OFFICIAL REPORT OF PROCEEDINGS

Wednesday, 17th January 1973

The Council met at half past Two o'clock

[MR PRESIDENT in the Chair]

PRESENT

HIS EXCELLENCY THE GOVERNOR (*PRESIDENT*)
SIR CRAWFORD MURRAY MACLEHOSE, KCMC, MBE
THE HONOURABLE THE COLONIAL SECRETARY
SIR HUGH SELBY NORMAN-WALKER, KCMG, OBE, JP
THE HONOURABLE THE ATTORNEY GENERAL
MR DENYS TUDOR EMIL ROBERTS, CBE, QC, JP
THE HONOURABLE THE SECRETARY FOR HOME AFFAIRS
M.R DONALD COLLIN CUMYN LUDDINGTON, JP
THE HONOURABLE THE FINANCIAL SECRETARY
MR CHARLES PHILIP HADDON-CAVE, JP
THE HONOURABLE DAVID RICHARD WATSON ALEXANDER, CBE, JP
DIRECTOR OF URBAN SERVICES
THE HONOURABLE JAMES JEAVONS ROBSON, CBE, JP
DIRECTOR OF PUBLIC WORKS
THE HONOURABLE JOHN CANNING, JP
DIRECTOR OF EDUCATION
DR THE HONOURABLE GERALD HUGH CHOA, CBE, JP
DIRECTOR OF MEDICAL AND HEALTH SERVICES
THE HONOURABLE JACK CATER, MBE, JP
SECRETARY FOR INFORMATION
THE HONOURABLE DENIS CAMPBELL BRAY, JP
DISTRICT COMMISSIONER, NEW TERRITORIES
THE HONOURABLE PAUL TSUI KA-CHEUNG, CBE, JP
COMMISSIONER OF LABOUR
THE HONOURABLE IAN MACDONALD LIGHTBODY, JP
SECRETARY FOR HOUSING
THE HONOURABLE DAVID HAROLD JORDAN, MBE, JP
DIRECTOR OF COMMERCE AND INDUSTRY
THE HONOURABLE LI FOOK-KOW, JP
DIRECTOR OF SOCIAL WELFARE
THE HONOURABLE WOO PAK-CHUEN, OBE, JP
THE HONOURABLE SZETO WAI, OBE, JP
THE HONOURABLE WILFRED WONG SIEN-BING, OBE, JP
THE HONOURABLE MRS ELLEN LI SHU-PUI, OBE, JP
THE HONOURABLE WILSON WANG TZE-SAM, OBE, JP
THE HONOURABLE HERBERT JOHN CHARLES BROWNE, OBE, JP
DR THE HONOURABLE CHUNG SZE-YUEN, OBE, JP
THE HONOURABLE LEE QUO-WEI, OBE, JP
THE HONOURABLE OSWALD VICTOR CHEUNG, OBE, QC, JP
THE HONOURABLE ANN TSE-KAI, OBE, JP
THE HONOURABLE ROGERIO HYNDMAN LOBO, OBE, JP
THE HONOURABLE MRS CATHERINE JOYCE SYMONS, OBE, JP
THE HONOURABLE JAMES WU MAN-HON, JP
THE HONOURABLE MRS MARY WONG WING-CHEUNG, MBE, JP

ABSENT

THE HONOURABLE PETER GORDON WILLIAMS, JP

IN ATTENDANCE

THE CLERK TO THE LEGISLATIVE COUNCIL
MR RODERICK JOHN FRAMPTON

Papers

The following papers were laid pursuant to Standing Order No 14(2): —

Subject	*LN No*
Subsidiary Legislation: —	
Business Registration Ordinance.	
Business Registration (Amendment) Regulations 1973	1
Public Health and Urban Services Ordinance.	
Declaration of Market in Urban Areas to which Ordinance Applies	2
Interpretation and General Clauses Ordinance.	
Rectification of Errors Order 1973	3
Offences Against the Person Ordinance.	
Termination of Pregnancy Regulations 1973	4

Sessional Papers 1972-73: —

No 33—Director of Audit's Report and Certificate on the Accounts of the Hong Kong Government for the year ended 31st March 1972 (published on 17.1.73).

No 34—Despatch dated 9th January 1973 to the Secretary of State on the Report by the Director of Audit for the year ended 31st March 1972 (published on 17.1.73).

Oral answers to questions

Through trains Kowloon-Canton

1. DR CHUNG asked: —

Will Government approach the Chinese authorities on the resumption of through passenger train services for the Kowloon-Canton Railway?

THE COLONIAL SECRETARY (SIR HUGH NORMAN-WALKER): —Sir, in this very big question the principal consideration is the convenience of the travelling public. This is affected not only by through trains of themselves, but also by the related customs, logistics and immigration arrangements. These matters constantly engage our attention, and sympathetic consideration will be given to any proposals for improvement.

Rehousing for Western District Urban Renewal Scheme

2. MR WONG asked: —

> Will Government make a progress report on the rehousing of families or persons affected by the Western District Urban Renewal Scheme, and state how many have been rehoused or will be offered rehousing?

MR LIGHTBODY: —Sir, the maximum rehousing commitment for that part of this renewal scheme which is definitely to go ahead as originally conceived is for some 1,800 families, or 12,000 persons. This is a 12.8 acre area known as the pilot scheme. To date, in the 107 properties acquired so far by Government, 369 families, or 2,300 persons, have been offered and have accepted public housing and, of these, 209 families or 1,300 persons have already moved in. A further 125 families, or 700 persons, declined the offer of public housing. In brief, over 500 families have now been dealt with.

This leaves some 1,300 families, or about 9,000 persons, still to be offered rehousing as and when Government acquires their properties for clearance.

MR WONG: —Sir, is there a provision for these 9,000 individual units in the ten-year housing scheme and, if so, within what period of time?

MR LIGHTBODY: —Yes, Sir, this commitment is provided for specifically in the ten-year housing programme. As to over how long, perhaps I could have notice of that question and let my honourable Friend know separately.

Proposal for tax relief on handicapped adult offspring

3. MR CHEUNG asked: —

> Will Government consider granting tax relief by way of a dependants allowance to the parents of adult offspring who are not employable because of a handicap?

THE FINANCIAL SECRETARY (MR HADDON-CAVE): —Yes, Sir, certainly I shall examine the honourable Member's suggestion in conjunction with the Commissioner of Inland Revenue. But I feel bound to say that I am by no means certain that selective allowances, that is to say allowances tailored to the special circumstances of certain individuals, are consistent with our low tax structure and the need to keep the administration of our tax laws as simple as possible.

Oral answers

MR CHEUNG: —Sir, would my honourable Friend care to indicate to us when will it be possible for him to examine this matter with the Commissioner?

THE FINANCIAL SECRETARY (MR HADDON-CAVE): —Soon, Sir. (*Laughter*).

MR CHEUNG: —Would my honourable Friend consider a further helpful suggestion from me which would not fall foul of his aversion to selective allowances, namely simply by widening the definition of the word "child" to include a handicapped child in the Inland Revenue Ordinance?

THE FINANCIAL SECRETARY (MR HADDON-CAVE): —Yes, Sir, I shall consult with the Commissioner of Inland Revenue.

Testing of concrete

4. MR WONG asked: —

> Since the standards of strength and quality of concrete and reinforcement is laid down by law, would Government state who is responsible for testing and what steps Government is taking to ensure that samples being tested are truly representative samples of the material actually being used on site?

MR ROBSON: —Sir, my honourable Friend is correct in that the required standards of strength and quality of concrete and steel reinforcement are laid down in the Building (Construction) Regulations made under the Buildings Ordinance. In order to achieve the standards required to comply with the provisions of these Regulations it is the duty of the appointed authorized architect and registered contractor to provide the supervision necessary to ensure that the regulations are strictly followed. In this connection it is also the responsibility of the authorized architect and registered contractor to arrange the carrying out of the necessary tests and to assure that the samples being so tested are truly representative of the materials actually used on the site.

In each case where high grade concrete has been specified the Building Authority sends a letter to the authorized architect requiring concrete cubes to be taken on each stage of the concrete work in the presence of the authorized architect or his representative, and these cubes have to be tested by an independent local testing laboratory. The

Building Authority also requires the authorized architect to ensure that, in all cases, samples of steel reinforcement delivered to the building site are selected and sent for a full range of tests again by an independent local testing laboratory. The results of these rests are then submitted by the architect to the Building Authority for consideration.

Honourable Members will no doubt recollect the recent amendment to the Buildings Ordinance by which any person for whom building works are carried out or any authorized architect or any registered contractor who permits or authorizes the introduction of defective materials into a building under construction is guilty of an offence and is liable, on conviction, to a fine of $50,000 and to imprisonment for 2 years.

Control over nurseries

5. MRS WONG asked: —

> In view of the assurance given by the former Director of Social Welfare on 2nd August 1972 that urgent consideration was being given to the setting up of the machinery necessary to implement legislation which is required to control all residential and day nurseries (where a maintained standard is essential in the care of the very young in our community), would Government state what progress has now been made in this matter?

MR LI: —Sir, my predecessor referred to the means of implementing any such legislation, namely, the need for a competent and qualified inspectorate, the training of nursery workers on a large scale, and the involvement of other Government departments in the maintenance of health and safety standards.

In order to build up a competent and qualified inspectorate, suitable officers are sent for overseas training in child care. There are already a number of qualified child care officers in the Department.

The provision of adequate facilities for the training of nursery workers has also been considered. The Lady Trench Training Centre at present provides a one-year full-time pre-service training course in nursery work for prospective nursery workers. In addition, the centre also runs short but intensive courses for staff of non-profit-making nurseries. These short courses range from one to twelve weeks. The Social Welfare Five Year Department Plan envisages that all these training courses would be expanded.

Since last August, the Social Welfare Department has had consultations with various Government departments including the Education,

Medical and Health, Fire Services and Public Works Departments on the minimum standards of health and safety which are considered to be necessary in residential and day care centres for children.

Returning to the question of a qualified inspectorate, I am afraid it is not possible at this stage to estimate the staff required for the implementation of any such legislation. The reason for this is that there is no record of the number of privately run profit-making nurseries but steps are being taken to ascertain the number of centres and the number of children in their care. On the other hand, there are 113 non-profit-making residential and day care centres for children including nurseries, creches, play centres and children's homes. The majority of these are sponsored by voluntary welfare organizations and are assisted by a recurrent subvention from Government.

To conclude, Sir, I can assure my honourable Friend that there has been no loss of momentum since my predecessor referred to this matter last August.

MRS WONG: —Sir, may I ask my honourable Friend if his department is contemplating means of controlling nurseries and day centres by registration?

MR LI: —Sir, I do not think it would be appropriate to introduce legislation to require registration alone, although I would not rule out the possibility of introducing legislation in two parts; namely, registration first and then control later. But I hope to conduct a survey in the summer, with the assistance of university students, to ascertain how many and what the standards are in private nurseries.

MRS SYMONS: — Sir, would Government make public the minimum standards of health and safety, inviting the full co-operation of the public in general and of the operators of creches and nurseries in particular? Furthermore, once Government has decided what these minimum regulations should be, would they please conduct a minor campaign of educating the public?

MR LI: —Yes, Sir, I think we have first of all to decide what minimum standards there should be. I think it would be unreasonable to have very high standards which very few nurseries can meet but, at the same time, there must be minimum standards to ensure the safety and health of children. I will certainly consider whether, prior to legislation, once we have come to a conclusion on the standards we could publicize this with local mass media.

Driving test examiners

6. MRS LI asked: —

> Will Government state how many driving test examiners are being recruited, and when it is expected they will start work? Have special measures been taken to fill existing vacancies?

