipline according to the tolerated area arrangements, so as to maintain the uniqueness of the Flower Market and a better road access.

In addition, the Government has also been promoting street markets to tourists, including the Flower Market, through the Hong Kong Tourism Board's (HKTB) website, mobile applications, visitors' guidebooks, visitor information centres and hotline. If in future there is any flower wholesale market which can be developed into a tourist hotspot, the HKTB will work with trade partners and related organizations to include those markets in its promotion.

- (2) To prepare for the implementation of the fixed penalty system, the Food and Environmental Hygiene Department (FEHD) has prepared enforcement guidelines and commenced training for front-line staff to assist them in determining on the spot the most appropriate legal tools (including Fixed Penalty Notice) to be used, taking into consideration the actual ground situation. The FEHD will collaborate with the Home Affairs Department (HAD) in launching public education and publicity at the district level like distributing leaflets/pamphlets, and so on.

The Police is currently working on preparing the enforcement guideline as well. Briefing sessions will be conducted to the front-line officers to ensure their understanding of the new fixed penalty system when providing the necessary support to other departments in pre-planned inter-departmental operations.

To allow time for the industry and other stakeholders to make necessary preparations, and to publicize the new fixed penalty system, the Government is carrying out relevant publicity and public education work during the period between the gazettal of the Ordinance and the commencement of the fixed penalty system. In particular, the HAD has launched a new round of publicity campaign with the use of Announcements in the Public Interest and posters. District Offices will, in collaboration with DCs, carry out public education and publicity at the district level, including distributing leaflets, pamphlets and/or advisory letters, and so on.

- (4) The FEHD is following up on the issue of licences to surveyed unlicensed street tradesmen with characteristics reminiscent of our local culture and heritage. Examples include cobblers, watch repairers, locksmiths, knife sharpeners, Chinese facial cosmeticians, letter writers, and so on. After obtaining DCs' support and clearance of other government departments, licensing in-situ or at another suitable site as fixed pitches will be considered, and the surveyed tradesmen may apply for Fixed Pitch (Tradesman) Hawker licences, so that if issued with the licence, they can continue to conduct business at suitable sites legally. The FEHD will submit cases to relevant DCs for their views shortly.
- (5) The Hong Kong Planning Standards and Guidelines (HKPSG) stipulates general guidelines for determining the scale, location and site requirements of various land uses, community facilities and infrastructures according to the population and other factors. The compilation of HKPSG is co-ordinated by the Planning Department, where relevant bureaux and departments will formulate and review planning standards under their purview in a timely manner, in accordance with their policies on relevant services and the development needs.

Bounty Award and Pay Rates for Auxiliary Police Officers

17. **MRS REGINA IP** (in Chinese): *President, some members of the Hong Kong Auxiliary Police Force (auxiliary police officers) have relayed to me that they are required to receive Statutory Efficiency Training each year, and those who have completed such training will be eligible for a bounty award. However, these auxiliary police officers consider that as the amount of the bounty award, which has remained unchanged for more than 20 years, is too small, coupled with the incessant increase of volume and hazard of work in recent years, the current amount of bounty award is not conducive to encouraging their active participation in the work of auxiliary police force. In this connection, will the Government inform this Council:*

- (1) of the existing size of the staff establishment of the Hong Kong Auxiliary Police Force, and its percentage in the size of the overall staff establishment of the Police Force (i.e. auxiliary and regular police officers);*
- (2) of the minimum and maximum working hours, pay rates and overtime allowances (if any) of auxiliary police officers at present, set out on a monthly average basis;*
- (3) of the initial purpose and background of providing the aforesaid bounty award; the current amount of the bounty award; and*
- (4) as some auxiliary police officers have indicated that their work has become increasingly complicated and dangerous in recent years, whether the authorities will consider adjusting, on a regular basis, the pay rates of auxiliary police officers and the amount of the aforesaid bounty award so as to reasonably reflect the contribution of auxiliary police officers; if they will, of the specific details; if not, the reasons for that?*

SECRETARY FOR SECURITY (in Chinese): President, my consolidated reply to Mrs Regina IP's question is as follows:

As at 30 April 2016, the establishment of the Hong Kong Auxiliary Police Force stood at 4 500, representing 13% of the Police's overall establishment (that is, including both the regular and auxiliary forces). There is no ceiling on the

number of monthly working hours for auxiliary police officers, and their salaries are calculated on the basis of their respective ranks and the number of working hours in the month. There is no overtime allowance.

Under section 15 of the Auxiliary Forces Pay and Allowances Ordinance (Cap. 254), an auxiliary member with satisfactory service shall be eligible to be paid, in addition to his appropriate pay, a bounty. As far as the auxiliary police are concerned, any officer who, in each year of service, complies with the requirements as to efficiency under the Hong Kong Auxiliary Police Force Regulations (Cap. 233A) (the present requirement being the completion of 208 hours of related training in each year) shall be paid an annual bounty, the prevailing level of which is \$900. The Government shall review the amount of such bounty in a timely manner.

Development of Tourist Night Markets in Hong Kong

18. **MR CHAN KIN-POR** (in Chinese): *President, it has been reported that according to the findings of a recent survey, nearly 90% of the practitioners in the tourism industry were "worried" or "very worried" about the prospect of the tourism industry in Hong Kong. There are views that in addition to increasing the percentage of overnight visitors in the total number of tourists, the development of tourist night markets may also help to promote local gourmet culture, thereby creating low-skilled employment opportunities and boosting the economic development. In this connection, will the Government inform this Council:*

- (1) *given that the Secretary for Food and Health said in March last year that he was studying with the 18 district councils (DCs) the setting up of night markets, of the latest details of the discussions (including the views put forward by various DCs), the progress of the study and the completion date; of the time required for conducting the relevant consultation exercise and the implementation timetable of the entire programme, as estimated by the authorities; whether the authorities have conducted surveys to find out the potential demand of members of the public in Hong Kong and overseas tourists for tourist night markets and their views in this respect;*

- (2) *of a breakdown by DC district of the number of prosecutions instituted by the authorities last year against unlicensed hawkers selling cooked food; whether it has studied the impact caused by unlicensed hawkers selling cooked food on the environmental hygiene of the areas and streets with a higher concentration of such unlicensed hawkers; of the hygienic requirements the authorities have planned to impose on night markets, and whether they will formulate the hygienic criteria specifically for the food sold at night markets; if they will, of the details; if not, the reasons for that; and*
- (3) *given that during the celebrations of the birthdays of Zhen Jun and Tin Hau in recent years, Tsing Yi Bamboo Theatre would be set up in Tsing Yi, and that it is learnt that the night market inside the Theatre consisting of a few dozen traditional food stalls was very popular among members of the public and tourists alike, whether the authorities will make reference to the successful example of Tsing Yi Bamboo Theatre and study the economic boosters and growth that tourist night markets may bring to the local catering industry, tourism industry or hotel industry, etc.; whether the authorities will apply the experience of Tsing Yi Bamboo Theatre to the development of Lunar New Year night markets or other tourist night markets in various districts; if they will, of the details; if not, the reasons for that?*

SECRETARY FOR FOOD AND HEALTH (in Chinese): President, the Government keeps an open mind towards proposals for the establishment of open-air bazaars (including night markets) with local characteristics, and considers the district-led approach desirable. The Government will render assistance to development proposals as long as they will not jeopardize food safety and environmental hygiene or obstruct public access, and provided that suitable sites can be located by the organizations concerned and that support from local communities and respective district councils (DCs) is obtained.

- (1) In March 2015, the Food and Health Bureau presented proposals to the Subcommittee on Hawker Policy of the Legislative Council. One of them covered the setting up of district-led bazaars. In the same month, the Food and Health Bureau briefed the Chairmen of the 18 DCs. On that as well as various subsequent occasions, we

articulated the Government's stance and the positioning of our hawker policy, as well as invited interested parties to identify suitable sites in districts to set up bazaars.

An individual organization organized a bazaar on a trial basis in Kiu Kiang Street in Sham Shui Po on Sundays of August 2015. Besides, a kaifong organization organized a bazaar with stalls selling cooked food at Maple Street Playground in Sham Shui Po during the Lunar New Year period of 2016.

In November 2015, the Government received proposals related to bazaars from a number of organizations. The Food and Health Bureau wrote to the DC Chairmen concerned, seeking their assistance in putting the proposals before the DCs for discussion and follow-up. With the support of Sham Shui Po DC, an organization submitted an application for the requisite Temporary Places of Public Entertainment Licence (TPPE) for organizing a bazaar in Kiu Kiang Street in Sham Shui Po from June to October 2016. The concerned government departments did not raise any objection to the application. The Food and Environmental Hygiene Department (FEHD) issued the "Letter of requirements" to the applicant on 7 June. As and when compliance with all licensing requirements is confirmed, the FEHD will issue the requisite licence. Separately, the Island DC has formed a Working Group on Promotion of Bazaar Development (the "WG"). The WG held its first meeting in April 2016 to follow up the bazaar proposals. The Food and Health Bureau will keep in touch with the DCs concerned to take forward the proposals.

The Government has been showcasing local culture and delicacies to tourists through the Hong Kong Tourism Board's (HKTB) website, mobile applications, visitors' guidebooks, visitor information centres and hotline. Open-air markets form one of the main themes of HKTB's promotion efforts, such as the Ladies Market in Mong Kok and the Temple Street Night Market in Yau Ma Tei.

If and when any night market has seen its way to development into a tourist hotspot, the HKTB stands ready to consider including it as

one of those highlighted attractions for promotion to tourists. Currently, the HKTB has not commissioned any survey to examine the potential demand for and tourists' feedback on night markets.

- (2) Unlicensed cooked food hawkers usually gather and operate at prime locations to conduct their hawking activities, thus causing environmental hygiene, noise nuisance, food safety problems and obstruction to public passageways. To achieve deterrent effect, the FEHD carries out stringent enforcement action against such unlicensed cooked food hawkers causing risks to public health by arresting them and seizing their hawking equipment. The Annex gives the number of prosecutions instigated against unlicensed cooked food hawkers (broken down by DC boundaries) in 2015. The FEHD has not conducted case studies on the environmental hygiene impact caused by unlicensed cooked food hawkers at specific areas.

Under the Food Business Regulation (Cap. 132X), the operation of a food business requires the relevant food licence from the FEHD. For food business which involves the operation of a stall/kiosk of temporary nature for heating up and sale of pre-cooked food for human consumption in conjunction with a public function of short duration, a temporary food factory licence (TFFL) should be obtained from the FEHD. Under a TFFL licence, the pre-cooked food sold must be obtained from lawful sources. Only warming of food by electricity is allowed. The FEHD's current regulatory regime over the sale of food by licensed food premises is premised on the principle that no food safety and environmental hygiene would be compromised. The FEHD would consider each application for food business licence on its own merit.

- (3) To celebrate the Tsing Yi Chun Kwan Festival and Tsing Yi Tin Hau Festival, organizations concerned have been organizing functions at the Tsing Yi Athletic Association Sportsground for several days in April and May respectively in recent years. Apart from Chinese opera performance, there are cooked food stalls selling various kinds of pre-cooked food obtained from lawful sources. The organizers would obtain the requisite TPPE and TFFL from the FEHD.

As above-mentioned, the Government keeps an open mind towards proposals for the establishment of open-air bazaars with local characteristics, and considers the district-led approach desirable and should stand a higher chance of successful operation. The Government will render assistance to development proposals as long as they will not jeopardize food safety and environmental hygiene or obstruct public access, and provided that suitable sites can be located by the organizations concerned and that support from local communities and respective DCs is obtained.

Annex

Number of Prosecutions Instigated against Unlicensed Cooked Food Hawkers by the FEHD in 2015

<i>District</i>	<i>Number of Prosecutions</i>
Central and Western	21
Wan Chai	0
Eastern	9
Southern	6
Islands	45
Yau Tsim Mong	14
Sham Shui Po	3
Kowloon City	3
Wong Tai Sin	0
Kwun Tong	12
Kwai Tsing	6
Tsuen Wan	0
Tuen Mun	0
Yuen Long	78
North	48
Tai Po	0
Sha Tin	9
Sai Kung	0
Total	254

Regulation of Private Residential Care Homes for Elderly

19. **MR LEUNG CHE-CHEUNG** (in Chinese): *President, it was uncovered last year that the staff of a private residential care home for the elderly (RCHE) frequently gathered female residents who lacked self-care skills on an outdoor podium and took off all their clothes for bathing them one by one. Subsequently, the RCHE failed to have its licence renewed by the Social Welfare Department. It has been reported that a new operator intends to operate an RCHE afresh at the premises concerned in July this year but the old and new operators are alleged to have a close relationship. Some members of the public have relayed to me that the predecessor of the RCHE had a record of non-compliance, so the authorities should strengthen their inspection and monitoring of the RCHE, in order to safeguard the rights and interests of the residents and ensure that they are taken care of properly. In this connection, will the Government inform this Council:*

- (1) whether the authorities, in vetting and approving applications for RCHE licences at present, will consider the past performance in operating RCHEs and non-compliance records of the operators and related persons;*
- (2) regarding those RCHEs whose licences were not renewed on the ground of non-compliance, how the authorities ensure that non-compliance will not recur in such RCHEs upon takeover by new operators;*
- (3) of the number of non-compliant cases uncovered by the staff of the Licensing Office of Residential Care Homes for the Elderly during their inspections of RCHEs in each of the past three years and the follow-up actions taken; and*
- (4) whether the authorities have plans to formulate measures which are more effective so as to strengthen the monitoring of the service quality of RCHEs; if they do, of the details of such measures and the implementation timetable?*

SECRETARY FOR LABOUR AND WELFARE (in Chinese): *President, my reply to the question raised by Mr LEUNG Che-cheung is as follows:*

(1) and (2)

Under the current mechanism, before the Licensing Office of Residential Care Homes for the Elderly (LORCHE) of the Social Welfare Department (SWD) issues a licence in respect of a residential care home for the elderly (RCHE), it will consider a series of factors, including the past performance in operating RCHEs and records of non-compliance with licensing requirements of the operators and related persons. Its four professional inspectorate teams will also conduct surprise inspections at the RCHE concerned to ensure the home's compliance with the licensing requirements on building safety, fire safety, healthcare and hygiene, as well as management respectively. To strengthen monitoring, the validity period of new licences issued to private RCHEs will not be longer than 12 months. If the licence of an RCHE is not renewed on grounds of non-compliance with the required licensing requirements, the RCHE concerned must cease operation and arrange proper relocation for the residents. If a new operator applies for operating a new RCHE at the same premises, LORCHE will process the licence application of the new operator in accordance with the above mechanism.

If a RCHE holds a valid licence for operation and only a change of operators is involved, LORCHE, when processing the application for change of operators, will consider various factors mentioned in the above vetting process as well as the past performance and records of non-compliance of that RCHE. If the RCHE has non-compliance records in the last licence period, LORCHE, in accordance with the risk-based principle, will strengthen inspections of the home so as to protect the welfare of the elderly residents.

(3) Over the past three years (that is, 2013-2014, 2014-2015 and 2015-2016), LORCHE conducted 5 254, 5 445 and 5 260 inspections respectively. LORCHE conducts on average about seven surprise inspections at each private RCHE per year, and adjusts the frequency of inspections in accordance with the risk-based principle to enhance the monitoring of non-compliant RCHEs and ensure timely rectification of irregularities. Over the past three years, LORCHE issued 3 204, 3 028 and 2 674 advisory letters to RCHEs

respectively, and issued 364, 320 and 361 warning letters respectively. In addition, over the past three years, LORCHE took 15 successful prosecutions against RCHEs committing offences under the Residential Care Homes (Elderly Persons) Ordinance and its subsidiary legislation.

- (4) The Chief Executive announced, in the 2016 Policy Address, that the Government would comprehensively strengthen the monitoring of RCHEs and residential care homes for persons with disabilities. This would be achieved through measures including enhancing inspection and supervision, improving the regulatory mechanism and promoting staff training, and so on. In order to take forward the initiatives, the SWD will establish a new Licensing and Regulation Branch in 2016-2017 to implement the work on enhancing monitoring of homes and improving their service quality. Concrete measures including strengthening the inspection strategy and stepping up audit inspections; setting up a dedicated team to handle complaints against RCHEs; reviewing the Code of Practice for RCHEs and formulating care-related guidelines; enhancing training and planning for a quality improvement project; as well as developing a dedicated website on long-term care services for the elderly to offer one-stop service information of over 700 RCHEs in the whole territory for better transparency. The new website is expected to be launched by end 2016. In addition, the SWD will extend in 2016-2017 the Service Quality Group Scheme on RCHEs to the whole territory with all types of RCHEs covered, joining force with the collaborative efforts of the community to monitor RCHEs through wider participation of community stakeholders in the scheme.

Regulation of Electronic Cigarettes

20. **DR PRISCILLA LEUNG** (in Chinese): *President, in 2014, the World Health Organization issued a report proposing to bring electronic cigarettes (ECs) under regulation. Since then, a number of countries have enacted legislation to regulate ECs. Earlier on, the media captured photographs of a girl smoking a fruit-flavoured EC in a public place, causing some members of the community to worry about the increasing popularity of smoking ECs among*

young people and children in Hong Kong. They are of the view that there is an urgent need to regulate the manufacture, import, sale, distribution and publicity of ECs (including ECs not containing nicotine). In this connection, will the Government inform this Council:

- (1) as the Food and Health Bureau (FHB) submitted a paper to the Panel on Health Services of this Council in as early as May last year indicating that the Government would study the enactment of legislation to regulate ECs, and the officials from the Bureau have reiterated such intention to the media in recent months, and quite a number of members of the community have also requested for expeditious enactment of legislation, of the timetable and details of such legislative work, and whether the authorities will undertake to introduce the relevant bill to this Council within this year;*
- (2) given that quite a number of ECs and e-cigarette liquid are currently sold on the Internet, how the Government has planned to regulate the online sale of ECs;*
- (3) whether it has studied how overseas legislation and relevant initiatives regulate EC products not containing nicotine; if it has, of the details, as well as the provisions and initiatives which are of reference value to Hong Kong; and*
- (4) as it was discovered in a survey commissioned by FHB and conducted by the University of Hong Kong in the past two years that 2.6% of primary school students and 9% of secondary school students indicated that they had smoked ECs before, whether the authorities have launched publicity exercises targeting both secondary and primary school students on the perils of smoking ECs; if they have, of the details; if not, the reasons for that?*

SECRETARY FOR FOOD AND HEALTH (in Chinese): President, my reply to the questions raised by Dr Priscilla LEUNG is as follows:

- (1) According to the Pharmacy and Poisons Ordinance (Cap. 138), e-cigarettes containing nicotine are considered pharmaceutical products. They have to comply with the relevant requirements on

safety, quality and efficacy, and must be registered with the Pharmacy and Poisons Board before they can be put up for sale or distribution in Hong Kong. Under the same ordinance, nicotine is categorized as Part 1 poison which can only be legally possessed or sold by licensed medicine dealers, including "licensed wholesale dealers" and "authorized sellers of poisons". Illegal possession or sale of Part 1 poisons or unregistered pharmaceutical products is an offence. Any person convicted of the offence is liable to a maximum fine of \$100,000 and imprisonment up to two years.

In addition, under section 3 of the Smoking (Public Health) Ordinance (Cap. 371), no person is allowed to smoke or carry a lighted cigarette, cigar or pipe in a no-smoking area, and "smoke" is defined as "inhaling and expelling the smoke of tobacco or other substance." As such, smoking of e-cigarettes or similar products in a statutory no-smoking area is an offence.

We are discussing the legislative arrangements with relevant departments. It is expected that the amendment bill, which aims to completely prohibit the import, manufacture, sale, distribution and advertising of e-cigarettes, will be introduced for the scrutiny of the Legislative Council in 2016-2017.

- (2) The legislative proposal to regulate e-cigarettes being considered by the Government will apply to all sale activities of e-cigarettes, whether they are conducted physically or online. The Department of Health (DH) has put in place an established mechanism to monitor the drugs supplied on the market (including the Internet). The DH will carry out investigations upon receiving information about suspected illegal possession or sale of unregistered pharmaceutical products or Part 1 poisons, and take joint actions with the Police or make test purchases where necessary. Legal actions will be taken if any irregularities are detected.
- (3) We note that other jurisdictions such as Singapore, the United States, the United Kingdom and a few other countries have planned/adopted measures to either regulate or completely prohibit the import, distribution and sale of e-cigarettes. We will study in details the

regulatory approaches adopted by different jurisdictions and formulate a suitable tobacco control policy in the light of the actual situation in Hong Kong.

- (4) The Tobacco Control Office (TCO) of the DH has, by producing and broadcasting more new TV and radio Announcements in the Public Interest, stepped up publicity to increase public awareness of the potential harm in using e-cigarettes. The TCO has also produced information leaflets and posters, and uploaded the relevant information to its website for reference of the public and healthcare personnel. To discourage the use of e-cigarettes among young people, the TCO has also strengthened education on the potential harm of e-cigarettes. By sending letters, promotional leaflets and posters to all primary and secondary schools in the territory, the TCO has advised schools to remind their students not to use e-cigarettes. In collaboration with various non-governmental organizations, the TCO also promotes smoke-free lifestyle and disseminates the message of abstaining from e-cigarettes in kindergartens as well as primary and secondary schools. The Government will continue its health education work to prevent the general public and students from starting to use e-cigarettes.

Vertical Greening Works

21. **PROF JOSEPH LEE** (in Chinese): *President, on the 20th of last month, the entire greened roof of the Chan Tai Ho Multi-purpose Hall at the City University of Hong Kong collapsed abruptly, and it has been reported that this accident is attributable to the greening works on the roof of the building. Some members of the public have pointed out that, apart from roof greening works, vertical greening works on the external walls of buildings may also pose safety hazards to the public. In this connection, will the Government inform this Council:*

- (1) *whether it knows the current number of buildings in Hong Kong on which vertical greening works have been carried out; and how the authorities regulate such works;*

- (2) *of the measures to ensure the structural safety of buildings on which vertical greening facilities/installations have been retrofitted; whether the authorities inspect on a regular basis the safety of the relevant works and facilities/installations; if they do, of the details; if not, the reasons for that; and*
- (3) *whether the authorities will comprehensively review the current regulatory arrangements for vertical greening facilities/installations; if they will, of the details; if not, the reasons for that?*

SECRETARY FOR DEVELOPMENT (in Chinese): President, greening of buildings can bring many benefits in terms of improving the environment and the ecology, saving energy, as well as enhancing people's quality of living. Vertical greening, being one form of greening of buildings, usually refers to planting of climbing or weeping plants along the edges of buildings, or planting on stacks of modular planters or panels and aims at creating greenery on the vertical surface of associated structures. Vertical greening can enhance a building's energy efficiency by serving as its thermal insulation, mitigate urban heat island effect by moderating temperatures and humidity, as well as filter dust pollutants and reduce noise. In view of all these benefits, the Government has been striving to promote greening of buildings, including vertical greening.

The reply to the three parts of the question is as follows:

- (1) With the paramount objective of ensuring building safety, the Government has in place different levels of regulatory control over the greening of private buildings, including vertical greening. If the greening is of a substantial scale, the relevant owner should then consult authorized building professionals on matters such as loading of the building. The building professionals authorized by the Buildings Department (BD) possess professional expertise. They should advise the owners, where the greening involves building works, on the need for seeking the consent of the BD for the works taking into account their location, scope and scale. For works requiring its prior approval, the Department will assess the works proposed and will only give consent for its commencement upon being satisfied of the safety of the works. As regards statistics, the BD does not have the number of private buildings in Hong Kong on which vertical greening works have been carried out.

(2) and (3)

Owners of private buildings are responsible for the timely inspection and maintenance of their properties, including any of their greening facility, to ensure their safety. They should consult professional advice if in doubt. Relevant departments have formulated guidelines on the pertinent matters to assist the owners in fulfilling their responsibilities. In particular, the Development Bureau has been formulating standards and guidelines on various types of greening since the establishment of its Greening, Landscape, Tree Management Section in 2010. In view of the collapse incident of the greened roof at the City University of Hong Kong last month, the BD has issued a circular to the building industry, setting out and reminding practitioners of the existing provisions under the Buildings Ordinance applicable to roof greening. These provisions equally apply to vertical greening. The circular particularly reminds the relevant professionals and contractors of their duties to inform building owners of the actions to be taken during the design and construction of the greening facilities, the impact of greening on the structure of the subject building, and how to safely operate and properly maintain the relevant facilities after commissioning. To enhance public knowledge of the relevant subject, the BD is drawing up a guide for property owners and the general public on the common greening works of buildings in Hong Kong.

The BD has not carried out inspections of the vertical greening of buildings specifically. In its day-to-day handling of public reports on unauthorized building works and other matters, as well as in conducting large-scale operation, the BD will take appropriate follow-up actions if any greening facilities which are unauthorized building works come to its attention.

Generally speaking, just as other forms of greening, vertical greening of buildings should pose no risk to safety, as long as it was suitably designed and constructed, and there are proper repairs and maintenance. As such, we have no plan at present to comprehensively review the relevant regulatory arrangements.

