

OFFICIAL REPORT OF PROCEEDINGS**Wednesday, 10th March 1976****The Council met at half past two o'clock****PRESENT**

HIS EXCELLENCY THE GOVERNOR (*PRESIDENT*)
SIR CRAWFORD MURRAY MacLEHOSE, KCMG, KCVO, MBE
THE HONOURABLE THE COLONIAL SECRETARY
SIR DENYS TUDOR EMIL ROBERTS, KBE, QC, JP
THE HONOURABLE THE FINANCIAL SECRETARY
MR CHARLES PHILIP HADDON-CAVE, CMG, JP
THE HONOURABLE THE ATTORNEY GENERAL
MR JOHN WILLIAM DIXON HOBLEY, QC, JP
THE HONOURABLE THE SECRETARY FOR HOME AFFAIRS
MR DENIS CAMPBELL BRAY, CVO, JP
THE HONOURABLE JAMES JEAVONS ROBSON, CBE, JP
SECRETARY FOR THE ENVIRONMENT
DR THE HONOURABLE GERALD HUGH CHOA, CBE, JP
DIRECTOR OF MEDICAL AND HEALTH SERVICES
THE HONOURABLE IAN MACDONALD LIGHTBODY, CMG, JP
SECRETARY FOR HOUSING
THE HONOURABLE DAVID HAROLD JORDAN, CMG, MBE, JP
DIRECTOR OF COMMERCE AND INDUSTRY
THE HONOURABLE LI FOOK-KOW, CMG, JP
SECRETARY FOR SOCIAL SERVICES
THE HONOURABLE DAVID AKERS-JONES, JP
SECRETARY FOR THE NEW TERRITORIES
THE HONOURABLE LEWIS MERVYN DAVIES, CMG, OBE, JP
SECRETARY FOR SECURITY
THE HONOURABLE DAVID WYLIE McDONALD, JP
DIRECTOR OF PUBLIC WORKS
THE HONOURABLE KENNETH WALLIS JOSEPH TOPLEY, CMG, JP
DIRECTOR OF EDUCATION
THE HONOURABLE IAN ROBERT PRICE, TD, JP
COMMISSIONER FOR LABOUR
DR THE HONOURABLE CHUNG SZE-YUEN, CBE, JP
THE HONOURABLE LEE QUO-WEI, OBE, JP
THE HONOURABLE OSWALD VICTOR CHEUNG, OBE, QC, JP
THE HONOURABLE ROGERIO HYNDMAN LOBO, OBE, JP
THE HONOURABLE MRS CATHERINE JOYCE SYMONS, OBE, JP
THE HONOURABLE PETER GORDON WILLIAMS, OBE, JP
THE HONOURABLE JAMES WU MAN-HON, OBE, JP
THE HONOURABLE HILTON CHEONG-LEEN, OBE, JP
THE HONOURABLE LI FOOK-WO, OBE, JP
THE HONOURABLE JOHN HENRY BREMRIDGE, OBE, JP
DR THE HONOURABLE HARRY FANG SIN-YANG, OBE, JP
THE HONOURABLE MRS KWAN KO SIU-WAH, MBE, JP
THE HONOURABLE LO TAK-SHING, OBE, JP
THE HONOURABLE FRANCIS YUAN-HAO TIEN, OBE, JP
THE HONOURABLE ALEX WU SHU-CHIH, OBE, JP

IN ATTENDANCE

THE CLERK TO THE LEGISLATIVE COUNCIL
MR KENNETH HARRY WHEELER

Papers

The following papers were laid pursuant to Standing Order 14(2):—

	<i>Subject</i>	<i>LN No</i>
Subsidiary Legislation:		
Public Revenue Protection Ordinance.		
	Public Revenue Protection (Dutiable Commodities) Order 1976	52
Hong Kong Airport (Control of Obstructions) Ordinance.		
	Hong Kong Airport (Control of Obstructions) (Amendment) Order 1976	53
Deposit-taking Companies Ordinance 1976.		
	Deposit-taking Companies Ordinance 1976 (Commencement) Notice 1976.....	54
Road Traffic Ordinance.		
	Road Traffic (Driving Licences) (Amendment) Regulations 1976	55
Road Traffic Ordinance.		
	Road Traffic (Registration and Licensing of Vehicles) (Amendment) Regulations 1976	56
District Court Ordinance.		
	District Court Civil Procedure (Fees) (Amendment) Rules 1976	57
University of Hong Kong Ordinance.		
	Statutes of the University of Hong Kong (Amendment) Statutes 1976	58
Sessional Paper 1975-76:		
	No 38—Annual Report of the Social Work Training Fund for the year ended 31st March 1975 (published on 10.3.76).	

Oral answers to questions

Prosecution of offenders

1. DR CHUNG asked:—

Sir, will Government xstate how a decision is taken on whether to prosecute offenders for those violent crimes which carry life imprisonment in the magistracies (where the maximum sentence that may be imposed is 3 years) or in the district courts (where the maximum sentence that may be imposed is 7 years)?

THE ATTORNEY GENERAL:—Sir, to answer this question adequately, I need to deal with a number of matters and I cannot deal with it in a very short comment, Sir. I need to deal first, with the procedures which apply generally in respect of the prosecution of offences; second, with the procedures which apply in respect of certain particular crimes; and thirdly, with the basis on which decisions are taken in the course of the procedures.

Sir, where a criminal case may under the law be tried either by a magistrate or in the District Court or Supreme Court, the police officers (or officers of other law enforcement agencies, as the case may be) who are involved with the case consider whether it is one which can appropriately be dealt with by a magistrate. Such officers are empowered to take a decision that a case should be dealt with by a magistrate and in many cases they do not need legal advice in order to enable them to reach a proper conclusion. Whenever they are in doubt, they naturally take advice from the Director of Public Prosecutions or Crown Counsel.

If the officers consider that a case cannot appropriately be dealt with by a magistrate, they must consult the Director of Public Prosecutions. This is because the law does not permit them to seek a transfer of a case to the District Court and they cannot in practice proceed to committal proceedings with a view to trial before the Supreme Court unless they know that the Director of Public Prosecutions is prepared to indict for trial in the Supreme Court in due course. A decision, therefore, to transfer a case to the District Court or to go for trial before the Supreme Court can only be taken by my officers.