THE FINANCIAL SECRETARY (MR HADDON-CAVE): — Sir, driving test examinations on the road are carried out in normal office hours by 35 Government officers. Thirty of these are Executive Officers who were temporarily posted to these duties in August of last year pending the creation of a new grade of specialist officers. Recruitment of such professional driving test examiners should begin within the next three to four months.

In addition, under a temporary accelerated programme, driving tests also take place after office hours on weekdays and at weekends and holidays. For this purpose selected volunteer civil servants are used. The number of these examiners varies, but it is usually around 120. The future of this accelerated programme I dealt with in my reply to my honourable Friend's question on driving tests a fortnight ago.

Outline Zoning Plans for Yau Ma Tei and Wan Chai

7. MRS WONG asked: —

> Will Government state when the property owners whose properties have been frozen by the Outline Zoning Plans for Yau Ma Tei and Wan Chai will receive a firm offer by Government to purchase their properties?

MR ROBSON: —Sir, I am pleased to advise my honourable Friend that as a result of the recent provision of funds by the Finance Committee of this Council, any property owner whose redevelopment proposals have been or are frustrated by the publication of the plans to which my honourable Friend refers can now open negotiations with my Director of Lands and Survey with a view to the acquisition of his property by Government.

Shellfish from New Territories

8. MR SZETO asked: —

> Will Government say whether it considers the consumption of shellfish caught in the waters off Sha Tin and other parts

of the New Territories to be harmful to human health, even if properly cleaned and sterilized? If so, what action will Government take in the matter?

MR ALEXANDER: —Sir, shellfish which are collected from polluted waters may carry infection to human beings. However, if they are properly cleaned and cooked before being eaten, there should be no danger to health—whether they are caught off Sha Tin or any other places.

MR SZETO: —Sir, can my honourable Friend say whether in the marine investigation carried out by the consultants in the Tolo Harbour area there has been any indication of the bacteria coliform counts of the water in that area?

MR ALEXANDER: —I believe this is so, Sir; but, in addition, we ourselves carry out regular sample-taking in the waters off Sha Tin and elsewhere off almost all gazetted beaches in the New Territories and these have been found satisfactory.

Vesting of private streets in the Crown

9. MR ANN asked: —

Will Government say whether any progress is being made in vesting private streets in the Crown now that the Crown Land Ordinance has been enacted?

MR ROBSON: —Sir, the Crown Land Ordinance 1972 and associated regulations, which became effective on the 1st October 1972, provide for Government taking over private streets where there is provision in the lease that the lessee shall, when required, surrender the land needed for this purpose. There are approximately 300 private streets in the Colony and checking the lease conditions of all the lots fronting these streets to see whether they contain such provision will be a lengthy task.

First priority has therefore been accorded to 16 roads which are used as traffic thoroughfares so that, wherever the lease conditions permit, early action can be taken to obtain surrender of the land occupied by the road. Broadly it is planned to deal next with roads now so blocked by hawkers or parked cars that fire appliances cannot get access to buildings and fire hazards have been created.

However, as indicated to this Council in June last year, additional legislation will be required to obtain possession of any land in the

private streets where there is no obligation under the lease for the owner to surrender the land to Government. This legislation is now in an advanced stage of drafting.

Rises in share and real-estate prices

10. MR WU asked: —

> In view of the phenomenal rise in shares and real-estate prices in Hong Kong would Government make a statement on the effects these would have on our cost of living, prices, wages, our industries and the economy as a whole, and whether Government will take any steps to alleviate the situation?

THE FINANCIAL SECRETARY (MR HADDON-CAVE): —Sir, I regret that I do not consider it would be appropriate for me to make the wide ranging statement requested by my honourable Friend at this juncture, and I would ask him instead to wait for the 1973 budget speech on the 28th of February next.

But, following the flurry of activity on the stock market last week, I would like to say a few words, now that the situation is more orderly, about the need for, and the philosophy underlying, the various moves made. These moves have been, naturally, the subject of a certain amount of critical analysis and really two questions have been asked. First, were the moves necessary? Secondly, has the Government less faith in the underlying strength of our economy than the ordinary investor?

As regards the first question: contrary to what some may think, neither the Government nor the managements of the stock exchanges take, or have taken, a view as to what is the “right” or "proper" level of prices. We have been concerned with a much more fundamental aspect, namely, the working of the market mechanism. We have been concerned to see that the market mechanism works—is *allowed* to work—correctly without artificial stimulants. Put another way, we are solely concerned to see that orderly marketing conditions prevail; and not disorderly conditions which distort the forces of supply and demand based on rational considerations.

It is true that the stock market is a market. But it is a market in paper and, if the velocity of circulation of that paper becomes such that it begins to be traded without regard to its underlying worth, then the conditions necessary for the conduct of an orderly market are no longer present. In other words, when the market for this paper attracts a large number of speculators, even gamblers, and certainly not

investors, who buy and sell several times a day by watching a television screen over cups of tea in a broker's office or by peering through a window at the board of a stock exchange, and whose feverish desire for a quick profit obliterates all rational thought, then the sheer volume of activity will in itself generate an upward spiral movement of prices. And this volume of activity has the further consequence that brokers are quite unable to observe the 24-hour settlement rule; in effect, this gives rise to an additional form of credit, further to fuel the market.

In our view, the situation that had developed by the middle of last week placed in jeopardy the possibility of orderly marketing conditions prevailing. Orderly marketing conditions continue to be our objective and I am sure the decision by the stock exchanges, acting in concert, to limit trading hours this week by closing for three half days and to close every Wednesday afternoon for the time being will assist towards this objective in the short term. Likewise, I am sure that the Securities Advisory Council, which is now holding its first meeting, will be concerned to suggest reforms in trading practices designed to secure this objective in the longer term.

As regards the second question, I need only say this: the Government has complete confidence in the underlying strength of all sectors of our economy and of the great majority of public companies in Hong Kong. But the continuing strength and further development of our economy is not helped—indeed is put at risk—by the existence of conditions and practices on the stock exchanges which inhibit the orderly marketing of shares.

MR WU: —Sir, I am grateful for my honourable Friend's reply which was preceded by action last Thursday. In view of what my honourable Friend has said about free market mechanism, may I ask if he is aware that there is a lot of artificial stimulants around to drive up the stock market—for example, people saying in the press that the Hong Kong dollar will devalue with the pound when that happens, in spite of his having previously said that the Hong Kong dollar will be detached from the pound in the event of devaluation?

THE FINANCIAL SECRETARY (MR HADDON-CAVE): —I hear rumours too, Sir, as regards the existence of certain trading practices. I can only say that the Securities Advisory Council will be looking into these with great care over the next few weeks.

Government business

First reading of bills

EVIDENCE (AMENDMENT) BILL 1973
ADMINISTRATION OF JUSTICE (MISCELLANEOUS AMENDMENTS) BILL 1973
MERCHANT SHIPPING (AMENDMENT) BILL 1973
MERCHANT SHIPPING (RECRUITING OF SEAMEN) (AMENDMENT) BILL 1973
DANGEROUS DRUGS (AMENDMENT) BILL 1973

Bills read the first time and ordered to be set down for second reading pursuant to Standing Order No 41(3).

Second reading of bills

EVIDENCE (AMENDMENT) BILL 1973

THE ATTORNEY GENERAL (MR ROBERTS) moved the second reading of: —"A bill to amend the Evidence Ordinance."

He said: —Sir, the storage of Government papers, whether in departments or in a public records office, presents formidable problems. The huge volume of documents means that considerable space has to be provided at great cost.

One solution to this problem is to microfilm records, which could then be destroyed, with a significant saving of space and expense. However, this course can only be safely adopted if doubt as to the evidential value of microfilms is removed. At present, a copy of a document which is proved to be lost or destroyed is admissible as secondary evidence of the original. However, this is not always satisfactory in practice since it sometimes proves to be difficult, after a lapse of time, to call evidence to prove that the original was destroyed and that the copy is a true copy of it. Where the secondary evidence consists of a microfilm reproduction, it may not be easy to find a witness who can identify the original film.

The bill before honourable Members, which is intended to deal with these problems, is based on the New Zealand Evidence (Amendment) Act.

The new section 33, which is contained in clause 2, provides that a print made from a film of a public documents shall be admissible in evidence, on its production, without further proof, if it is certified by a public officer as having been made from a film of the public document concerned.

[THE ATTORNEY GENERAL] **Evidence (Amendment) Bill—second reading**

By virtue of the new section 34, a print made from a film of a document in the possession of the Government or of an authorized person, will be admissible in evidence, upon its production, without further proof, provided that the conditions set out in that section are satisfied.

The new section 34A defines an "authorized person" as a bank, a trust company and any other person declared by the Governor to be an authorized person under the new section 34(5). This will enable a print to be admissible in evidence if it is made from a film of records held by a bank, a trust company or some other person or body declared by the Governor.

The bill has the support of the Exchange Banks' Association and the Law Society and should be of assistance to those who are faced with the difficult task of dealing with records.

Motion made. That the debate on the second reading of the bill be adjourned—THE ATTORNEY GENERAL (MR ROBERTS).

Question put and agreed to.

Explanatory Memorandum

The purpose of this Bill is to make admissible in evidence microfilm reproductions of public documents and other documents in the possession of the Government, banks, trust companies and other authorized persons.

2. Clause 2 adds three new sections to the principal Ordinance. The first of these (section 33) provides for the admission of prints made from a film of a public document. The print must be certified as such by the public officer who has custody of the film.

3. Section 34 makes admissible, subject to certain conditions, a print made from a film of a document in the possession of the Government or an authorized person. An authorized person is defined in section 34A as a bank, a trust company and any person declared by the Governor to be an authorized person under section 34(5).

4. Proof of compliance with the conditions relating to the admissibility of prints may be given by a Government officer, an employee of an authorized person or an authorized person either orally or by certificate (section 34(2)).

5. Section 34A contains a number of definitions.

ADMINISTRATION OF JUSTICE (MISCELLANEOUS AMENDMENTS) BILL 1973

THE ATTORNEY GENERAL (MR ROBERTS) moved the second reading of: —"A bill to amend certain laws relating to the administration of justice."

He said: —Sir, the amendments which are contained in the Schedule to this bill will bring our law into line with that which now applies in England on the subjects of the enforcement of judgments, prerogative writs and contempt of court. They are modelled on sections of the Administration of Justice Act 1956, the Administration of Justice Act 1960 and the County Courts Act 1959.

Paragraph 2 of the amendments to the Supreme Court Ordinance (which are contained in the Schedule) inserts two new subsections into section 11 of the principal Ordinance. These will empower the Supreme Court to appoint a receiver by way of equitable execution in relation to land and any interest in land. This power can be exercised whether or not a charge is imposed on the land or interest in land of the judgment debtor.

Paragraph 3 of the amendments to the Supreme Court Ordinance inserts several new sections in that Ordinance. The first of these empowers the Supreme Court to impose a charge on any land, or interest in land, of a judgment debtor to secure the payment of money due or to become due under a judgment or order. At present, execution in such cases is achieved by the issue of a writ of elegit, whereby the land of the debtor is delivered to the creditor to be held by the latter until the debt is satisfied. The introduction of the new section 11A makes it no longer necessary to retain this rather archaic writ, which is abolished by the new section 11B.

The new section 11C enables the Supreme Court to attach a sum standing to the credit of a person in a deposit account in a bank. This cannot be done at present because money may be attached only if it is due to the depositor, which does not usually occur in the case of a deposit account until notice is given and other conditions imposed by the bank are satisfied.

The new sections 11 D and 11 E relate to habeas corpus proceedings. By section 11D, only the Full Court may refuse a criminal application for habeas corpus. A criminal application for such an order may be made in the first instance to a single judge, who will have power only to grant the application and not to refuse it. If he does not grant an order, he must direct that the application be made to the Full Court. In a civil application for habeas corpus, however, a single judge may either make or refuse the order.