Ex gratia Payments Made by Protection of Wages on Insolvency Fund

22. **MR KWOK WAI-KEUNG** (in Chinese): *President, section 31G of the Employment Ordinance (Cap. 57) stipulates the formula for calculating severance payments but, pursuant to section 31I, the amount calculated according to the formula has to be reduced by the accrued benefits derived from the employer's contributions made to Mandatory Provident Fund schemes in respect of the employee concerned (offsetting) in order to arrive at the net amount of severance payment due to the employee. On the other hand, the employee may apply for ex gratia payments from the Protection of Wages on Insolvency Fund (PWIF) to cover the outstanding wages, severance payment, etc. that the employer fails to pay. Limit on the amount of an ex gratia payment payable to an employee in relation to severance payment in arrears is calculable by applying the formula set out in section 16(2)(f)(i) of the Protection of Wages on Insolvency Ordinance (Cap. 380). Over the years, the authorities have taken the amount calculated under section 31G as an applicant's "entitlement to severance payment" in section 16(2)(f)(i) and, by applying the formula set out therein, computed the limit of such entitlement, and then made the offsetting to arrive at the amount of ex gratia payment payable to an employee in relation to severance payment in arrears. Last month, the Court of Final Appeal held that the calculation approach adopted by the authorities was wrong and the amount of "entitlement to severance payment" in section 16(2)(f)(i) should be the actual amount of severance payment, and therefore the offsetting should first be made before arriving at a net amount, which will then be put into the formula to calculate the ex gratia payment payable to an employee. In this connection, will the Government inform this Council:*

- (1) *of the number of applications for ex gratia payments received by PWIF and the amounts involved, in each of the past five years;*
- (2) *of the number of people who made applications to PWIF in the past five years in relation to severance payment in arrears but were not granted ex gratia payments after the offsetting was made;*
- (3) *whether it has assessed, among the applications made to PWIF in relation to severance payment in arrears in the past five years, the number of those in which the amounts of ex gratia payments calculated according to the approach set out by the Court of Final*

Appeal in the aforesaid judgment are higher than those calculated under the original approach, and the total amount of the relevant shortfalls; whether the authorities have plans to repay the shortfalls to the applicants concerned; if they do, of the details; and

- (4) *whether the authorities will, in the light of the aforesaid judgment, conduct a comprehensive review of the relevant regulations in the existing Protection of Wages on Insolvency Ordinance; if they will, of the details; if not, the reasons for that?*

SECRETARY FOR LABOUR AND WELFARE (in Chinese): President, my reply to the question raised by Mr KWOK Wai-keung is as follows:

- (1) A breakdown of the applications for ex gratia payment received by the Protection of Wages on Insolvency Fund (PWIF) in the past five years and the amounts applied for are provided below:

	<i>Number of applications</i>	<i>Amount of ex gratia payment applied for (\$ million)</i>
2015	3 486	206.5
2014	2 236	187.3
2013	2 081	132.4
2012	2 976	176.0
2011	3 729	196.0

- (2) Verification of the information and documents in respect of each application for ex gratia payment from PWIF is conducted by the Labour Department (LD) when processing the applications. Depending on individual circumstances of each case, applications for ex gratia payment in respect of severance payment (SP) may be refused for reasons which include ineligibility of an applicant for SP as revealed by the LD's verification (for example, where the applicant has not been employed under a continuous contract for at least two years), or the fact that the applicant's accrued benefits attributable to an employer's contributions being held in a mandatory

provident fund scheme or occupational retirement scheme have exceeded the employee's SP calculated under the Employment Ordinance, or that the employer has paid SP and/or completion-of-contract gratuity or gratuity based on the length of service to the employee, and so on. The LD does not keep statistics on applications for ex gratia payment in respect of SP that have been refused because the accrued benefits attributable to an employer's contributions being held in a mandatory provident fund scheme had exceeded the amount of ex gratia payment in respect of SP computed (based on the approach adopted by the LD before the handing down of judgment by the Court of Final Appeal (CFA)).

- (3) The LD does not keep relevant statistics for assessing the number of applications and additional amounts which would be involved if the approach held by the CFA for calculating ex gratia payment in respect of SP were to be adopted.

The CFA judgment of 17 May 2016 was a ruling on the relief sought by the applicant in his application for judicial review. As regards the implication of CFA's judgment on applications for ex gratia payment in respect of SP that have already been processed, the LD is currently studying with the Department of Justice how these applications are to be handled. The views of the PWIF Board will also be sought.

- (4) The Government respects the judgment of CFA and will follow the Court's approach in determining the amount of ex gratia payment of PWIF in respect of SP.

The CFA has provided the interpretation on the approach in calculating ex gratia payment in respect of SP under the Protection of Wages on Insolvency Ordinance (PWIO). The Government does not consider it necessary to review the relevant provisions under the PWIO regarding the calculation of ex gratia payment in respect of SP.

GOVERNMENT BILLS

DEPUTY PRESIDENT (in Cantonese): Government Bills.

Council went into Committee.

Committee Stage

DEPUTY CHAIRMAN (in Cantonese): Committee stage. Council is now in Committee to continue the consideration of the Interception of Communications and Surveillance (Amendment) Bill 2015.

**INTERCEPTION OF COMMUNICATIONS AND SURVEILLANCE
(AMENDMENT) BILL 2015**

MR JAMES TO (in Cantonese): Deputy Chairman, please do a headcount.

DEPUTY CHAIRMAN (in Cantonese): Will the Clerk please ring the bell to summon Members back to the Chamber.

(While the summoning bell was ringing, some Members returned to the Chamber, but they did not return to their seats)

DEPUTY CHAIRMAN (in Cantonese): Will Members please return to their seats.

(After the summoning bell had been rung, a number of Members returned to the Chamber)

DEPUTY CHAIRMAN (in Cantonese): We now conduct the fifth debate.

Mr WONG Yuk-man has given notice to move his amendments to amend clause 16, as set out in the Appendix to the Script. The amendments seek to clarify the meanings of certain expressions.

Members may now proceed to a joint debate on the relevant parts of the original clause and Mr WONG Yuk-man's amendments.

Mr WONG Yuk-man, you may now move your amendments.

MR WONG YUK-MAN (in Cantonese): Deputy Chairman, I move that clause 16 be amended by my amendments as set out in the Appendix to the Script.

Deputy Chairman, my amendments seek to clarify the meanings of certain expressions, so as to reflect the power relationship between monitoring officers and law-enforcement officers. If my amendments are passed, the power relationship between the two will not be as vague as in the present case but will become clear. For the purpose of clarifying the meanings of the relevant expressions, I propose to add subclauses (2A), (4A), (5A) and (6A) to substitute "cause" (安排) with "order" (下令) in sections 57(1), 57(2)(a), 57(2)(b) and 57(3) of the Interception of Communications and Surveillance Ordinance (the Ordinance). As I said just now, my intention is to clarify the meanings of the relevant expressions so as to reflect the power relationship between monitoring officers and law-enforcement officers, and to increase the necessity of discontinuing an interception or covert surveillance. This is why I propose to amend clause 16 to substitute "cause" with "order" before the expression "the interception or covert surveillance concerned ... to be discontinued" in sections 57(1), 57(2)(a), 57(2)(b) and 57(3) of the Ordinance. This term is clearer.

When judged with common sense, which term is more accurate — "order" or "cause"? How can "cause" be done? What about the line of authority? In the case of section 57(1), for example, the original provision reads, "as soon as reasonably practicable ... cause the interception or covert surveillance concerned ... to be discontinued". In my view, amending this part to "as soon as reasonably practicable ... order the interception or covert surveillance concerned ... to be discontinued" can enhance its clarity.

Besides, section 57 of the Ordinance is mainly about authorizing two types of personnel to carry out two duties. These two types of personnel are officers in charge of regular review and officers in charge of interception or covert surveillance. Under section 57, they may, where necessary, cause an

interception or covert surveillance to be discontinued as soon as reasonably practicable. But section 57 also requires them to cause a report to be provided to the relevant authority as soon as reasonably practicable after discontinuance of the operation.

As the name suggests, "officers in charge of interception or covert surveillance" of these two types of personnel mentioned in this provision refers to those front-line law-enforcement officers. Then, who are the officers in charge of regular review? A clear description can be found in section 56 of the Ordinance: "(1) The head of each department shall make arrangements to keep under regular review the compliance by officers of the department with the relevant requirements. (2) Without prejudice to subsection (1), where the head of any department has made any designation under section 7, he shall make arrangements for officers of a rank higher than those held by the authorizing officers of the department to keep under regular review the performance by the authorizing officers of any function under this Ordinance."

"Officers in charge of regular review" and "officers in charge of interception or covert surveillance" are two different types of personnel. It is necessary to clearly explain the power relationship between them. I have already quoted sections 56(1) and (2) to explain who are in charge of regular review. It can be seen from these provisions that officers in charge of regular review shall be designated by the head of a law-enforcement agency, and these officers are not front-line law-enforcement officers as such. Besides, based on the design of the Ordinance, we can even say that the duties of those officers in charge of regular review in law-enforcement agencies may be more interesting than those of the Commissioner on Interception of Communications and Surveillance (the Commissioner). The reason why I say so is that the Commissioner can only wait passively for law-enforcement agencies to "bestow" materials on him. Of course, the word "bestow" should be put in quotation marks because the Commissioner is independent, and he is even a judge. Why do I say that they can "bestow" materials on this judge? The reason is that they may give him some materials or nothing, depending on their mood. They may give him more or fewer materials, again depending on their mood. They may also withhold certain materials from him, and even lie or mention nothing to him in addition to withholding certain materials, all depending on their mood. Therefore, the Commissioner can only wait passively for law-enforcement agencies to "bestow" materials on him before he can conduct inquiries. Those officers in charge of regular review can take the initiative to conduct inquiries and

discontinue an interception. In that case, won't you agree that in conducting inquiries, they enjoy much convenience and even more power than the Commissioner?

The Secretary and the Government have always stressed that after the establishment of the independent Commissioner, he is duty-bound to monitor other people and deter them from acting in an unruly way. Despite the Government's claim, however, Mr Justice WOO Kwok-hing complained bitterly for years about his meagre power as the Commissioner. After reading between the lines, I think his reports over the past few years were meant to disseminate a key message, the message that "things were past redemption despite his determination to eliminate the bandits". Members can imagine how painful it is to see that "things are past redemption despite his determination to eliminate the bandits"! He was well aware of their unruliness, but he could only express condemnation in his reports and could not do anything about them. What else can I say except "things are past redemption despite his determination to eliminate the bandits"? He as the Commissioner must be very painful. For this reason, I am very sympathetic with Mr Justice WOO. During the several years of his tenure, he had to monitor their work and work diligently. But in the end, he probably felt a mere sense of helplessness, thinking that "things were past redemption despite his determination to eliminate the bandits". Our sight of "689" will likewise conjure up the same agony of "things are past redemption despite our determination to eliminate this bandit". So, I am very sympathetic with Mr Justice WOO.

The arrangement of requiring officers in charge of regular review to be designated by the head of a law-enforcement agency has induced the doubt of "cronies investigating themselves". However, as the objective design of the Ordinance has made it impossible for us to increase the power of the Commissioner, we can only seek to clearly define the power limits of the officers in charge of regular review under the system. Deputy Chairman, there must be limits to one's power. An individual or organization designated to execute a task must be given the power required to do so but the power should be confined to the execution of the task concerned, which are the "power limits". If one exceeds the power limits in executing a task, this is tantamount to power abuse. Why do we always guard against law-enforcement agencies in the same way as guarding against thieves? The reason is that law-enforcement agencies are vested with the power. If a law-enforcement agency exceeds its power limits in executing a task and is not subject to any constraints, it will tend to abuse its

power. Since the officers in charge of regular review must be designated by the head of a law-enforcement agency, and because the Commissioner is not given much power under the system as designed, we can only seek to clearly define the power limits of the officers in charge of regular review under the system as such limits are not defined at present.

If the power limits are vague, and if the power limits of the officers in charge of regular review under the system are not clearly defined, the power relationship between them and those law-enforcement officers in charge of interception or covert surveillance can hardly be highlighted. Officers in charge of regular review must be designated by the head of a law-enforcement agency, and sections 56 and 57 of the Ordinance have clearly provided for their power. When an officer in charge of regular review under the system discovers from his regular review that an interception or covert surveillance should actually be discontinued, he should be empowered to "order" rather than "cause" the law-enforcement officers concerned to discontinue the operation. The reason is that the continuance of an unjustified interception or covert surveillance is a very serious intrusion of human rights.

People are very concerned about the Ordinance mainly because they want to safeguard human rights. We certainly hope that human rights can be safeguarded while law-enforcement agencies can combat crimes smoothly without too many constraints. Secretary, this balance can hardly be achieved. The Secretary for Security definitely wants to avoid any constraints on the power of the Independent Commission Against Corruption, the Customs and Excise Department, the Immigration Department and the Hong Kong Police Force. Many front-line law-enforcement officers often complain bitterly and ask, "Nowadays, everybody stresses human rights and the rule of law. Don't they think that it is necessary to maintain law and order? Are they saying that we should let go of a suspect with our eyes wide open?" Well, we can do nothing about this because in a democratic society where information flow is unobstructed and human rights are of utmost importance, this is unchangeable. The Police should exercise their power passively rather than actively. This is simple truth and common sense. But law-enforcement agencies, including the Government, want to avoid any constraints on their power. Hence they have resorted to every possible means to avoid any constraints on their power and even the minutiae of their work as they want to achieve efficiency. Secretary, it is very easy to achieve efficiency. If the Secretary were a member of KGB in the past, he could be very efficient. But he is not. He is merely a politically

appointed Bureau Director, and his power does not originate from Hong Kong people. But after all, he is under a relatively liberal system and subject to the check and balance of the legislature. Of course, he cannot act in the same way as PUTIN did in the KGB era — his mentality certainly has not changed — because after all, he is in a country practising electoral politics. No, he cannot simply do whatever he wants.

Whenever we talk about human rights, Members will definitely bring up issues such as the abuse of judicial reviews, the misinterpretation of human rights laws, and the indiscriminate citation of the United Nations' human rights conventions. This is inevitable, as Hong Kong is a signatory to such human rights conventions. As this is the case, Hong Kong must abide by such conventions. Since officers in charge of regular review are designated by the head of a law-enforcement agency, and sections 56 and 57 have clearly provided for the scope of their power, they should be empowered to "order" instead of "cause" the relevant law-enforcement officers to discontinue an interception or covert surveillance once it is found in their regular review that the action should actually be discontinued. The reason is that the continuance of an unjustified interception or covert surveillance is a serious intrusion of human rights, and the operation should be discontinued instantly. Why do I think so? What is the difference between "cause" and "order"? "Order" can bring forth instant discontinuance, but "cause" cannot. As we always say, "Let us make some arrangements." We often hear this in Putonghua, "Let us make some arrangements and see how things go. (*Putonghua*)" We cannot let them "see how things go (*Putonghua*)" or consider "making some arrangements (*Putonghua*)". They should instantly discontinue an interception or covert surveillance.

Proposed amendments

Clause 16 (see Annex I)

DEPUTY CHAIRMAN (in Cantonese): Does any Member wish to speak?

MR JAMES TO (in Cantonese): Deputy Chairman, Mr WONG Yuk-man seeks to replace the word "cause" (安排) with "order" (下令) in sections 57(1), 57(2)(a), 57(2)(b) and 57(3) of the Ordinance. Deputy Chairman, when I first

learnt about this amendment, I wondered whether it was purely textual in nature and whether it was necessary to do so. We discussed this with the Administration in the Bills Committee. The more I think about this amendment, the more certain I am about using the word "order", from either a textual, legal or procedural perspective. Perhaps, let me first talk about why it is generally better to use the word "order".

First, we are now talking about discontinuing an operation which should be cancelled. If there is any delay in the discontinuance, there is a higher chance to hold somebody responsible for the delay if the discontinuance is made by an "order". Why do I say so? It is because there will be formal papers to substantiate the order. Even if it is an oral order, there should be some kind of record, such as a time record. Hence, should a dispute arise, the parties concerned can look up what the head of department (the one vested with the authority to discontinue a mission) has done, which has caused the mission to be discontinued.

Supposing the head who gives the order to discontinue an operation is the Assistant Commissioner of Police or a chief superintendent, he would formally tell his subordinate, who may be a superintendent, that this is an order. If he gives an oral order, there will be a time record, or at least a date, say, today which is the 15th of June, and this date will be put on record. However, since the operation in question is a law-enforcement action, especially interception of communications which will infringe on the rights of the person, the law-enforcement officer should also record the time, such as 3.20 pm, though he may not need to record the time to the seconds, such as 26 seconds. He should at least write down the time when the order is given.

If there is any delay in discontinuing the operation, I don't know how many hours or days the delay will be, there will at least be a time record indicating when the head (the superior) gives this order; or he may have formally given this order to a certain superintendent (his subordinate) through his secretary, by email or other channels, and this will also provide a time record. Suppose the superintendent received the order at 3.20 am on the following day but the order was given at 3.20 am that day. If he worried that he would be blamed for the delay, he could reply to his superior or inform his secretary that he received the order at 3.20 am on the following day although it was issued at 3.20 am of the day. He could at least have a time record to tell his superior that he did not receive the order until 3.20 am of the following day. By using the word "order",

they can have a record so that it is possible to find out whether there is a delay in giving the order or in discontinuing the interception. In my opinion, this rigorous procedure should be put in place to protect the rights of the people.

Secondly, using the word "order" makes it possible to find out who is responsible for the delay. Regarding how an order should be given, the Police or the Independent Commission Against Corruption may have query about whether the order should be given to every members of the department. I do not think it is necessary to do so. As the mission is designated to a particular team of officers, the head of department only needs to give the order to the team leader. But of course, we should note that it is their internal procedural matter if the team leader fails to pass the order to his team members. But members of the public, external watchdogs and the Commissioner on Interception of Communications and Surveillance (that is, the judge) can at least trace the liability along the time at which the order is issued, whether the subordinate has complained about his superior for delay in issuing the order, why the issuance of the order has been delayed for so long, and so on.

One more benefit of using the word "order" is the possibility to trace the person who should be held responsible. If the word "cause" is used, then who is actually responsible for causing the operation to be discontinued? If the arrangement which causes the discontinuance has the same effect as an order does, that is, say, I (name of the chief superintendent) cause you (name of the superintendent) to discontinue a certain mission at a certain point of time, if the arrangement is expressly written in such a format, I do not think the Government has any justification to oppose Mr WONG Yuk-man's amendment. If the word "cause", as proposed by the Government, will generate the same effects as those we foresee from using the word "order", and the time and name of the person (the one to whom the order is given) are also expressly written, then the liability should be equally traceable and the person held liable should be equally clear. If this is the case, the Government should not oppose his amendment. I do not quite understand why the Government has to oppose it. Maybe the Government can later justify its opposition.

Besides, the word "order" differs from the word "cause" in that the former is binding. As I have said earlier, discipline is very important in the disciplined services. If the head of a disciplined service discusses something with his subordinate, the subordinate is free to say whatever he likes. But if the head says that this is an order, it represents a lawful order that the subordinate has to

accept, obey and execute. This is a priority discipline that they should follow. It is unquestionable. Hence, when the head says in a discussion that an action should be cancelled, does he mean that he subjectively and wistfully wants the action to be cancelled, or that he is exercising his power to command his subordinate to cancel the action? Such ambiguity can be avoided if the word "order" is used. Given that it is an order, it is binding and the subordinate will not say, "Sir, I misunderstood your meaning. I thought you meant that we might call off the action as nothing was found."

Frankly speaking, when they have a lot of work on hand and are very busy, the head may briefly say to a superintendent when they brush past each other, "Superintendent CHAN, stop the case." What does this mean? I honestly find this very risky. It is because the difference between something binding and non-binding is that the former will cause the subordinate to execute an order without hesitation, and he knows that it is a strict order and he has to execute it.

Fourthly, it is the matter of seriousness. When a head of department orders his subordinate to do something, he is serious about it; he is not joking. The order has its legitimacy and is well-defined in hierarchy. It is something must be done. However, if the head causes his subordinate to do something ... I do not know how you would interpret the word "cause". Perhaps you will always take what your department head causes you to do as an imperial edict. This is also possible. Certainly, if the head of a disciplined service asks you to do something with a serious face, you will take it as an order. But sorry, do not forget who you are dealing with in the present situation. Frankly, the person you are dealing with can also be a factor. Let me cite an example.

Suppose you ask your secretary or personal assistant, who may be a sergeant, to do something ... Perhaps I take the Commissioner of Police as an example because he is often accompanied by a superintendent. Sometimes, this superintendent may have to relay messages from the Commissioner of Police to the Deputy Commissioner of Police. He is not having casual chats with the Deputy Commissioner of Police. But the superintendent, who often follows the Commissioner of Police, may not be able to talk directly to the Deputy Commissioner of Police. He may have to tell the message which his boss wants him to relay to the Deputy's secretary. Then problems may arise. He would have to say to the secretary, "My boss wants your boss to do a certain thing."

Buddies, he may even have to get through a few persons before he can relay the message. There has been a classic joke about the Police Force which is actually quite pathetic. It has been said that the few top "big brothers" in the Police Force are on bad terms of unknown reasons and they would not even look at each other if they run into each other in the passageway. To cut a long story short, the top three officers in the Police Force are at odds with each other, especially the two Deputy Commissioners of Police; but the relationship between the Commissioner of Police and the Deputy Commissioners of Police is actually much the same. Frankly, if the real situation is like this, the superintendent would definitely not want to relay the message. Sometimes, the situation is so tense that one of the Deputy Commissioners of Police will take leave if the other Deputy Commissioner of Police acts up as the Commissioner of Police because he does not want to greet him "Sir".

If the real situation is this bad, it would be a serious problem. I wonder whether their subordinates would be like this. If a senior superintendent, and not the other senior superintendent, acts up as chief superintendent, does he have to talk to him or his secretary? Or do they have to communicate through their secretaries?

An order is much more straightforward. I simply need to sign an order and my secretary will pass the order to your secretary. With this order in hand, your secretary can clearly inform you of the time for a certain task to be done. If you delay in doing that task, it is your delay. And if I delay in passing you the order, your secretary, in order to protect her boss, will immediately inform me by email that I am five hours late in giving her the order. Hence, an order can show the seriousness of the matter. Even if the persons concerned do not meet each other, or the matter concerned is passed to them indirectly or is arranged by other colleagues, they will still know that this is an order.

We have asked the Government on the actual arrangement and whether some documents have to be signed. The reply of the Government seems to indicate that there is kind of a document to sign; otherwise, it would be difficult to make arrangements since they cannot rely on oral orders all the time except in a very urgent matter. If that is the case, it means the actual arrangement will still involve giving orders. Then, I do not understand why the Government has to oppose using the word "order".

If the Government wishes to use the word "cause" to express the meaning of "please", that is, I beseech you to do a certain task, then I do not think that using the word "cause" is better than using the word "order". Just now I have already stated four to five reasons. The fifth reason is that if the word "cause" is adopted, and if this mechanism also involves giving orders to command another person to do a certain task, and it also requires making a record of the time and the intended recipient of the order who will pass this order to his subordinates, then I cannot understand why the Government has to oppose so strongly against the amendment to use the word "order".

We cannot understand the Government's reasons for its opposition. If it thinks that it is better to use "cause" than "order", I would like to hear why it is better to cause, rather than to order, somebody to do something. It is because an order is binding while causing somebody to do something is not. This is the point I do not understand.

Lastly, as the word "order" is not used in other ordinances, the Government may question whether other ordinances have to be immediately amended to reflect the change. Deputy Chairman, it is sometimes better to learn from past events when it comes to amending ordinances. If we truly think that it is better to use the word "order" than the word "cause" in this Bill and this is also applicable to other ordinances, why should the Government be so concerned about amending the wordings in other ordinances? Besides, we are not saying that we have to amend all other ordinances by tomorrow. The question is still about which word is better, which one can show a higher degree of seriousness, which one can better facilitate tracing of responsibility and which one is more binding. These are the questions we need to pursue today on this ordinance.

MR CHAN CHI-CHUEN (in Cantonese): Deputy Chairman, the theme of this debate is to clarify the meanings of certain expressions. The expression to be clarified is "cause" in the Interception of Communications and Surveillance Ordinance (the Ordinance). Mr WONG Yuk-man has proposed amendments to replace "cause" with "order". Mr James TO has also spent a lot of time expounding the rationale behind.

Three possible outcomes may be resulted in our attempt to clarify the meanings of certain expressions. First, the clarity of the meaning remains more or less the same; it is neither improved nor worsened. If that is the case, it is

better not to make changes and it is better to stay put. This is one possibility. If, in our attempt to clarify, we replace "cause" with "order" but the new meaning deviates from the original legislative intent or the intent of the Government's amendment, then the Government can point this out to us clearly and argue with Members that the meaning as amended is not an improvement. But Mr WONG Yuk-man and Mr James TO have expounded on a few scenarios to let us understand that the meaning is actually clearer after the clarification attempt. Nevertheless, the Government may prefer ambiguity to clarity as the former allows more room or flexibility. The Secretary may respond to this point in his reply speech.

The relevant amendments propose to amend sections 57(1), 57(2)(a), 57(2)(b) and 57(3) of the Ordinance. We must go to section 57 of the Ordinance and read it line by line to see if a clarification is really needed, that is to say, whether the outcome will be better or worse than the original, and whether it has deviated from the original intent of the Government. First of all, the heading of section 57 reads: Discontinuance of interception or covert surveillance. The term "discontinuance" involves a time span and refers to an act as abrupt as the thrash of a sword. Certain actions of some verbs imply a sense of present progressive. To me, for instance, "cause" implies a sense of progression, at present or in general. To "cause" something to happen is a process which may last for a relatively longer duration. As for "discontinue", it is as sudden as the thrash of a sword or the arrival of death. Death is the "discontinuance" of life; it is a point in time. Dying is a misnomer, for the onset of death is not death *per se*. And "causing" something to happen implies that the process is not yet complete and has to be continued for a period of time. Waiting is to be expected before we finally reach "discontinuance".