So much for the general position.

I now come to the second point—the procedure which applies in respect of certain particular offences. They are mainly those with

[THE ATTORNEY GENERAL] **Oral answers**

which the question is concerned—namely, robbery and burglary—but blackmail cases also now fall in this class.

The position is that, in consultation with the Director of Public Prosecutions, the Director of Criminal Investigation has directed that robbery and burglary cases falling within specified guidelines must be referred to either the Director of Public Prosecutions or Crown Counsel. Such a directive has been in effect for some years in relation to many robbery cases—for example those in which weapons are used and those where the accused has previous convictions. The directive has been revised recently so as to bring within it robbery cases in which two or more persons are involved, and the terms are now such that a large number of robbery and many burglary cases should be referred to the Director of Public Prosecutions. I shall not give details of the directives now. They have been provided separately to honourable Members. So long, Sir, as the directives are complied with, the decision as to the court of trial in the majority of robbery and burglary cases is taken by my officers. Since February this year, the position is the same with respect to blackmail cases, many of which should now be referred to the Director of Public Prosecutions.

The third point concerns the basis on which decisions as to the court of trial are taken. The answer is in fact fairly obvious. When a police officer is deciding whether to leave a case for trial by a magistrate or the Director of Public Prosecutions is deciding whether to transfer a case to the District Court or proceed to trial before the Supreme Court, the basis for the decision is the Crown's view of the seriousness of the particular offence as such and the seriousness of the particular case. Account is also taken of the prevalence of the particular offence and, of course, of the accused's criminal record and his own particular circumstances, including his age. In short, the question is whether the powers of punishment of a particular court are in the Crown's view sufficient to enable the defendant, if convicted, to be dealt with properly in the public interest. But, of course, the Crown's decision as to the court of trial is also influenced by the general level of sentence for the particular offence.

I now turn again to robbery and burglary cases. Many of those cases which are referred to the Director of Public Prosecutions in accordance with the directives will be taken to the District Court or, in particularly serious cases to the Supreme Court. However, the directives are in wide terms and embrace widely differing types of case. Undoubtedly the powers of a magistrate are sufficient to enable

a significant number of cases falling within the directives to be dealt with quite adequately in the magistrates courts.

Sir, the honourable Dr CHUNG's question is clearly not the product solely of an academic interest in the prosecution processes. I feel sure that it is influenced by recent remarks from the Bench and elsewhere suggesting that robbery cases, and perhaps some others, are not always taken to the right court. I do not hesitate about acknowledging that sometimes they are not. When one considers the number of prosecutions each year, the number of police officers and Crown Counsel involved in the decisions and the differing views which may properly be taken about individual cases, it would, I suggest, be remarkable if we got it right every time. The administration of justice is not an exact science and however precise the directives a significant measure of discretion must be left to individual police officers and Crown Counsel. There will always be some cases where the prosecutor's decision as to the court of trial can be questioned.

DR CHUNG:—Sir, in the light of the reply by my honourable Friend, will he consider the possibility and feasibility of increasing the maximum sentences that may be imposed by the lower courts?

THE ATTORNEY GENERAL:—Sir, this question was before this Council in 1973. At that time it was felt inappropriate to raise further than the present level of two years, or three years where more than one offence is involved, the punishment which may be imposed by the magistrates. I, Sir, do not think it would be appropriate to look into that matter further.

MR LO:—Sir, to clarify one aspect of the answer, I wonder whether my honourable Friend, the Attorney General, would say whether, where a particularly nasty robbery is brought before the Supreme Court instead of the District Court, is one of the main reasons the fact that in the view of the Director of Public Prosecutions the maximum penalty of seven years in the District Court may well be inadequate?

THE ATTORNEY GENERAL:—Yes, Sir, that would be likely to be one of the reasons.

Oral answers**Imitation firearms**

2. MR LOBO asked:—

Sir, will Government take early steps to strengthen existing legislation concerning the import and possession of imitation firearms and "convertible" toy guns?

THE ATTORNEY GENERAL:—Sir, whilst recognizing the public concern over this matter, I can say no more than that the Government is urgently considering what further controls may be practicable.

Hawkers

3. MR JAMES WU asked:—

Sir, in view of the improvement in the economic and employment situation, what are Government's plans to direct unlicensed hawkers into employment which is more productive from the community's point of view?

SECRETARY FOR THE ENVIRONMENT:—None, Sir.

MR JAMES WU:—Sir, may I ask why not?

SECRETARY FOR THE ENVIRONMENT:—Sir, I don't think this is particularly related to the first question, but I suppose the answer to the question, is that Government does not plan to direct people into employment.

MR JAMES WU:—Sir, quite apart from the question of economic use of manpower, does my honourable Friend, with his specific Government portfolio, not see that hawking also contributes substantially to the pollution of the environment?

SECRETARY FOR THE ENVIRONMENT:—Sir, I don't think that is related to the original question.

Motor insurance

4. MR BREMRIDGE asked:—

Sir, what is the present position on the proposed motor nofault insurance scheme?

SECRETARY FOR THE ENVIRONMENT:—Sir, the present position on the proposed no-fault scheme for compensating victims of traffic accidents is that the cost of the scheme has been re-assessed and the administrative problems analysed. A draft bill to be known as the Traffic Accident Victims (Compensation Fund) Bill is under preparation which is expected to be placed before Executive Council shortly.

MR BREMRIDGE:—Sir, have Government recently, and I underline recently, discussed with the Accident Insurance Association in Hong Kong the setting up of a motor insurance bureau to handle difficult problems in this area as is done successfully elsewhere?

SECRETARY FOR THE ENVIRONMENT:—Sir, I don't think that the Insurance Association has been consulted recently, and in saying recently I mean within the last eighteen months. But if my honourable Friend thinks this might be fruitful, I can certainly arrange for it to be done.