[THE ATTORNEY GENERAL] **Administration of Justice (Miscellaneous Amendments) Bill—second reading**

Section 11D also prohibits a person from making more than one application for habeas corpus on the same grounds. At present an applicant in a civil matter has a right to apply in turn to any judge who is competent to issue the writ and each judge must determine the application on its merits. The new section 11E provides for appeals in habeas corpus proceedings, save only where an order for release is made by a single judge in a criminal application.

The new section 11F gives power to the Supreme Court, on an application for an order of certiorari, to call for the proceedings of a lower court and to substitute for any sentence passed by that court which it did not have power to pass, one which it could properly have imposed. The Supreme Court does not at present have this power and can do no more than quash the proceedings if the lower court has exceeded its powers.

Paragraph 4 of the amendments to the Supreme Court Ordinance introduces a new section 37A. This gives a general right of appeal against any order of a court or tribunal issued in exercise of its power to punish for contempt of court. In some Ordinances which provide for the punishment of contempt, a right of appeal is conferred, but in others it is not. Furthermore, in some circumstances, the jurisdiction of the courts to punish for contempt rests upon common law, and there is no right of appeal conferred in such a case.

Page 6 of the bill contains amendments to the Judicial Proceedings (Regulation of Reports) Ordinance. A new section 3 provides that it shall not be a contempt of court to publish any matter calculated to interfere with the course of justice in pending proceedings if this is done innocently. The burden of proof would be on the person who pleads the defence of innocent publication. This is a new provision, since at present innocence is no defence to proceedings for contempt of court for publication of this kind of matter.

By virtue of the new section 4, which clarifies the existing law, the publication of information about proceedings before a court, judge or tribunal sitting in private, in camera or in Chambers shall not of itself be contempt of court except in the circumstances specified in the section or where the court, judge or tribunal specifically prohibits publication.

The amendments to the District Court (Civil Jurisdiction and Procedure) Ordinance, which are to be found on pages 7, 8 and 9 of the bill, give to the District Court powers similar to those conferred upon the Supreme Court by the amendments to the Supreme Court

Ordinance contained in the Schedule in relation to the enforcement of judgments, the appointment of receivers and the attachment of debts.

Motion made. That the debate on the second reading of the bill be adjourned—THE ATTORNEY GENERAL (MR ROBERTS).

Question put and agreed to.

Explanatory Memorandum

This Bill amends various Ordinances relating to the administration of justice. The amendments are contained in the Schedule.

The new sections 11(3) and (4), 11A to 11F and 37A, which are added to the Supreme Court Ordinance, are based on the corresponding provisions in the Administration of Justice Act 1956, c. 46, and the Administration of Justice Act 1960, c. 65.

Section 11(3) and (4) enables the Supreme Court to appoint a receiver by way of equitable execution as regards land and interests in land. This may be done whether or not a charge has been imposed under section 11A. New section 11A empowers the court to impose a charge on the land of a judgment debtor to secure the payment of money due. Such a charge may be imposed to enforce a judgment of any court, including a foreign court, and the charge may be registered under the Land Registration Ordinance. The writ of elegit is abolished by the new section 11B and it is replaced by the new provisions in section 11(3) and (4) and section 11A.

New section 11C gives the court a new method of enforcing judgments for the payment of money. It empowers the court to attach a sum standing to the credit of a judgment debtor in a deposit account in a bank.

New section 11 D provides that the Full Court only can, in a criminal application for *habeas corpus*, refuse an order for the release of a restrained person. Once an application for *habeas corpus* has been made, whether in a civil or criminal case, no other application may be made on the same grounds, whether to the same or to another court or judge, unless fresh evidence is brought forward in support of it. New section 11E provides for appeals in *habeas corpus* proceedings.

New section 11F gives power to the Supreme Court to amend the proceedings of a magistrate or the District Court on *certiorari* by substituting, for the original sentence, a sentence which the magistrate or the District Court had power to impose. Previously, the court could only quash the proceedings and order a retrial, not amend them.

Administration of Justice (Miscellaneous Amendments) Bill — second reading

[*Explanatory Memorandum*]

New section 37A provides, for the first time, a general right of appeal in cases of contempt of court, whether civil or criminal.

The amendments to the Bankruptcy Ordinance and the Companies Ordinance are consequential upon the new provisions regarding charging orders.

Two new sections 3 and 4 are added to the Judicial Proceedings (Regulation of Reports) Ordinance. These sections are based on the corresponding provisions in the Administration of Justice Act 1960, c. 65. Section 3 makes the defence of innocent publication or distribution available in cases of contempt of court brought on the ground that a person has published or distributed matter calculated to interfere with the course of justice in pending or imminent proceedings.

Section 4 clarifies the law with respect to reports of proceedings in private, by providing that the publication of information relating to proceedings before a court, judge or other tribunal sitting *in camera* or in chambers is not to be contempt of court except in the cases specified in the section, and that in cases other than these the publication of the text or summary of an order made in such circumstances is not to be contempt except where the court, having power to do so, prohibits publication.

New sections 21A, 21B and 21C of the District Court (Civil Jurisdiction and Procedure) Ordinance give the District Court powers similar to those conferred on the Supreme Court by the amendments to the Supreme Court Ordinance. The sections empower the District Court to impose a charge on land of a judgment debtor, to appoint a receiver by way of equitable execution, and to attach debts. The sections are based on the corresponding provisions of the County Courts Act 1959, c. 22.

MERCHANT SHIPPING (AMENDMENT) BILL 1973

THE FINANCIAL SECRETARY (MR HADDON-CAVE) moved the second reading of: —"A bill to amend the Merchant Shipping Ordinance."

He said: —Sir, this bill deals with two quite separate problems: discipline of seamen and pollution of the sea. As regards discipline, all Hong Kong seamen serving on foreign-going ships are engaged under articles of agreement which cover pay and conditions of service. These

articles are normally concluded on the vessel's return to port and the seaman is then under a contractual obligation to leave that ship. In practice, some Hong Kong seamen, individually or collectively, have refused to leave ship on the conclusion of their contracts and have thus prevented ships from sailing. Generally, these tactics are adopted to compel employers to enter into new contracts. In most cases, employers have accepted such demands since delays in sailing can be very costly. Such behaviour is detrimental to the reputation of our seamen and it can only result in the employment of crews from other ports to replace Hong Kong seamen.

It is, therefore, proposed in *clause 2* of this bill to place a seaman who has been lawfully discharged from a ship under a statutory obligation to leave that ship. If the seaman fails to do so when requested by the master, the bill provides authority for police officers of the rank of inspector or above and officers of the Marine Department of the rank of assistant marine officer or above to remove the seaman from the ship.

To put this amendment in perspective I should perhaps also point out that the Seamen's Recruiting Office is always willing to mediate if a seaman considers he has a grievance over the interpretation of his articles of agreement. This is the proper channel to make use of in cases of this sort and the Government hopes that clause 2 of the bill will encourage negotiations for pay and conditions of service through constitutional means.

Turning to the problem of pollution of the sea, honourable Members will recall that at a meeting of this Council on the 13th of December 1972, my honourable Friend the Acting Attorney General explained that a bill to provide for increased penalties for offences connected with sea pollution would be submitted to this Council for consideration. *Clauses 3 and 4* of this bill introduce a penalty of $20,000 and six months' imprisonment for all forms of sea pollution irrespective of whether the source of the pollution is from a ship or from land. In addition, the bill imposes a duty on the owner, master, agent or charterers of a vessel or the occupier of land to report to the Director of Marine the discharge or escape of oil from a vessel or from the land. These persons will be liable to a fine of $4,000 if they fail to make the necessary report.

This represents a substantial increase over the existing penalties for pollution of the sea which, at present, are a fine of $4,000 and imprisonment of six months in those cases where a person throws any substance into Hong Kong waters. In cases where similar objects are discharged from a ship, then the owner, master, agent or charterer is liable to a fine of $1,000 and imprisonment of six months only.

[THE FINANCIAL SECRETARY] **Merchant Shipping (Amendment) Bill — second reading**

Last year, the courts handled fourteen cases of oil pollution and in each case the defendant was found guilty. On four occasions, the maximum penalty was imposed. Nevertheless, it is evident that the penalties permitted under the law at present are too low in relation to the seriousness of the offences.

Motion made. That the debate on the second reading of the bill be adjourned—THE FINANCIAL SECRETARY (MR HADDON-CAVE.)

Question put and agreed to.

Explanatory Memorandum

This Bill amends the Merchant Shipping Ordinance in two main respects.

2. Clause 2 adds a new section 14A to the principal Ordinance, so as to provide for the removal from a ship of a seaman who has been lawfully discharged from the ship but refuses to leave it. A seaman who has been discharged may not remain on board except with the permission of the master and a seaman who refuses to leave when requested to do so by the master may be removed by an authorized officer.

3. Clause 3 deletes the references in section 71 of the principal Ordinance to the deposit of rubbish, oil, etc. into the waters of Hong Kong.

4. Clause 4 adds four new sections (71A, 71B, 71C and 71D) which deal with pollution of Hong Kong waters.

5. Section 71A makes it an offence for any person to discharge oil into such waters. Where oil is so discharged from a vessel the owner, master, agent or charterer will also be liable and, where it is discharged from a place on land, the occupier of the land or, if there is no occupier, the owner will be liable.

6. The new section 71B imposes a duty upon the owner, master, agent or charterer of a vessel or the occupier of land to report the discharge or escape of oil from the vessel or land into Hong Kong waters to the Director of Marine.

7. Section 71C defines certain terms for the purposes sections 71A and 71B.

8. Section 71D makes it an offence to deposit substances (other than oil) into Hong Kong waters without the permission of the Director of Marine.

9. Clause 5 amends section 96(1) of the principal Ordinance to provide that the definition of "launch" shall include a vessel used for towing or pushing.

10. Clause 6 extends the provisions of Part XIV (which controls small craft) to oil barges and tankers not already provided for in the principal Ordinance.

MERCHANT SHIPPING (RECRUITING OF SEAMEN) (AMENDMENT) BILL 1973

THE FINANCIAL SECRETARY (MR HADDON-CAVE) moved the second reading of: —"A bill to amend the Merchant Shipping (Recruiting of Seamen) Ordinance."

He said: —Sir, the Explanatory Memorandum attached to this bill sets out the purposes which it seeks to fulfil. I shall confine myself, therefore, Sir, to general commentary and the main clauses of the bill.

As honourable Members are aware, large numbers of Hong Kong seamen have traditionally been recruited for service on foreign-going ships. At the present time, there are about 24,000 Hong Kong seamen serving on such ships. Prior to 1966 seamen usually sought employment through intermediaries who, more often than not, demanded exorbitant fees for their services. To rectify this situation, the Merchant Shipping (Recruitment of Seamen) Ordinance was passed in 1966 and the Seamen's Recruiting Office was established to regulate and control the recruitment of seamen. Since that time, the Seamen's Recruiting Office has kept the Ordinance under constant review to ensure that seamen are given the best possible opportunity to seek and obtain employment on a fair and equitable basis. As a result of this, the intermediaries have been largely cut out and seamen are no longer required to pay more than a small official fee to obtain jobs.

Since that date, however, a new form of abuse has developed. The Ordinance in its present form precludes from the definition of “seaman” the professional complement of a vessel and certain others such as musicians, compradors and tallymen who do not require special qualifications. As a result certain personnel have been able to join ships, ostensibly in these miscellaneous positions but, in reality, as ordinary seamen. *Clause 2* of the bill seeks to deal with this abuse by extending the definition of "seaman" to include all but the master, certificated mate, certificated engineer, doctor and persons serving in capacities specifically excluded by the Seamen's Recruiting Authority.