Section 57(1) reads "If the officer by whom any regular review is or has been conducted under section 56(1) or (2) is of the opinion that the ground for discontinuance of a prescribed authorization exists, he shall, as soon as reasonably practicable after forming the opinion, cause the interception or covert surveillance concerned to be discontinued." The amendment now in question proposes to replace "cause" with "order".

To understand this provision, we have to understand firstly who "he" is. Several groups of persons are mentioned throughout the whole ordinance: the Commissioner, the judge, authorizing officers and "the officer by whom any regular review is or has been conducted" as now referred to in section 57(1).

The "he" is "the officer by whom any regular review is or has been conducted". "[H]e shall ... after forming the opinion" — "opinion" notwithstanding, it is not the opinion of a man in the street, nor that of you, me or the Chairman. It is not like this. Under the provision, when he "is of the opinion that the ground for discontinuance of a prescribed authorization exists", that is, after "he" has made such a determination and the ground for this determination is the opinion that he has formed, "he shall, as soon as reasonably practicable after forming the opinion, cause ... to be discontinued." With "as soon as", we know we have to wait for a reasonable period of time. In other words, "as soon as" does not tell you exactly how many minutes, seconds or hours are needed. "[A]s soon as" coupled with "cause" — I have said just now "cause" implies a sense of progression. When asked if something has been done, the response is: "I am causing it to happen." How long does it take to get done? Does this meet the requirements laid down in section 57(1)? We are not satisfied with the clarity of the provision. Section 57 is about discontinuance, and how long does it take when one is causing the operation to be discontinued?

Let us return to "the officer by whom any regular review is or has been conducted". This expression is in fact clearly explained in the law. We shall first take a look at the previous section, section 56: Regular reviews. (1) The head of each department shall make arrangements to keep under regular review the compliance by officers of the department with the relevant requirements. (2) Without prejudice to subsection (1), where the head of any department has made any designation under section 7, he shall make arrangements for officers of a rank higher than those held by the authorizing officers of the department to keep under regular review the performance by the authorizing officers of any function under this Ordinance.

Section 56 is indeed very important. It is highly related to our discussion as well as the last argument brought up by Mr James TO. He said that sometimes when the Government objected to the amendments to certain provisions or expressions, it would say that the amended expressions would be incompatible with the rest of the text in the provision.

We see that in section 56, "shall make arrangements" appears twice. The first appearance is in "[t]he head of each department shall make arrangements to keep under regular review the compliance by officers of the department with the relevant requirements." With regard to this, I hope the Government or the Member who moves this group of amendments can provide an explanation. For

instance, when Mr WONG Yuk-man sees the expression "shall make arrangements" in section 56, does he think that it should be replaced by "shall order"? Why does he not propose the change? I am not sure and I have not attended any meeting held by the Bills Committee. If section 56 does not appear in the blue bill, it means that nobody has proposed any amendment to it. No amendment is proposed on "shall make arrangements" in section 56. Does it mean that though "shall make arrangements" should ideally be replaced with "shall order", we have not initiated the change? Or, does it mean that we consider the use of the expression "shall make arrangements" in section 56 appropriate and hence the expression should not be replaced by "shall order"? I hope that the Government or our fellow colleagues can enlighten me on this point.

In section 56(2), "he" — this "he" refers to the head of department — "he shall make arrangements for officers of a rank higher than those held by the authorizing officers of the department to keep under regular review the performance by the authorizing officers of any function under this Ordinance". "[S]hall make arrangements" is not used in conjunction with "discontinuance" here and hence it is not proposed to be replaced by "shall order", which is a clear-cut expression. "Discontinuance" is a sudden termination comparable to the thrash of a sword, the press of a button, the certification of death or the removal of a life sustaining tube. As "to keep under regular review" follows "shall make arrangements", it becomes "shall make arrangements to keep under regular review". Since "review" is a process that cannot be done in a flash of time, it can be used in conjunction with "shall make arrangements". I hope we are all clear about this.

Let us now look at section 7, which stipulates who "authorizing officers" are: "The head of a department may designate any officer not below a rank equivalent to that of senior superintendent of police to be an authorizing officer for the purposes of this Ordinance." This is also related to the comment made by Mr WONG Yuk-man that power relation is often revealed when the meanings of expressions are clarified. Law-enforcement officers are referred to as "authorizing officers", "overseeing officer" or "the officer by whom any regular review is or has been conducted". We can see the power at work here.

I share Mr James TO's view, which he has stated very well just now. He says that the expression "order" is much clearer. "This is an order" — I now make an order. The time involved here is much shorter than that of "cause". If

it is the Government's intention to keep the expression vague, or to complete the task slowly rather than swiftly, they can use this reason to oppose the use of "order". However, considering the use of the expression "as soon as" and the objective of this provision, I think the immediacy requirement is in fact evident to us.

Next, section 57(2)(a) and section 57(2)(b) are also relevant. The original section 57(2)(a) "as soon as ... practicable ... cause the interception or covert surveillance to be discontinued", section 57(2)(b) "may at any time cause the interception or covert surveillance to be discontinued" and section 57(3) "[w]here any officer has caused any interception or covert surveillance to be discontinued". According to my understanding, the term "cause" implies a longer duration and a larger space. That is to say, if he has caused something to happen, is able to tell us his plan (where to put this and that, for instance) and follows the plan step by step, he has met the requirements of the provision. The "authorizing officers" under section 7 are caused (perhaps willingly) to do something, not ordered to do so, as nobody has made an "order". Given this, do they enjoy more room under the provision to — I would rather refrain from using the word *chicane* — explain?

I always say that the primary focus of the Ordinance is the regulation of the Government and law-enforcement officers. While formulating laws which aim at regulating other people, demonstrators, protesters or the citizens for instance, the Government tends to tighten the control as far as possible with stipulations written as clearly as possible, and refers this as exercising the "power in my hands". As for laws which regulate the Government itself, the Government would like to keep the control as loose as possible so as to minimize the chances that they may run into trouble. Indeed, when we were arguing over the issue on criminal sanction earlier, it was pointed out that the deterrent effect of the Ordinance was actually rather limited and insufficient. When we put down the provision in black and white, section 57 is the most crucial one. On stipulating the discontinuance of interception or covert surveillance, if expressions which confer greater clarity or mark a more definite sense of time are not preferred, more flexibility will be resulted. By then, if someone infringes this provision, there will be more loopholes available for exploitation. It is also more likely that the scenarios as suggested by Mr James TO may arise.

Finally, if the Secretary objects to this amendment — he of course opposes it, otherwise he should have taken it up — he should respond to the scenarios

raised by Mr WONG Yuk-man or Mr James TO just now as well as my request for clarification of expressions on the theoretical level. Does the Secretary actually think that the amendment is completely unnecessary as it makes little difference to the meaning of the provision and is therefore not worth the trouble to initiate the change? If so, there is actually no need for the Secretary's interference as Members can use their own discretion. Only in the case where the Secretary thinks that the amendment will bring about undesirable effect or deviates from the legislative intent should he ask Members to oppose it. As the amendment aims at clarifying the meaning, the Secretary must tell us clearly whether the provisions will be more ambiguous if we replace "cause" with "order" or whether the amendment will give rise to a deviation from the legal effects intended by the Secretary? With regard to the sense of time that I talked about, does the Secretary think that the use of "cause" and "order" in the context will give rise to different results? In order to have something "discontinued", why should we not do it swiftly like killing someone with a quick cut, which is sharp and clear? I hope the Government can give a reply to this as well.

I so submit.

MR IP KWOK-HIM (in Cantonese): Deputy Chairman, three Members have spoken just now. Mr WONG Yuk-man explained clearly the reasons for proposing the amendments, while Mr CHAN Chi-chuen talked about irrelevant matters and gave a lengthy speech. However, I think Mr James TO's boundless imagination should be astonishingly impressive for Members who have listened to his speech.

As a matter of fact, I think we all know very well the respective meanings of the terms "order" (下令) and "cause" (安排). There is of course a sense of authoritativeness and urgency in the term "order", and this is also reflected in its literal meaning. Apart from the effect of asking a particular person to do something immediately, the term "order" also has the meaning of pursuing the responsibility because if a person directed to do a certain thing fails to do so, he/she should of course be held responsible. Hence, the literal meaning of the term is very clear. Yet, we should also bear in mind that after a person has been "caused" to do something, an "order" may still be made specifically. Therefore, overall and specific arrangements are respectively involved as far as the two terms are concerned, but these are only their literal meanings.

The amendments in question seek to amend sections 57(1), 57(2) and 57(3) of the Ordinance. Section 57(1) is now quoted as follows: "If the officer by whom any regular review is or has been conducted under section 56(1) or (2) is of the opinion that the ground for discontinuance of a prescribed authorization ... exists, he shall, as soon as reasonably practicable" — this is a very crucial phrase — "after forming the opinion, cause the interception or covert surveillance concerned ... to be discontinued." An examination of the section I quote in its entirety will enable Members to understand why I consider "as soon as reasonably practicable" the most crucial phrase. As stipulated in the section, after the officer has formed the relevant opinion, he should, as soon as reasonably practicable, consider if the prescribed authorization could be discontinued at once, or some other procedures have to be followed before the prescribed authorization could be caused to be discontinued. Hence, I consider it appropriate to use the term "cause" in the section. In my opinion, if the phrase "as soon as reasonably practicable" is not included in the section, the term "order" should instead be used to better achieve the purpose mentioned by the Members concerned.

Nevertheless, as we all know, a very stringent regime is provided under the Interception of Communications and Surveillance Ordinance to restrict the exercise of power by the Government. Law-enforcement agencies are required to comply fully with the relevant legislative requirements when undertaking operations in this respect. Certainly, some specific arrangements can only be made as far as are reasonably practicable and hence, there would be a time gap in between. If arrangements have to be made in this regard, a correct description of how the matter is taken forward could be given by using the term "cause". As I have elaborated just now, an order may still be issued after certain arrangements have been made, and by using the term "cause", specific actions may be taken after other related matters have been handled. Therefore, I consider it more appropriate to use the term "cause" than "order".

Among the three points raised by Mr CHAN Chi-chuen, I basically agree with one of them. When considering whether the relevant sections should be amended, Members should take three factors into consideration. First of all, whether there is a deviation from the original legislative intent, and I think the answer is in the negative. On the contrary, replacing "cause" with "order" will, in my opinion, render the meaning of the phrase "as soon as reasonably practicable" unclear. Although the replacement cannot be described as a deviation, it will at least render the meaning of the relevant phrase unclear.

Secondly, with regard to the issue of accuracy, as I mentioned just now, it is determined by the actual length of the time gap. Most importantly, not only have the arrangements and practice been in use for nearly 10 years, they have also been proven effective in achieving the objective of the Interception of Communications and Surveillance (Amendment) Bill 2015 to empower law-enforcement officers to take specific actions in respect of particular operations. Besides, as far as I understand, the former or incumbent Commissioners on Interception of Communications and Surveillance have never indicated that the existing regime is inappropriate or difficult to enforce.

Hence, the Democratic Alliance for the Betterment and Progress of Hong Kong objects to the proposed amendments.

MR LEUNG KWOK-HUNG (in Cantonese): It is really well said by Mr IP Kwok-him, who has quoted the part on "as soon as reasonably practicable ... , cause the interception or covert surveillance concerned ... to be discontinued" in the relevant section. Under the same section, it is stipulated in the following subsection (2) that "(a) shall, as soon as reasonably practicable after he becomes aware that the ground for discontinuance of the prescribed authorization ... exists, cause the interception or covert surveillance ... to be discontinued; and (b) may at any time cause the interception or covert surveillance ... to be discontinued."

What is the meaning of the provisions? If the officer concerned has become aware that the need to conduct the relevant operations no longer exists, he shall "cause" ("安排") the operations to be discontinued as soon as reasonably "practicable". The purpose of replacing "cause" with "order" ("下令") is to require the issuance of an order without consideration of whether it is practicable to do so, since the officer concerned will naturally assess the practicability of doing so once an order is issued. Take the example we have cited before. If a listening device is installed under the bed in a premise, and it is not possible to break into the premise to recover the device, the officer concerned will have to submit a report and explain the case. His supervisors will then have the chance to pursue the responsibility and query the appropriateness of installing the device in a place where it will not be possible to have the device recovered. It is also possible that there was no cement structure in a place at the time when the device was installed, and new fitting installed subsequently has rendered it not possible to recover the device. We should try to look at the issue from this perspective.

Law-enforcement officers have to apply for a court order to conduct interception and covert surveillance, but they will not be subject to court supervision after the issuance of the court order, unless a new application is submitted for another court order. The judge in court may then ask for the reasons why the investigation has been going on for such a long time. If a new application is not submitted for another court order, it will not be possible for the judge in court to have knowledge of how an authorized officer exercises the power given to him under the court order issued. This will then depend on self-discipline exercised by the authorized officer, but this is meaningless and regulation by legislation is absolutely needed, is it not?

What is meant by "as soon as reasonably practicable ... , cause ..."? If it is read in conjunction with the previous sentence, it means that the authorized officer will be allowed to decide at his own discretion whether it is reasonably practicable to take the required actions. Mr IP Kwok-him, is that what it means? Apart from his supervisors, no other people can exercise supervision over him. If the sentence is amended to delete the dispensable phrase of "as soon as reasonably practicable", and replace "cause" with "order", the whole sentence will read as "he shall, after forming the opinion, order the interception or covert surveillance concerned ... to be discontinued.". A question may be posed to ask what should be done if it is really not possible to do so? Another sentence may then be added to make it very clear by specifying that "unless he considers it not reasonably practicable to do so". The whole thing is very simple, and whether this can be done actually depends on whether or not the authorized officer is willing to be placed under supervision, and whether or not he wants to be free from supervision and go his own way once power is given.

If a new application is submitted for another order from the judge, the authorized officer will be asked to explain why it is necessary to carry out such operations in somebody's bathroom or at a lawyer's office. An order will of course not be issued for operations conducted at a lawyer's office, but the judge may query the justifications for conducting interception of communications against a lawyer and carrying out surveillance to intrude into his private life when he is taking a bath or having a sleep at home. An explanation has to be given of the reasons why it is necessary to carry out surveillance to intrude into the private life of a lawyer when interception of communications cannot be conducted at his office, so that a judgment may be made on the reasonableness of the operations.

When the authorized officer has become aware that the ground for conducting interception of communications no longer exists, what justifications does he have to argue that it is not reasonable, practicable and feasible to discontinue the relevant operations? Hence, if the term "order" is used instead, an explanation has to be offered for not taking the required actions. However, under the existing system, once power is given to the authorized officer, he may exercise his own judgment to decide if this is practicable. From what I recall, disputes did arise when Mr Justice WOO Kwok-hing was the Commissioner.

Mr Justice WOO Kwok-hing has once asked law-enforcement officers for the reasons of not discontinuing the operations immediately, and was told that it was not possible for them to do so. If this really was the case, should it be reported to the judge for the issuance of an order? If it is stipulated in the law that instead of making an order, the authorized officer should notify the judge at once when he considers it not reasonably practicable to discontinue the interception or covert surveillance conducted under the prescribed authorization, it may be necessary for the judge to extend the validity period of the prescribed authorization. Enquiries could then be made by the judge in this regard, meaning that the authorized officer would be subject to the supervision by another person, that is, supervised directly by the judge. He may also be required to report the case to supervisory departments for record and answer questions put to him.

Therefore, the question is not simply about the replacement of "cause" with "order", but also the deletion of the phrase "as soon as reasonably practicable", and to put everything beyond doubt by adding the sentence "reporting to a particular person if he considers it not reasonably practicable to make an order at once". The power given is so great that once an authorization is obtained, the authorized officer may decide to make an order without supervision to discontinue the operations concerned. I consider this absolutely undesirable.

Someone may think that as law-enforcement officers have already applied for an order for the conduct of interception of communications or surveillance against the subjects, allowing the operations concerned to go on for one more day is no big deal since law-enforcement officers may have difficulties discontinuing the operations at once, or they may still have doubts about the subjects. Another problem is that the scope of the phrase "reasonably practicable" is too broad, and what is meant by "reasonably"? As I mentioned earlier, in a previous case,

Mr Justice WOO Kwok-hing has asked law-enforcement officers for the reasons of not discontinuing the interception of communications, but was told that the operation was continued with the hope of obtaining some useful information.

I remember that in another case, law-enforcement officers were required to intercept the communications of an identified subject of investigation, but they failed to figure out accurately the subject's identity. Simply put, A was mistaken as having a double identity and was regarded as B as well, and therefore the communications of B were mistakenly intercepted at the same time. It was finally discovered that A and B were actually two separate persons. Under the existing system, it would be highly possible that the interception operation against B could not be discontinued. The Commissioner should be allowed to pursue the responsibility from law-enforcement officers and ask for the reasons of continuing with the interception operation when they have become aware that A actually was not B.

Therefore, if the test of "reasonably practicable" is adopted, as pointed out in an Annual Report submitted by the Commissioner, the interception operation against B would be allowed to continue as it would be very difficult for law-enforcement officers to recover the listening device or discontinue the operation. Hence, although B is innocent and the subject of investigation should only be A, an interception operation was conducted against B by law-enforcement officers for quite a considerable time simply because they suspected that A was actually B. Under this qualifying clause, law-enforcement officers will only cause the interception operation concerned to be discontinued as soon as they consider it reasonably practicable. However, how can we know for sure when will law-enforcement officers cause the operation concerned to be discontinued? Hence, we consider it necessary to adopt a standard practice across the board.

Judging from the points raised by Mr IP Kwok-him, it seems that he fails to understand that apart from legislating for certain enforcement actions by the Government which will infringe upon human rights but are deemed necessary for prevention of crimes, preservation of the public peace and prevention of injury to property, it would not be possible for us to confer greater power on the Government. This is the reason why we have to pay excessive attention to every single word in the Bill, and I hope Members would understand this.

As reflected from the example I cited last time, law-enforcement officers have in some previous cases seized the mobile phone of suspected persons, asked the persons to unlock their phone so as to gain access to the information stored

therein, threatened to take further actions when the request was not acceded to, and tried to unlock the phone seized by themselves but to no avail. Suspected persons only managed to get back their mobile phone later when they claimed that leave would be sought to apply for judicial review, but the phone was seized again as exhibit subsequently as the persons concerned were alleged to have violated the legal provisions of some other ordinances. We have already tried not to argue with the Government over such attempts to take advantage of possible loopholes in the law.

The true meaning of providing for the test of "cause as soon as reasonably practicable" in the law can be illustrated simply with a general example. While advanced planning can be made for the after-death arrangements for a person, an order to take care of these after-death arrangements is practically made at the moment when the person is certified dead by a doctor. Just like the case of LEUNG Chun-ying, he has to step down if an order is made by the Central Authorities to terminate his appointment as the Chief Executive, but it would be an entirely different matter if the Central Authorities only indicates that it will cause his appointment as the Chief Executive to be terminated as soon as reasonably practicable.

Therefore, I speak in support of Mr WONG Yuk-man's amendments. It may be suggested that as a result of his amendments, consequential amendments might have to be made to some previous provisions. I do not know how the Government will handle the matter but this stance of mine will remain unchanged. As long as the requirement of "shall reasonably practicable order the interception or covert surveillance concerned to be discontinued" is accepted, law-enforcement officers have to offer an explanation if an order is not made immediately. On the contrary, under the existing system, they are only required to cause or cause as soon as possible the operation concerned to be discontinued. The making of an order is a very specific administrative instruction, and with regard to an application submitted by law-enforcement officers for a court order to intercept the communications of "Long Hair", the issuance of such an order to law-enforcement officers by the judge as soon as possible and immediately in that afternoon are two entirely different matters.

I would like to put the following questions to the Secretary: If the judge considers it no big deal to conduct interception by law-enforcement officers and an authorization would definitely be given, would it be two different matters for the judge to issue an order as soon as possible and grant a warrant at once? Is

there any difference between requiring the judge to, under certain requirements, cause an order to be issued as soon as reasonably practicable and as known to Mr TO, fixing urgent court sittings to hear an application for the making of a special order immediately by the duty judge? Hence, I speak in support of Mr WONG Yuk-man's amendments.

MR JAMES TO (in Cantonese): Deputy Chairman, some Members find my speech weird, especially the examples mentioned in it. But I do not feel surprised, because, first, my words are all true. Among the people who are familiar with the work of the Police, and even front-line police officers, 80 out of 100 of them know who the two people are. They can even utter their names. With regard to fellow Members, it does not imply that anyone being the Chairman of a Panel will automatically become an authority, or will be familiar with police work, especially some work in detail, because of the chairmanship. Deputy Chairman, I am talking about some very detailed work procedures here.

Deputy Chairman, I find it necessary to reply one of Mr IP's worries. He said that it would be alright to use the term "cause". Only when the tasks remain unfulfilled after being "caused" that the term "order" would be needed. If it is fine to adopt the term "cause", why need we use "order"? I consider it necessary to respond to this viewpoint. He means that if using the term "cause" is fine, and if the tasks can be fulfilled, it will turn out that the job is done; if using the term "cause" does not work, we then have to "order". However, we have to think about this: When a superior asks his subordinates to take on a task, how much time it has to lapse before the superior will come back and check with his subordinates, and find out finally that the task is unfulfilled? Or, will it turn out that it is not "practicable" to fulfil the task? The actual meaning of Mr IP's remark is that it is fine to have a secretary or subordinates to "cause" the task to be fulfilled, and only when the task cannot be fulfilled at last that we need an "order" to get it done.

The first situation is simple. The issue in question is about intrusion on human rights. As the operation itself should be stopped at the very beginning, it is our goal to have it discontinued as soon as "practicable". It is the most serious and disciplined way to cause the discontinuance to happen with the greatest binding effect if we use the term "order". Of course, it is another question if the officers do not care about disciplinary actions or dismissal, or if they do not even

fear about being prosecuted for misconduct in public office and bearing the criminal liabilities. However, is using the term "order" not the best option to make the discontinuance possible under our system?

As Members may imagine, if "cause" is used first and "order" is adopted only if the task is not achieved, this implies that in some cases, it will take a period of time before the superior who opted to "cause" a certain task to be done at the beginning can realize that the task cannot be fulfilled. He will "order" the same to be done again only after this realization, yet we do not know how much time it takes for him to come to realize this. Is this the best way to protect human rights? In some cases, this practice will delay the discontinuance of unreasonable or illegal wiretapping. Therefore, I feel perplexed as to why he can reject amending the term "cause" to "order" for such a reason. It can be the case only if his mentality is that intruding on human rights is not a problem, and there is no big deal to delay the discontinuance of unreasonable or illegal wiretapping. This is simply the mentality of royalists. I can tell Members that I had contact with many pro-establishment members of local communities in the past. At first, they had strong pro-government background. Then one day, it was his own human rights that were intruded on. He was under arrest at 6 am early in the morning. Despite believing himself innocent, he was dragged onto the vehicle in no time and almost had to leave in his pyjamas. He then reckoned the need to visit me. He said, "Mr TO, you always talk of intrusion on human rights, and it turns out that this is true. I am sorry for rebuking you all the time before." This is the case. Regarding intrusion on human rights, it is common that Members do not understand what constitutes intrusion on human rights, especially for those powerful Members from the pro-establishment camp, or Members of the Executive Council, who can suddenly jump the queue to take an operation. They will never know the meaning of being overtaken in a queue.

Deputy Chairman, there is another remark by Mr IP which I must respond to. Something "practicable" means that it can be practicably discontinued when it has been "caused". On the contrary, "order" is a command that the officers must obey, or they will suffer punishment or dismissal if wiretapping is not stopped immediately. Will this be too harsh and unreasonable? It even dismisses the premise of "practicable". In that case, is it true that the legislation cannot be enforced? According to my understanding, this is Mr IP Kwok-him's query. However, my response is simple. If the term "order" is used, people are under order to carry out a task. All subordinates taking part in the wiretapping operation will be given the "order" to implement the task. If this is the case, this

will imply a concept of "practicable" in the end, as the task is "practicable" under the prevailing situation of the time and is not cancelled, indicating that the task is not revoked as long as it is "practicable". In other words, regarding when the task will be fulfilled in the end, or whether there is anyone violating the rules, acting against discipline or defying orders, it depends on whether the task is "practicable" and how long it takes before the order can be fulfilled. On the contrary, it does not mean that as the task is beyond "practicable", the officers concerned will not be able to execute the order, rendering the situation unreasonable. Nor does it necessarily imply that the officers have violated the order and acting against discipline. Therefore, adopting the term "order" will not lead to a loss of the concept of "practicable". It will not.

Deputy Chairman, sorry, I indeed feel that Mr IP should take the office of the former Director of Marine. The Ombudsman published a report about the investigation of a marine incident yesterday. Should the Government "cause" improvements to be made by vessel companies under investigation, or should it "order" these companies to make improvements? Just like Mr IP, the former Director of Marine, Surveyors of Ships and Assistant Director opted to "cause" that improvements be made by the vessel companies concerned. However, if they decided to "order" the improvements under marine laws, this would be different from choosing to "cause" improvements to be done. Of course, this is not a very good example. Some people may query whether it will really be the case that officers in a disciplinary force will refuse any task which their superior has decided to "cause" to be accomplished? Deputy Chairman, having spent 15 minutes on this argument, I am not going to repeat my points. Although we are talking about a disciplinary force, we still have to ask if this is indeed the case. In most situations, I agree that officers will get the job done after their superiors have given the most subtle signal, or after sensing the mind or thoughts of their superiors. However, we must remember that things are not always as simple as we imagine.