Pharmacy course

5. MR LOBO asked:—

Sir, in the absence of a course in pharmacy which can be taken locally will Government give consideration to the inclusion of a recognized pharmacy course in the Hong Kong Polytechnic or in the proposed new medical faculty of the Chinese University or within the existing medical faculty of Hong Kong University?

SECRETARY FOR SOCIAL SERVICES:—Sir, I believe that it would be desirable to establish a course in pharmacy locally, in order to meet the needs of our community particularly in relation to the administration of the Poisons Regulations. Accordingly, I shall ask the University and Polytechnic Grants Committee to consider whether such a course can be introduced at an early date in view of other priorities and to consider whether such a course should be provided in one of the universities or at the Polytechnic.

Oral answers

MR CHEUNG:—Sir, if the Grants Committee is to be asked to consider this question, would finance be provided for such a course if recommended?

SECRETARY FOR SOCIAL SERVICES:—I hope so, Sir.

Kwong Wah Hospital

6. DR FANG asked:—

Sir, will Government step in to help the Kwong Wah Hospital maintain adequate services following the recent resignation of a number of doctors?

DR CHOA:—Sir, last week the department was informed that ten medical officers in the Medical Unit of the Kwong Wah Hospital had resigned. It was impossible for the remaining staff to deal with the total number of 420 beds in the unit and it was not practicable to transfer medical officers from other units because of the specialized nature of the work.

Consequently, in order to maintain maximum utilization of the beds in the unit, it was decided that 120 beds should be made available for cases to be transferred from medical units of the Queen Elizabeth Hospital which would remain responsible for their treatment and care. Also, as the depleted medical staff of the Kwong Wah Hospital could not deal with a 24-hour service, medical emergency cases were diverted to the Queen Elizabeth Hospital for admission between the hours of 9 a.m. and 10 p.m. These arrangements took effect from March the 2nd. To cope with the extra load on the Queen Elizabeth Hospital, the medical units have been augmented by three medical officers.

Adequate services have been maintained in the medical unit of the Kwong Wah Hospital in the way I have described and other units have not been affected. It is hoped that the situation will return to normal soon when the vacancies are filled by recruitment. Meanwhile, the department will give every support to the Kwong Wah Hospital to tide over this difficult period.

Red Dye No 2

7. DR CHUNG asked:—

Sir, (a) is there any danger to health from the use of Red Dye No 2 known generically as Amaranth?

(b) If so, will Government take steps to control its use in foodstuffs, cosmetics, and pills?

DR CHOA:—Sir, Amaranth has been suspected to have carcinogenic and teratogenic effects, but sufficient evidence has not been found in animal experiments.

Hence, there is yet no conclusion that there is any real danger to health from the use of Red Dye No 2 known generically as Amaranth.

However, in view of this, Government is keeping the matter under close review and appropriate action for control will be taken immediately if this is found necessary.

MR LO:—Sir, I wonder whether my honourable Friend could tell me what is the meaning of carcinogenic and teratogenic effects? (*laughter*)

DR CHOA:—Carcinogenic, Sir, is the combination of two words, carcinoma and genesis (*laughter*) meaning cancer producing. Teratogenic is the combination of teratoma and genesis, teratoma being a special form of cancer affecting embryonic tissues.

MR LO:—Thank you.

Educational television—1

8. MR CHEONG-LEEN asked:—

(Asked in the Cantonese dialect. The following is the interpretation of what Mr CHEONG-LEEN asked)

Sir, what is being done by Government to encourage and follow a co-ordinated approach together with the TV stations to increase the number of school children who watch educational and current affairs programmes?

Oral answers

MR TOPLEY:—Sir, if I've understood my honourable Friend right (*laughter*) my concern is with a school's television service specifically directed to children attending primary schools. As my honourable Friend will be aware, my educational television service has been operating since 1971 and covers 400,000 children in Primary 3 to Primary 6. This coverage is made possible by the co-operation of the commercial television stations which each provide four hours air time daily for ETV programmes during a 32-week broadcast year.

From time to time I am approached by the commercial companies for views on educational programmes like Sesame Street, and the Big Blue Marble. I am always happy to give these views.

MR CHEONG-LEEN:—Sir, does Government have any statistics as to the number of hours of television Hong Kong children watch on an average day or week or month?

MR TOPLEY:—Sir, I do not have such figures with me, and I believe that in any case that this question does not strictly arise out of the original question.

MR CHEONG-LEEN:—Sir, has any survey been carried out as to the extent that television is beginning to supplant the family and the school as a major or the major influence in forming children's moral standards?

MR TOPLEY:—Not to my knowledge, Sir.

MR CHEONG-LEEN:—Will Government give consideration to the carrying out of such a survey?

MR TOPLEY:—I will ask my honourable Friend the Secretary for Home Affairs whether he will give consideration to the carrying out of such a survey, Sir. (*laughter*).

Educational television—2

9. MR CHEONG-LEEN asked:—

(Asked in the Cantonese dialect. The following is the interpretation of what Mr CHEONG-LEEN asked)

Sir, what is Government doing to make educational television more interesting to school children?

MR TOPLEY:—Sir, I believe that the question implies that educational television is dull. This I deny emphatically. I am in close touch with primary schools taking ETV and I am assured that this service is still being received enthusiastically. But, if the question implies that a very good service can be improved, I do agree. ETV programmes are being continually improved in the light of feedback from schools. Each year approximately 30% of programmes are re-made. This year there was a complete overhaul of all the first-year programmes.

MR CHEONG-LEEN:—Sir, with your permission may I clarify that I do believe that the service is good, but that it still can be improved. May I ask when it will be possible for ETV to extend its service to children in secondary schools?

HIS EXCELLENCY THE PRESIDENT:—A completely different question, I am afraid. Perhaps you could put it down some other time?

Robberies

10. MR CHEONG-LEEN asked:—

(Asked in the Cantonese dialect. The following is the interpretation of what Mr CHEONG-LEEN asked)

Sir, what measures will be taken to prevent future armed robberies within the precincts of any court of law?