Clauses 4, 5, 6, 7 and 10 of the bill seek to amend the Ordinance by deleting Part II of the register of seamen. This is a register of seamen who are interested in serving on foreign-going ships, which is

[THE FINANCIAL SECRETARY] **Merchant Shipping (Recruiting of Seamen) (Amendment) Bill—second reading**

maintained by the Seamen's Recruiting Office in four parts. Generally, those whose names appear in Part I of the register are experienced seamen who have either obtained recent sea-going experience on a foreign-going ship or have had satisfactory pre-sea training in recognized training establishments. Part II is reserved for those seamen who have been in service at sea on a foreign-going ship during a period more than 24 months preceding their applications for registration. In practice, however, there are now no names in Part II of the register and it is, therefore, proposed to streamline the record system by deleting this part. I should add that trainee seamen and those recruited through licensed crew departments are covered in Parts III and IV of the register respectively. At present, there are about 71,000 names on the register, of whom 26,000 can be regarded as still active seamen. The remainder are, to all intents and purposes, no longer in the shipping industry.

Another important clause is *clause 13* which gives authority to the Superintendent of the Seamen's Recruiting Office to require a serving seaman to undergo a medical examination if he has cause to believe that the seaman is unfit for service.

Finally, and perhaps most important of all, the bill provides for increased powers to deal with disciplinary offences. Traditionally, discipline on board ship had been left to the leading hands. But their powers were drastically eroded when the Merchant Shipping (Recruiting of Seamen) Ordinance was enacted. Discipline was then placed in the hands of ships' masters, where it should have been originally and provisions were included in the Ordinance to deal with serious cases of misconduct.

Nearly 7,000 Hong Kong seamen have deserted their ships since the establishment of the Seamen's Recruiting Office, the majority in ports in the United States and desertion is by far the most prevalent form of misconduct. Indeed, so prevalent has this offence become that it is now seriously affecting the reputation of Hong Kong seamen, with the predictable result that shipowners and employers are beginning to replace Hong Kong crews with those of other nationalities. This underlines the importance of maintaining a high standard of discipline on board ships. Hong Kong seamen must come to realize that they are marketing their services and skills in competition with seamen from other nations who are keen to obtain a share of the job opportunities which have been traditionally held by our seamen, particularly now that smaller crews man modem ships.

To protect the reputation and livelihood of the majority of hard working and conscientious Hong Kong seamen; therefore, more stringent

penalties have become necessary as deterrents against misconduct on the part of the minority. By *clause 13* of the bill, the Superintendent of the Seamen's Recruiting Office may summarily suspend any seaman's registration whenever he has reasonable grounds for believing that the seaman has deserted or has refused without reasonable cause to join his ship. The Superintendent must serve notice on the seaman giving the grounds for the suspension and the date when the seaman may make representations in his defence. After hearing representations from the seaman himself, various courses of action are then open to the Superintendent and he may in serious cases suspend the seaman's registration for a maximum period of 24 months for desertion and 12 months for other forms of misconduct. This is provided for in *clause 14* of the bill and the suspension counts from the date the seaman first makes representation to the Superintendent. Alternatively, the Superintendent may caution the seaman.

The principal Ordinance provides for the seaman to appeal against the decision of the Superintendent to a Board of Reference. *Clause 20* of this bill gives wider powers to the Board. On hearing a case, the Board may uphold the Superintendent's decision, direct the Superintendent to withdraw the suspension, with or without the substitution of a caution for the suspension, or vary the period of suspension for a period not exceeding 24 months.

Motion made. That the debate on the second reading of the bill be adjourned—THE FINANCIAL SECRETARY (MR HADDON-CAVE).

Question put and agreed to.

Explanatory Memorandum

This Bill amends the Merchant Shipping (Recruiting of Seamen) Ordinance.

2. Clause 2 amends the definition of "seaman". Often, persons engaged nominally in one or other of the capacities excepted from the present definition of "seaman" in fact work as ordinary seamen. By this means the requirements of registration and of the other provisions of the Ordinance designed to protect the seaman have been evaded.

3. Clause 3 amends section 5 to enable an Assistant Commissioner of Labour to sit on the Seamen's Recruiting Advisory Board and to increase from 3 to 4 the number required to form a quorum of the Board.

4. The object of having Parts I and II of the register was to separate active seamen (that is to say, seamen who have served

Merchant Shipping (Recruiting of Seamen) (Amendment) Bill—second reading

[*Explanatory Memorandum*]

at sea on a foreign-going ship at any time during the two years preceding the application for registration) and seamen embarking on a career at sea, who are registered in Part I, from those seamen who have not been actively engaged at sea (that is to say, who need only show they have been to sea at some time more than two years preceding the application for registration), who are registered in Part II. It has been found that Part II of the register is not necessary and no seamen are at present registered in that Part. Clauses 4, 5, 6, 7 and 10 therefore amend the principal Ordinance to provide for the discontinuance of Part II. Seamen who would otherwise be eligible for registration in Part II will in future be registered in Part III.

5. Section 13(2) of the Ordinance already enables the Superintendent to enquire into the circumstances surrounding a seaman's demotion and to refuse to record a demotion which is without any sufficient cause.

6. It is considered that the Superintendent should also be able to refuse to record a promotion for which there is insufficient cause. Clause 9 amends section 13(1) for this purpose. It also inserts a new section 13(3) which will empower the Superintendent, after consulting the Advisory Board, to change a seaman's rating to a higher rating in the same grade or to a rating in a different grade. This will help the Superintendent to ensure that the supply of the different grades and ratings meets the demand.

7. Clause 11 amends section 16 to provide that the Deputy Director of Marine may sit on boards of reference as an alternative to the Authority or assistant directors and to increase the quorum of the boards from 3 to 4.

8. Clauses 12 and 19 amend sections 17(1)(*b*) and 28 in consequence of the enactment of the Prevention of Bribery Ordinance which replaced the Prevention of Corruption Ordinance. Clause 12 also amends section 17(2) consequentially upon clause 13.

9. By section 7, an applicant for registration may be required to pass a medical examination. But there is no provision whereby the registration of a seaman who has become medically unfit for service on a foreign-going ship may be suspended. Clause 13 adds section 17B to the principal Ordinance to provide that the Superintendent may require a registered seaman to undergo such medical examination as to his fitness for

service on a foreign-going ship as the Authority may specify. If the seaman fails to pass the medical examination, his registration may be suspended until he produces a medical certificate that he is again fit for such service.

10. The incidence of desertion of Hong Kong registered seamen has become a serious problem affecting Hong Kong, the shipping industry, and the country in which the seaman deserts. The reputation of Hong Kong as a recruiting centre and the livelihood of Hong Kong seamen will suffer if the number of desertions is not reduced. Section 18 is inadequate to meet this problem and it is necessary therefore to enact measures which are more adequate and stringent. Clause 13 adds section 17A and clause 14 amends section 18 for this purpose.

11. At present, the Superintendent may not suspend the seaman's registration prior to considering the matter under section 18; before he exercises his powers under section 18, the Superintendent is required under section 19 to serve notice on the seaman. This is often not possible because of the difficulty in tracing the seaman. Section 17A provides for the immediate suspension of a seaman's registration by the Superintendent, where he has reasonable grounds for believing that the seaman has deserted his ship or neglected, or refused without reasonable cause, to join his ship or proceed to sea. Subsection (2) requires notice of the grounds of the suspension and of the date when the seaman may appear before the Superintendent to make representation in the matter to be served on the seaman as soon as practicable. The suspension continues until the Superintendent exercises his powers under section 18.

12. Clause 14 amends section 18 so as to increase from 6 to 24 months the period for which the Superintendent may suspend a seaman's registration for desertion or refusal or neglect to join ship or proceed to sea. The period of suspension in other cases under section 18 is also increased from six to twelve months. Section 18 is further amended by the deletion of subsection (2) which has been found to be impractical to apply. A new subsection (2) enables the Superintendent in any case where he thinks fit to issue the seaman with a written caution to be of good behaviour in the future.

13. Section 22 is designed to avoid delays in commencing hearings of appeals and cases referred. In practice, without any fault on the part of the Authority, the Board is sometimes not able to commence the hearing within the time limit fixed by subsection (1) or (2), because the seaman has not been served with the required notice of hearing. Attempts at personal service may

Merchant Shipping (Recruiting of Seamen) (Amendment) Bill—second reading

[*Explanatory Memorandum*]

fail because the seaman is abroad, has changed his address or is evading service. As a result of clause 16, service by registered post will suffice for the purposes of section 23 in the case of appeals under section 20 but this may fail for the same reasons as personal service and also people in Hong Kong are reluctant to accept registered mail. Clause 15 amends section 22 so as to provide for extending the time for commencing a hearing where reasonable attempts to serve the seaman with the notice of hearing required under sections 20(3) and 21 have failed.

14. Clause 16 amends section 23 to enable a board of reference to proceed with an appeal under section 20 in the absence of the seaman where it is satisfied that the seaman has been served with the notice of hearing personally.

15. Clause 17 amends section 24 so as to provide that a copy of an entry in a ship's official log book or other similar document certified by, and any deposition purporting to be signed by, a duly accredited consular officer shall be admissible in evidence in proceedings before a board of reference in cases where such documents certified or signed, as the case may be, by a British consul are presently admitted under the section.

16. Clauses 18 and 20, which repeal and replace sections 26 and 29 respectively, are consequential to clause 14. In both sections, subsections (1), (2), and (3) are re-enacted with modifications. Under section 26(3) a board in an appeal against a suspension will have power to increase the period of suspension to a period not exceeding 24 months and to substitute a written caution for a suspension. Under section 29 a board, in a case referred to it under section 18(1)(ii) will have power, under subsection (1), to suspend a registration for a period not exceeding 24 months, instead of the present 12 months, and to issue the seaman with a written caution.

17. Clauses 21, 22(*a*), 23 and 25(*b*) amend section 34, 36, 37 and 40 consequentially upon clause 13. Clause 22 further amends section 36 by inserting a new subsection (3) which will make compulsory a practice that is generally adopted at present at musters in the Seamen's Recruiting Office.

18. Clause 26 adds a new section 40A which provides that where a seaman's engagement on a foreign-going ship is terminated and re-engagement is not intended, the master, owner, charterer or the agent shall notify the Superintendent of the fact. This will

help the Superintendent to keep some record of the seamen's whereabouts and of his current engagement at sea.

19. Section 41(1), 42(2), 43(3), 44(3), 45(3), 46(3), 65(1), 66(3), 83 and 84(3) provide for the delivery to the Superintendent, upon the engagement or re-engagement of seamen for service on board foreign-going ships, of the seamen's engagement, re-engagement or emergency engagement cards and notices of engagement or re-engagement and for payment of fees. The delivery of the cards and notices and payment of the fees are required to be made "as soon as practicable", under sections 41(1), 42(2), 65(1), and 83 after all the seamen have been engaged or re-engaged or, under sections 43(3), 44(3), 45(3), 46(3) and 84 (which deal with the engagement of a seaman in emergency) and 66(3) (which deals with the engagement of a seaman supplied by a licensed company) after the seaman has been engaged.

20. The time for compliance with these sections has proved in practice to be too uncertain and difficulty has arisen in their application. Clauses 27, 28, 29, 30, 31, 32, 37, 38, 41 and 42(*b*) therefore amend these provisions to provide that the time for compliance in each case shall be "within seven days after the last day of the month during which the engagement or re-engagement took place".

21. Clause 33 amends section 47(1) by deleting and substituting paragraph (*b*). The requirement of three years continuous business is unnecessary and could work unfairly against a company setting up business for the first time or which goes into liquidation and is reformed. The new provision requires that the company should, in the opinion of the Authority, be capable of maintaining a crew department.

22. Clause 35 amends section 60(6) to facilitate the regular revision of the notices by licensed crew departments twice monthly, on the 1st and 16th of each month.

23. Clause 43 amends section 90 to provide that service of notices and documents, other than personal service, shall be by registered post and not as at present by ordinary post.