Just now Mr LEUNG Kwok-hung or other Members have quoted some examples concerning situations under which relevant officers fail to comply with ... remember, to be honest, if all of them have complied with ... the issue before us is exactly about dealing with the possibility of non-compliance, and there are specific factors behind the cases, such as mentality, timing or reasons of non-compliance. Why do we need legislation if we assume all the tasks can be achieved after the option to cause it to be fulfilled? We really do not have to

enact any legislation under these circumstances. Deputy Chairman, we are simply asking for certainty. By this, I merely mean that, as one extra second of wiretapping will readily constitute intrusion on privacy, we have to discontinue any such operations as soon as practicable, and such discontinuance should be serious and binding.

Deputy Chairman, I have just thought of one more scenario. I hope Mr IP, as the Chairman of the Panel on Security and have considerable experience in leading the Panel, can disprove or refute me, claiming my words absurd. Why do I think of one more example? This is an example which has not been mentioned before. What is the difference between "order" and "cause"? I always see such difference indeed. Regardless of whether this is drawn from judgments delivered by courts or answers given by police officers in interviews, I do see this difference based on my experience related to these areas.

What is the difference between "cause" and "order"? In the case of "cause", if this is not effected under formal procedures similar to an "order" I mentioned just now, in which all documents, officers conferring the documents, time and signatures, and so on, are ready, but instead the superior can choose to verbally "cause" the task to be fulfilled, the advantage is that the subordinate can assume the liability on behalf of his superior. One may wonder if this will be the case. Who on earth is willing to take the blame for others? If the superior is wrong, he will have to take the blame, of course. It is unreasonable for the subordinates to become scapegoats. Deputy Chairman, sorry, after referring to countless cases and monitoring front-line police work, the scenario we mostly come across is that many officers aggrieved after disciplinary hearings come to us to assess the feasibility of instituting a judicial review. Or, to put it coarsely, in many cases the subordinates have been exploited by superiors. We learnt about such cases from many past examples and experience related to other circumstances. If a subordinate is willing to shoulder responsibility for his superior while the task has been told by the superior verbally and he wants to cover up things for his superior, he may easily say the following: "In fact my superior have caused that the operation be discontinued long ago, but I delayed in carrying this out. It was me that did not do so as far as practicable, thereby violating the order. I failed to comply with the order, so I should be held accountable, but not the Superintendent. There is nothing to do with him. Mr Justice, please do not blame him. I should be held responsible." However, if the task has been officially given by order with time records, under most

circumstances the subordinate cannot take the responsibility for his superiors. Why? It is because everything will then be kept in the records and the time of the late order issued by the superior will be known.

Moreover, the Police keeps a log of procedures in different stages of operation, including the daily work of Superintendents of Police or Chief Superintendents of Police. Therefore, if the order has really been issued late, he may backdate the order to advance the time of issuing the order. It is alright for him to do so. But remember, if it has been decided to verbally "cause" the task to be fulfilled, then it will not be possible to retrieve the sequence and take follow-up actions. This can be the case. However, if we need to check the log, as an "order" has been involved, we can access the case concerned in the file which may contain the time sequence or the contents of the order. As such, the transmission of the order, which are probably recorded in files or can be found in certain procedures, can be traced. So, it cannot be said that "order" and "cause" are completely the same. This relates to the prevention of abuse of power or injustice, as well as enhancement of certainty. In fact, there is no downside in adopting the term "order". Instead, it will only give us a better and more certain system.

Deputy Chairman, if some of those seasoned and witty pro-establishment Members who have sat on the Executive Council have any insight, I am more than happy to hear from them so as to correct my ignorance. I am willing to change, to alter my attitude and to slap myself and heed their words of wisdom.

MR WONG YUK-MAN (in Cantonese): Deputy Chairman, I have to thank Mr James TO, whose two speeches on this amendment are more pithy than what I have to say. Besides, Mr LEUNG Kwok-hung has also spoken for 15 minutes. I also have to thank Mr IP Kwok-him, Chairman of the Bills Committee and Chairman of the Panel on Security. Among the many Members from the pro-establishment camp, he is the only outspoken Member so far as this amendment is concerned. Although what he said is all sophistry, it is still fine because he is willing to debate with me, which I highly welcome. Hence, I have to ask the Chairman to ring the summoning bell as a quorum is not present. Please summon those members back to listen to our speeches.

DEPUTY CHAIRMAN (in Cantonese): Will the Clerk please ring the bell to summon Members back to the Chamber.

(While the summoning bell was ringing, THE CHAIRMAN resumed the Chair)

(After the summoning bell had been rung, a number of Members returned to the Chamber)

CHAIRMAN (in Cantonese): Mr WONG Yuk-man, please continue with your speech.

MR WONG YUK-MAN (in Cantonese): Chairman, Mr IP Kwok-him was of course defending the Government in his speech earlier on, and he did not even budge an inch. In fact, this so-called amendment is very simple and is of no great significance. It does not affect the structure of the whole Bill but only aims to amend the wordings and to clarify the power relations.

In my first speech, I said very clearly that the so-called officer responsible for conducting regular reviews and the front-line law-enforcement officer, who is in charge of the wiretapping, are actually two kinds of persons. We have to clarify the power relations between them. According to Mr IP Kwok-him, the action shall not be discontinued immediately, but the officer "shall, as soon as reasonably practicable ... cause" the action to be discontinued. I now amend the word "cause" as "order", and this has triggered the discussion. Frankly speaking, I find that this is really meaningful. We have spent at least one hour in the discussion, but some Members choose not to speak and I cannot help it.

In fact, power relations are very important. Under this premise, they think that "shall, as soon as reasonably practicable ... cause" has already achieved the best result, and they do not understand why the word "order" should be used. The Chinese version of this sentence is problematic, but I do not intend to amend it. What is "於合理地切實可行範圍" (reasonably practicable)? Please explain it to me. "合理切實可行範圍" (reasonably practicable) is just fine, right? When it says "reasonably practicable", does it mean that there is "unreasonably practicable"? Do you know that "合理地" (reasonably) has

become a modifier? What is meant by "reasonably practicable"? Please explain it to me. It does not make any sense, but I just let it stay put. I think it would be better to change "cause" into "order". But I do not want to have a pedantic study with you on the wording, otherwise we will have to spend some more time.

What is meant by "to order". Do you know the meaning of "order"? In the Chinese proverb "三令五申" (give repeated orders and injunctions), what is meant by "令" (order)? What is the meaning of "order" or "to order"? The Chinese word "令" has the meaning of "責令" (instruct), "喝" (shout an order), "申令" (make an order) or "飭令" (give command). You will know the meaning if you look up a Chinese dictionary. It is a top-down process. For "責令" (instruct), peers will not give instructions among themselves. For "飭令" (give command), the command will be given from superiors, of course — do you know how to write the Chinese word "飭"? There are still "申令" (make an order) and "喝令" (shout an order). "下令" (to order) is a relatively neutral word which highlights the power relations between two kinds of officers, and this is very clear. However, Mr IP Kwok-him has decided to defend the Government. He acted as if he had found a treasure and said that this was preceded by "於合理地切實可行範圍內，盡快" (as soon as reasonably practicable). I shall ask him to explain what is meant by "合理地切實可行範圍" (reasonably practicable). Is it possible to be unreasonably practicable? For "切實", it carries the meaning of being definite and practical, or being practicable. Since the word "切" is very categorical, what is the point in using "合理地"? On the other hand, if "合理可行範圍" is used without the adverbial particle of "地", this will work. What is "合理地切實"? With a mere look at this phrase, I have already found that there are problems. Do not say that I am talking pedantically.

Do you think that everyone is as intelligent as Chairman? While his severe speech can be interpreted as its reverse, he also gives us lantern riddles. Of course, I know the answer. When drafting the law, we cannot adopt the Chairman's approach of saying anything like "寬掌彩綢" (a wide palm with colourful satins) and see if people can guess that these four Chinese characters imply "拒絕" (refusal). Law cannot be like this. The wording in law has to be precise and clear. "寬掌" (a wide palm) represents the radicals "巨" (big) and "手" (hand), meaning big hand. This may take you a long time to guess. However, we are not supposed to guess the meaning of legal provisions. Hence, "to order" has the clear meaning of giving mandatory orders. Particularly when giving formal and mandatory legal orders, the word "order" has to be used, not to

mention in the enforcement authorities which emphasize discipline. In regard to the arguments of Mr James TO, who knows the Police very well, I am sincerely convinced by him. He is the one who knows this area best. I can tell Members that in this Council, no one knows this area better than he does? Does anyone know it better? He can express so many views on my amendment, and you can see how capable he is. What do you want to refute? However, I still thank you for refuting me, as truth does not fear contention. It will be perfect if that happens.

I do not mean to be pedantic or to find fault with the Government when proposing my amendments, as it is unnecessary for us to take that role when there are other amendments proposed by Mr James TO which deal with the devil in the details. My amendments cannot compare to Mr James TO's. He, of course, will do the job as this is his expertise. What is my expertise? It is of course picking bugs in texts. I like finding mistakes in literal work or texts, and now I find one. In fact, I do not intend to challenge you deliberately. Otherwise, I will propose to amend "於合理地切實可行範圍內" (reasonably practicable), and the Chairman will not be able to reject my proposal. Hence, the crux of the problem is that when the so-called amendment basically cannot affect the structure of the whole provision, why do you have to oppose everything we support?

Chairman, I think it is necessary to amend the provision, in which "cause" is used in connection with the interception or covert surveillance or other related parts concerned to be discontinued after "as soon as reasonably practicable" because the word "cause" does not carry the meaning of being urgent and compulsory. "安排" is equivalent "to arrange", as in "someone has arranged something", and arrangement is the noun. "The arrangement of ZHANG Dejiang visiting Hong Kong" and "to arrange ZHANG Dejiang to visit Hong Kong" have two totally different meanings. There must be a subject before "to arrange ZHANG Dejiang to visit Hong Kong" to indicate who arranges or has arranged ZHANG Dejiang to visit Hong Kong. No subject is required before "The arrangement of ZHANG Dejiang visiting Hong Kong" as this is an act or action. Undoubtedly, the arrangement will be made by the Government of the Special Administrative Region, right? Therefore, when someone arranges something or someone to do something, it does not mean that the act must be performed, should be performed or has to be performed immediately. It does not carry that meaning.

If the word is changed to "order" someone to do something, it will show the power relations between the person who gives the order and the person who carries out the order. Most importantly, it highlights the fact that the act must be performed. According to his interpretation, in regard to "shall, as soon as reasonably practicable ... cause", does it mean that it is unnecessary to cause the interception or covert surveillance concerned to be discontinued if the situation is not "reasonably practicable"? Is this the meaning? Then what should that officer responsible for conducting regular reviews do? He should not speak with that premise. If he speaks with that premise, it will mean that there is a precedence relationship. If there is a precedence relationship but without this premise, it means that nothing needs to be done. Is this what it really means?

What we mean is very clear. It is necessary to change "cause" into "order" in "cause the interception or covert surveillance concerned to be discontinued", as "cause" cannot express the urgency and compulsion of the action, right? In addition to showing the power relations between the officer responsible for conducting regular reviews and the law-enforcement officer in charge of covert surveillance, this amendment also shows that this action must be carried out.

Therefore, I propose to amend section 57(1) in order to replace "cause" by "order". The same can also be applied to the officer who is in charge of the interception or covert surveillance concerned in section 57(2). Being the front-line law-enforcement officers, they are in possession of the comprehensive information of the related case. When compared to other people, including the officers responsible for conducting regular reviews, one of the two kinds of people mentioned earlier, these front-line law-enforcement officers who are in charge of the interception or covert surveillance concerned have a clearer picture of whether the existing interception or covert surveillance action should continue, right? In comparison with the officers responsible for conducting regular reviews, they are clearer about the situation. They can say, "We cannot come again for interception of communications or covert surveillance, as the time is up." Is that right? Although a warrant or so-called permission has already been obtained from the panel judge, the action cannot be carried out anymore. Should they be clearer than the officers responsible for conducting regular reviews? This is a matter of course theoretically. Nevertheless, will the law-enforcement officers in Hong Kong think that their authority at work can be suspended and the action shall not be carried out because the time is up or they have gone beyond the authority? This of course will not happen. If this did

happen, it would not be necessary to draw up this Ordinance and appoint a Commissioner. If this really happened, this Council would not have been arguing endlessly, right? Since the authorities have submitted a report to this Council, we have to speak in this Council, right? This subject has been under discussion for 10 years and it is not until now that the authorities propose to amend the Ordinance.

As I mentioned earlier, surely every law-enforcement officer has to be very efficient and has to employ the means most convenient to themselves when carrying out the duty. Some people may even go as far as to satisfy their own desire for certain power. This is why the power has to be restricted. This is the principle of checks and balances. In many democratic countries, no matter what their political or election systems are, the crux can be concluded in a few words, which are "制衡" in Chinese and "checks and balances" in English. For example, the basic legal spirit of the entire federal government of the United States is "checks and balances". Therefore, I always tell people not to worry that Donald TRUMP's victory in the election will render the whole world chaotic. I can tell everyone that all his present undertakings in his speeches will not be realized when he becomes the President, because there are checks and balances from the Courts, the Congress and the media. At present, he can say whatever he wants. This is just like the present situation when some people propose to hold a so-called united front election, and start to defame other people. This is useless and cannot stand the test. When people ask you to take out the evidence and you do not have any, you can do nothing and no one but you will lose face, right?

Therefore, when we run an election, we do not like making negative propaganda. We can have policy debates, and this is similar to what we do in this Council. We do not like initiating personal attacks. Of course, if I say that you are despicable and you do not like it, you will regard this as personal attack. However, the subjective judgment on the "despicable person" has to be based on objective facts. For example, what Andrew FUNG has done is the objective fact which leads us to make the subjective judgment that he surely is a "despicable person". This is as simple as that. Another example is that "689" must be a "despicable person", and is a highly "despicable" person, because this is evidenced by objective facts.

On this issue, as we mentioned earlier, changing "cause" to "order" is also applicable to section 57(2). The reason is that all these law-enforcement officers

will never think that their ongoing interception or covert surveillance action is unnecessary, or what they are doing is unnecessary. An example is the lead water incident earlier. The collective responsibility as remarked in the report could turn out to be the responsibility of no one. It was to our surprise that the Chief Secretary for Administration dared to come out and say with her eyes wide open, "No individual government department or person has to take the responsibility." Nonetheless, "collective responsibility" is clearly stated in the report. Hence, the title published on the *Oriental Daily News* earlier is really wonderful. It says, "Collective responsibility, everyone shirking responsibility, no one's responsibility". I will add to it "a really big mess" or "a big mess to the public". This simply reflects the situation. All people who possess the power do not like being restricted, right? Therefore, this is why the political philosophy of Chinese emphasizes self-reflection, while westerners think otherwise. Westerners think that to err is human. Since people are unable to reflect themselves, they have to be restricted by systems.

MR IP KWOK-HIM (in Cantonese): Chairman, after listening to the speech of Mr WONG Yuk-man, basically I have nothing to respond, because ...

MR WONG YUK-MAN (in Cantonese): Chairman, I find that a quorum is not present in the Chamber, I hope more Members will return to listen to Mr IP Kwok-him's speech. Will the Chairman please summon Members to return to the Chamber?

CHAIRMAN (in Cantonese): Will the Clerk please ring the bell to summon Members back to the Chamber.

(After the summoning bell had been rung, a number of Members returned to the Chamber)

CHAIRMAN (in Cantonese): Mr IP Kwok-him, please continue with your speech.

MR IP KWOK-HIM (in Cantonese): Chairman, I do not know why Mr WONG Yuk-man requested the counting of the quorum. I believe my response will disappoint him because I am not interested in responding to his view. In fact, I have stated my view clearly in this regard. Just now he has already clearly explained his purpose in his speech, that is, to clarify the textual expression. There is no question at all although we have different views. He considers the term "order" more appropriate while I consider it more appropriate to retain the term "cause". Therefore, we are just expressing our respective views. Nevertheless, I am not interested in responding and perhaps that will let him down.

On the contrary, I will respond to the speech of Mr James TO. It is rather difficult for me to understand the views expressed by Mr James TO. It happens that in his opinion, my support to the retaining of the wording "cause" is tantamount to "human rights ought to be infringed". It surprises me that he comes up with a conclusion like that. It is indeed the case in the saying: Give a dog a bad name; then hang him. It turns out that he can come up with a conclusion on the mere basis of the two different words, namely "order" and "cause" that IP Kwok-him considers that human rights ought to be infringed. Nonsense!

They need justifications to support what they say. They should cite example to illustrate how human rights have been infringed, instead of making the allegation randomly. I have heard such allegations for at least two times in this Chamber during the discussion of this issue this time around. Please don't be that repetitive; please show some novelty! He even mentioned something about the Director of Marine, and that is even really not worth mentioning at all.

However, he said he was all ears. I think I have to clarify some points, but I dare not ask him to lend me his ears. It is because he criticized me for saying earlier in my speech that an officer might "order" the discontinuation if he could not "cause" the discontinuation. Mr TO, please leaf through the speech I delivered just now. Where does that come from? Did I make that point? Please don't talk random nonsense. I have clearly stated that the action of making an "order" is included in the term "cause", which includes a series of things. That is to say, arrangement will be made after a lot of things have been considered.

Of course, perhaps he has not listened very clearly and therefore misunderstood me. Now I am clarifying those points to him. I hope he is not trying to distort my words deliberately after listening to what I have said. Otherwise, perhaps it is a personality issue. His argument is tantamount to saying that I approve using "cause" and disapprove "order" and therefore I approve of the infringement of human rights. Thank you, Chairman.

CHAIRMAN (in Cantonese): Does any other Member wish to speak?

MR JAMES TO (in Cantonese): Chairman, Mr IP Kwok-him says that the word "cause" includes the meaning of "order". If so, may I ask him why he has to oppose ... Let me put it this way. What Mr IP Kwok-him says actually means that he accepts the word "order". In other words, he means that the meaning of "cause" has a larger coverage, or a richer meaning, than "order". If this is the case, may I ask Mr IP Kwok-him to explain the additional meanings of the word "cause" which are not covered by the word "order", when such additional meanings have caused him to oppose replacing it with the word "order"?

I hope Mr IP Kwok-him is aware that not even the Government dare to say that the word "cause" covers the meaning of "order". Does Mr IP Kwok-him think that he is more familiar with the law than the Government? I cannot help but gasp in amazement if Mr IP Kwok-him thinks that he is so familiar with the operation of the Police Force, the Independent Commission Against Corruption or any other disciplined services that in these contexts, the word "cause" covers the meaning of "order". Does he have any justification for saying so? Was he speaking off-the-cuff when he said that the word "cause" covered the meaning of "order"? Mr WONG Yuk-man, listen carefully. I have participated in the entire scrutiny of the Bill and I am not aware that the Government has said that the word "cause" includes the meaning of "order".

Chairman, why do I say that using the word "cause", rather than using the word "order" ... But of course, I base my words on the premise that the word "cause" does not have the meaning of "order", and I have already explained my logics clearly. In the first 15 minutes of my speaking time I have already explained that if the Government insists on using the word "cause" and if my premise that the word does not contain the meaning of "order" is true, then any enforcement action caused to be executed will lack discipline, certainty, seriousness and traceability. In other words, if someone fails to execute the

action, it will be difficult to hold him responsible and prevent similar irregularities from happening again. This will increase the likelihood of human rights infringement and persistence of the problem. This builds up the mentality of "law enforcement comes first and human rights can be infringed upon". This is what I meant to say and I do not mean to say that infringement on human rights is acceptable, as Mr IP Kwok-him has claimed. This is not what I mean. What I mean is that they always think that human rights can be infringed upon and that law enforcement should come first. This is what I wish to bring out.

Chairman, I hold that the Government should clearly explain in its first round of reply whether the word "cause" always covers the meaning of "order". As we have just said, we all think that the word "order" is better than the word "cause", and our justifications, at least 80% to 90% of them, are tenable. If the Government replies that the word "cause" does not cover the procedure of giving orders, but then it still opposes replacing the word "cause" with the word "order", I would like to see what other justifications it has which can convince us.

CHAIRMAN (in Cantonese): Does any other Member wish to speak?

(Mr WONG Yuk-man stood up)

CHAIRMAN (in Cantonese): Mr WONG Yuk-man, do you wish to speak?

MR WONG YUK-MAN (in Cantonese): Chairman, a quorum is not present now.

CHAIRMAN (in Cantonese): Will the Clerk please ring the bell to summon Members back to the Chamber.

(After the summoning bell had been rung, a number of Members returned to the Chamber)

CHAIRMAN (in Cantonese): Mr WONG Yuk-man, please speak.

MR WONG YUK-MAN (in Cantonese): Chairman, in my speech made earlier on my amendments, I have already pointed out that "cause ... to be discontinued" in section 57(1) can be replaced by "order ... to be discontinued". This amendment is also applicable to section 57(2). When it comes to a situation that even the relevant law-enforcement officers consider it unnecessary to continue with an interception or covert surveillance, it is highly probable that the operation should have been discontinued long ago. The operation still goes on only because certain law-enforcement officers have inexplicably delayed the discontinuance. Besides, about discontinuing an interception, I believe that it will be quicker and unobstructed if the instructions are issued by officers in charge of interception instead of those responsible for regular review. Under such circumstances, "cause ... to be discontinued" in sections 57(2)(a) and 57(2)(b) can likewise be replaced by "order ... to be discontinued". This can reflect more clearly the original intent of requiring their "mandatory discontinuance".

The amendment to section 57(3) is a technical amendment corresponding to the changes to the three provisions mentioned above. Due to time constraint, I do not intend to explain this provision any further. But actually, section 57(3) also contains the term "cause", and it stipulates that after the discontinuance of an operation, the relevant personnel shall cause a report on the discontinuance to be provided to the relevant authority as soon as possible. Since such reports are to be provided afterwards, and because the Interception of Communications and Surveillance (Amendment) Bill 2015 already uses the expression "as soon as reasonably practicable ... cause", we have not proposed the same amendment to this particular provision to change "cause" into "order". The reason is obvious. Since an interception or covert surveillance has already been discontinued, providing a written report on the grounds for the discontinuance is less urgent. Our emphasis ... This lexical change (from "cause" to "order") or this amendment aims to reflect the urgency and necessity of the whole action. We have not particularly proposed to change "cause" into "order" in section 57(3) because requiring the relevant personnel to provide a written report on the grounds for discontinuance afterwards is less urgent.

Besides, the provision requires these officers rather than anyone else to provide such reports. This is related to the two types of personnel we talked about a moment ago: first, front-line law-enforcement officers in charge of interception or covert surveillance; and second, officers in charge of regular review. They are two different types of personnel because their duties are

different in nature, to say the very least. Our amendments seek to reflect the difference in their job nature. Second, we want to reflect the power relationship between them. The third reason is out of consideration for necessity and urgency. As such, we do not find it necessary to change "cause" into "order" in section 57(3).

We have already responded to Mr IP Kwok-him's earlier reply. He said that he would not dwell on the semantic subtleties with me. That means he will adhere to his own views. I think the wording "as soon as reasonably practicable ... cause" is already appropriate and sufficient. In my view, this is right. Even if I propose to change "cause" into "order", he will say that I can insist on my own views but he will not give any support anyway. It does not matter but I am really baffled. Why did he react so strongly to Mr James TO's reply? Actually, his strong reaction was unnecessary, right? Frankly speaking, Members will argue with one another when speaking in this Chamber. The most important thing is whether our discussions are pragmatic. Many people are seriously lack of vocabulary, and they can only reel off the same litany of criticisms against others. Well, we can do nothing about this. Now, many amendments are involved, and Members can pick up some useful expressions here and there. Besides, Members can hold thorough discussions on the relevant amendments, including the many amendments proposed by Mr James TO, in this Chamber and the time today. In my view, he did not have to react so strongly even if certain remarks sounded disagreeable or even like personal attacks to him. The reason is that there is still a long way to go, and we will need quite some time to discuss the many remaining groups of amendments.

So, I hope other Members can support our lexical amendments. But if any Members think that our amendments do not deserve their support, we honestly cannot say anything, as this will only serve to show that they are ignorant of the Chinese language. In that case, why should they speak in this Chamber? This will only show that they refuse to talk reason or face up to the reality. Their mentality is that they will not give any support as their political stances differ from ours. But what can I do if they simply refuse to do what is obviously right?

Some matters are indisputable and there is no point in arguing. A character is obviously a wrong one if it is wrongly written; when a character is obviously misused, it is a misuse. All these are indisputable. One will be wrong if one addresses Mr IP Kwok-him as Mr IP Kwok-gim because a radical of

the character is missing, rendering the pronunciation of the character "謙" (him1), as in "謙 (him1) 虛 (heoi1)", which means "modesty", to become 兼 (gim1). His name in Chinese reminds him that he should be modest. When he was told to be modest, he reacted very strongly. I hope he can change his mind and support my amendment. This is certainly the best.

Thank you, Chairman.

CHAIRMAN (in Cantonese): Does any other Member wish to speak?