SECRETARY FOR SECURITY:—Sir, there is always a police presence within the precincts of magistracies during office hours, and this provides a degree of protection not available in buildings generally. In the District Courts and the Supreme Court there is only a limited police presence.

In addition separate precautions are taken over the safe custody of public monies within the precincts of magistracies and in their transport to and from these courts.

MR CHEONG-LEEN:—Sir, can an assurance be given whether the police presence available will be sufficient to prevent as much as possible

Oral answers

a recurrence of any robberies within the precincts of magistracies or courts of law?

SECRETARY FOR SECURITY:—Sir, obviously it would be unwise of me to give any unqualified assurance of that nature, but steps are taken by the Commissioner of Police within the capacity of available resources and other demands to provide what he believes to be a sufficient presence.

Fire hazards

11. MR ALEX WU asked:—

Sir, will Government take steps to control fire hazards in the so-called music parlours so as to avoid mishaps?

SECRETARY FOR SECURITY:—Sir, according to Fire Services Department statistics there have only been twelve fires reported in music parlours in the last four years, out of a total of 29,600 fires reported in domestic buildings, in which music parlours are generally established.

Apart from the recent fire in Mong Kok, which unhappily caused five deaths and twenty injuries, the total of casualties in the last four years in music parlours from fire was nine injuries.

These figures suggest that the use of premises as a music parlour does not represent a greater fire risk than its use for other purposes. There does not appear to be a need for special efforts by the Fire Services Department, in addition to its normal coverage of multi-storey buildings, where most music parlours are to be found.

Of course, the Director of Fire Services will investigate any complaint that a fire risk exists in any premises and will take action to abate it, if necessary.

MR ALEX WU:—Sir, would my honourable Friend state whether the so-called music parlours are regarded as places of public entertainment and subjected to the same measures of control by the Fire Department for the latter?

SECRETARY FOR SECURITY:—Sir, the fact that my honourable Friend refers to these establishments as so-called music parlours indicates the

difficulties of definition. I am advised that the Fire Services take all action which they properly can under the law in respect of possible fire dangers.

MR LO:—Sir, is it in fact, in short, the Government's view that such mishaps as might happen will only be little ones?

SECRETARY FOR SECURITY:—If the honourable Member is referring to fire hazards, I can only return to the facts which I have given, which are that the total number of fires of this sort are twelve in four years.

Mass transit railway

12. MR LEE asked:—

Sir, will Government inform this Council what measures it is taking during construction of the Metro to ensure:—

- (a) the security of property and persons in buildings which have to be hoarded up; and
- (b) the protection and safety of the movement of valuables in areas affected by traffic diversions particularly in Nathan Road?

SECRETARY FOR SECURITY:—Sir, the Commissioner of Police recognizes the potential security problems involved during the period of construction of the mass transit railway.

The exact siting and design of hoardings is to a certain extent dependent on contractors and the precise details will not be known until contractors have submitted their plans. As plans become available the Police Community Relations Officers in each police division are contacting proprietors of affected premises to make a site visit both to answer questions and to tender advice. The officer in charge is able to call on the assistance of the police specialist units such as the CID Crime Prevention Office in dealing with security problems as they arise.

With regard to the protection and safety of the movement of valuables in areas affected by traffic diversions, the police will, whenever necessary, try to make suitable arrangements with those concerned to reduce risk to the minimum.

Statement

Consular officers—traffic contraventions

THE ATTORNEY GENERAL:—Sir, on 11th February this year, I answered a question in the Council about the number of cases in which proceedings in respect of alleged minor infringements of the traffic laws were not brought against consular officers and officer of Commissions pursuant to the customary practice. Prior to answering the question I had caused to be laid on the table a detailed list of the cases and those involved.

Unfortunately, Sir, the list was seriously inaccurate in a number of cases and was inaccurate in others. Although the Colonial Secretary has already written to the Doyen of the Consular Corps expressing the Government's deep regret, it is right that I should bring the matter before the Council again and at the same time say publicly how much the Government regrets the annoyance and embarrassment which the inaccurate information has naturally caused members of the Corps.

A correct list has been laid on the table today and arrangements have been made to ensure its wide distribution.

Sir, the error arose from a combination of circumstances. Steps have been taken to ensure that it will not be repeated. (*laughter*).

Consular Privileges—1975

<i>Consulate/Commission</i>	<i>No. of offences</i>
Australia	3
India	4
Malaysia	15
Nigeria	95
Singapore	8
Argentina	1
Austria	5
Brazil	17
Burma	4
Cuba	21
Egypt, Arab Republic of	9
France	3
Iran	1

<i>Consulate/Commission</i>	<i>No. of offences</i>
Israel	3
Italy	9
Japan	1
Korea	29
Norway	6
Pakistan	3
Panama	6
Philippines	2
South Africa	7
Spain	11
Sweden	2
Thailand	34
Uruguay	19

Government business

Motions

MASS TRANSIT RAILWAY CORPORATION ORDINANCE 1975

THE FINANCIAL SECRETARY moved the following motion:—

Under section 12(1) of the Mass Transit Railway Corporation Ordinance 1975 that the Schedule to the resolution of the Legislative Council published as Legal Notice No 242 of 1975 in the *Gazette* on the 31st October 1975 be amended—

(a) in item 5 by deleting "10 billion" and substituting the following—

"34,000 million";

(b) in item 6 by deleting "20.5 million" and substituting the following—

"41.5 million";

(c) in item 7 by deleting "24 million" and substituting the following—

"56 million"; and

[THE FINANCIAL SECRETARY] **Motions**

- (d) by deleting item 10 and substituting the following—
- | | | |
|------|--|---|
| "10. | Loans arranged by
Wardley Limited to
finance local and
international contracts. | 570 million Hong Kong
dollars and such amounts as
may become payable in
respect of interest and other
charges." |
|------|--|---|

He said:—Sir, as foreshadowed in my speech in this Council on 11th February last, I wish today to introduce a further motion to amend the Council's resolution of 23rd October 1975 dealing with loan arrangements to be guaranteed by this Government on behalf of the Mass Transit Railway Corporation. This motion is the first standing in my name on the order paper.