24. Clause 44 will enable the Superintendent to delegate his powers under sections 13(2) and 34(1) and (10).

DANGEROUS DRUGS (AMENDMENT) BILL 1973

MR JORDAN moved the second reading of: —"A bill to amend the Dangerous Drugs Ordinance."

Dangerous Drugs (Amendment) Bill—second reading

He said: —Sir, under section 54 of the Dangerous Drugs Ordinance any police officer not below the rank of inspector may require anyone who is reasonably suspected of an offence under the Ordinance to have his finger nails pared and his hands washed in water so that the nail parings and water can be analysed. A person can also be required to give a specimen of his handwriting for the purpose of comparison.

Although the responsibility for the enforcement of the Dangerous Drugs Ordinance rests mainly with the Royal Hong Kong Police Force, the members of the Preventive Service also are authorized officers under the Ordinance. When the Service makes a large seizure of dangerous drugs it is our normal procedure to inform the Narcotics Bureau of the Royal Hong Kong Police Force. The Bureau then carries out the necessary investigations with a view to prosecuting the people concerned. However, there are occasions when, for various reasons, Narcotics Bureau staff are not readily available to provide the necessary support, so it is proposed that Preventive Service officers of the rank of Revenue Inspector or above should have the same powers under section 54 as officers of the Royal Hong Kong Police Force. This should enable us to speed up the process of investigation and will reduce the number of official witnesses required to give evidence in court.

Motion made. That the debate on the second reading of the bill be adjourned—MR JORDAN.

Question put and agreed to.

Explanatory Memorandum

This Bill would enable a member of the Preventive Service not below the rank of Revenue Inspector to exercise the powers in section 54 of the principal Ordinance under which a suspected person may be required to have his finger nails pared and his hands washed so that the nails and water may be analysed and to give a specimen of his handwriting for the purpose of comparison.

URBAN COUNCIL (AMENDMENT) BILL 1973

Resumption of debate on second reading (3rd January 1973)

Question proposed.

Question put and agreed to.

Bill read the second time.

Bill committed to a committee of the whole Council pursuant to Standing Order No 43(1).

COPYRIGHT BILL 1973

Resumption of debate on second reading (3rd January 1973)

Question proposed.

DR CHUNG: —Your Excellency, during the past 10 or 15 years there have been certain significant and basic changes in our manufacturing industries. For example, now we are producing more sophisticated products, our operations are more capital intensive, and our industries are more diversified. However, there is one important change which seems to be less well known.

In the past, the majority of our manufacturing industries were selling not products but rather production capacity or facility. We were basically producing products to the designs, specifications and brands provided by our customers. There was little emphasis on product development and design in Hong Kong.

Today, there is an increasing number of industrial companies which produce products of their own designs, specifications and brands and which have their own departments of development and design. In view of Hong Kong's fast-rising cost of production as compared to our neighbouring competitors, our manufacturers will have to depend more and more on original and innovated designs to maintain their competitiveness in the world markets. Unfortunately, the lack of adequate protection against local infringement of designs has hampered the movement on promotion of industrial design and design competition in Hong Kong. As chairman of the Hong Kong Industrial Design Council, I therefore very much welcome the introduction of this bill into this Council.

I particularly support the teeth provided in clauses 5 and 6 of the bill. Clause 5 puts the burden on the defendant to prove his innocence. Clause 6 gives senior police officers and authorized officers of the Commerce and Industry Department very wide powers of investigation of suspected offences. These officers can enter and search, without a warrant by a magistrate and at any time of the day and night, any place or premises (apart from domestic premises) and can seize, remove and detain any infringing copies of copyright work or any article used for making infringing copies. If necessary, they can further also without a warrant by a magistrate, enter premises by force,

[DR CHUNG] **Copyright Bill — resumption of debate on second reading (3.1.73)**

remove any person by force and detain any person, vehicle, vessel or aircraft. These powers are indeed very wide and could be abused. However, as Hong Kong enters into a sophisticated stage of development, I agree with my honourable Friend the Attorney General that it is necessary to take vigorous action to prevent piracy in copyrights.

Section 3(1) of the present Copyright Ordinance stipulates that any person who is guilty of second or subsequent offence, shall be liable to imprisonment for twelve months. Clause 5(1) of this bill, however, imposes imprisonment for only six months on identical conditions. This seems contrary to the intention of the proposed bill and I suggest that the maximum term of imprisonment be increased back to twelve months unless my honourable Friend has some good reasons for the reduction of penalty from 12 to 6 months imprisonment.

Sir, I wish to take this opportunity in seeking confirmation from my honourable Friend, the Attorney General, on the interpretation of the word "work". A work under the Copyright Act 1956 as amended by the Design Copyright Act 1968 and this Copyright Ordinance 1973 should, in my opinion, mean not only literary, musical and dramatic work but also handicraft and especially mass-produced products.

If my interpretation is correct, Sir, then any person who has in his possession for the purposes of trade or business not only any *plate* but also any *tooling* used or intended to be used for making infringing copies of original work should be guilty of an offence. Accordingly, it is my present intention to propose during the Committee Stage that the word "plate" in clauses 5 and 6 be replaced by the words "plate or tooling".

Sir, with these remarks, I support the motion.

MR ANN: —Sir, for many years since Hong Kong manufacturers started to try to lift themselves up by creation of new industrial designs for their products to meet world competition, genuine complaints have been prevalent that their inventive designs are recklessly copied and very little remedy is available. A sort of "copyphobia" has developed among the manufacturers. In fact, this "copyphobia" is very much consequent upon the geographic proximity of factories engaging in same or similar manufacture in Hong Kong, and is also a price to pay for Hong Kong's unique type of industrial development.

Residents of Hong Kong are often surprised, when they travel abroad, to find products of superb design, both imaginative and original,

which the distributors claim to have originated from Hong Kong factories, but which they would never have thought did in fact originate here because these products had never been seen in Hong Kong shops or in the exhibitions.

The Federation of Hong Kong Industries has from time to time been approached by its members to seek effective protection against the piracy of their new designs and products. The best advice that could be given was to have the designs registered with the Patent Office in London, which is now a common practice and more so in recent years.

Sir, I take a particular interest in the aspect of industrial designs which the bill before Council declares also to protect.

In the Copyright Act 1956, copyright is generally referred to literary, dramatic, musical and artistic works. Industrial designs fall under this Act provided they have been registered under the Registered Designs Act 1949. By virtue of the Design Copyright Act 1968, industrial designs which are also artistic works, can be accorded copyright before they are registered. This later legislation gives the author copyright protection provided by the Copyright Act 1956. The idea behind the enactment of the Design Copyright Act 1968 was to prevent the commercial copying of designs before registration was completed, as in general the process of registration of industrial designs did not prove fast enough.

By the introduction of the bill before Council to apply the Copyright Act 1956 as amended by the Design Copyright Act 1968 with some modifications to suit Hong Kong's circumstances, the authors of original industrial designs in Hong Kong will now be offered earlier protection than that given under the Registered Designs Act 1949. I do hope that local talent will from now on have no fear of their brain child being pirated from or after the day of its birth, although if one seeks a monopoly of 15 years of commercial exploitation, registration is still necessary, as every new baby is required to obtain a birth certificate.

Sir, you have rightly said last week at the ceremony of presentation of the Governor's Award for Hong Kong Design 1973, if I may quote:

> "The new legislation for protection of copyright would further induce Hong Kong manufacturers to develop and improve the design of their products. The fear of imitation had led to secrecy between rival manufacturers, and perhaps the new law would lessen these anxieties. By taking the wraps off their products, our manufacturers will not only widen market prospects on their home ground but stand to profit by mutual experience and example."

Sir, I cannot agree more with what you said, and might I add that it is this very "mutual experience and example" which Hong Kong

has very much in need and demand at any time of its industrial development. Lack of it will only impede the pace of our growth.

Like the need to protect Hong Kong designs from being copied, so is there the need to afford protection to Hong Kong's reputation as a manufacturing centre against local infringement of right of others' artistic authorship in foreign countries.

It is in this context and in the context of what I earlier said, Sir, that I have pleasure in supporting the bill now before Council.

THE ATTORNEY GENERAL (MR ROBERTS): —Sir, with regard to the suggestions for amendment made by the honourable Dr CHUNG, I see no objection to amending clause 5(1) of the bill, as he proposes, so as to increase the maximum imprisonment which can be imposed for a second or subsequent offence from 6 to 12 months, and I should be pleased either to move or to support an amendment to this effect at the Committee Stage.

The Copyright Act 1956 gives protection to any artistic work, a phrase which is defined so as to include, among other things, drawings and works of artistic craftsmanship. Thus, any original plans from which an industrial product is made will be protected, as also will any industrial products made from an original design. In addition, as the honourable Mr T. K. ANN explained, a Hong Kong industrial design can be registered in the United Kingdom under the Registered Designs Act 1949. When so registered, it receives the full protection in Hong Kong which is provided for by the United Kingdom Designs Protection Ordinance, which is Chapter 44 of our laws.

I appreciate the anxiety of the honourable Dr CHUNG that the definition of "plate" should be wide enough to embrace other kinds of devices which are used to reproduce copyright works. Section 18(3) of the Act defines a plate as including any stereo-type stone, block, mould, matrix, transfer, negative or other appliances. This seems to me to be in sufficiently wide terms to cover tooling used for making infringing copies of an original work.

Unfortunately, if the definition were not wide enough, I doubt whether it would be permissible for us to alter this particular definition in the Hong Kong Ordinance, since our power to extend the application of the English Act is very limited by the terms of the English Act itself. For these reasons perhaps my Friend would be prepared to reconsider his proposal that this particular definition ought to be amended.

I welcome the support of honourable Members for this bill and I share their hope that it will help to protect more effectively the legitimate interests of the owners of copyright.

Question put and agreed to.

Bill read the second time.

Bill committed to a committee of the whole Council pursuant to Standing Order No 43(1).

INLAND REVENUE (AMENDMENT) BILL 1973

Resumption of debate on second reading (3rd January 1973)

Question proposed.

Question put and agreed to.

Bill read the second time.

Bill committed to a committee of the whole Council pursuant to Standing Order No 43(1).

RATING BILL 1973

Resumption of debate on second reading (3rd January 1973)

Question proposed.

MR WOO: —Sir, I have only one point to make with regard to the bill itself, namely, in respect of the definition of "owner" in clause 2. The existing definition of owner does not mention a mortgage though legally speaking a mortgage is within the existing definition. The new definition of owner includes a mortgage but it is submitted that it is more reasonable to require a mortgagee in possession to pay rates if the occupier or owner of the property fails to do so. A mortgagee in possession is one who is in receipt of the rent or profits of the property, and I think that the words "in possession" should be added after the word "mortgagee' in the definition. My suggestion is not new. The definition of owner in other Ordinances includes a mortgagee in possession and not a mortgagee pure and simple. Instances are found in the definition of owner in the Law of Property (Enforcement of Covenants) Ordinance (Chapter 297) and the Multi-Storey Buildings (Owners Incorporation) Ordinance (Chapter 344).

[MR WOO] **Rating Bill—resumption of debate on second reading (3.1.73)**

My other observations do not concern the bill itself but are in respect of the steps that have already been taken by the Commissioner of Rating and Valuation—who I see is sitting here today—in making new assessments anticipating the passage of this bill by this Council.

The first point I wish to make is the concession given under clause 18 of the bill. The existing rateable value is 17% whereas under this clause the rateable value is reduced to 15%. However, this 2% reduction is not available to owners of prewar premises, as the Commissioner of Rating and Valuation now makes new assessments of these prewar premises by increasing their rateable values to almost the same as before, that is no reduction is made. The prewar premises are controlled under the Landlord and Tenant Ordinance (Chapter 255) and for years since 1947 the rateable values of these premises have been constant. The Commissioner has now taken it upon himself to increase the rateable values of these premises although the rents have not been increased and cannot be increased as the rents of these premises are controlled by the Landlord and Tenant Ordinance. In my opinion such assessment can be challenged in a Court of Law in that it cannot be shown that the rental has been increased recently and therefore the assessment of the Commissioner is wrong. I submit that Government should not deprive the owners of prewar premises the 2% concession.