(No Member indicated a wish to speak)

SECRETARY FOR SECURITY (in Cantonese): Chairman, Mr WONG Yuk-man proposes to replace "cause" (安排) with "order" (下令) in sections 57(1), 57(2)(a), 57(2)(b) and 57(3) of the Ordinance respectively. The Government objects to the relevant amendments.

According to section 57 of the Ordinance, if the officer by whom any review is or has been conducted under section 56(1) or 56(2) is of the opinion that the ground for discontinuance of a prescribed authorization exists, he shall, as soon as reasonably practicable after forming the opinion, "cause" the interception of communications or covert surveillance operation concerned to be discontinued. On the level of actual operation, after the officer has formed the opinion above, he or she will make arrangement to relay the decision to the officer responsible for the interception of communications or covert surveillance operation, so as to kick-start the discontinuance process. The officer who conducts review under section 56(1) or (2) must make all the necessary arrangements to ensure the discontinuance of the relevant interception of communications or covert surveillance operation.

According to paragraph 157 of the Code of Practice, the reviewing officer should be at least a rank higher than the officer for approving the making of applications for judge's authorization and the authorizing officer under the Ordinance. In addition, where any interception or covert surveillance operation has been discontinued, the officer who has caused the discontinuance shall, as soon as reasonably practicable after the discontinuance, cause a report on the discontinuance and the ground for the discontinuance to be provided to the same

relevant authority to whom an application under the Ordinance for the issue or renewal of the prescribed authorization concerned has last been made, for revocation of the prescribed authorization concerned. The officer-in-charge is obliged to comply with the instructions of the reviewing officer.

Chairman, in the Bills Committee we have sufficiently discussed the opinions of the members, including those expressed just now. In the meetings, representatives of the Security Bureau have explained the meanings very clearly. Neither the Interpretation and General Clauses Ordinance nor the Interception of Communications and Surveillance Ordinance defines the meaning of "cause" ("安排" in the Chinese text) and "order" ("指令" in the Chinese text). Generally speaking, when the two words are used as verbs, they respectively mean "to precipitate or contribute to, whether directly or indirectly" and "to instruct". The officer conducting reviews under section 56(1) or section 56(2) of the Ordinance should make every necessary arrangement to ensure that the interception or covert surveillance in question has been discontinued and that a report on the discontinuance and the ground of the discontinuance has been provided to the same relevant authority. The officer-in-charge is obliged to follow the instructions of the reviewing officer. It follows that "cause" has a broader meaning than "order" and is able to sufficiently and more holistically reflect the responsibilities imposed onto the reviewing officer. Similarly, I must point out that paragraph 45 of the Bills Committee Report has clearly set out the Government's position. (I quote) "The term 'cause', which carries a broader meaning than 'order', reflects sufficiently and more holistically the obligations imposed on the reviewing officer. The Administration therefore does not consider it necessary to amend the current use of the term 'cause' in section 57(1)."

Furthermore, according to paragraph 158 of the Code of Pragmatism, the reviewing officer should inform the officer who is for the time being in charge of the interception ...

(Mr WONG Yuk-man stood up)

CHAIRMAN (in Cantonese): Secretary, please wait a moment.

MR WONG YUK-MAN (in Cantonese): Chairman, the Secretary just now said the Code of "Pragmatism" ...

CHAIRMAN (in Cantonese): Pardon me, Mr WONG?

MR WONG YUK-MAN (in Cantonese): I have never heard of the term the Code of "Pragmatism". Would he please make a correction?

CHAIRMAN (in Cantonese): Mr WONG, you still have time to raise questions after the Secretary has finished delivering his speech.

MR WONG YUK-MAN (in Cantonese): He can make the correction now and stop committing the same error from this point onward.

CHAIRMAN (in Cantonese): Mr WONG, you have raised the question, please sit down. Secretary, please reply to Mr WONG's question.

SECRETARY FOR SECURITY (in Cantonese): Certainly, Chairman. I now repeat what I have said just now.

Furthermore, according to paragraph 158 of the Code of Practice, the reviewing officer should inform the officer who is for the time being in charge of the interception or covert surveillance of his decision, and the latter should so comply. The reviewing officer's decision and the grounds for the decision should be documented in the report on the discontinuance to be submitted to the relevant authority under section 57 of the Ordinance. Under 60(1)(d) of the Ordinance, each department shall keep a record of (i) cases in which any interception of communications or covert surveillance operation has been discontinued by any officer of the department under section 57; and (ii) cases in which any prescribed authorization has been revoked under section 57 further to the discontinuance.

The above-mentioned mechanism for arranging the discontinuance of interception or covert surveillance operation has been implemented for years and no problems have been found. Neither has the Commissioner pointed out any shortcoming with regard to this respect. Additionally, the responsibilities of the relevant officer are not just "to order". Therefore, I consider Mr WONG's amendments will only constrict the meaning of the term, preventing an accurate reflection of the responsibilities of the relevant officer. I earnestly call on Members to oppose Mr WONG Yuk-man's amendments.

Thank you, Chairman.

MR WONG YUK-MAN (in Cantonese): Chairman, actually I do not really want to respond to the Secretary. He even slipped up while delivering a scripted speech and referred the Code of Practice (實務守則) as the Code of Pragmatism (務實守則). But "practice" (實務) and "pragmatism" (務實) are entirely different. So I think it is ridiculous to let the Secretary spell out the meaning of words.

According to the Secretary, the meaning of "cause" is broad, much broader than that of "order". But it is very inadvisable to use expressions that carry wide-ranging meanings in legislative provisions. Would he please think clearly before making such a claim or simply read out from a note written out neatly by his colleague? While the meaning of the expression that I propose is too confined, the meaning of the expression opted by the Secretary is adequately expansive. But why is an expression with broader meaning more preferable? It would make more sense for the opening of a public litter bin to be broader. The openings of the public litter bins now are awfully narrow.

What is having a broad meaning? Should legal provisions have broad meanings? This is actually the first time I hear such an argument. The Secretary should explain clearly what he meant by having a broad meaning. And, the Secretary continues to quote the expression "reasonably practicable" without explaining it. Would the Secretary please explain to me — I dare say he cannot explain — what is "reasonably practicable". Even if he is allowed to do it in English, he will not be able to explain properly what reasonable and practicable should mean. If something is "reasonably practicable", is there

anything that is unreasonably practicable? Please would he explain to me these sayings — basically, I bet he cannot provide a logical explanation. And such a meaning is adequately expansive, right? Of course, when the Secretary ask them not to support these amendments, they will certainly obey and refrain from showing support. A quorum is lacking here, please do a headcount.

CHAIRMAN (in Cantonese): Will the Clerk please ring the bell to summon Members back to the Chamber.

(After the summoning bell had been rung, a number of Members returned to the Chamber)

CHAIRMAN (in Cantonese): Mr WONG Yuk-man, please continue with your speech.

MR WONG YUK-MAN (in Cantonese): Though the reply provided just now was brief, the Secretary was reading it out from a prepared script. Some capable people have written a script for him to read. And he does not even know what he has said after making the utterance.

Anyway, I stress again that I propose the amendments with a view to clarifying the limits of power and improving the denotational precision of the expressions. Here, I once again call upon Members to support my amendments.

Thank you, Chairman.

CHAIRMAN (in Cantonese): I now put the question to you and that is: That the amendments moved by Mr WONG Yuk-man be passed. Will those in favour please raise their hands?

(Members raised their hands)

CHAIRMAN (in Cantonese): Those against please raise their hands.

(Members raised their hands)

Mr WONG Yuk-man rose to claim a division.

CHAIRMAN (in Cantonese): Mr WONG Yuk-man has claimed a division. The division bell will ring for one minute.

CHAIRMAN (in Cantonese): Will Members please proceed to vote.

CHAIRMAN (in Cantonese): Will Members please check their votes. If there are no queries, voting shall now stop and the result will be displayed.

Functional Constituencies:

Mr James TO and Mr Kenneth LEUNG voted for the amendments.

Mr Abraham SHEK, Mr Tommy CHEUNG, Mr Jeffrey LAM, Mr Andrew LEUNG, Mr WONG Ting-kwong, Ms Starry LEE, Mr CHAN Kin-por, Mr IP Kwok-him, Mr NG Leung-sing, Mr Steven HO, Mr Frankie YICK, Mr YIU Si-wing, Mr MA Fung-kwok, Miss CHAN Yuen-han, Mr KWOK Wai-keung, Mr Martin LIAO, Mr POON Siu-ping, Ir Dr LO Wai-kwok, Mr CHUNG Kwok-pan and Mr Tony TSE voted against the amendments.

Dr LEUNG Ka-lau abstained.

Geographical Constituencies:

Ms Emily LAU, Ms Cyd HO, Mr WONG Yuk-man, Ms Claudia MO, Mr Gary FAN, Mr CHAN Chi-chuen, Mr SIN Chung-kai and Dr Helena WONG voted for the amendments.

Mr CHAN Kam-lam, Mr TAM Yiu-chung, Mr CHAN Hak-kan, Mr WONG Kwok-kin, Mr CHAN Han-pan, Mr LEUNG Che-cheung, Miss Alice MAK, Dr Elizabeth QUAT, Dr CHIANG Lai-wan and Mr Christopher CHUNG voted against the amendments.

THE CHAIRMAN, Mr Jasper TSANG, did not cast any vote.

THE CHAIRMAN announced that among the Members returned by functional constituencies, 23 were present, two were in favour of the amendments, 20 against them and one abstained; while among the Members returned by geographical constituencies through direct elections, 19 were present, eight were in favour of the amendments and 10 against them. Since the question was not agreed by a majority of each of the two groups of Members present, he therefore declared that the amendments were negatived.

CHAIRMAN (in Cantonese): I now put the question to you and that is: That clause 16 stand part of the Bill. Will those in favour please raise their hands?

(Members raised their hands)

CHAIRMAN (in Cantonese): Those against please raise their hands.

(No hands raised)

Mr WONG Yuk-man rose to claim a division.

CHAIRMAN (in Cantonese): Mr WONG Yuk-man has claimed a division. The division bell will ring for one minute.

CHAIRMAN (in Cantonese): Will Members please proceed to vote.

CHAIRMAN (in Cantonese): Will Members please check their votes. If there are no queries, voting shall now stop and the result will be displayed.

Mr James TO, Mr CHAN Kam-lam, Mr LEUNG Yiu-chung, Ms Emily LAU, Mr TAM Yiu-chung, Mr Abraham SHEK, Mr Tommy CHEUNG, Mr WONG Kwok-hing, Mr Jeffrey LAM, Mr Andrew LEUNG, Mr WONG Ting-kwong, Ms Cyd HO, Ms Starry LEE, Mr CHAN Hak-kan, Mr CHAN Kin-por, Dr LEUNG Ka-lau, Mr WONG Kwok-kin, Mr IP Kwok-him, Ms Claudia MO, Mr NG Leung-sing, Mr Steven HO, Mr Frankie YICK, Mr WU Chi-wai, Mr YIU Si-wing, Mr Gary FAN, Mr MA Fung-kwok, Mr CHAN Chi-chuen, Mr CHAN Han-pan, Miss CHAN Yuen-han, Mr LEUNG Che-cheung, Mr Kenneth LEUNG, Miss Alice MAK, Dr KWOK Ka-ki, Mr KWOK Wai-keung, Mr SIN Chung-kai, Dr Helena WONG, Mr IP Kin-yuen, Dr Elizabeth QUAT, Mr Martin LIAO, Mr POON Siu-ping, Mr TANG Ka-piu, Dr CHIANG Lai-wan, Ir Dr LO Wai-kwok, Mr CHUNG Kwok-pan, Mr Christopher CHUNG and Mr Tony TSE voted for the motion.

Mr WONG Yuk-man abstained.

THE CHAIRMAN, Mr Jasper TSANG, did not cast any vote.

THE CHAIRMAN announced that there were 48 Members present, 46 were in favour of the motion and one abstained. Since the question was agreed by a majority of the Members present, he therefore declared that the motion was passed.

CLERK (in Cantonese): Clause 18.

CHAIRMAN (in Cantonese): Mr James TO has given notice to move his third to fifth groups of amendments as set out in the Appendix to the Script to amend clause 18.

The Secretary for Security has also given notice to move his second group of amendments as set out in the Appendix to the Script to amend clause 18.

The above-mentioned groups of amendments are related to action needed to be taken in view of material inaccuracy in the information contained in the relevant application for prescribed authorization or material change in relevant circumstances.

Members can now have a joint debate on the original clauses and the above-mentioned amendments proposed to these clauses.

I will first call upon Mr James TO to speak and move his third group of amendments. Then I will call upon the Secretary for Security to speak, but he may not move his second group of amendments at this stage.

Upon conclusion of the debate, the Committee will first vote on Mr James TO's third group of amendments. As Mr James TO's fourth group of amendments and the Secretary for Security's second group of amendments are interrelated, and subject to the voting results of the relevant amendments in the Committee, I may call upon them to move their amendments.

Mr James TO, you may now move your third group of amendments.

MR JAMES TO (in Cantonese): Chairman, I move my third group of amendments as set out in the Appendix to the Script to amend clause 18. Chairman, while I move my third group of amendments, we are in fact having a joint debate on my third to fifth groups of amendments. Here I would like to draw your attention to two points. The first point is related to clause 18 of the Interception of Communications and Surveillance (Amendment) Bill 2015 (the Bill) — Actions should be taken, including the submission of a report to the relevant authority which is likely to be a judge or a senior official of the police force, for considering whether to revoke the relevant authorization or a part thereof when the law-enforcement officer concerned realizes that there is material inaccuracy in the information or material change in relevant circumstances.

Chairman, I am of the view that the term "becomes aware" proposed by the Government is over-demanding. My amendments seek to lower the threshold by replacing "becomes aware" with "has reason to suspect". What is the justification behind my amendments? A report should be provided when the

officer concerned has reason to suspect that there is material inaccuracy in the information or material change in relevant circumstances. In other words, after the threshold is lowered, I believe more reports will be submitted. This is for sure. According to my analysis, a lower threshold can enhance the privacy protection for the people.

Why do I say so? In fact, whether there is material inaccuracy in the information or material change in relevant circumstances will eventually be determined by the judge, and in the case of covert surveillance, be determined by the senior officials of the Police. But we have to clarify the difference between "becoming aware of something inaccurate" and "has reason to suspect that something is inaccurate". For instance, when applying for the authorization to conduct interception, one may provide an affidavit affirming that there are guns, drugs and bombs in a certain venue according to intelligence. While the application is made in an affirming tone — or else the application would probably be rejected, in fact one is not 100% sure about the intelligence. As we also understand, if you have reason to suspect that there are guns, ammunition and bombs somewhere or some operations are under planning when you are gathering the relevant evidences, you should apply for a warrant of interception from the judge with reasonable justification.

In other words, from the enforcement perspective, one is not required to confirm the absolute accuracy of the information. In most cases, we have to strike a balance. If one has reason to suspect, or according to information or intelligence ... allow me to digress a bit, but this is actually relevant — one of the examples is the tip-offs provided by informers. I am not referring to those tip-offs that charge, many people provide tip-offs not necessarily for money. Hence, while I have proposed to cut the reward for informers in the Budget year after year, it would not necessarily affect the work of the Police. In many cases, tip-offs are provided for free due to complicated reasons that are difficult to explain here, such as vengeance, conflicts arose from the division of proceeds, playing a trick on certain people, jealousy, conflicts among triad gangs, making use of the Police to shatter the domain of the enemy, and countless other reasons. But not all the tip-offs are absolutely reliable. Some searches conducted by the Police are in vain because the tip-offs are wrong or inaccurate. These scenarios do occur sometimes. But if one has reason to suspect and report a case which one considers to be a serious offence, and there is no other less intrusive way to probe into the case, one may have no other choice but apply for interception of communications.

Under these circumstances, it is up to the judge to decide whether to approve an application for interception by the Police. Honestly, judges work under great pressure, and they have to base decision on their experience. They may ask the police officers who have submitted the application more questions, such as the past performance and reliability of the informer who provides the tip-offs or information. In fact, many law-enforcement agencies, including the Criminal Intelligence Bureau of the Hong Kong Police Force, have set up specialized mechanism to assess intelligence and the reliability of informers. The tip-offs and information provided by informers will be filed and analysed in order to assess the accuracy and reliability of informers. I would say that there may be uncertainties when the judge approves an application for a warrant. You may say that this concerns striking a balance between the human rights of the person being intercepted and enforcement. Some information is not absolutely accurate. It may be erroneous or material changes may have arisen. In other words, the entire investigation process can be full of changes. Try to imagine the following situation. The contents of communication obtained from an interception operation that has been ongoing for two months is found to be inaccurate or completely wrong — which is exactly one of the possible scenarios raised by the Government at the Bills Committee. A typical example is a wrong telephone number with two digits swapped. The subject obviously is not "Snaky Ming" because the conversations are humdrum, frivolous and causal chats on horse racing or whatsoever. They have mentioned nothing about drug deals or anything relevant to an offence. Having intercepted communications like these for some while, they may check the telephone number again and find that they have intercepted the wrong number. In that case, all of the intercepted communication contents are useless.

If a mistake has been made, for instant "74" is mistakenly written as "47" on the application form, the mistake is of course noticeable. But one may possibly suspect that something has gone wrong during the process of an interception operation. One has reason to suspect, but that sense of reasonable suspicion may take shape only over a period of time. It is pretty unlikely for one to immediately affirm that the telephone number is wrong just at a glimpse. To be frank, the scale would be inclined to the enforcement side if the officer concerned must affirm that the person being intercepted is definitely not the subject.

Let us imagine that there were a machine that could reverse time. If one had already notified the panel judge about the material inaccuracy when he submitted the application two months ago, just that he was not very sure or pretty

unsure about that inaccuracy, and more importantly, there was an additional factor of uncertainty ... well, it may be easier for me to elaborate from another angle. Suppose no concrete and relevant information is found after wiretapping for three months. When one has informed the judge of this material inaccuracy that is, no relevant and concrete findings have been obtained during the three-month interception operation, he applies to extend the authorization for the wiretapping for another three months. By then the judge can inquire the applicant and interact with him. Do you think the judge would approve such application for extension of authorization? The application may not necessarily be turned down, yet the treatment could possibly be different from that of three months ago when one was applying with a more affirming tone. In other words, if we have reason to suspect that there is material inaccuracy, but we refrain from telling the judge till the expiry of the approved period, I would say this is unfair to the judge, to the system, as well as to the subject of interception.

Members should bear in mind that the subject of interception is neither in a position to debate with you nor is he represented by a solicitor who can defend for him and query your suspicion and intent of conducting interception. Given the absence of an adversary system, including the conduct of an adversary debate during which a senior counsel representing the subject of interception can challenge the applicant, the judge only listens to the arguments of one side, that is, the law-enforcement agency concerned as the applicant. Under this circumstance, I am of the view that we should leave it to the judge to decide whether the surveillance on the subject should continue, provided that there is reasonable doubt, new circumstances or material inaccuracy in the information. This can maintain a balance to ensure that the human rights of the subject are under reasonable protection and achieve reasonable balance in the systems when the subject is not in a position to query the application for interception by a law-enforcement agency. Chairman, I know this is rather technical. I believe none of us here, including myself, have experienced this because this is the most confidential application and inquiry. Although this is not a court inquiry, it is still highly confidential. Members should note that "become aware" is certainly not the right expression. To be frank, this has gone far beyond what is considered a reasonable balance.

Chairman, this is very simple. If one does not report to the panel judge a reasonable doubt he has for the panel to decide, which is not frivolous and groundless suspicion ... We should leave it to the panel judge to consider and decide whether to terminate the interception in case of reasonable doubt, but Members should note that this would be decided case by case. I think this is fair

enough. The panel judge is not an idiot and he would not terminate the interception lightly in the absence of reasonable doubt. He would base his decision making on a range of factors, including how long the interception has been conducted, whether any information has been obtained, and if none, the reason for that, what exactly the reasonable doubt is about, and all other details. Chairman, I therefore hope that Members can support this group of amendments which aim to strike a reasonable balance.

Proposed amendments

Clause 18 (see Annex I)

MR WONG YUK-MAN (in Cantonese): Chairman, in respect to clause 18, Mr James TO ...

CHAIRMAN (in Cantonese): Mr WONG, please wait for a moment. I have to first call upon the Secretary for Security to speak because he has proposed amendments to the clauses covered by this debate. Secretary, please speak.

SECRETARY FOR SECURITY (in Cantonese): Chairman, clause 18 of the Interception of Communications and Surveillance (Amendment) Bill 2015 (the Bill) proposes to add section 58A to the Interception of Communications and Surveillance Ordinance (the Ordinance). The proposed new section 58A stipulates that if the law-enforcement agency (LEA) becomes aware that there is a material inaccuracy in the information provided for the application for prescribed authorization, or becomes aware that there has been a material change in the circumstances of the case, for example, there is a bigger possibility of obtaining information subject to legal professional privilege, a report should be made to the authorities for them to consider whether the entire or part of the prescribed authorization should be revoked.

During discussions at the Bills Committee, some members expressed that the heading of the new section 58A as proposed in the Bill might give rise to misunderstanding. It might give the impression that once a report had been made to the authorities as required, the prescribed authorization concerned would surely be revoked. Actually, I have said earlier that the Bill seeks to empower

the authorities to revoke all or part of the prescribed authorization upon receipt of a report.

The authorities also have the power to vary the existing terms or conditions in prescribed authorization and specify new conditions. Therefore, I propose to amend the heading for it to reflect the content more clearly. The Bills Committee and the incumbent Commissioner on Interception of Communications and Surveillance support this amendment proposed by the Government.

The third and fourth groups of Mr James TO's amendments

Moreover, the Government opposes the third to fifth groups of amendments proposed by Mr James TO on clause 18. The difference between the third and fourth groups of amendments and the new section 58A proposed in the Bill by the Government is that Mr James TO proposes to change "becomes aware" in the proposed new sections 58A(1)(a) and (b) to "has reason to suspect", and to change "becoming aware of the matter described in the relevant provisions" in the proposed new sections 58A(2)(a) to (d) to "having reason to suspect the matter described in the relevant provisions", before submitting a report to the relevant authorities.

I have said earlier that clause 18 of the Bill proposes to add section 58A to the Ordinance so that the authorities can revoke the prescribed authorization in case there is a material inaccuracy in the information provided for the application for prescribed authorization, or there has been a material change in the circumstances of the case. Upon receipt of a report under section 58A, if the relevant authorities do not consider that the conditions for the continuance of prescribed authorization or a certain part of it as stated in section 3 of the Ordinance are met, they should revoke the prescribed authorization or that part of it. The relevant authorities are also empowered to vary the existing terms and conditions in the prescribed authorization and specify new conditions. Mr TO proposes that when there is a material inaccuracy in the information provided for the application for prescribed authorization, or when there has been a material change in the circumstances, the threshold for submitting a report to the relevant authorities be lowered from "becomes aware that" to "has reason to suspect that" there is a material inaccuracy or there has been a material change.

Whether there is a material inaccuracy in the information provided for the application for prescribed authorization or a material change in the circumstances is a matter of fact that can be ascertained by reference to objective evidence. If

officers of LEAs are required to adopt the "has reason to suspect" threshold, it will involve subjective inferences and evaluation. An officer may have "reason to suspect" while another officer may not. This will make it difficult for LEA to execute section 58A, which may give rise to ambiguities. Also, the Commissioner will find it hard to monitor whether the officers have complied with the relevant requirement.

In fact the "becomes aware of" threshold has been working well. The previous Commissioners have never queried it and have not indicated that it should be changed. The Commissioner will strictly monitor whether officers of LEAs have complied with the requirements of the Ordinance. The consequences of non-compliance are serious. There may be disciplinary actions or legal implications. It is very important to have "becomes aware of" as the threshold with regard to the discharge of function and compliance with requirements by officers of LEAs. In my opinion, the threshold for submitting a report should not be ambiguous. As it is difficult to put Mr TO's amendments into actual operation, the Government does not approve of them. I implore Members to oppose the amendments.

The difference between the third and fourth groups of Mr TO's amendments is that in the third group, he further proposes to substitute "any provision of this Ordinance" in clause 16(10) of the Bill with "under those terms referred to in section 29(1) to (5), or under section 29(6) or (7) or 30". The nature of this amendment is the same as that of Mr TO's first group of amendments. The drafting of the proposed section 58A(6)(b) is modelled on the existing section 32 of the Ordinance. As I have said during the second debate session, since the Ordinance took effect, everything has been smooth when the panel judge and the delegated officer exercise the power given under section 32. There have been no ambiguities over the understanding of section 32. If the current drafting of the section 58A(6)(b) is maintained, consistency and clarity in the interpretation of the Ordinance can be ensured. The Government opposes Mr James TO's amendments.

The fifth group of Mr James TO's amendments

In his fifth group of amendments, Mr James TO has added a requirement under his proposed section 58A. He proposes that if the prescribed authorization or a part of the prescribed authorization is revoked due to a material inaccuracy in the information provided for the application, or there has been a material change in the circumstances, the department concerned must as soon as

reasonably practicable after the revocation of the prescribed authorization remove from the intelligence management system of the department any information obtained pursuant to the prescribed authorization or that part of the prescribed authorization, which has been aggregated and input into the system.