On the 1st March the Corporation let a further seven major international civil engineering contracts worth almost \$2,000 million, after taking into account anticipated escalations in costs over the construction period. These contracts were let to firms and consortia from Germany, France, Japan, Sweden, the United Kingdom and Hong Kong and they represent about half of the value of the total civil engineering work associated with the Modified Initial System of the railway. The contracts include the construction of the Tsim Sha Tsui, Jordan, Waterloo and Argyle stations, part of the future Prince Edward station, all under Nathan Road, the Chater and Admiralty stations on Hong Kong Island, the North and South Nathan Road and Island tunnels, and the immersed tube tunnel which will carry the railway under the harbour.

More than 30 *per cent* by value of these contracts has gone to a United Kingdom led consortium, more than 20 *per cent* to a European led consortium, and the remainder of just over 40 *per cent* to Japanese companies. Three of the seven contracts are on a fixed-price basis, while the others have price variation clauses, which are, of course, perfectly normal in large contracts of this kind.

The fact that I wish to emphasize most strongly is that once again the total value of the contracts just let is within the estimate we assumed last autumn for the total construction costs of the Modified Initial System. So the amendments I am proposing today to the Council's resolution of 23rd October 1975 simply seek to cover the related borrowings that will be made by the Mass Transit Railway Corporation in the currencies of the countries whose companies have, in fact, been awarded the contracts. To this end, the motion now before Council

seeks to increase the maximum guarantees in respect of the value of export credits to finance contracts placed in first, Japan from 10,000 million yen to 34,000 million yen, secondly, in West Germany from 20.5 million Deutsche marks to 41.5 million Deutsche marks, thirdly, in Sweden from 24 million Swedish kroner to 56 million Swedish kroner, as well as fourthly, to increase the maximum sums which I may guarantee under loans arranged by Wardley Limited, to finance local contracts, from HK\$470 million to HK\$570 million. No amendments are required in respect of France and the United Kingdom as, of course, these are lines of buyers' credits.

Additional guarantees will also be required in respect of the remaining six local civil engineering contracts still remaining to be let, and it is expected that all but one of these will be let by June. Honourable Members, Sir, will also wish to know that, at the end of June, the Corporation intends to let all ten contracts for the electrical and mechanical engineering part of the works. These will provide for the supply of such items as coaches, signalling equipment and telecommunications equipment. I would, therefore, intend on 7th July next to introduce a further and, hopefully as far as the Modified Initial System is concerned, final motion into this Council to cover any further modifications to the guarantees that are necessitated by these contracts. It will, of course, still be necessary to come back from time to time for guarantees in respect of residual finance such as bond issues.

Question put and agreed to.

VOTE ON ACCOUNT

THE FINANCIAL SECRETARY moved the following motion:—

That—

- (a) a sum not exceeding \$2,887,525,000, shall be and is hereby charged upon the general revenues and other funds of Hong Kong on account for or towards defraying the service of the financial year commencing on the 1st April 1976 and ending on the 31st March 1977, and the said sum so charged may be expended in the manner expressed in the Schedule;
- (b) where on or after 1st April 1976 the Financial Secretary directs that any revenue, whether received by way of fee, penalty or proceeds of sale or by way of an extra or unusual receipt, shall be applied as an

[THE FINANCIAL SECRETARY] **Motions**

appropriation-in-aid of any head of expenditure referred to in the schedule, such revenue shall, without being paid into the general revenue, be applied, audited and dealt with accordingly, and so far as it is not so applied shall be paid into the general revenue.

SCHEDULE

	<i>Head of Expenditure</i>	<i>Amount upon which Provision on Account is based</i>	<i>Amount of vote on Account</i>
		\$	\$
21.	H.E. the Governor's Establishment ...	1,675,000	335,000
22.	Agriculture and Fisheries Department.....	46,022,000	10,921,000
23.	Audit Department	4,623,000	932,000
24.	Census and Statistics Department	11,646,000	3,781,000
25.	Civil Aviation Department	38,530,000	12,656,000
26.	Colonial Secretariat.....	50,927,000	10,210,000
27.	Colonial Secretariat: London Office	6,468,000	1,294,000
28.	Commerce and Industry Department	52,578,000	10,511,000
29.	Defence: Auxiliary Medical Service	2,024,000	405,000
30.	Defence: Civil Aid Services.....	4,427,000	917,000
31.	Defence: Miscellaneous Measures	250,604,000	63,820,000
32.	Defence: Royal Hong Kong Auxiliary Air Force.....	4,795,000	1,653,000
33.	Defence: Royal Hong Kong Regiment (The Volunteers)	3,820,000	1,129,000
34.	Education Department	220,257,000	47,164,000
35.	Fire Services Department.....	97,784,000	18,154,000
36.	Government Supplies Department ... t	19,301,000	3,913,000
37.	Home Affairs Department.....	17,146,000	3,430,000
38.	Housing Department	115,374,000	31,494,000
39.	Immigration Department.....	32,934,000	6,416,000
40.	Independent Commission Against Corruption.....	37,748,000	7,550,000
41.	Information Services Department	11,708,000	2,335,000
42.	Inland Revenue Department.....	41,277,000	8,296,000
43.	Judiciary.....	27,358,000	5,490,000
44.	Kowloon-Canton Railway.....	39,933,000	18,855,000
45.	Labour Department	23,084,000	4,617,000
46.	Legal Department	8,996,000	1,800,000
47.	Legal Aid Department.....	8,199,000	1,652,000
48.	Marine Department	60,300,000	11,224,000
49.	Medical and Health Department	430,329,000	88,368,000