Secondly, still on the subject of prewar premises, the Commissioner of Rating and Valuation has re-assessed the rates to be paid by the owners-occupiers of this category of premises in certain cases as much as 700% of the existing rateable value. The argument put forward by him is that the owner has already recovered possession of the premises and therefore he can apply to the Tenancy Tribunal under section 17 of the Landlord and Tenant Ordinance if he relets the premises to a new tenant for a term not exceeding 5 years at a rent in excess of the standard rent of the said premises, that is the market rental, but it must be noted that this application must be made jointly by the tenant and the owner, and it must be shown that the tenancy agreement

"(*a*) is not harsh or oppressive on the tenant; and

(*b*) contains no provision for renewal or for extension of the term; and

(*c*) expresses the whole consideration for the transaction"

before the Tenancy Tribunal would approve such a letting.

Apart from the argument of the Commissioner that the owner can relet the premises at a higher rental, I think it would be more logical before he does so that these premises should be decontrolled. In other words, these premises should not be subject to the provisions of the Landlord and Tenant Ordinance and I suggest that Government should amend the Ordinance to the effect that once the landlord has recovered possession from the tenant the premises should not be subject to the provisions of the Landlord and Tenant Ordinance. This will save the expenses of the landlord and the tenant making the application under section 17 and also the time of the Tenancy Tribunal and other administrative expenses.

Finally, with regard to the post war domestic premises, which are now subject to the control of the Rent Increases (Domestic Premises) Control Ordinance No 56 of 1970, it would seem unfair to increase the rateable value of these premises while the rent is still under control by this Ordinance. It is true that the landlord can apply to the Commissioner of Rating and Valuation to have the rent increased, but while the premises are still under control, it is only fair and reasonable that the rateable value of this category of premises should be assessed at the actual rent received by the landlord and not on the rent which he might have received if the premises are not under control.

With these observations, Sir, I support the bill.

DR CHUNG: —Your Excellency, in rising to express my support of the Rating Bill 1973 I would like to make two brief comments.

First, about clause 7. The current valuation list was assessed in accordance with market rents in 1968, almost five years ago. During the intervening years, a large number of new buildings have been built. The rateable values of these new buildings were, however, based on market rents at the time when they were assessed and, consequently, this practice has created some serious unfair and unjust burdens on tenants and owner/occupiers of new buildings constructed after 1968. There are many instances in which two similar neighbouring buildings are paying totally different rates. The rates paid on one may be two or even three times that paid on the other building simply because the former was built after and the latter prior to the year 1968. I am therefore glad to see that such an anomaly is removed in this bill. In future, if there is any delay by the Commissioner to update the valuation list in line with increased rental values, the assessment of rateable values of newly constructed buildings will be based on the market rents prevailing at the time when the current valuation list was prepared. Thus, ratepayers for new buildings will not have

to bear an undue proportion of the rate burden, as the honourable Financial Secretary said two weeks ago, even if rents continue to rise. On the other hand, in the unlikely event that rents go the other direction and fall, I presume ratepayers for new buildings will then have to bear an undue proportion of rate burden; otherwise ratepayers will be getting the best of two worlds. Will my honourable Friend confirm this interpretation of clause 7 for interim valuation of a tenement.

Sir, my second comment is about the maximum 5% surcharge on non-payment at specified date as permitted in clause 22 of the bill. The honourable Financial Secretary has turned down a proposal made to him that some less punitive sanction should be used on the lines of a cumulative charge related to the length of delay in payment. He advanced for his refusal the reason that the single 5% surcharge is very effective and simple. With due respect, I think, firstly, the penalty is too heavy and, secondly, it may encourage other public utility companies to follow suit. I wonder whether my honourable Friend would be prepared to reconsider the case. A two-step penalty could be equally effective and simple on the one hand but less harsh on ratepayers on the other. In other words, Government could, for example, impose a 2% surcharge for payment overdue within the first two weeks and a 5% surcharge after two weeks.

Sir I support the motion.

THE FINANCIAL SECRETARY (MR HADDON-CAVE): —Sir, as my honourable Friend Mr WOO points out the rating of mortgagees is not a new issue. Under the existing Ordinance, the definition of "owner" would include a mortgagee, because in Hong Kong mortgages are arranged by assignment and not by demise. In the bill, to indicate clearly the position of mortgagees, we have specifically included them under the definition of "owner" in clause 2. Our purpose in doing so and, indeed, in making mortgagees liable for rates in the same way as owners, is to protect the revenue and ensure that rates may be recoverable from any person who has a legal interest in the premises. I consider this provision necessary, for a mortgagee in entering into a mortgage has a legal and pecuniary interest in the premises, and should be concerned to see that all taxes and other dues are paid. I see no good reason for relieving a mortgagee of these basic responsibilities in protecting his security. In the case of hardship, clause 35 provides that the Governor may refund rates in any circumstances, and I think it would unnecessarily weaken our position to make a concession in the case of mortgagees not in possession.

In regard to the valuation of premises subject to the Landlord and Tenant Ordinance, the 2% concession on the rate charge was, as I said in my 1972 budget speech, a concession "to mitigate the effect of the revaluation on the community as a whole"; it was not intended as a special concession for this particular class of ratepayer. The valuation of premises for rating purposes is a professional task within the competence of the Commissioner of Rating and Valuation and he is required to carry out his functions in accordance with the law. The bill provides the necessary safeguards for ratepayers, and any person who considers his rateable value to be wrong has a right of appeal to the District Court against the Commissioner's assessment. This is a matter which, I think, we must leave to the courts to decide.

If a concession is to be made to the owners of pre-war premises (and we are not debating this today) it should, in my view, be effected by amendment to the Landlord and Tenant Ordinance and not through our rating system. As to owner-occupied pre-war premises, their position is clearly little different from that of owner-occupied post-war premises, and there would appear to be no grounds for more favourable treatment. I note of course, the point made by my honourable Friend in regard to the exclusion of such premises from the Landlord and Tenant Ordinance. Proposals on this point have in fact been made and are being considered by the Government together with other proposals regarding this legislation.

On the assessment of post-war controlled premises, here again the Commissioner must assess premises on the basis laid down in the law. Most landlords of premises whose rents (inclusive of rates) are controlled under the Rent Increases (Domestic Premises) Control Ordinance have already had increases in rents which included an element for rates, yet they will not, until the coming financial year, have to pay any increased rates. The extended Ordinance also provides for further increases in rent, and landlords and tenants are free to agree increases at any time. I am informed by the Commissioner of Rating and Valuation that generally little hardship will result in these cases, though there will be the odd case where the new assessments will bear perhaps a little harshly. While one might have some sympathy in these cases, I am not sure we need be too concerned for such landlords, as most have seen the asset value of their premises more than double over the past three or four years. Neither do I consider we should attempt to change the whole basis of rating in Hong Kong, a basis which has endured for some 130 years, for the sake of a few hard cases resulting from a temporary situation.

My honourable Friend Dr S. Y. CHUNG is correct when he says that, because of the present definition of rateable value, there are disparities in values between premises included in the list prepared

[THE FINANCIAL SECRETARY] **Rating Bill—resumption of debate on second reading (3.1.73)**

in 1968 and those assessed to rates since then. As drafted, clause 7 will prevent this situation occuring in the future. In the case of an interim valuation, that is a valuation of premises not included in a valuation list, the valuation may not exceed the general level or tone of valuation if tenements in the list; and if rents fall the Commissioner has to assess the premises at their lesser values. As he will be prevented from exceeding the existing general level, there can be no question of new ratepayers bearing an undue proportion of the rate burden. And should there be a *general* fall in rentals the Commissioner can even be directed under clause 11 to make a new valuation of *all* tenements.

On the second point raised by Dr CHUNG, as I indicated in my speech introducing the motion, the matter of the surcharge has been carefully considered by Government. To allow any variation on the lines suggested would create, I am quite sure, very difficult administrative problems for the Treasury. In addition, the initial surcharge would have to be pitched sufficiently high to ensure that payments were not deliberately delayed in order that the money could be used elsewhere.

Question put and agreed to.

Bill read the second time.

Bill committed to a committee of the whole Council pursuant Standing Order No 43(1).

ROAD TRAFFIC (AMENDMENT) (NO 2) BILL 1973

Resumption of debate on second reading (3rd January 1973)

Question proposed.

MR SZETO: —Sir, in introducing the bill, my honourable Friend the Financial Secretary said it had two purposes both of which were aimed at reducing traffic accidents and thus safeguarding road users. By making the wearing of protective headgear compulsory for motorcyclists and their passengers, much of the serious and fatal injury resulting from this category of traffic accidents could be avoided while, with sterner measures and heavier penalties in dealing with traffic offenders, higher driving standards will be obtained. In the light of our deteriorating road congestion and rising traffic accidents, I support the bill and, in so doing, I believe I am expressing the general feeling of my Unofficial colleagues.

Since the bill was published and subsequently introduced into this Council, the Commissioner for Transport has come under fire and has become the villain of this piece of legislation, though the honourable Financial Secretary was fortunate enough not to have been subjected to the same fate.

I believe much of the opposition as expressed recently in the English press came from some motor-cycling enthusiasts whose stand is not unlike that of their British counterparts in the latter's prolonged fight against the imminent introduction of compulsory wearing of crash helmets in the United Kingdom, where over 760 motor-cyclists died on the roads in 1970 mostly from damaged skulls. According to a report in 1967 of the Road Research Laboratory in the UK, death and injury to motor-cyclists and their passengers would be reduced if they were required to wear crash helmets because 71% of all motorcycle fatalities were caused by injuries to the head. It is to be emphasized that in Hong Kong the rate of growth of motor-cycles and scooters outstrips that of the fast-growing private cars. In 1970, 1971 and 1972 the total numbers of these vehicles were 14,089, 16,592 and 19,833 respectively increasing by 18% and 20%. In the same period the numbers of driving licence holders for these vehicles were 37,069, 42,791 and 48,368 respectively. This means that up to the 31st December last year, for every motor-cycle or scooter in Hong Kong there were 2½ licensed drivers. Again, in the same period, the numbers of fatalities among motor-cyclists and their passengers were 513 in 1970, 700 in 1971 and 880 in 1972 increasing by 36.5% and 26% in the last 2 years. The gravity of the matter can further be demonstrated by the high proportion of motor-cycle casualties as compared with casualties involving private car occupants; in November last year this percentage was 41. These statistics justify the legislation for the compulsory wearing of protective headgear for motor-cyclists and their passengers, notwithstanding the opposition of those enthusiasts defending personal freedom.

Sir, it is relevant to note that General Regulation 263 requires Government officers, when on Government business, to wear a crash helmet of approved type when riding on a motor-cycle or scooter. It is also relevant to mention that in August 1966 the then Director of Medical and Health Services suggested to the Commissioner of Police the compulsory wearing of protective headgear for this form of transport or sport, as he was alarmed by the high rate of injuries and fatalities at that time involving motor-cyclists and their passengers which averaged 51 injuries and 13 deaths a month. The Transport Advisory Committee, however, at that stage recommended persuasion and publicity rather than mandatory action. But the situation today has become far more serious, the average monthly casualties of injuries and deaths in 1972 being 170, which is almost 3 times that in 1966

[MR SZETO] **Road Traffic (Amendment) (No 2) Bill—resumption of debate on second reading (3.1.73)**

and it is in this light that the TAC made the positive recommendation last year.