As I have said earlier, the proposed new section 58A proposes that upon receipt of a report on a material inaccuracy in the information provided for the application, or there has been a material change in the circumstances, the relevant authority should revoke the prescribed authorization (or that part of it) if it considers that section 3 of the Ordinance on the conditions for the continuance of prescribed authorization (or that part of it) cannot be met. Revocation of prescribed authorization does not necessarily imply that LEA or the action concerned does not comply with the regulation. Nor will it have any bearing on the effect of the prescribed authorization before its revocation. Any protected products obtained pursuant to the prescribed authorization before its revocation are deemed to have been obtained lawfully. Information lawfully obtained from covert operations by an LEA may be aggregated into intelligence after being screened, evaluated and analysed.

The LEAs have strict intelligence management systems. The agency concerned will collect information from various avenues. Valuable information will be turned into intelligence after analysis and screening. As regards valuable information obtained from covert operations, it has to be specially filtered before being turned into intelligence. This is to ensure that the sources, details and process are kept confidential before being kept in the confidential intelligence management system. Hence it is unreasonable to remove from the intelligence management system any information lawfully obtained pursuant to the prescribed authorization or that part of the prescribed authorization, which has been aggregated and input into the system after the revocation of the prescribed authorization. Also, this will undermine the capacity of LEAs to prevent or detect serious crimes or protect lives and property. This is particularly so when intelligence involves crimes relating to serious personal safety, such as murder, armed robbery, burglary or terror attack. If such cases are not prevented, personal safety will be seriously affected.

In fact, the Ordinance is not designed to regulate the operation of intelligence management systems. If the scope of the Ordinance is extended to cover intelligence management systems, it is tantamount to allowing the Commissioner to have access to intelligence kept in the intelligence management system in the capacity of a non-law-enforcement officer, regardless of whether

such intelligence can be identified as coming from covert operations under the Ordinance. This is not appropriate and the proposal will also weaken the ability of LEAs to obtain intelligence through lawful avenues.

In conclusion, Mr James TO's third to fifth groups of amendments are practically and operationally not feasible. I implore Members to support the Government's second group of amendments and oppose Mr James TO's third to fifth groups of amendments.

Thank you, Chairman.

MR WONG YUK-MAN (in Cantonese): Chairman, the Secretary for Security's response to Member's amendments shows that he is not able to grasp the crux of the matter and he is not making sense. Buddy, the police officers under him are also making arrests based on "reasonable suspicion". He can ask "Brother Chiu" who has been a police officer for years.

I would like to tell the Secretary that these amendments have in fact helped him. I will explain the reasons in detail later. Mr James TO has proposed three versions to amend clause 18 of the Bill. His amendments are mainly on the action to be taken in case of material inaccuracy in the information provided for the purposes of the application for the prescribed authorization, or material change in circumstances. The Administration has also proposed an amendment to clause 18 but the main purpose is to amend the original heading from "Revocation of prescribed authorization in case of inaccurate information or change in circumstances" to "Report to relevant authority: inaccurate information or change in circumstances". Mr TO has made the same amendment in version A and version B of his amendments.

According to the voting arrangement, the Committee will first vote on version A of Mr TO's amendment. If version A is vetoed, the Committee will vote on version B of Mr TO's amendment. If version B is also vetoed, the Committee will vote on the Government's amendment. Regardless of whether the Government's amendment is passed or not, the Committee will lastly vote on version C of Mr TO's amendment. This arrangement is quite complicated and I believe other Members may not have a good idea about the order.

Chairman, version A and version B of the amendments have made two changes. One is about changing the heading and the other is to change the arrangement for "becomes aware" of material inaccuracy in the information or material change in circumstances to "has reason to suspect" material inaccuracy in the information or material change in circumstances. The difference between version A and version B is that in version A, section 58A(6)(b) stipulates "(whether granted or imposed under its terms or any provision of this Ordinance)" while version B stipulates "(whether granted or imposed under its terms or under those terms referred to in section 29(1) to (5), or under section 29(6) or (7) or 30)". This is the same as the five groups of amendments which Mr TO proposed in the second debate session, that is, to make adaptations to the provisions. This is the background of Mr TO's amendments.

Moreover, the proposed new section 58A covers two circumstances. Just as the Secretary has kept repeating when he read his scripted speech earlier, one of the circumstances is that there is material inaccuracy in the information and the other is that there is material change in the information. The law-enforcement agencies (LEAs) have to report to the panel judge who has to decide whether the prescribed authorization should be revoked or conditions for the prescribed authorization should be changed.

For the so-called material inaccuracy, it may be that wrong information has been put down on the application form. For example, company A has been put down as company B which necessitates the submission of a report to the panel judge. Typographical errors are common, in particular it looks as if the police officers do not know Chinese. Lately, I have read scores of statements. The ridiculous thing is that I have not seen one without a typo. The Chinese language of some police officers is extremely poor. In the past, police officers had to scribble down what the witnesses said when they gave their statement, but now, they input the statement using notebook computers or tablet computers. Nonetheless, the statements are still full of typos. This is simply outrageous.

Basically, there is bound to be material inaccuracy, and mistakes can be found in both Chinese and English. Mr WONG Ting-kwong is now in the Chamber. Let me tell you a very ridiculous mistake. The Police should have put down in their notebook that CCTV clips would be taken from the security officers of the Legislative Council but surprisingly, they put it down as to be taken from Mr WONG Ting-kwong ...

CHAIRMAN (in Cantonese): Mr WONG, you need not go into too much detail with regard to your example.

MR WONG YUK-MAN (in Cantonese): I just want you to have a laugh.

I have just explained what material inaccuracy means. For example, the wrong company name or name of a person has been put down on the application form, thus necessitating the submission of a report to the panel judge. What then is material change? Information subject to legal professional privilege or journalistic material can be a problem. For example, when LEAs are investigating a corruption case, they may discover that the subject has been transferred from a post which he may obtain advantages to a new post which there is no way for him to do so; or the subject under investigation is suspected to be involved in drug trading but at the same time, he may be seeking legal advice for divorce. Such circumstances may not have anything to do with the case but they constitute material change which has to be reported to the panel judge.

In the proposed new section 58A, "material" refers to some factors which may cause the panel judge to change his original decision of not to approve to approve or *vice versa*, or to increase or change the conditions.

The authorities consider that reference to objective facts rather than subjective judgment should be made when deciding what is material change and material inaccuracy. Mr James TO's amendment is to amend "becomes aware" that there is material inaccuracy or change by the panel judge to "has reason to suspect" that there is material inaccuracy or change by the panel judge. Yet, the Government regards that this will render LEAs hard to abide by the relevant provisions. I see this so-called worry unwarranted.

The policy intent of the proposed new section 58A is that if there are changes to the circumstances before or during the investigation, or if information provided in the original affidavit submitted to the panel judge is inaccurate, a report has to be made to the panel judge for him to become aware. What we have to consider now is the threshold for "reasonable suspicion". This power should be vested in the panel judge, right? Whether it is "becomes aware" or "has reason to suspect", a subjective judgment can only be made on the basis of objective circumstances. The authorities regard "has reason to suspect" to be more subjective as compared with "becomes aware" which is more objective. However, I beg to differ. The Bureau has to explain why "has reason to suspect" is subjective while "becomes aware" is objective.

Furthermore, there is problem to the translation for some provisions of the Bill. The Government has translated "becomes aware" into "知悉" (know). This gives a big difference in meaning to the Chinese and English texts of the Bill. Could the Secretary please look up some authoritative dictionaries for the meaning of "becomes aware"? As we understand it, "becomes aware" does not literally mean "知悉" (know). I can say that "becomes aware" has the meaning of "getting to know". This has quite a different meaning from "知悉" (know), right?

Written Chinese aside, what about the meaning in Cantonese? I can say that "becomes aware" has the meaning of "sense", "feel that" or "smell something wrong". Yet, the Bureau has translated "becomes aware" into "知悉" (know). If we take "知" (know) as a verb, it means know or understand, while "悉" has the meaning of in more detail. Thus, by putting "知" and "悉" together, it can mean that I know in detail. In that case, how can the Bureau translate "becomes aware" into "知悉" (know)?

When we draft the law, we of course cannot use the Cantonese terms like "feel到不對路" (smell something wrong), "聞到陣除" (sense) or "我為意到" (feel that). However, the Bureau should have chosen more precise wordings, for example, "開始察覺到" (get to realize) for "becomes aware". Let me cite an example. Does "I get to realize that there is a fire at the Legislative Council Complex" have the same meaning as "I know that there is a fire at the Legislative Council Complex"? If I know that there is a fire at the Complex, it means that the fire has already started at the Complex and many objective facts are visible, including thick smoke coming out and people running for their lives. I may also smell a burning smell and hear sirens from fire engines. Yet, if I get to realize that there is a fire at the Legislative Council Complex, I may have picked up only one of the above objective facts.

There are many problems with the draft version of the Bill. Mr James TO's amendments serve to make the provisions clearer and Members of the pro-establishment camp should give their support. If the original version of "becomes aware" of the Bill is adopted, LEAs will not know what to report and what not to report. Also, they will not know whether the panel judge will change the conditions. Mr James TO has proposed in his amendments to amend "becomes aware" into "has reason to suspect" which will make the provisions clearer. Furthermore, the threshold for "has reason to suspect" is also not as high as that for "becomes aware". Therefore, I find Mr TO's amendment very reasonable.

I fail to understand why the Secretary is again asking Members to oppose the amendments. Why is the Government opposing whatever amendments proposed by Members? Chairman, there is a lack of quorum.

CHAIRMAN (in Cantonese): Will the Clerk please ring the bell to summon Members back to the Chamber.

(After the summoning bell had been rung, a number of Members returned to the Chamber)

CHAIRMAN (in Cantonese): Ms Claudia MO, please speak.

MS CLAUDIA MO: We are essentially debating the revocation of prescribed authorization in case of inaccurate information or change in circumstances. I do not quite understand why the Government would need to change the heading even. Instead of using this expression "Revocation of prescribed authorization in case of", they now try to make it sound simpler or something like "Report to relevant authority". Why would they want to downgrade the key message in this particular section? I fail to understand this altogether. And it is a pity that the moment they hear English, Members in this Chamber would just go boo-boo and decide to all quit.

Never mind. Let us come back to what we are supposed to be talking about. Our colleague, Mr James TO, is actually trying hard to lower the threshold for those involved investigators on "Report to relevant authority". Instead of using very unclear terms in the original Bill, he is trying to make the wording all very clear. Now, of course, all laws are supposed to protect the people instead of harming them. And so, if you lower the threshold on the "revocation of prescribed authorization" to conduct surveillance, that is to help protect the people and will mean more protection for society in general.

(THE CHAIRMAN'S DEPUTY, MR ANDREW LEUNG, took the Chair)

I am no particular security expert. I cannot talk about police work or security matters like snitchers, informants, grasses or even planted evidence. But another key point in this debate is about inaccurate information. As some other colleagues have pointed out, inaccurate information could simply be typographical errors — typos. Instead of Mr WONG, it was wrongly typed as Mr TONG. So, that would need some serious reports and consideration as to why you actually got the target wrong altogether.

And, change in circumstances, meaning the changes are circumstantial, or the physical changes which you can see. It is obvious. The person is no longer in the particular premises; he has moved out of a certain flat or workplace, and things like that, right? No, they just want to get rid of all those in the heading.

Now, the key point is two words, one said in Chinese and one said in English. And I claim that I probably was the first one to raise that issue at the Bills Committee on Interception of Communications and Surveillance (Amendment) Bill 2015 (the Bills Committee). Please remind me or correct me if I am wrong. In Chinese, we have "知悉", which means in English "become clearly aware" or "absolutely clearly aware". But the English version simply says "becomes aware". Now, anyone with the right mind and with some basic linguistic training could tell you that they are not equivalent. They are simply not the same thing. The Chinese version would require the person to be utterly, absolutely, profoundly or perfectly aware of something that has happened. Somebody is in danger, for example. If he is clearly aware ("知悉") that the person is in danger, he could actually see blood on him. It is so clear that he is in danger — he might die, or he has been attacked. But then if he is simply aware of some danger that is imminent to that person, it is a completely different matter.

Mr James TO is trying to make it easier by lowering, as we are saying, this threshold on "Report to relevant authority". He is changing the English wording from "becomes aware" to "have reason to suspect". Now, that is quite clear. If you can see some danger looming around the corner for that target, you could say you are in a status of having some reasons to suspect that something is going to happen to him. That is what the whole thing is about.

Now, as I would say, I am not any security expert. But I did sit on the Bills Committee, and I was quite diligent at the meetings. And, I did learn quite a lot. All these amendments are actually quite technical. It is exhausting, and all the legalese — you are smiling — is quite difficult to cope. But can we not talk in a layman's terms? Can we not just tell the people what this is really

about, despite its being full of legalese? It is not just nuance. You cannot say, "Oh, it is boring, so let us forget about it." There is a lot about freedom and human rights in this thing. Of course, you are trying to do your job, but we are trying to do ours as well.

So, I fail to understand how and why the Secretary for Security just now claimed that all the changes and amendments as put in the CSAs by Mr TO are simply not practical and just not right. He kind of said that ladies and gentlemen, please forget about them as they do not know what they are talking about. Basically, the Secretary for Security was saying something like this. Well, this is more than "unright" on his part because we do have laws to protect the people. The idea — the original idea — of this law is to help fight terrorism, to help fight the really serious crimes, to protect the people. But in doing that, you do not, along the way, harm the people unnecessarily without meaning to. That is the whole point.

And let us allow the investigators to report to the panel judge or whoever who is in the middle. Let the panel judge decide whether that prescribed authorization should be withdrawn. And you are trying to make it more difficult for them to withdraw the authorization that has been issued. Now, let the panel judge decide.

And, another line I put down here that was uttered by the Secretary for Security just now was that "we have all along been consistent ("一致") and clear ("清晰)". They are nebulous and confusing. That is why we need to make the wording changes. That is why we want to help you, as we are saying, to help you make this law even better.

Seriously, do not just stay in some political nirvana, just feel good about yourself or that kind of atmosphere because you have got enough votes, right? It is all perfunctory. "You can talk till the cows come home, but we have enough votes over there." No, please. I do believe some of you, if not all of you, are here to serve the people with some genuine intention and purpose. So, do think about it first, do not dismiss whatever we have to say on this side as just some trite comments, some nagging remarks, and do not think they are all dismissible. No, please do not have that attitude. We are not throwing egg on your face. But there is egg on your face, and you cannot pretend it is not there.

Thank you.

MS CYD HO (in Cantonese): Deputy Chairman, in respect to the several groups of amendments proposed by Mr James TO, I would like to focus on two points.

The first point is about Mr TO's amendments to replace "becomes aware" as drafted by the Government in the original Bill with "has reason to suspect". The second point is about Mr TO's amendments that seek to remove, in case material inaccurate information is identified, any information that has been obtained from the interception conducted according to the wrong information, as well as the information aggregated and input into the intelligence management system from the system after termination of the interception operation. I of course support the essence of these two groups of amendments proposed by Mr James TO.

Deputy Chairman, first of all, I would like to talk about the term "知悉" used by the Government in the original Bill. In the English text, "becomes aware of" is used. Earlier on, Ms Claudia MO rightly pointed out that Mr James TO and herself had initiated a discussion over these wordings at the Bills Committee of the Interception of Communications and Surveillance (Amendment) Bill 2015 (the Bill). She told the truth. In addition, at that time I also pointed out that "become aware of" is not an accurate translation for "知悉". The word "aware" by itself does not exactly means "知道".

Those who have learnt English probably know that English words are made up of prefixes, suffixes and roots. According to our research, the root word "ware" is an old English word of Germanic origin which means — let me read it out in English — perceive, take care of, watch out for. It is common in English to turn a noun or an adjective into a verb by adding the prefix "a-". In fact, "aware" does not clearly carry the meaning of "知悉". We had quite a long debate on this issue, but the Government insisted on keeping the term. Back then I argued that if Mr TO's amendment seeking to use "has reason to suspect" instead is adopted, it would mean that the law-enforcement officers would be duty-bound to discern any external factors and reasons as long as such factors and reasons existed. If the word "aware" is used, however, it may cause big problems. If the law-enforcement officers are not sensitive enough to spot the issue and fail to become aware of ... Just now Mr WONG Yuk-man used the analogy of a fire. In case a fire broke out in a building, it is impossible for the hearing impaired to be aware of the fire if only the fire alarm bell is rung. If the word "aware" is used, it would very much hinge on whether one is able or wish to

discern the matter. According to Mr TO's amendment, the law-enforcement officers are duty-bound to report to the panel judge whenever any reasonable grounds or external factors come on the scene.

Now we are not proposing to immediately cancel or terminate the interception operation concerned whenever these reasons arise. In fact, we just call on the intercepting officer concerned to obtain further advice from the panel judge. Deputy Chairman, the Government is always keen to maximize the power of the law-enforcement agencies while minimizing the room to keep them under check. Moreover, the Government would draft the provisions in a way that it would be difficult to substantiate any incompliance in the future. "Become aware" is a typical example of this kind of law drafting as it would be difficult to prove the unawareness of the law-enforcement officer concerned. Deputy Chairman, I fully support the inclusion of external factors as proposed by Mr James TO and his proposal to use "has reason to suspect" when drafting section 58A. It is a shame that the Government considers Mr TO's proposals infeasible. Moreover, the law-enforcement officers would be confused and unable to discharge their duties because of the so-called reasonable doubt. In fact, there are many cases of police officers taking enforcement actions under reasonable doubt. I believe Mr James TO can cite many authentic cases. For instance, police officers may break into a premise when they "have reason to suspect" (here one will not use "become aware of") that the persons inside the premise are subject to imminent danger to life.

Deputy Chairman, when drafting the law, the Government would try to give itself the biggest buffer in view of various situations. However, this is a bill to protect the people. We do not have to monitor our Government so closely if we trust it. Neither would Mr LEUNG Kwok-hung institute a judicial review, which has subsequently forced the Government to come up with this main legislation. We might as well let the Chief Executive to resolve the matter by making an executive order. Obviously, we cannot allow the law-enforcement agencies to infringe the rights of the people with the mindset that they can do anything in the name of enforcement. Hence, the balance point in drafting the Bill must tilt more towards protecting the privacy of the people. Moreover, either of the expressions, "becomes aware of" or "has reason to suspect", will not cause significant impact on the Government as the final decision will still be made by the panel judge, except that Mr TO's amendment now proposes a lower threshold.

Furthermore, the Secretary holds that a revised threshold would cause inconvenience and hindrance to their enforcement actions, and may even endanger personal safety. I really want to remind the Secretary not to talk like this all the time to scare the people. Why are suggestions to monitor the law-enforcement agencies against their abuse of power always regarded as obstacles? Take the scrutiny of this Bill as an example, the Government said we — the Members who participated in the debate and raised questions — were filibustering. The pro-establishment Members also said so as if they were enchanted. If the Council is not for monitoring the Government, if Members are wrong to raise questions, what is the point in holding Council meetings? We can simply communicate through email, and vote for or against a motion by pressing the relevant buttons online. What is the point in spending time on debating? Through debating, Members can elaborate their arguments and reasons. We do not naively believe that we can successfully convince the Government in this Council. But we can at least give the media and the public a clear account of all relevant reasons and justifications.

Deputy Chairman, just now the Secretary said the Commissioner did not propose to revise the mechanism. According to Mr TO's amendments, in case materially inaccurate information is identified and reported to the panel judge who subsequently decides that the interception operation should be terminated, any information that has been obtained from the interception conducted according to the wrong information and has been aggregated and input into the intelligence management system should be removed from the system. The Government replied that such revocation of authorization does not suggest that there is non-compliance in the operation concerned, and the effect of the prescribed authorization before the revocation is not retrospective. I agree to this point because the panel judge approves interception of communications based on inaccurate material information, or terminates the interception in view of the changes in relevant circumstances. Of course, the interception of communications previously conducted in accordance with the approval granted by the panel judge does not involve any non-compliance issue. As a reasonable person, I would not condemn and criticize lightly. However, if the information obtained from interception of communications previously conducted based on some circumstances that have already changed, the interception operation should be terminated once such changes are identified. Moreover, the information previously obtained from such operation should be removed accordingly. In response to Mr James TO's proposal, the Government indicated that the first Commissioner was fully aware of the effect on protected products if the power was exercised, but he did not recommend to depart from the existing regime,

which has provided for the lawful way to obtain protected products. The Government even said if this was a part of the Commissioner's recommendation, he should have clearly indicated that to the Government. The Government put the blame on the Commissioner and accused him for not advising the Government to amend the legislation back then.

How could the Government place the responsibility for revising the legislation on the Commissioner? The enactment of legislation depends on the circumstances, such as whether the proposed amendments are reasonable, whether there is adequate monitoring regime, and so on. How possibly could the Government ignore the issue on the pretence that the Commissioner has not made relevant recommendation? As the Commissioner, Mr Justice WOO was very responsible. He has put forth numerous recommendations on revising the legislation and procedures. Yet nothing is flawless even if it looks seamless. By the way, when have the recommendations raised by Mr Justice WOO become the Bible of the Government? If so, can we say that the Government has failed to implement the recommendations raised by the Commissioner as many issues reported by Mr Justice WOO during his five-year of office are still outstanding? What justifications would the Government provide?

Deputy Chairman, the Government now refuses to accept this group of amendments proposed by Mr James TO which seek to remove from the intelligence management system the information obtained from interception. I hold that the Secretary should not put the blame on the Commissioner. It is indeed very irresponsible to do so. I would like to reiterate that the enactment of legislation is not supposed to turn anyone's opinions into the Bible. That said, the opinions of some authoritative figures are of much value for our reference. The former Commissioner has maintained a neutral stance and made no comment on the removal of interception products. But the Government now uses this as an excuse to oppose the amendments. I find this excuse highly ridiculous. Thank you, Deputy Chairman.

MR IP KWOK-HIM (in Cantonese): I hope Ms HO has not been affected by evil poison, does not think wishfully, nor ignores the truth. Has the pro-establishment camp ever said they will filibuster? I have not heard of this. On the contrary, some reporters have asked Mr WONG Yuk-man why he is persistently asking for headcounts. We are now having a debate at the meeting and it is most important for us to discuss rationally and keep the debate going.

The current debate centres around Mr TO's proposal to replace the expression "becomes aware" in the proposed section 58A with "has reason to suspect". What exactly is this? Basically he points out a situation under which one becomes aware of a material inaccuracy in the information submitted for application, in other words, one is aware of a material problem. Next, he has put forth a number of different scenarios, authorization issue, and so on. But then, they are all about the consideration given to the handling of cases in which some material information has changed, leading possibly to inaccuracy.

The Bills Committee has also discussed the issues related to "becomes aware" and "has reason to suspect". Just now, I heard the Secretary mention in his speech the replacement of "becomes aware" by "has reason to suspect" as a lowering of threshold. Actually I hold a different opinion in this regard. To me, this is not lowering the threshold. On the contrary, I consider "has reason to suspect" a significant elevation of threshold. The Secretary has also said that subjective judgment is involved here. That is to say, after getting hold of the situation, the law-enforcement officer has to judge whether there is good reason to report the case to the panel judge. However, both Mr James TO and Ms Cyd HO have made it clear in their speeches that the action involved is the filing of application to the panel judge after seeing material inaccuracy. It is basically up to the panel judge to make judgment and decision on this.

Therefore, my opinion is that "becomes aware" is not about a law-enforcement officer making a judgment on whether there is reason to suspect; it is only about whether he becomes aware of a certain situation. As in the example cited just now, one hears the fire alarm ring, reads irrelevant messages on the phone, finds people talking about horse betting, which are unrelated to the purpose of monitoring. The law-enforcement officer in fact is aware of such circumstances and he or she does not have to make a judgment whether there is good reason for further action. If having good reason is a benchmark, it definitely involves subjective judgment and hence I totally agree with the point raised by the Secretary.

Therefore, if we replace "becomes aware" with "has reason to suspect", the threshold is not lowered but raised, as the law-enforcement officer has to have his or her own consideration and decision. I do not find this advisable. On the contrary, when the law-enforcement officer comes into contact with certain objective presence, objective facts, he should be required to report it to the panel judge. Of course, he might have excessive worries about the situation in the

process, or might have his own views on the gravity of the situation. But it would be much better for the provision to provide clearly that when one becomes aware of a material inaccuracy in the information provided, one should consider the next move and file an application to the panel judge asking for decision.

Regarding the issues whether "aware" (知悉) or "understand" (知道) should be used, whether the meaning of the Chinese expression corresponds with that of its English counterpart, this is just a matter of diction. If you ask me the difference between "aware" and "understand", I do not find it a big one. To me, it is not a matter of principle whether we use "aware" or "understand". It might as well be appropriate to continue using "aware". Hence I think it is more appropriate to continue using the existing expression.

Ms HO has made a query in the last part of her speech just now, asking why we have to make law in accordance with the personal opinion of Mr Justice WOO. With due respect, my opinion is that amendments to existing legislation are broadly made with reference to the experience accumulated during the operational process. During this nine or 10 years of operation, which areas need improvement? Of course, the panel judge is experienced in this regard and therefore the views collected are primarily analysed from his perspective to see if revisions should be made. This is also the foundation of the amendments proposed to this Ordinance. The amendments are not proposed merely because of the comments raised by a judge, and we are not making such amendments lest we will be considered disrespectful to the judge. I do not agree with this view. Hence, with regard to this amendment, I think it is more appropriate to use the existing expression "becomes aware" than "has reason to suspect".

Thank you, Deputy Chairman.