<i>Head of Expenditure</i>	<i>Amount upon which Provision on Account is based</i>	<i>Amount of vote on Account</i>
	\$	\$
50. Miscellaneous Services.....	341,577,000	105,167,000
51. New Territories Administration	40,144,000	10,144,000
52. Office of Unofficial Members of Executive and Legislative Councils.....	1,831,000	367,000
53. Pensions.....	201,316,000	40,264,000
54. Police: Royal Hong Kong Police Force	469,518,000	99,550,000
55. Police: Royal Hong Kong Auxiliary Police Force	28,418,000	5,684,000
56. Post Office	156,587,000	43,463,000
57. Printing Department	22,873,000	4,904,000
58. Prisons Department.....	90,120,000	17,731,000
59. Public Debt	42,674,000	5,598,000
60. Public Services Commission	489,000	98,000
61. Public Works Department: Headquarters.....	9,671,000	2,431,000
62. Public Works Department: Building Development	113,036,000	22,621,000
63. Public Works Department: Engineering Development	268,896,000	53,699,000
64. Public Works Department: Lands and Survey	36,711,000	7,452,000
65. Public Works Department: New Territories Development	3,907,000	782,000
66. Public Works Department: Water Supplies.....	211,801,000	43,008,000
67. Public Works Non-recurrent: Headquarters	93,364,000	93,364,000
68. Public Works Non-recurrent: Buildings.....	226,728,000	223,528,000
69. Public Works Non-recurrent: Engineering.....	457,612,000	457,612,000
70. Public Works Non-recurrent: New Towns and Public Housing (other than Housing Authority)	593,743,000	588,943,000
71. Public Works Non-recurrent: Waterworks	230,114,000	230,114,000
72. Radio Hong Kong.....	13,100,000	2,587,000
73. Rating and Valuation Department.....	13,647,000	2,730,000
74. Registrar General's Department	12,693,000	2,539,000
75. Registration of Persons Department	5,192,000	1,039,000
76. Registry of Trade Unions.....	656,000	132,000
77. Royal Observatory	8,285,000	1,677,000
78. Social Welfare Department	354,812,000	71,161,000
79. Subventions: Education	821,165,000	195,621,000

[THE FINANCIAL SECRETARY] **Motions**

<i>Head of Expenditure</i>	<i>Amount upon which Provision on Account is based</i>	<i>Amount of vote on Account</i>
	\$	\$
80. Subventions: Medical.....	180,708,000	46,582,000
81. Subventions: Miscellaneous.....	66,871,000	16,649,000
82. Subventions: Social Welfare.....	52,000,000	13,000,000
83. Transport Department.....	15,625,000	4,819,000
84. Treasury.....	12,426,000	2,635,000
85. Universities and Polytechnic.....	292,333,000	79,155,000
86. Urban Services Department.....	51,400,000	11,353,000
	7,211,910,000	2,887,525,000

He said:—Sir, I rise to move the second motion standing in my name in the Order Paper.

Sir, the enactment of the Appropriation Ordinance normally takes place in March each year. But this year, as last year, the debate on the second reading of the Appropriation Bill is to be extended into April to allow honourable Members more time to examine the draft Estimates for 1976-77. This motion, therefore, seeks funds on account to enable the Government to carry on existing services between the start of the financial year on 1st April 1976 and the issue of the General Warrant following the enactment of the Appropriation Ordinance. The funds on account sought under each head have been determined in accordance with rules which have been agreed by the Finance Committee of this Council.

Expenditure will be regulated in accordance with the heads and subheads shown in the draft Estimates for 1976-77. A Vote on Account Warrant will be issued to the Director of Accounting Services authorizing him to make payments up to the amount specified in this motion, and will limit the expenditure in accordance with the agreed rules. The provision under the Vote on Account will be subsumed upon the enactment of the Appropriation Ordinance, and the General Warrant issued after the enactment of the ordinance will replace the Vote on Account Warrant and be effective from 1st April 1976.

Sir, I said in my speech moving the second reading of the Appropriation Bill 1976 that an appropriations-in-aid system was to be introduced in 1976-77. Under this system certain receipts, consisting of fees and charges, will be appropriated-in-aid and used to offset expenditure

instead of being credited to General Revenue. The motion now before Council also seeks the authority of this Council to enable me to direct that such receipts shall be applied in this way during the period covered by the vote on account.

Question put and agreed to.

CRIMINAL PROCEDURE ORDINANCE

THE ATTORNEY GENERAL moved the following motion:—

That the Legal Aid in Criminal Cases (Amendment) Rules 1976, made by the Chief Justice on the 24th February 1976, be approved.

He said:—Sir, among other cases, legal aid may now be granted to a defendant convicted in a magistrate's court who wishes to appeal against the magistrate's decision.

These rules provide for the grant of legal aid to a respondent where the Crown appeals to the High Court on a point of law from a magistrate's decision. Sir, the number of cases in which the Crown appeals against an acquittal on a point of law is small and the cost of this change to the public revenue will be minimal.

Question put and agreed to.

APPRENTICESHIP ORDINANCE 1976

MR PRICE moved the following motion:—

That the Apprenticeship Regulations 1976, made by the Commissioner for Labour on the 13th February 1976, be approved.

He said:—Sir, I move the first motion standing in my name on the order paper for the approval of the Apprenticeship Regulations 1976, which I made on 13th February 1976. In accordance with section 47(3) of the Apprenticeship Ordinance 1976, which received its third reading on 11th February 1976, these regulations have been submitted to Your Excellency and are now subject to the approval of this Council.

Honourable Members will recall that at the second reading of the Apprenticeship Bill on 7th January I announced my intention of making

[MR PRICE] **Motions**

these regulations at the earliest possible opportunity. The regulations provide for matters which need to be prescribed to achieve the purposes of the Apprenticeship Ordinance 1976. In respect of apprenticeship contracts they provide for—

- the terms and conditions which must be set out in such contracts;
- the requirements as to medical examination;
- the maximum hours of employment including overtime;
- the keeping by the Commissioner for Labour of a register of apprenticeship contracts;
and
- the keeping of records by employers.

Sir, there is, I believe, no need to elaborate on the explanatory note, except to state that these regulations have the full support of the Hong Kong Training Council and its Committee on Apprenticeship.

DR CHUNG:—Your Excellency, I have read through these Apprenticeship Regulations 1976 and have consulted some of those persons who are running organized apprentice training schemes in their factories. It is considered that these proposed apprenticeship regulations, generally speaking, are reasonable and fair. They therefore have my support in principle.