My honourable Friend the Financial Secretary has mentioned that the Government was also considering other measures to protect the safety of road users. I hope that next in line will be legislation for the fitting of safety belts in all private cars to be followed, if necessary, by the compulsory wearing of the same as has already been enforced in some overseas countries, notably in Australia where crash deaths have been reduced by 20%. The monthly average of fatalities and injuries last year involving occupants of private cars was 356 which prompted the TAC's recommendation.

Clause 3 of the bill is designed to remedy certain loopholes and defects in the principal Ordinance by extending the time which the Police require to obtain particulars of an alleged traffic offender and by increasing the penalty as a more effective deterrent. This is clearly necessary because of the large number of traffic offence summons which the Police have to deal with every month—that processed in November 1972 alone being 16,451. Traffic congestion and traffic accidents in Hong Kong have reached such a serious state, more effective measures of detection and deterrent penalties are imperative to cope with the situation.

I note that my honourable Friend has taken the opportunity to link the amendments with the optimization of use of road space—an element in his pet subject “Overall Transport Policy for the 70's and the 80's”. Whilst I agree with him that restraint of private car ownership, universal inspection of vehicles and enforcement of traffic regulations—which he calls supervision of drivers—are important factors in achieving the maximum use of our meagre road space, there are, however, other aspects which are just as important but which have long been tolerated. I refer to the many extraneous obstructions on our roads which must be removed; these include the multitudes of hawkers who should be confined as much as possible to off-street bazaars, and the many motor repair shops whose polluting operations should not be allowed to obstruct road space.

Finally, Sir, on-street parking will have to be curtailed to essential needs in the near future to reduce impediment to traffic flow for which the roads are built; but this can only be achieved when considerably more off-street parking facilities are available. In the context of Hong Kong, where high density residential and commercial development spreads over the urban area, I consider that a review

is long overdue of Government's existing out-dated, unrealistic and ostrich-like policy of building multi-storey car-parks in commuter areas only.

MR CHEUNG: —Sir, I only wish to speak on clause 2 of the bill, and will take issue with my honourable Friend the Financial Secretary on his traffic philosophy on another occasion.

I agree that it would much contribute to the personal safety of motor cyclists to oblige them to wear crash helmets; I for one would sympathetically consider making it compulsory for them to use silencers in their exhausts! It would probably also be desirable to make it obligatory on drivers and passengers to use seat belts, although proposals, I believe, have not been put into final form.

However, the range of equipment and apparatus that can be used in motor vehicles can fill a catalogue the size of our telephone directories. The necessity of prescribing the use of some of these items is highly controversial. Thus there is heated debate in America whether, to take two examples, an inflatable air bag should be made compulsory equipment—the air bag inflates automatically as soon as the car crashes. There is also debate as to which type of anti-pollution emission control equipment is practical or effective. Enthusiasts for any particular kind of equipment are not in short supply.

It would therefore be in the public interest that, whenever it is contemplated to make the use of any particular kind or type of equipment obligatory, there should be public debate in this Council before any law to that end is enacted. Accordingly, my Unofficial colleagues and I should like clause 2 of the bill amended to provide that regulations may only be made in respect of equipment of a kind to be specified in a Second Schedule of the Road Traffic Ordinance, and to provide that the Second Schedule might be amended by resolution of this Council of which, say, at least 14 days' notice has been given.

Sir, I support the motion.

THE FINANCIAL SECRETARY (MR HADDON-CAVE): —Sir, dealing with my honourable Friend Mr CHEUNG's point first, my honourable Friend the Attorney General advises me that something on the lines of what he has suggested should be accepted by the Government and accordingly I shall move an appropriate amendment at the committee stage of the bill.

[THE FINANCIAL SECRETARY] **Road Traffic (Amendment) (No 2) Bill—resumption of debate on second reading (3.1.73)**

Sir, I am grateful to my honourable Friend Mr SZETO for his support of this bill and for his acceptance of my view that the emerging movements problem of the 70's and 80's must be tackled in a balanced and imaginative way. I entirely agree with him that an important aspect of making the most efficient use of road space is the reduction of on-street parking and its replacement by off-street parking facilities. But I could not agree that this should be done to the extent of providing so much off-street parking that the number of cars seeking to use the roads grows even faster despite the fact that there is, and always will be, a limitation on the availability of road space in our urban society. However, the Government accepts that within and on the outskirts of the central business areas there is a shortage of off-street car parking spaces. My honourable Friend the Director of Public Works gave details of the projects presently in the Public Works Programme the other day in this Council—on the 29th of November 1972.

There are two projects in Category A of the Public Works Programme providing for 1,300 spaces at Murray Road and Yau Ma Tei and four projects in Category B providing for 4,700 spaces at Kwun Tong Ferry Pier, Causeway Bay Magistracy, Tsuen Wan Ferry Concourse and Garden Road. From this list my honourable Friend will see that we are widening our definition of "commuter areas" from Victoria, Tsim Sha Tsui and Yau Ma Tei, to take in more districts where people now go to work in large numbers; so the policy is a little less ostrich-like than he alleges. When these projects are completed the number of car parking spaces in *Government* multi-storey car parks alone will be 9,600.

I can assure my honourable Friend that the Government will keep under review the need within the limits of our overall transport policy for multi-storey car parks in developing central areas, which is the new "in" term for "commuter areas".

Question put and agreed to.

Bill read the second time.

Bill committed to a committee of the whole Council pursuant to Standing Order No 43(1).

IMPORT AND EXPORT (AMENDMENT) BILL 1973

Resumption of debate on second reading (3rd January 1973)

Question proposed.

Question put and agreed to.

Bill read the second time.

Bill committed to a committee of the whole Council pursuant Standing Order No 43(1).

Committee stage of bills

Council went into Committee.

URBAN COUNCIL (AMENDMENT) BILL 1973

Clauses 1 to 4 were agreed to.

WORKMEN'S COMPENSATION (AMENDMENT) BILL 1973

Clauses 1 to 3 were agreed to.

IMPORT AND EXPORT (AMENDMENT) BILL 1973

Clauses 1 to 3 were agreed to.

Council then resumed.

Third reading of bills

THE ATTORNEY GENERAL (MR ROBERTS) reported that the

Urban Council (Amendment) Bill 1973

Workmen's Compensation (Amendment) Bill 1973

Import and Export (Amendment) Bill 1973

had passed through Committee without amendment and moved the third reading of each of the bills.

Question put on each bill and agreed to.

Bills read the third time and passed.

Unofficial Member's motion

Extension of service for civil servants

MR WONG moved the following motion: —

> It is hereby resolved that this Council is of the view that Government officers should be allowed upon application to continue working in the public service until the age of 60, provided that, in the case of an officer over the age of 55, he is found annually to be medically fit and also in all respects to be capable of continuing to carry out his duties efficiently; and that his services should be retained in the public interest.

He said: —Sir, Unofficial Members of the Legislative Council have for years spoken on the desirability of extending the retirement age of civil servants. Amongst them are Sir Sidney GORDON and my honourable Friend Mr P. C. WOO. In 1967, I said "The retirement age of civil servants was established many years ago to be 55. This was determined at a time when Hong Kong, being located in the semi-tropics, was considered to be a hardship area. Since the advent of air-conditioning, Hong Kong is no longer a hardship area and we are losing a fine crop of men at the zenith of their wisdom and experience. This is most unfortunate for Hong Kong which, despite a number of weaknesses, enjoys one of the best administrations in the world. It is also unfortunate for the civil servants who, at the age of 55, find it difficult to get a career job and often have to pass the twilight of their life through the bleak winter of idle old age. It does not seem equitable that those who have given the best years of their life should be called upon to end their career to which they have been devoted for decades so abruptly unless they choose to do so at a time, say five years, before the compulsory retirement age."

The retirement age of civil servants of all countries in South East Asia and Australasian countries varies from 60 to 65, except India and Pakistan where it is 58. I am informed that the overwhelming majority of civil servants are in favour of extending the maximum age to 60 with option to retire at 55. I have also been informed that some younger staff regard this proposal as blocking their earlier chance of promotion. To that argument, we must bear in mind that a later retirement age would also apply to the present younger staff and therefore, if they look ahead a few years on the grounds of security, it is a proposal which would be fair all round.

There is, however, a small group of expatriates who would want to retire early in order to secure better employment in their home country. This attitude does not seem to fall in the pattern of a career employment and civil service should be on a long term basis. Furthermore,

there is no substitute for experience and I have known cases where the loss of experience works to the detriment of the individual concerned as well as to that of Government.

Naturally there are certain cases of ill health in which exceptions of early retirement can be made on medical grounds. But in normal cases, not only life expectancy has increased all over the world, but I venture to suggest that work is the best routine for long life. In America, statistics show that the average life span between retirement and death is four years. Of course, the retirement age in America is generally 65 years but it is also true that the glands and cells in the human body will also tend to atrophy because of the lower demands made on them in retirement.

Accordingly I now move:

That this Council is of the view that Government officers should be allowed upon application to continue working in the public service until the age of 60, provided that, in the case of an officer over the age of 55, he is found annually to be medically fit and also in all respects to be capable of continuing to carry out his duties efficiently; and that his services should be retained in the public interest.

MR WANG: —Sir, this is the second time when I have tried to speak in Cantonese that I have found no audience in the Public Gallery. (*Laughter.*) I hope that this is just a mere coincidence and is no indication of the unpopularity of my use of Chinese language. (*More laughter*.) I shall therefore try and try again to speak in Cantonese.

(From this point Mr WANG completed his address in the Cantonese dialect. The following is the interpretation of what he said.)

I rise to support the motion tabled by the honourable Wilfred WONG on behalf of the Unofficial Members, and I would like to make some further points.

Let us look at retiring ages all round the world. We don't have to look very far. In places near Hong Kong, it is 65 in Australia and the Philippines, 60 in New Zealand and Singapore, and 58 in India and Pakistan.

In sticking to retirement at 55, Hong Kong is tying itself to an anachronic system. One cannot help wondering if measures in Hong

[MR WANG] **Extension of service for civil servants**

Kong were not all antiquated, and if we were so much overstaffed in the civil service that we had to accelerate the cycle of "metabolism". Others might think the working conditions in Hong Kong are so bad that people here are unhealthy and live shorter lives.

But these are the exact opposite of the facts. On our source of manpower, I am sure anyone with a clear mind knows we are short of supply. The honourable the Colonial Secretary said at one of our regular Council sittings last year that he was worried about not how big but how small the size of our civil service was, especially in the experienced and skilled sectors. As to life expectancy, a survey of retired civil servants shows that in 1951 the death rate for 55-60 year old was 50%, 61-65 30%, 66-70 20%. And in 1971, the death rate for 55-60 dropped to 36%, 61-65 down to 20%, and 61-70 up to 26% and for the 70-plus it was as high as 18%. The age of 70 is no longer “rare” as the Chinese saying goes. Life expectancy in Hong Kong is rising, but our retirement age has not been changed accordingly, and it is not in step with our rapid progress in other fields.

The word "retirement" (being "*tui yau*" in Cantonese) implies one being senile and inefficient, with "tui" meaning vacate and "yau" being rest. But in fact most civil servants in Hong Kong go on working in other organizations after retirement, as they are by no means senile. Those who are well off would "vacate" but would not "rest", and those who are hard up would "vacate" but could not afford to "rest". This is not what retirement is meant for.

Government calculates pension with the maximum length of service of 33½ years as a basis. But there are posts which need special qualification or technical training for which it is usually impossible for anyone to qualify before reaching 25 or 26. When a civil servant is forced to retire at 55, it is just impossible for him to have a service of over 30 years. It shows the present system is both impractical and imperfect.