MR JAMES TO (in Cantonese): Deputy Chairman, I have been a Legislative Council Member for quite some time. I would not feel strange when I heard certain arguments from different Members every now and then because a Member who said something was good five or 10 years ago might say that the same thing was not good five or 10 years later. I do not feel surprised about this. However, I really feel shocked today because the Secretary personally put forward some arguments which have never been mentioned in the Bills Committee. I am a bit worried how the Secretary will handle his business in future.

The Secretary said that "reasonable suspicion" was very obscure, and if this obscure wording was used on the responsibility of the law-enforcement officer who had to report to the judge about the change in situation, the law-enforcement officer would, discipline wise, easily violate the law in the worst scenario, or break the regulation and be punished in a less severe situation. This was very dangerous, as the law-enforcement officer could be easily wronged with this obscure wording. He said that "reasonable suspicion" was very obscure. I really feel a bit scared. Every day, tens of thousands of officers from disciplinary forces and non-disciplinary forces, such as officers from the Buildings Department and the Agriculture, Fisheries and Conservation Department, are enforcing the law. Law-enforcement authorities are vested by many ordinances with the enforcement power, power of entry for search, power of arrest, power of closure of premises, power of closure of bank accounts, and so on. Many of them enforce the law on the basis of "reasonable suspicion".

The Secretary was in the leading position of a law-enforcement authority before. He was the Director of the Immigration Department. Are the officers from the Immigration Department not based on reasonable suspicion when arresting illegal immigrants? Will the Secretary withdraw this argument and say again in his second speech or immediately after my speech? I wonder if his speech was written by the two government officials sitting next to him, which was highly probable. However, the Secretary was the leading officer of a law-enforcement authority. Every day, police officers arrest people who have committed serious crimes or minor offences, like theft or assault. How can the Police arrest people if the reasonable suspicion of assault is so obscure? Are the Police enforcing the law and making arrests obscurely everyday? I do not think so. When the Secretary says that the law-enforcement officer will be easily wronged if he has to report to the judge on his reasonable suspicion of any material inaccuracy in the information, what does it mean? It means that we are easily doing people wrong every day.

Deputy Chairman, I really find it very difficult to accept such a ridiculous argument. We have to remember that the same argument and same wording: "reasonable suspicion", always appear in the laws of Hong Kong; there are just too many. Even though Deputy Chairman is not from the legal field, he has also been involved in many discussions of this context in his many years of experience in the Council. When we deliberated the Private Columbaria Bill earlier, it was also said that closure and entry of premises are possible with reasonable suspicion. All these are based on reasonable suspicion. Is reasonable

suspicion really highly obscure wording? It is not, unless the Secretary says that there are double standards in this world. It is not obscure when exercising power with reasonable suspicion, but it is very obscure when requiring the law-enforcement officer to report to the judge about his reasonable suspicion of material inaccuracy. Buddy, what does it mean? Does it mean the "double talk" of the Administration? Are there double standards?

Deputy Chairman, at times I will let things go even when the Government's argument is only a bit convincing. I will not insist on opposing it. Perhaps the Government thinks that although its argument is not very convincing, it at least has a point which can make a little sense. Deputy Chairman, the Government wants us to accept that reasonable suspicion is a very obscure term, and this should definitely not apply to the responsibility of law-enforcement officer who has to report to the judge on his reasonable suspicion of any material inaccuracy in information and any material change in circumstances, as this will do harm to the police officer or officer from the Independent Commission Against Corruption, to the effect that the good investigation officer may be subject to disciplinary punishment or may lose his pension after retirement due to one mistake. If you say that to me, please remember that when a law-enforcement officer has reasonable suspicion, he can use coercive power to arrest citizens and to deprive people's personal freedom. This is not obscure at all.

Deputy Chairman, I am really worried about the Government's idea, which turns out to be that there should not be too many restrictions on law-enforcement officers, even reasonable restrictions. However, it is not bad in Hong Kong as we still have a stable environment. The present situation of Hong Kong differs from that of the United States. After the 911 incident, the USA PATRIOT Act was drawn up in the United States in order to enhance the power of law-enforcement officers in interception of communications. Since the general public were worried about their safety at that time, they thus attached less importance on protection of human rights for the moment. After the United States was attacked and people saw the collapse of the Twin Towers, everyone felt insecure. Public opinions may sometimes waver, which is not strange at all.

Nevertheless, it is a very peaceful discussion today, as we are still living under a peaceful and prosperous environment. We cannot say that Hong Kong is chaotic merely because some people threw bricks and occupied the roads. We are not in the moment similar to that of the 911 incident. When drawing up the legislation, a Member mentioned the likely situations which warrant reporting to

the judges. For instance, some circumstances may have changed or some information is really not accurate, and we have to remember that uncertainty exists in everything. You may have reasonable suspicion that you have done wrong, and may have reasonable suspicion that the information submitted to the judge at that time is not accurate enough. In reality, this does not differ from your reasonable suspicion that he has a knife, because your reasonable suspicion is also based on certain conditions.

We have to remember that the standard of reasonable suspicion that I mention is rather high. This is not the suspicion triggered by trivial matters or anything, or due to the officer being overly suspicious, because you are a law-enforcement officer. If you were a law-enforcement officer, I believe that you would adopt that standard of reasonable suspicion so that you could arrest the people concerned, enter and search the premises and freeze the bank accounts. You had reasonable suspicion due to your training, discipline, experience and expertise. Precisely due to law-enforcement officers' discipline and expertise, we can incorporate the term of reasonable suspicion into the law. If you really have reasonable suspicion, you have to tell the judge, "We may have made a mistake. Which aspects do we need to pay attention to? Are there special measures to enhance protection? Will we listen to certain conversations which we should not listen and which are under the protection of legal professional privilege?" This is what it should be. Therefore, in regard to the same group of people, we trust them and give them power to take certain actions based on reasonable suspicion. Due to the same reason, we also entrust them with the responsibility of instituting reasonable suspicion. When this kind of situations happens, they have to report to the judges so as to safeguard public privacy. They can enforce the law and exercise their power with their own discretion. We adopt the same standard and give power to the same group of people, because they can be trusted.

Deputy Chairman, I see that many government officials are whispering among themselves. If they think that this argument is ridiculous, unjustified, and will lead to the collapse of the entire law-enforcement system of the Government and the system being queried, I really hope that the Secretary will stand up and say with courage, "We withdraw this argument. We do not take this argument because it is wrong. We are sorry. Our previous consideration is wrong. We still have other arguments."

Deputy Chairman, why is reasonable suspicion so important? It is because if there is reasonable suspicion ... Of course, I think that the standard concerned is rather low, although Mr IP Kwok-him thinks that it is rather high. But this is fine. He can continue to think it that way, and I will not refute him. Sometimes, different people, including me perhaps, will have different perceptions on certain wordings, because there are blind spots or restrictions in our respective training, professions and other aspects. For example, I have blind faith in law.

Assuming that my analysis is objectively accurate, meaning that reasonable suspicion falls below our knowledge, a kind of culture will really appear in the law-enforcement authorities. This is very important, and why? Some people will say that the situation is not easy to prove. In fact, whether it is based on his own knowledge or reasonable suspicion, he reports to the judge because he has found out the mistake. If he does not report to the judge at the end, how can you find out that he has reasonable suspicion? This aspect has been touched upon in Ms Cyd HO's speech earlier.

If he thinks that he has reasonable suspicion, while I think there is no reasonable suspicion, what should we do? How do you know that I should have reasonable suspicion? Deputy Chairman, this is not the situation, of course. If this is, the Government will not oppose this amendment and say that this will do harm to the police officers as they will be subject to disciplinary punishment. It also says that this wording is obscure and will put them at risk. But what is the truth? The truth is that something important has been overlooked. The problem is that when a team of officers are investigating a case, they will respectively find some information from various channels. Sometimes you may really have the feeling: Oh, no! Have we really made a mistake by following this person? Have we really made a mistake by intercepting his telephone communications? Or are there mistakes in the information of the affidavit submitted to the judge back then? It is because the investigation is conducted by many people, not just one person. Why will this happen? It is very simple. Even though the superintendent or inspector asks other people to investigate the case while each person can find some information, not so many people have access to the contents of communications being intercepted, as the supervisor will not easily share the contents with the whole team due to confidentiality of the contents. Members of the team do not share their information among themselves. But there is a problem in the following case. A junior and

inexperienced subordinate — who is only performing his duties — has ignorantly written the information into the file, including the details and the information about following certain person. However, his supervisor finds it a totally different story after reading the file, as he has the summary of the contents of communications being intercepted from another person. He thinks that it is a totally different story as the information such as the background, what that person has done or the locations he attended are all different from his other source. Given that the information has already been written in the record, this supervisor cannot say, "Sorry, I do not have reasonable suspicion." If this case is exposed, the Commissioner will ask him, "Your subordinate already has the record. Since you obviously know all the information, why did you not discontinue the action?"

MR LEUNG KWOK-HUNG (in Cantonese): Deputy Chairman, this is actually a very simple issue. As a common Chinese saying goes, "A mason making a door should bear in mind that it should allow both him and others to go through". Actually, I have also said in the Court of Final Appeal what Mr James TO has mentioned just now. I told Chief Justice LI Kwok-nang that if he used *ordre public*, which has a loose interpretation, as the reason to restrict the rights of Hong Kong people, I would pledge my life to oppose him. But if he would use *ordre public* as the reason to restrict law-enforcement departments and protect our rights under *ordre public*, I would support him to do so. In the end, Chief Justice LI Kwok-nang suggested amending the definition of *ordre public* in his judgment made in the Court of Final Appeal. But his effort is to no avail because the same problem has now arisen again. This issue is also about the two sides of the same concept.

In fact, I have cited an example just now. If police officers have to intercept the communications made by a suspect who has identity A and identity B, they will have to intercept the communications he made through two telephone numbers. If the police officers later find that his identity B is irrelevant to the case but they continue to intercept his communications made in identity B, they will obtain the personal data of another irrelevant person with whom the suspect communicates. In this case, the Commissioner will take the police officers to task. In this example, that is, Mr James TO's example, I believe the Government is worried that many police officers will be penalized if the term "becomes aware" is replaced by "has reason to suspect".

Secretary, do not cheat Hong Kong people anymore. First, if the police officers have not intercepted the messages of an innocent person in the first place, they would not do something wrong. Even if the threshold is lowered by changing the term to "has reason to suspect", still they would not do something wrong. If the police officers later fail to submit a report, the Commissioner will be responsible for commenting on their failure, but they will not be prosecuted or reprimanded for their failure. The Commissioner does not have the direct authority to monitor whether they have or have not intercepted the messages of an innocent person. Why? First of all, there is no legislation to do so. Second, he is not a judge. Although he used to be a judge or is an incumbent judge, he has been seconded to this post and he no longer has the statutory function of a judge.

Even if the Commissioner alleges that a police officer has failed to submit a report by applying the threshold of "has reason to suspect", he can only issue a warning to the officer, after which he will have to hand over the case to you. But have you ever meted out any penalty? Have you laid off anyone? Please tell me an example. If you did lay off someone in the past, Superintendent CHU King-wai would not be on holiday now. What is the point in having "reason to suspect"? The incident of police officers beating a person with batons in Mong Kok has hit international headlines. What is the point of having "reason to suspect"? The authorities did not take any actions against the officers although people around the world have concluded that the incident is true. What else can we say? The authorities always deceive Hong Kong people.

Okay, I now come back to the procedure issue. If a police officer fails to submit a report and the Commissioner only gives him a warning, what then? Should we lodge a complaint to the Complaints Against Police Office (CAPO) against his non-compliance? If the CAPO does not take our case, should we opt for civil litigation? But the matter will then end up being handled by the judges again. After all, no one will be held responsible immediately for their non-compliance because the case will have to pass through several thresholds. If a police officer who has reason to suspect an irregularity but fails to submit a report, he will not be taken to task because the Commissioner will have to discover it in the first place, or we will have to lodge a complaint against the police officer.

Secretary, perhaps, you can tell us how many officers have been taken to task when they "became aware" of an irregularity? How many of them were sacked by the Commissioner because they failed to report the irregularity?

Buddy, how many? These are classified information. If anyone has been sacked, please tell us. Has anyone? If so, please tell us. Do not frame us. We do not have such a power. Only the judges have this power.

Deputy Chairman, no one can bring them penalty unless someone lodges a complaint against them at the CAPO. But then the case will be investigated by police officers themselves at the CAPO. If the complainant's grievances are not redressed at the CAPO, he will have to lodge another complaint at the Independent Police Complaints Council (IPCC). Only when the IPCC finds the incident unacceptable will the police officer concerned be taken to task. If the complainant pursues the matter by civil litigation ... He cannot pursue the matter through criminal proceedings as it is not under the scope of the Criminal Procedure Ordinance. No matter how aggrieved we are, we cannot bring our grievances to the attention of the Department of Justice by initiating a criminal proceeding against a police officer who has reason to suspect an irregularity but fails to report the matter. Buddies, sorry, there is no such a thing. They will not be penalized.

The complainant may take the matter to the CAPO, but then he cannot pursue the matter through litigations. If he pursues the matter through civil proceedings, all he can do is to make a civil claim. But then he may not be able to obtain the information from the Police in the civil claim. I really do not know what the Secretary is talking about. The Secretary says that police officers will be prone to prosecution if the threshold is changed. Even if this is true, they will still be prone to prosecution when the term "becomes aware" is used. We oppose using "becomes aware" because the term is ambiguous in meaning and is likely to be abused by the Police.

Honestly, even if the term "becomes aware" is used, it will still put them at risk. If the term "has reason to suspect" is used instead, only two specific situations are applicable, that is, when there is a material inaccuracy in the information or when there has been a material change in the circumstances. When an officer submits an application to the judge for an order, he has to do it in writing, stating the reason for the order. Once there is a material change in this reason, it shows that he already has reason to suspect there is a change. Right? He has reason for his suspicion. However, the Administration seems to think that we are being capricious, as if we wanted to set them up.

Deputy Chairman, let me cite another example. If law-enforcement officers intercept the communications of person A because they suspect that person A could be their target B. Later on they find out that person A is not target B, and this constitutes a material inaccuracy in the information or a material change in the circumstances. As soon as they discover that person A is not target B, they should have reason to suspect that there is an inaccuracy in the information or a change in the circumstances. A lowered threshold will prompt law-enforcement officers to immediately report to their superior of their suspicion. Judges are not idiots. If law-enforcement officers undervalue themselves ... The Secretary actually means that this amendment will end up in two scenarios. First, police officers will become hesitant and they will frequently report to the judge. But the judge will exercise his judgment.

For example, some law-enforcement officers submit an application for an authorization for them to intercept the communications made by "Long Hair" until 12 midnight because he goes to bed at midnight. But then, if "Long Hair" changes his habits and goes to bed at 2 am, will the law-enforcement officers stop intercepting his communications? They will report the change to the judge and the judge will authorize them to continue the interception. The judge does not care about when he goes to bed. He cares about what "Long Hair" has said in the communications. Can you people be more reasonable? Even if the threshold is lowered, police officers will exercise their professional judgment to make a decision in the same manner as they do every day.

Deputy Chairman, whenever Communist Party leaders visit Hong Kong and there are protests at the venue where the leaders are, police officers will stop my car if I happen to drive pass the venue, saying that they have reason to suspect that I am going there to protest. Whenever the situation at the Legislative Council is tense, police officers will question my purpose of going there if I come back to work. I ask them what else I can come back for if I do not come back to work. They do not want to allow me to go into the Legislative Council also because they have a reason to suspect that I go there to do something wrong. Police officers are using this concept of having a reason for their suspicion every day to search people's home and freeze other people's bank accounts in order to combat crimes.

There are two denotations with regard to the amendment concerning the term "has reason to suspect": when there is a material inaccuracy in the information or a material change in the circumstances. In such situations, law-enforcement officers are not allowed to continue intercepting the

communications of their target without any reason or justification. The amendment is specific and clear; it does not seek to forbid law-enforcement officers to conduct investigation.

Deputy Chairman, if that is the case, police officers can suspect any action I, LEUNG Kwok-hung, take as long as they have a reason to suspect so. They can cite hundreds of reasons to forbid me from moving a step forward and warn me that they will arrest me ... actually they have already arrested me and released me. Police officers can have reason to suspect that my car emits excessive black smoke ... Members, they can even resort to this reason ... I drive this car of mine every day and they see me every day, but they do not tell me that my car emits excessive black smoke on normal days. There is an incident which shows that police officers are really stupid. They saw me driving a car which looked like a medium goods vehicle and said to me that they had to inspect my car. It took them four hours to inspect my car. After all those Communist Party dignitaries finished their luncheon, the police officers said to me that their inspection confirmed that my vehicle was a private car, and that they were sorry for their mistake, but then they had to weight my car as a routine procedure ... they can do this to me.

Buddies, police officers are very clever in manipulating with "having reason to suspect" to abuse their power. Now, I am only asking them to use the same yardstick to protect the rights of the people. What is wrong with that? Will the sky fall? Secretary, please say something to us. It has a clear definition in the law. If law-enforcement officers do not understand these terms, ask them to go home and sleep. I may not understand these definitions, but Mr James TO is a lawyer and he should understand them. Are they trying to deceive Hong Kong people? In training their police officers on what is "having reason to suspect", do the Police Force not understand its meaning? In what manner have they been exercising this power? Why are they so invincible when they exercise this power to restrict my rights with their reasons?

Let me tell Members something. The only thing they cannot suspect me with their reasons is my identity and ask for my Hong Kong Identity Card (HKID) for checking. A police officer asked for my HKID and I refused to give it to him for checking. I asked him whether he has reason to suspect that I am not a Hong Kong resident. The police officer hesitated. He knew that I was a Hong Kong resident. He did not have any reason to suspect that I was not. He asked for my HKID and I asked him whether he had reason to suspect that I was not a Hong Kong resident. He immediately withdrew his request because he

knew that it would only be a waste of time to suspect that I was not a Hong Kong resident and he would be reprimanded for doing so. Law-enforcement officers know very well what is meant by having reason to suspect something.

Deputy Chairman, this issue has actually made much ado about nothing. I remember that when Mr LAU Kong-wah was still a Member of this Council, he made the following remark in vetoing the hundreds of amendments we proposed. He said, "We will not let any of your amendments pass. We will not allow you to let those thieves off lightly." Now, the Secretary adopts the same tactic. Is he sick or something? I ask the Secretary again to explain to us why his law-enforcement officers are unable to correctly interpret the term "has reason to suspect". If the term can prompt a law-enforcement officer to make reports to the judge, and the judge will then decide whether or not to issue a warrant for continuing an interception, what is wrong with that? The judge will make the decision.

Let me say it once more. If law-enforcement officers forget to submit a report, we can only reprimand them, and no one can punish them, not even the Commissioner, except the Police Force themselves. If the matter is taken to court, they will at most be subject to civil liability only. Is this not problematic? Will they "die" for this? If they will, then let me cite Superintendent CHU King-wai as an example again. If they will, the baton-wielding CHU King-wai will not have become an international laughingstock and be seen in a BBC programme on the annual review of international events. Why don't you have reason to suspect that something was wrong in this incident? Do you want me to refresh your memory? Are you aware of this? Do you know what you are talking about?

MR JAMES TO (in Cantonese): I request a headcount.

DEPUTY CHAIRMAN (in Cantonese): Will the Clerk please ring the bell to summon Members back to the Chamber.

(While the summoning bell was ringing, **THE CHAIRMAN** resumed the Chair)

(After the summoning bell had been rung, a number of Members returned to the Chamber)

CHAIRMAN (in Cantonese): Mr IP Kwok-him, please speak.

MR IP KWOK-HIM (in Cantonese): Chairman, I rise to speak to clarify one point briefly. Just now I referred to the term in Cantonese "合理理由懷疑" ("reasonable grounds for suspecting"), which was not precise. After doing some checking, the correct interpretation of the term shall be "有理由懷疑" in Cantonese ("reasonable suspicion"). This is the only thing I wish to clarify, thank you, Chairman.

CHAIRMAN (in Cantonese): Does any other Member wish to speak?

MR JAMES TO (in Cantonese): Chairman, I will now speak on another group of amendments, that is, Version C.

This is the second argument which I hear and find really shocking today, and the Government has never presented this point during the meetings of the Bills Committee on Interception of Communications and Surveillance (Amendment) Bill 2015 (the Bills Committee). The key point of my amendments is that no matter what test we use, be it "becomes aware" or "has reason to suspect", if an order has to be revoked by the judge or the relevant authority and the interception has to be discontinued as a result of a material inaccuracy or material change in the relevant information, the following problem will emerge: there will definitely be a time gap between the revocation of the order by the judge and the actual time of discontinuance of the interception operation conducted in the relevant system, such as the system of telephone companies or Internet service providers, and the time gap will certainly exist in any case.

As the officer concerned is now required to mark down the time before the judge, let me assume that the time marked down for the revocation of an order is 4.48 pm. The officer concerned will then leave the room to make a phone call since he will not bring his phone into the room for fear of being wiretapped. There will certainly be a time gap between the giving of a verbal notification to his subordinates for discontinuing the interception against a particular subject and the actual time of discontinuance of the interception operation. Above all, we

would of course like to shorten the time gap as much as possible, and it would be best if this could be shortened to 20 minutes. The Government has also roughly indicated that the process can be completed within one or two hours, and I assume and believe that this can be done.

However, how should we handle the information obtained during the time gap from the revocation of an order to the actual discontinuance of the interception concerned, such as during the one-hour period from 4.48 pm to 5.48 pm? What I am talking about is the information obtained after a material change has been identified, while the information obtained from the interception conducted before 4.48 pm has been excluded since the revocation of the order concerned was still being considered then. Obviously, all information obtained from the interception conducted after 4.48 pm is information which should not be intercepted and thus, how should the information be handled? It is my opinion that the information should not be used for the investigation of crimes or other similar purposes, but the Government told us that the information could be handled in accordance with the requirements under the Code of Practice. I consider the safeguard provided not sufficient, but let me not go into the matter for the time being.

The chance may in fact be very slim for the information so obtained to be input into the intelligence system, but if it has been aggregated and input into the intelligence system very efficiently due to some unknown reasons, my proposed amendments can be invoked to handle the matter. The question is: Should the department concerned remove from the intelligence system any information which was obtained during the one-hour period and has been input into the system? This may seem rather technical, but it is actually not the case and sounds easy enough to understand.

Fundamentally speaking, such communications should not be intercepted at the outset, and neither should the information so obtained be aggregated and the aggregated information be input into the intelligence system. However, what should we do if the information has really been input into the intelligence system? The answer is to remove the same from the system, and this indeed is the right and proper thing to do. Nevertheless, as we have heard just now, the Secretary opposes the amendments I propose, and one of the reasons he put forward is rather interesting. It is argued that the interception conducted during the time gap from the revocation of an order to the actual discontinuance of the operation

concerned is lawful interception, and this is the first major principle. In other words, the interception conducted from 4.48 pm to 5.48 pm is also lawful interception and again, let me not argue with the Secretary over this point.

First of all, the interception should basically not be conducted, and even though I do not argue the lawfulness of doing so, the operation concerned should obviously be discontinued at 4.48 pm, but this could not be done at that very moment due to technical constraints. Nevertheless, technology will keep on advancing, and it can be assumed that full preparation may be made one day for online discontinuance of the operation concerned when an application is submitted to the judge in court, so that a button may be pressed to technically discontinue the interception immediately at 4.48 pm when the relevant order is revoked by the judge. Under such circumstances, instead of one hour or 30 minutes, the time gap may be shortened to three minutes only.

Attempts should in fact be made to shorten as much as possible the time gap between the revocation of the relevant order by the judge and the actual time of discontinuance of the interception operation. This is the first point. Let me assume that the Government would do so, but there is no reason to argue that the interception conducted during the time gap is lawful and hence despite of the requirements under the Code of Practice to prohibit the use of the information so obtained for investigation or other purposes, such information will still be used for intelligence purpose once it has been input into the intelligence system and it will not be removed from the system. What kind of logic and justice is this? It is true that this is something which should not be done, but since communications have already been intercepted and the information thus obtained has been input into the intelligence system, it will not be removed from the system since it is obtained through a lawful channel. This is the logic of the Government as presented by the Secretary, and how terrible it is!

I feel a bit disappointed because the contents of the few speeches I have given today are not difficult to understand, but I do not know if reporters covering our meeting here completely fail to see my points or consider them not worth mentioning, it seems that no news coverage is made of my speeches at all. However, I understand that there are a lot of people watching the broadcast of the meeting on television since I have received some WhatsApp messages from members of the public. I do not know why they have so many time, and perhaps some of them are retired persons or even retired superintendents.

Chairman, although an order is made by the judge at 4.48 pm to discontinue the interception operation, the interception can only be practically discontinued at 5.58 pm, and according to the internal Code of Practice of the department concerned, the information obtained in the time gap of one hour should basically not be used for any purposes. I consider it necessary to make an express provision to the effect in the legislation but the Government disagrees. It does not matter since it only involves the enactment of legislation or otherwise, and we can also choose to believe that the information so obtained would not be used for other purposes. Yet, it is surprising that the stance of the Government with regard to the amendments I propose is: Although the information thus obtained should not be input into the intelligence system, why bother to remove such information which has already been input into the system?

Chairman, the information should of course be removed since it is stipulated in the Basic Law that the privacy of communication of Hong Kong residents shall be protected by law, and no one shall infringe upon the privacy of communication of residents except that information may be obtained in accordance with legal procedures. The Secretary is now trying to argue that 5.48 pm is the earliest possible time for discontinuing the interception conducted in the relevant system. We should be exceptionally careful with this because if the information obtained prior to the actual discontinuance of the operation concerned can be used for intelligence purpose, an incentive will be offered to law-enforcement officers to delay the discontinuance of the interception operation.