Nevertheless, there are two points which I would like my honourable Friend, the Commissioner for Labour, to consider. The first point concerns sex. When I say "sex", Sir, I mean the sex of the apprentices. All these regulations, I believe, were drafted on the assumption that all apprentices are male. Take for example, regulation 9 governing overtime employment of apprentices. I wonder whether this particular regulation would apply to a female apprentice. Although my honourable Friend may not have yet come across a female apprentice, one can not rule out the possibility in the near future.

My second point relates to regulation 3 which stipulates that the period of apprenticeship in a designated trade should not be less than three years. As my honourable Friend said at the second reading of the Apprenticeship Bill early this year, the objective of Government would be to provide protection to all apprentices in all trades. Therefore ultimately all trades will become designated sooner or later. There are certainly many trades which need not require a minimum period of three years for training. I note that paragraph (2) of regulation 3 provides power for the Commissioner to reduce the period of apprenticeship

in any case or class of cases. However, I doubt whether this is for the purpose I have mentioned. In any case, I feel that when the Hong Kong Training Council recommends to you, Sir, that a particular trade should be designated, the Training Council itself should also recommend the minimum period of apprenticeship for that particular trade. With due respect, I don't think the minimum period of apprenticeship should be decided by the Commissioner for Labour alone.

Sir, I believe these two points are important but not necessarily urgent. I therefore do not wish to hold up the passage of this motion in Council. As long as my honourable Friend, the Commissioner for Labour, agrees to give consideration to these two points, I shall be glad to support the motion.

MR PRICE:—Sir, I am grateful to my honourable Friend for his support of the motion before Council.

With regard to his first point, sex, the regulations were not drafted on the assumption that all apprentices are male. Section 7(1) of the Interpretation and General Clauses Ordinance states "words and expressions importing the male gender include the female". Therefore, the Apprenticeship Regulations and indeed the Apprenticeship Ordinance apply to male and female apprentices. Regulation 9 governs overtime for all apprentices both male and female, and is generally in accord with the relevant provisions of the Factories and Industrial Undertakings Regulations. Before leaving this point I should state that I have come across some female technician apprentices in the garment industry. Their numbers are few but others may well come forward in the future.

I turn to my honourable Friend's second point. In all the 143 principal job standards already prepared by the ten training boards there is not one skilled craft trade which is likely to be a designated trade under the ordinance, and which requires less than a minimum of three years' apprenticeship. However, should any problems arise later, I shall certainly reconsider the matter. I agree that regulation 3(2) was not designed to permit the arbitrary reduction of the period of apprenticeship. Finally, I assure my honourable Friend that I have no intention of taking any important decision regarding apprenticeship without the advice of the Hong Kong Training Council.

DR CHUNG:—Sir, as a matter of clarification, may I ask my honourable Friend to refer to regulation 9 which I have mentioned concerning overtime employment of apprentices. This regulation,

[DR CHUNG] **Motions**

subclause (a)(iii), which says in the case of an apprentice of age of 18 years or above, 250 hours in any year or two hours in any day. Sub-clause (b), the total hours worked by the apprentice shall not exceed ten in any day. Do these two regulations apply to female apprentices also?

MR PRICE:—Yes, Sir, they do. I should like to take this opportunity of pointing out that in accordance with section 49(3) of the Apprenticeship Ordinance that ordinance takes precedence over the Factories and Industrial Undertakings Ordinance if there should be a conflict.

Question put and agreed to.

FACTORIES AND INDUSTRIAL UNDERTAKINGS ORDINANCE

MR PRICE moved the following motion:—

That the Factories and Industrial Undertakings (Spraying of Flammable Liquids) Regulations 1976, made by the Commissioner for Labour on the 29th January 1976, be approved.

He said:—Sir, I move the second motion standing in my name on the order paper for the approval of the Factories and Industrial Undertakings (Spraying of Flammable Liquids) Regulations 1976. These regulations were made by me on 29th January and have been submitted to Your Excellency in accordance with the provisions of section 7(3) of the Factories and Industrial Undertakings Ordinance.

The spraying of flammable liquids is the process of applying a flammable liquid, or a mixture containing such liquid, to an article by atomization under pressure through the nozzle of a spraying apparatus. Its most common use is in spraying paint, but these regulations cover also the spraying of thinners, varnishes, lacquers, sealing compounds and petroleum based adhesives. In all these processes the flammable liquid vapourises rapidly and so creates in the atmosphere a concentration of gases which is potentially explosive and easily set on fire. It is against fire hazards that these regulations are primarily directed.

Uncontrolled spraying of flammable liquids caused about 25 *per cent* of all dangerous occurrences involving explosions or fires reported under regulation 18 of the principal regulations. To put this another way, such spraying has caused about 300 accidents and some 22 deaths during the past five years. In addition, there were five large fires resulting from spraying of flammable liquids during the last five months of 1975. And I have grounds for believing that there were also a number of potentially serious small fires not involving the Fire Services Department and dealt with successfully by employees in the industrial undertakings concerned.

Sir, there is ample evidence of the need for these regulations to control the potentially dangerous process of spraying flammable liquids in industrial undertakings and so minimize the risk of explosion and fire, with consequent injury to employees. The more important controls include—

- the segregation of the spraying area from other parts of the industrial undertaking, to minimize the effects of explosions and fire (regulation 4);
- the provision of an efficient ventilation system to reduce the concentration of flammable vapours in, or within the vicinity of, any spraying room or spraying area (regulation 5);
- the prohibition of smoking or the use of naked flame inside any spraying room or area, or within 20 feet of any spraying area (regulation 6);
- the imposition of standards of electrical equipment, to avoid sparks igniting flammable atmosphere (regulation 8);
- a statement of conditions under which flammable liquids can be stored (regulation 10);
and
- the requirement that persons and employees must report promptly to the proprietor any fault or defect in any ventilating apparatus, fire extinguishers, electrical appliances or containers for the storage of flammable liquids.

A secondary effect of these regulations, by requiring improved ventilation, will be to reduce concentrations in the air of flammable vapours, mists, or sprays—and so to provide a much safer working environment for employees. However, I intend to examine further the problem of providing a greater degree of safety for workers exposed to toxic solvents — with particular reference to the prevention of industrial dermatitis.