To have a low retirement age is a detriment both to the Government and to the person concerned. From the Government's point of view, it means a shortage of experienced personnel. Man's health is so improved today that he is not old, both physically and mentally, at 55. His knowledge, experience, wisdom and temper are at their zenith. Generally speaking, this is the time to be in a responsible position. Yet he is forced to retire. Is it not a loss to the Government? Furthermore, as I said earlier, most people either "vacate" but not "rest", or "vacate" and could not "rest". But they must retire at 55. Hence, most civil servants have to find some other alternatives beforehand. Having to prepare well in advance a few years

before they retire, they cannot concentrate on their job. Their efficiency would deteriorate. There are others who worry that as they may not be able to make a living after retirement, they would rather leave earlier. Many would even migrate and make a new start. This is one of the indirect causes of our brain drain. As to the junior civil servants, as the pension is not enough to live on and it is difficult to find another job, they become frustrated. If we could postpone the retirement, we would at least alleviate their distress and put their minds at rest.

Another point is as the retirement age is too low most expatriate civil servants, who cannot be put to full use for the first few years when they are new here, would have to retire soon after they know Hong Kong well and have to go home for another job. No wonder most people in Hong Kong worry that expatriate civil servants are not working whole-heartedly for the good of Hong Kong. People wonder whether they regard Hong Kong as their "home". I am sure the extension of their service could help towards the doing away of this suspicion.

To sum up, in order to adapt to the needs of our time and our conditions, there is a need for a thorough review of our retirement system. A complete change obviously takes time. But in order to solve the immediate shortage in our civil service, and because of the points mentioned, I would like to support the motion and hope the Government will take active steps to implement it. I would also like to take this opportunity to urge once again that the Government should revise as soon as possible the whole system of retirement.

MR BROWNE: —Sir, I rise generally to endorse the comments of the two previous speakers. The public service continues to expand rapidly and there is, I understand, a serious shortage of experienced officers. I therefore believe that a change in the retirement date is both necessary and urgent, and that it is also overdue since retirement at 55 is generally out of step with the private sector.

I support the motion, Sir.

MRS WONG: —Sir, at the last conference of the International Council on Social Welfare held at the Hague last summer, to which I was invited, I had the privilege to attend a series of discussions on various aspects concerning the elderly and the aged. One of the aspects relevant to the subject of today's debate was the dilemma private and government organizations were facing in the payment of pensions. They were finding they were making payments to increasing numbers

of retired persons over much longer periods of time than ever before and, as a result, their financial estimates and reserves were getting out of line. The advance in science and standard of living has resulted in people enjoying a longer span of life who are therefore still around to collect pensions at ages when their predecessors would have already long taken their leave.

It was also brought out in the discussions that retired persons nowadays are capable of carrying on working being still mentally and physically fit, unlike their forefathers who did not have the benefits of modem science and the welfare state. Consequently we now have a useful source of manpower which was not available in the past and, indeed, manpower with experience and knowledge. Not to draw on this manpower would be to let needed work force go to waste on the one hand and, on the other, oblige those people to gradually become depressed and frustrated with time on their hands with nothing worthwhile to do and finally to slowly deteriorate.

Such is the existing state of affairs abroad and in Hong Kong with our elderly, and it is time we looked into their case and into the matter of adjustment of the retirement age by extending it from the age of 55 to 60.

Expectation of a few more years of working life would give incentive and encouragement to all including those younger in years, for they could then look forward to being able to bring to fruition projects and plans in which they were committed or were interested in.

We all know experience, knowledge and practical training can only be acquired over a period of years and it is time that makes maturity. Generally matured persons are able to perform their work within a shorter time because of their experience and employers, on the other hand, feel more assured of results without the need to make allowance for the probable process of trial and error as would be the case when one was new to a job.

Thoughts must also be given to the younger officers who must inevitably be affected by any extension of the retirement age, especially when it is coming into effect in the middle of their service. Consideration therefore must be given to that side of the picture before a conclusion can be reached as one would not wish to discourage and cause disappointment which would arise if one's normal expectations were to be blown to the wind by an unexpected delay of another, say, three to five years before one could go up the scale of advancement. I feel that if the retirement age is to be extended so must procedure for promotion be correspondingly adjusted, say based on quality of

performance as against length of service, wherever and whenever it would be for the interest of the public and for improved and more effective performance; promotion should be given to the one more capable even if it meant overtaking another who has been allowed to stay on because of the extension of the retirement age. Why cannot an officer be transferred to another post more suitable to his experience and where public interest would be better served, when he is allowed to continue on after 55? If retired officers when leaving Government can take up work with private firms and be employed on jobs quite different from what they had been doing or, as is the case now in several instances re-employed by Government on other jobs, why cannot officers be put on other work while continuing with Government after the age of 55?

I support the view, Sir, that the retirement age of Government officers be extended from the age of 55 to 60 provided at 55 he/she is medically fit and is capable of carrying on his/her work efficiently and in the public interest, until such time as he/she becomes otherwise, but not beyond the age of 60.

MR WOO: —Sir, my Unofficial colleagues who have already spoken on the motion stressed that it is time for Hong Kong to catch up with the rest of the world, on the matter of the age of retirement for civil servants. I should like to add that during the deliberations of the Unofficials at one time we thought we should press for a statutory amendment to the normal age of retirement, which is now 55, but in view of the various factors involved in any such change to existing legislation we have finally agreed that the changes to be made should be confined to those spelt out in the motion.

From research conducted in the UMELCO Office, it is clear that the average life expectancy in Hong Kong is rapidly rising, as in many other parts of the world, and the statistics showing this trend are supported by information from the Treasury which has a direct bearing on civil servants. We were informed by the Accountant General that there has been a rise in the life expectancy of Government pensioners over the past 2 decades, and here I quote the figures supplied: of the male Government pensioners who died in 1951 50% passed away between the ages of 55 and 60, and the remainder between 61 and 70. By 1971, only 36% died between the ages of 55 and 60, the remainder between the ages of 61 and 75. With better medical care and higher standards of living, this is not surprising. Indeed, the rise in life expectancy has been recognized even by Government, as in the case of the Widows and Orphans Pension Scheme where the age for ceasing contributions is 65 if an officer has not been contributing for at least 35 years. Officers who now retire at 55 are permitted to commute part

of their pension, and the period used for commuting is 12½ years; therefore, a pensioner is considered for this purpose likely to reach the age of 67½ years. In this connection it may be of interest to note that Government pensioners in Singapore who previously retired at the age of 55 (the age of retirement in Singapore is now 60) and who also commuted part of their pension on the basis of 12½ years, are now entitled to have their reduced pension restored in full after they attain the age of 67½ years. This entitlement was enacted into law, and I can only assume that the Singapore authorities took the trouble of legislating for the concession only after they had given very careful study to the tables of life expectancy in that country.

Turning to another aspect of the matter, I would like to remind my colleagues that my honourable Friend the Colonial Secretary in his budget speech last year confessed that while he was worried about the size of the civil service it was not about how large it was but how small it was, particularly in those areas where experience and expertise were of the essence. He admitted the professional, administrative and executive groups formed a frighteningly low proportion of the total of about 3%.

THE COLONIAL SECRETARY (SIR HUGH NORMAN-WALKER): —Sir, on a point of correction: I didn't admit it—I *asserted* it. (*Laughter*).

MR WOO: —Sir, I beg your pardon; the admission I am stating is just the one fact, Sir.

To man the complex and sophisticated services now demanded by the public, this seemed to him to be quite inadequate. He further stressed that the recruitment of good material and the retention of experience was of paramount importance.

I would now like to say a few words on the retention of experience. If Government is genuinely concerned about the lack of experienced manpower in the civil service, surely the most accessible source of experienced personnel is the group of civil servants who are about to reach the age of 55. To continue to permit the great majority of these officers to retire at 55 will mean a continuous loss of expertise and talent each year.

With the expansion of the civil service, many vacancies exist in the approved departmental establishments. Some of these vacancies are long standing ones, for which candidates with the special qualifications and experience are in short supply. The retention of some Government

officers who reach the age of 55 will help to reduce the number of vacancies, and should contribute to more efficient public administration.

My honourable Friend the Financial Secretary is no doubt even now mentally calculating how much more the present proposals will cost Government. I would venture to say not much more. Conceivably it could be even less. A Government officer now retiring at the age of 55 would draw a pension of up to two-thirds of his salary, but his successor or somewhere down the ladder someone else recruited to fill a vacancy will be paid a salary. If the first Government officer should be allowed to serve until the age of 60, he would continue to draw his salary for a further 5 years but no one need be paid another salary during that period. On average, when he retires at the age of 60, the officer will also enjoy his pension for 5 years less.

My Unofficial colleagues and I agree that it is important to recruit good material into Government service, and that this should be done as quickly as possible and with the minimum of red tape. But even good material takes time to mature, and until such time as a newly appointed officer has gained a good insight of Government procedure and the detailed functions of his particular post he would not be pulling his full weight. Once he has managed to acquire some experience and has gained the necessary knowledge to tackle his duties with an acceptable degree of efficiency, he would be capable of holding down the post to which he was recruited. But how long does it take an average officer to reach that level of maturity of experience to enable him to tackle with confidence not only the more routine tasks of his job, but also the more complicated subjects which arise from time to time?

And, as the officer advances in his career and assumes a greater responsibility, he acquires those qualities which will allow him to become a good administrator—the ability to decide what should be done by himself and what should be delegated in full or in part to his subordinates, the extent of supervision which should be retained by himself, the deployment of his staff and the duties to be allocated to each of them, the tone of the relationships which must exist between himself and his assistants and between them and the more junior members of the staff, and the role within the vast machinery of Government which his unit must play to ensure that things go as smoothly as possible.

My Unofficial colleagues and I consider that the present retiring age for Government servants is totally unrealistic, and that it is high time for Government to come to a decision. This decision, while taking into consideration the views of the 3 staff associations, should not overlook a factor of particular importance: what is best to ensure that the civil service is proportionately staffed with men of high calibre and long experience, and thus capable of carrying out those many tasks

in the machinery of Government which are vital to the well-being and further progress of Hong Kong?

Special rules on the age of retirement exist for members of the disciplined services and senior members of the Judiciary. It is not intended that the changes proposed should apply to them, or to officers recruited on contract terms of appointment.

My Unofficial colleagues and I are unanimous in our support of the motion before Council, and we are of the view that adoption of the proposal will be advantageous to the public interest as well as to the careers of large numbers of serving officers. On the other hand it will not interfere with the current arrangements for early retirement of those who wish to do so, nor will it result, as the motion is worded, in the retention of deadwood. What it will do is to strengthen many cadres of the civil service with seasoned, mature and experienced officers with whose talents the community can ill afford to dispense at the early young age of 55. The Unofficial Members therefore urge the Government to support this motion so that it can pass this Council nemine contradicente.

THE COLONIAL SECRETARY (SIR HUGH NORMAN-WALKER): —Sir, without prejudice to my right on another occasion to make a substantive and, I hope, positive contribution to this debate, I now move that the debate on this motion be adjourned.

On that understanding it would be improper for me at this stage even to comment on the substance of what has been said, but I am, I am advised, entitled to make an explanation of why I would like to adjourn the debate.

For a very considerable time now the Government has been in consultation with the three Associations, who make up the Staff Side of the Senior Civil Service Council, on the question of the age of retirement and it has been very difficult to get the three Associations to agree on a joint approach. This has, however, now been achieved and only last week was a joint and unanimous proposal put before this Government and that, Sir, will be before you in Council very shortly.

I would very much prefer to talk to this debate when you have had an opportunity of considering that. But I would like to thank Members for the very constructive—I mustn't support or . . . (*laughter*) —for the very constructive approach they have adopted to this problem,

which I am sure will be of great value to you, Sir, in considering the views of the Executive Council.

Sir, I beg to move the adjournment of the debate.

Question put on subsidiary motion and agreed to.

Adjournment and next sitting

HIS EXCELLENCY THE PRESIDENT: —In accordance with Standing Orders I now adjourn the Council until 2.30 p.m. on Wednesday the 31st January.

Adjourned accordingly at eighteen minutes to five o'clock.

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