Numerous excuses can be invented in this regard, for example, machinery breakdown; the phone was not working properly, and thus the need to go back to the Police Headquarters on foot to notify colleagues in person since highly confidential matters were involved and it would not be desirable to notify them with other phones; it so happened that it was raining heavily that day, the officer concerned was stuck in a traffic jam and has spent three hours on the road; and so on. Chairman, this can in fact serve as an incentive to use the information obtained during the time gap since it is regarded as information lawfully obtained, and there are justifications to oppose to my amendments once the information so obtained has been input into the intelligence system. However, under the Code of Practice devised by the Government, such information should not be used for investigation or other purposes. Is the Government being self-contradictory, and is it a slap in its own face?

Chairman, the Secretary has also adopted a brand new viewpoint, which is even more terrifying and has never been raised during the meetings of the Bills Committee. I do not know who is the genius coming up with that idea and introducing it to the Secretary. According to the Secretary, as the judge in charge of the matter (that is, the Commissioner) is not a disciplined officer, allowing him to monitor the removal of information from the intelligence system will tantamount to letting a non-disciplined services officer gain access to information stored in the intelligence system. In the eyes of the Secretary, police officers or disciplined officers of such ranks as Constable, Sergeant, Inspector or Superintendent are so competent that they are absolutely qualified to gain access to intelligence information. On the contrary, as the Commissioner is only of the rank of Justice of Appeal of the Court of Appeal, the Secretary is of the view that it will go against the rule if he is allowed to exercise the power given to him under the law to supervise the officers mentioned above after the passage of my amendments because as a non-disciplined services officer, he may conduct a review to a limited extent on the removal or otherwise of information from the intelligence system and thus be allowed to gain access to the intelligence system through the supervisory checking.

I cannot help but ask members of the public the question: If a Justice of Appeal of the Court of Appeal, such as WOO Kwok-hing, the former Commissioner, is empowered to check if the information obtained during the time gap has been removed from the intelligence system, whom will they trust, WOO Kwok-hing or Andy TSANG? The comparison may be too extreme since no one will believe Andy TSANG. Whom will they trust then, WOO Kwok-hing or the incumbent Commissioner of Police? I think people will trust WOO Kwok-hing more than the incumbent Commissioner of Police or even the Secretary. However, the Secretary has argued that as the judge in charge of the matter is a non-disciplined services officer, the passage of my amendments will lead to serious consequences because the judge will be allowed to gain access to the intelligence system, which would be too terrifying and dangerous.

I think Hong Kong people will agree that it is exactly the Commissioner's duty to monitor secretly for us the conduct of interception of communications by the Government and the possibility of abuse of the system. The Commissioner is entrusted with the task of carrying out this mission, and a survey may be conducted by the Government to confirm this. Certainly, we should not always rely on public opinions and securing public trust and confidence is equally important, but the problem is that the Government has gone so far as to adopt the

above viewpoint to argue that my amendments will threaten the intelligence system, which is highly confidential and should only be accessed by disciplined officers. It is also suggested that the public credibility and standard of integrity of these disciplined officers, including junior police officers, are far higher than those of judges. What exactly is the Secretary talking about? I only come to realize today that in the eyes of the Government, only police officers are trustworthy and judges are not trustworthy at all. Buddy, there are tens of thousands of disciplined officers and for the Police alone, there are dozens or even hundreds of police constables and sergeants who can have access to the intelligence system. Yet, the Secretary has gone so far as to tell us that these junior police officers are more trustworthy than a Justice of Appeal of the Court of Appeal. Chairman, what kind of mindset is this? Obviously, he is telling us that all public officers sitting on the opposite side are trustworthy, while those responsible for conducting supervisory checking have no credibility and are not trustworthy. It is as simple as that.

With the same mindset, when we indicated a wish to monitor the secret actions taken by the Government, a query was raised to ask in what position could we monitor such actions. However, in places all over the world, power is given to the congress or parliament to monitor the secret actions taken by its government, and the United States is not the only country I am referring to. I was returned by the votes of over 300 000 people, but the Chief Executive was elected with only 600-odd votes. Chairman, it is really puzzling that public officers consider themselves trustworthy while judges are not.

MR LEUNG KWOK-HUNG (in Cantonese): Chairman, I guess Mr James TO really have to study harder. When we talk of public security, prosecution and the Courts, the sequence is that public security always comes first, followed by prosecution, then the Court. The Court is simply an organ to carry out orders from the Public Security Bureau and Procuratorate. So, there is no pride in being a Judge indeed. I have debated with the President before, and all of you will always remember the day 28 August, the day amidst the surging tide, which has been deeply sealed in your memory. The President ordered security check on everyone entering the Legislative Council Complex. I asked the President why armed police officers were allowed to walk around here but I had to go through security check even though I was a legislator elected by the people. They were allowed to bear arms, of course, but I could not carry guns. But why on earth should I be subject to security check? The President found my query

reasonable and agreed that it should not had been the case. This is the point. Mr James TO has got it wrong in fact. Chairman, you were here when the argument took place then, though you sat down there, instead of sitting in your current seat. I believe you were attentive at that time when the argument was going on. We said that they wished to appoint a Judge chosen from the Court, yet the Judge would not be given any authority. This is exactly the case at present. I am not sure which way the authorities like to put it: either the Judge does not have any authority, or the Judge does not have any authority after being chosen to be an administrative official. I am not sure.

Forget it. I can tell you that it is none of the above. The Secretariat, Commissioner on Interception of Communications and Surveillance is set up by the Government, and there is an integrity checking mechanism. When the authorities access and leak the people's information, the Secretariat can do nothing about this, right? LAI Tung-kwok, I do not trust you. Must I trust you and have no other option only because you have passed the integrity check? What are you talking about in this Chamber? You have all the powers, and you will certainly not sell the information you have got. May I ask you whether corruption is more common among judges or among police officers? Do assaults on the people happen more frequently among judges or polices officers? Have you ever seen any judges assaulting the people with a bamboo rod in courts? CHU King-wai did so. He did pass your integrity check, and we trusted him, right?

CHAIRMAN (in Cantonese): Mr LEUNG, you do not have to yell, so that the colleagues interpreting your speech can hear more comfortably.

MR LEUNG KWOK-HUNG (in Cantonese): It is because I am infuriated. Chairman, his words are directed at you. Do you know? The President of the Legislative Council, earning his emolument, and I had better not to put it too coarsely. By saying so, he can suspect you too. Is he sick?

An administrative official or a law-enforcement officer who holds the power will not spare me for taking drugs or committing indecent assault in this Chamber simply because I am a Member of the Legislative Council. This is right. However, regarding a Judge appointed by them, they still claim that it is unlawful to let him access the information. As a matter of fact, the Judge is

seconded from the judiciary system, and is appointed in accordance with certain criteria. Moreover, he has passed an integrity check long ago, and has already gone through a second integrity check. Are they sick? Go consult a doctor and drink some water outside if they are sick.

Chairman, we said long ago that one had to adhere to a consistent standard all along. During his tenure, Mr Justice WOO Kwok-hing was always teased. Once, his opinion was not acceded to in terms of law. Buddy, as a judge with the power and legal knowledge, his request for information only got a response that consultation with the Department of Justice (DoJ) was necessary. I did not know if they had really consulted the DoJ, yet in response to my question, DoJ confirmed that information must be produced to the appointed judge, that is, the Commissioner.

Chairman, what is the point now? Upon applying for an authorization, they have to discontinue their operation as soon as reasonably practicable after the authorization is revoked. Discretion is given to them as it is probable that they cannot practically make it, but not for the purpose of allowing them to obtain the information without the power given by law. If this is the case, an off-duty policeman can assault me as if he is an officer on duty? Do you understand?

Can an off-duty officer claim that he is a policeman? He is not a policeman if he is off-duty, unless he is faced with an imminent threat, and in such case he can invoke "the power of citizens to arrest". Following his concept, he has the authority as a police officer, right? Can he disclose his identity as a policeman during a dispute with someone else for a seat, and claims that he has reasons to suspect him? This cannot be the case. You will get it with such an easy example.

Failing to make it as soon as reasonably practicable, they dare to claim that this is done according to the law as this cannot be fulfilled as soon as reasonably practicable. Buddy, are they sick? When has the authorization expired? Upon its expiry, they actually do not have the authority to go on their operation. Without such authority, how can they possess and input the information into the intelligence management system? They simply aim to exploit the legal loophole. At first, we attempted to debate with them, arguing that not everything could be written into the system. However, such a system was used in the end after we lost the debate, like using a big pool so that everything can be thrown inside. As a matter of fact, it is unfavourable, but let us forget it. They

still want to argue today. Buddy, I am sorry to say that the order was still valid then, but it was ignored and they had wiretapped for two more hours. Secretary, your legal advice is that it is legitimate for them to do so, right? It means that when someone is dead, he will not be counted as deceased as long as the funeral has not yet taken place, right? Secretary, please answer. Is he not considered as dead before his funeral? Even if the forensic pathologist has signed a death certificate, the person cannot be regarded as dead. Is this the case?

There is a limit to tolerance. Do you not understand? No matter how high your rank is, you cannot assert that the sum of the internal angles of a triangle is 181 degrees — unless Jasper TSANG permits. This is common sense. If the common law is not built on common logic, what else can it be built on? Should we enact 50 000 piece of statute laws? Should all paradoxes of logic be included? Are you sick? The principle is that they can do anything allowed under the law, yet they can never do anything beyond their legal authority. Therefore, they cannot possibly add further information into the pool, as this is not something owned by them, or something they should obtain. "One should not acquire wealth improperly". Now, they have to "refuse undignified surrender in the face of disaster", right?

Secretary, look this way. Can you bring home any article you picked up on the road? After picking up an article which is not yours, something to which you have no legal authority, you cannot bring it home, right? You cannot. After suspects in custody have handed over their objects, can you take those objects away? No wonder such incidents always happen. This is logic. Please tell me: Can you take home anything which should not have belonged to you? You cannot. Why is it now alright to do so under your witchcraft? After all, you get the object after fighting with someone else, causing him to fall on the ground. Under this example, you indeed did not have the right to touch this person at the first place, yet you even scuffled with him, hugged him or kissed him with some excuses to scare him into dropping the object on the floor. And you said that you would take it home as it was found on the ground. Is this alright? The exemption of being "practicable" does not intend for your abuse to add information into the pool. It is merely a proviso. When asked why it takes four hours, you reply, "It is true, as I am suffering from leg pain, coupled with other circumstances ...". The exemption should be used this way. Can you expand your illegitimate authority by means of this proviso? Your logic is the "logic of hooligan". He who provokes it is the culprit. After being touched casually by others, I make up the excuse to take actions on all other fronts. The

powers in your hand are residual powers, and therefore they must be subject to the most stringent monitoring. Can you do so? Give an answer, but not asking the others next to you. Go ask LEUNG Chun-ying via WhatsApp, as this is what he can do best. I tell you, LEUNG Chun-ying is most capable of answering this question. Apart from him, no one can help you in this regard.

However, to be honest, I am certainly not as good as you in terms of raising hands, not even raising my legs. While you cannot win by applying your reasoning, you can win by raising hands. Chairman, let us not speak here anymore in the future; instead we had better install a platform for wrestling, and we can even add some mud. With so many people in your team, if you cannot convince people, you can ask Mr IP Kwok-him to speak briefly by giving him a hint, sending an WhatsApp message or dropping him a note. I have to tell you that no matter how senior you are as an official, you cannot repeal the law of geometry. Do not think that you can do this. We are a big force here too, yet we are treated like this.

So, I ask you again now. First, legally speaking, you will not be able to achieve this as you are wrong in terms of legal principle. In reply to my question about the consequence of your actions, you claim that you are reasonable, sensible and legitimate. Then why do you input the information into the pool? Can you make use of the information? What do you use it for? For memorial purpose? Why do you add that information? Why do you add those things you have obtained illegally?

CHAIRMAN (in Cantonese): Mr LEUNG, you are repeating your points.

MR LEUNG KWOK-HUNG (in Cantonese): What? Buddy, I am exactly talking about you. You do not have to cover it up for him. When I mention legality, in what ways does he benefit the public?

CHAIRMAN (in Cantonese): Mr LEUNG, you are straying away from the question.

MR LEUNG KWOK-HUNG (in Cantonese): ... he exercises his rights unlawfully. He may think, as in the case of Mr IP Kwok-him, who said that even something unlawful could probably benefit the public. So, according to their logic, it is alright to be unlawful. Therefore, I ask: What kind of benefits this can offer?

(Some Members talked loudly in their seats)

CHAIRMAN (in Cantonese): Will Members please do not talk loudly in your seats.

MR LEUNG KWOK-HUNG (in Cantonese): No, I am not referring to Mr IP Kwok-him, but Mr WONG Ting-kwong. He came here yesterday. Do you feel fine then? I am referring to Mr WONG Ting-kwong.

There is no benefit. How pathetic it is to have a law-enforcement officer resorting to rhetoric on such logic. It is both illegitimate and unreasonable. Chairman, are they not required to be subject to any monitoring when information is added into the pool? By asking them to delete the information, am I not alleviating their burden? The chance for leakage has decreased.

Chairman, to be frank, it is really pitiful. Let me quote an example. Suppose they have to end the operation by five o'clock, yet they go on wiretapping until seven and get to know some of my privacy. How are we supposed to deal with this? If my personal data is added into the pool, and someone has left the USB on a bus when he intends to bring it home for work — this happens frequently — then what can I do? Who can I ask to get it back? Buddy, I simply cannot punish him. Chairman, the issue has already been pointed out and explained during lunch hours. In reply, he described a really dire consequence about which nothing can be done. I asked, "Who will be punished directly for not complying with these rules?" No one will. Chairman, should the Judge granting the authorization consider it incorrect, he would briefly issue a condemnation. If the Commissioner has been wrong, it will draw some brief condemnations and a little grumble from the Judge. However, after making condemnations, no prosecution can be initiated against him if we are still not satisfied. As he has no criminal liability in this respect, we cannot sue him by ourselves. Not even Ken TSANG can do so. What can

we do then? Chairman, as the Complaints Against Police Office refuses to follow up the case, civil litigation will be needed. Buddy, why am I required to spend money when they are the ones have done something wrong? Will I win for sure? Chairman, that is a duodenum. Secretary, do you like duodenum? You can have it cut down and preserved as a specimen, instead of keeping it in your body. What good is keeping a thing when you are not legitimate, reasonable and sensible to do so?

Therefore, Chairman, while I am watching, I discover that this Council, like the Meeting in *Animal Farm*, is probably not a place for humans to give their speeches.

MS CYD HO (in Cantonese): Regarding this group of amendments, I have to mention what the term "material change in circumstances" should include. In the papers provided by the Government, the term "material change" includes a greater likelihood of obtaining information subject to legal professional privilege (LPP) or journalistic material. In other words, the information is not supposed to be obtained by the Government by way of wiretapping. However, when there is material change, the Government has to report to the panel judge of the discontinuance of the wiretapping action. Since the Government should not obtain the information in the first place, no matter when the action discontinues, the information should not be used by the Government.

Chairman, one hour ago, we have a lengthy debate on the threshold of "becomes aware". The Government tries to minimize the public's or the Commissioner's regulatory power over it, and therefore proposes the threshold of "becomes aware" so that it can use it as a defense and to evade responsibilities. Our proposal of "reasonable suspicion" will not be passed, and at the end, the term "becomes aware" will be retained. Insofar as this legislature's mode of voting is concerned, the current amendment can only adhere to the threshold of "becomes aware". Since we have achieved this threshold, and it is difficult to prove whether the Government has really become aware or has not become aware, law-enforcement agents can evade no more. When there is dispute about whether or not the Government has become aware, the judgment of a panel judge should be sought in order to examine if the action should be discontinued or not. Nevertheless, you still have a little leeway, and that is why Mr James TO has to move his amendment this time around.

Chairman, what is that little leeway? As Mr James TO said just now, there would be a time gap between the time that the judge gave the order to discontinue the wiretapping action and the time that the law-enforcement agent, who performed the wiretapping action, discontinued it. According to the amendment to the Code of Practice as proposed by the Government, products obtained during this time gap should be regarded as having been obtained pursuant to a prescribed authorization. In other words, they are legal. But where is the leeway for the Government? The purpose of amending the Ordinance is to vest the Commissioner with the power to listen to the wiretapped products obtained by the Government, right? This is also a major reason why the democratic camp supports the amendment this time around, as the Commissioner may listen to wiretapped products. However, should the products obtained during the time gap, that is, between the time that the action is discontinued and the time that the judge issues the warrant to discontinue the wiretapping action, be considered protected products? The Bills Committee has not discussed that. Now we hear the Secretary say that the Commissioner is not allowed to listen to the information that has been obtained during the time gap and has been aggregated and input into the intelligence management system. We only learn that today and it turns out that we have to continue the debate with the Government in this Chamber.

Chairman, if they are considered protected products, then the Commissioner is vested with the power to listen to it according to the amendment. However, as the Secretary said just now, the Administration simply does not want the Commissioner to have access to the information that has been aggregated and input into the intelligence management system. Does he mean that once the information has been aggregated and input into the intelligence management system, the Commissioner shall have no power to listen even if it is protected product? Is that the case? Will the Secretary clarify that later on? If the Secretary really means that, then we should support the amendments of Mr James TO. It is because we have been saying all along that the most effective way for the Commissioner to oversee the Government is to listen to those recordings directly. It is not enough even if he can have access to the verbatim record because the verbatim record could be jeopardized by deliberate or careless omission. Listening to the sound recording is the most important thing. However, the Government considers that the Commissioner has no right to listen to the recording, provided that the sound record of that one hour or so has been aggregated and input into the intelligence management

system during the time gap between the issuance of the warrant concerning the discontinuance of wiretapping and the actual time that the wiretapping action is discontinued. In such cases, how can we monitor the Government? Another part of the lawful power vested in the Commissioner is taken away by the Government. We said during the Second Reading that the amendments had been surpassed by modern technologies. No matter whether the Commissioner had listened to the recording or not, no matter whether the Government had wiretapped or not, personal privacy could have been infringed already. However, it turns out that there is another leeway.

Chairman, regarding the "material change" I have mentioned just now, actually it involves information the Government should not have intercepted in the first place. However, if such information that the Government should not intercept is quickly aggregated and input into the intelligence management system by law-enforcement agents, and the Government is reluctant to pull it out, then there will not be any overseeing since the Commissioner cannot review the information. This will serve as an incentive for the officer in charge to delay the serving of the discontinuance notification to eavesdroppers. The incentive is therefore augmented and it may become an area under no regulation. For that reason, we have to rely on Mr James TO's amendment to expressly stipulate that the Government should pull out the protected products obtained during this unregulated period and that the Government should be prohibited from using the protected products even if they have been aggregated and input into the intelligence management system. Only by doing this can we prevent the overseeing regime from being crippled.

Chairman, furthermore, according to the Government's proposal in the Code of Practice, law-enforcement agencies will be refrained from gaining access to any products obtained during the time gap or their copies once they receive the revocation notice, no matter whether they are for investigation or other purposes. However, if the information has been aggregated and input into the intelligence management system, how will the information be used? Should this principle be adhered to and such information should not be used for other purposes? If so, why is the Government so reluctant to pull them out? For that reason, we consider that the Government wants to retain the protected products in the intelligence management system and prevent it to be pulled out because it wants to use such stolen products ... I am sorry, wiretapped products, but I truly believe that they are obtained by way of stealing. I consider that the Government wants

to use the recordings for other purposes, while such recordings may include LPP or journalistic material that the Government should not possess in the first place, but the Government keeps on using the information by means of the loophole.

Thank you, Chairman.

MR JAMES TO (in Cantonese): Chairman, please count the quorum. I would like to make my speech tomorrow.

CHAIRMAN (in Cantonese): Will the Clerk please ring the bell to summon Members back to the Chamber.

(After the summoning bell had been rung, a number of Members returned to the Chamber)

SUSPENSION OF MEETING

CHAIRMAN (in Cantonese): I now suspend the meeting until 9 am tomorrow.

Suspended accordingly at 8.02 pm.

Annex I

Interception of Communications and Surveillance (Amendment) Bill 2015

Committee Stage

Amendments moved by the Honourable WONG Yuk-manClauseAmendment Proposed

16

[NEGATIVED]

By adding—

“(2A) Section 57(1)—

Repeal

“cause”

Substitute

“order”.’.

16

[NEGATIVED]

By adding—

“(4A) Section 57(2)(a)—

Repeal

“cause”

Substitute

“order”.’.

16

[NEGATIVED]

By adding—

“(5A) Section 57(2)(b)—

Repeal

“cause”

Substitute

“order”.’.

16

[NEGATIVED]

By adding—

“(6A) Section 57(3)—

Repeal

“any officer has caused any interception or covert surveillance to

be discontinued, whether under subsection (1) or (2)”

Substitute

“any officer has ordered any interception or covert surveillance to be discontinued, whether under subsection (1) or (2)”.”.

Version A

Interception of Communications and Surveillance (Amendment) Bill 2015

Committee StageAmendment moved by the Honourable James TO Kun-sunClauseAmendment Proposed

18 By deleting the clause and substituting —

“18. Section 58A added

After section 58—

Add

“58A. Report to relevant authority: inaccurate information or change in circumstances

(1) This section applies if, while a prescribed authorization is in force, the officer of the department concerned who is for the time being in charge of the interception or covert surveillance concerned—

(a) has reason to suspect that there is a material inaccuracy in the information provided for the purposes of—

(i) the application for the issue of the prescribed authorization made under section 8, 14 or 20, including such an application made orally under section 25;

(ii) the application for the renewal of the prescribed authorization made under section 11 or 17, including such an application made orally under section 25;

(iii) the application for confirmation of the prescribed authorization as provided for in section 23(1) or 26(1); or

- (iv) the application for confirmation of the renewal of the prescribed authorization as provided for in section 26(1); or
- (b) has reason to suspect that there has been a material change in the circumstances on the basis of which—
 - (i) the prescribed authorization was issued under section 9(1)(a), 15(1)(a), 21(1)(a) or 25(4)(a);
 - (ii) the prescribed authorization was renewed under section 12(1)(a), 18(1)(a) or 25(4)(a);
 - (iii) the prescribed authorization was confirmed under section 24(1)(a) or 27(1)(a) or ordered to have effect under section 24(3)(a)(ii) or 27(3)(a)(ii); or
 - (iv) the renewal of the prescribed authorization was confirmed under section 27(1)(a).
- (2) Subject to subsection (3), the officer must—
 - (a) as soon as reasonably practicable after having reason to suspect the matter described in subsection (1)(a)(i) or (b)(i), cause a report on the matter to be provided to the relevant authority by whom the prescribed authorization has been issued;
 - (b) as soon as reasonably practicable after having reason to suspect the matter described in subsection (1)(a)(ii) or (b)(ii), cause a report on the matter to be provided to the relevant authority by whom the prescribed authorization has been renewed;
 - (c) as soon as reasonably practicable after having reason to suspect the matter described in subsection (1)(a)(iii) or (b)(iii), cause a report on the matter to be provided to the relevant authority by whom the prescribed authorization has been confirmed or ordered

- to have effect; or
- (d) as soon as reasonably practicable after having reason to suspect the matter described in subsection (1)(a)(iv) or (b)(iv), cause a report on the matter to be provided to the relevant authority by whom the renewal of the prescribed authorization has been confirmed.
- (3) The officer is not required to cause a report on a material change in circumstances to be provided to the relevant authority under subsection (2) if—
 - (a) the change arises from a discontinuance of the interception or covert surveillance concerned or a part of the interception or covert surveillance concerned under section 57(1) or (2) and a report has been provided to the relevant authority under section 57(3); or
 - (b) the change arises from the arrest of the subject of the interception or covert surveillance concerned as referred to in section 58(1) and a report has been provided to the relevant authority under that section.
 - (4) Where the relevant authority receives a report under subsection (2), if the relevant authority considers that the conditions for the continuance of the prescribed authorization concerned or a part of the prescribed authorization concerned under section 3 are not met, the relevant authority must revoke the prescribed authorization or that part of the prescribed authorization.
 - (5) If the prescribed authorization or a part of the prescribed authorization is revoked under subsection (4), the prescribed authorization or that part of the prescribed authorization, despite the relevant duration provision, ceases to have effect from the time of the revocation.
 - (6) If the prescribed authorization is not revoked or only part of the prescribed authorization is

revoked, the relevant authority may do one or both of the following—

- (a) vary any terms or conditions in the prescribed authorization;
 - (b) specify any new conditions in the prescribed authorization that apply to the prescribed authorization itself or to any further authorization or requirement under it (whether granted or imposed under its terms or any provision of this Ordinance).
- (7) If, at the time of the provision of a report to the relevant authority under subsection (2), the relevant authority is no longer holding his or her office or performing the relevant functions of that office—
- (a) without affecting section 54 of the Interpretation and General Clauses Ordinance (Cap. 1), the reference to relevant authority in that subsection includes the person for the time being appointed as a panel judge or authorizing officer (as appropriate) and lawfully performing the relevant functions of the office of that relevant authority; and
 - (b) the provisions of this section are to apply accordingly.
- (8) In this section—
- relevant duration provision*** (有關時限條文) means section 10(b), 13(b), 16(b), 19(b) or 22(1)(b) (as may be applicable).””.