[MR PRICE] **Motions**

To provide time for proprietors of industrial undertakings to comply with these new regulations, they will not come into force until 1st July 1976. To assist these proprietors to meet their new obligations an explanatory booklet will soon be issued free of charge; and advice will be given by members of the Factory Inspectorate.

The Director of Fire Services supports these regulations, of which the principles have been unanimously approved by the Labour Advisory Board. As a result of consultations with the Chinese Manufacturers' Association and the Federation of Hong Kong Industries, a number of useful points were raised and these have been incorporated in the regulations.

DR CHUNG:—Your Excellency, there is no doubt that well-defined and clear-cut safety working regulations minimize industrial hazards and improve working conditions. It is also true that the process of spraying flammable liquids is potentially dangerous as far as fire and explosion are concerned. For these reasons, therefore, I support the principle of making these factory regulations which on the whole, with one exception, are quite precise and concise.

The one exception is regulation 5 which governs the efficiency and effectiveness of ventilation. Here the regulation says:

"Where a flammable liquid spraying process is carried on either in a spraying room or a spraying area, any such room or area, including in the case of a spraying area any booth or cabinet within such area, shall be efficiently ventilated to open air by mechanical means adequate to remove from any such room, area, booth or cabinet any flammable vapour mist or spray arising from the spraying process."

Sir, I cannot imagine what standard a factory inspector would use to determine whether a given spraying room is efficiently or inefficiently ventilated. Nor can a factory operator, without a standard to follow, design and install a mechanical ventilation system to comply with this particular regulation 5. I am sure honourable Members will agree with me that it is not desirable to leave this to the personal judgment or subjective opinion of factory inspectors as this could very well lead to dispute or abuse or even corrupt practices.

With the advancement of science and technology nowadays, there are many scientific ways and means of determining the efficiency and

effectiveness of ventilation. One method is to measure the flammable vapour content in the room air and to set maximum permissible limits.

Sir, I was under the mistaken impression that my honourable Friend, the Commissioner for Labour, had agreed to postpone the introduction of this motion pending discussion by an *ad hoc* group of Unofficial Members. I did not realize my misunderstanding until very late on Monday night and because of pressure of work, I was unable to have any discussion or even a telephone conversation with my honourable Friend, the Commissioner for Labour, until this very morning. Accordingly, I have not given my honourable Friend a reasonable period of time to consider my suggestion and therefore it would seem unfair to press him for a redraft of regulation 5 at this stage.

In the circumstances, Sir, if my honourable Friend undertakes to give the matter further thought with a view to redrafting regulation 5 on more scientific grounds I am quite prepared to support the motion before Council as an interim measure.

MR JAMES WU:—Sir, I share the view as expressed by the Senior Unofficial Member and in particular in regard to regulation No 5. As the proposed regulation No 5 now stands, a person can be prosecuted if he allows even the slightest trace of flammable vapour or mist as can be detected by smell but next to impossible of being completely evacuated although traces of such a minute quantity will not constitute any danger. Sir, I believe that regulation No 5 would be made less arbitrary if we can specify a certain number of air changes per minute or hour as an acceptable standard of forced ventilation of the room so as to have a positive measure to get rid of any explosive mixture. This I believe would help the designer or architect, the factory inspector and the factory owner.

MR PRICE:—Sir, I appreciate the support given by my honourable Friend, Dr CHUNG, to these regulations.

My honourable Friend has taken issue with the phrase "efficiently ventilated" in regulation 5. I do not believe that the use of the word "efficient" is in any way inappropriate because it has already been used in the following three regulations—

Factories and Industrial Undertakings Regulation 23(1)(h);

Woodworking regulation 4; and

[MR PRICE] **Motions**

Electrolytic Chromium Process regulation 5, in the context of "an efficient exhaust draught".

The efficiency of a ventilating system to a spray booth or area is determined by the captured velocity induced by mechanical ventilation. For the purpose of dispersing contaminants released at low velocity into moderately still air, a minimum velocity of between 100 to 200 feet a minute is necessary. The Labour Department has velometers to measure captured velocity of 30 feet a minute or above. From this, I trust that it is clear that what is efficient or inefficient will *not* be left solely to the personal judgment of a factory inspector. Moreover, the explanatory booklet, which I have already mentioned in introducing these regulations, will contain details of what is an efficient ventilating system.

I agree with my honourable Friend's point that there are scientific methods which can be used to determine if a given concentration of flammable vapour is dangerous. In determining this, the staff of the Labour Department will use an explosimeter or Kitagawa tubes. For the benefit of honourable Members, I should explain that an explosimeter determines the extent of an explosion risk due to the presence of an explosive mixture while Kitagawa tubes determine the extent of risk to the health of the workers because of the presence of toxic vapours. Sir, I believe that my explanation for the present wording of regulation 5 is clear, but I am prepared in the light of suggestions made to me by honourable Members to consider redrafting regulation 5 to provide for more specific requirements.

Question put and agreed to.

First reading of bills

CRIMINAL PROCEDURE (AMENDMENT) BILL 1976

MAGISTRATES (AMENDMENT) BILL 1976

MARRIAGE (AMENDMENT) BILL 1976

OFFENCES AGAINST THE PERSON (AMENDMENT) BILL 1976

OLICE FORCE (AMENDMENT) BILL 1976

Bills read the first time and ordered to be set down for second reading pursuant to Standing Order 41(3).

Second reading of bills**CRIMINAL PROCEDURE (AMENDMENT) BILL 1976**

THE ATTORNEY GENERAL moved the second reading of:—"A bill to amend the Criminal Procedure Ordinance."

He said:—Sir, the Criminal Procedure (Amendment) Bill proposes five provisions of substance and seeks to make some other minor amendments.

There is a long standing practice whereby courts require a deposit of cash as a condition of the grant of bail. Long experience has shown that a cash deposit is a generally effective guarantee that an accused person who is released from custody will attend for trial in due course. The good sense of the practice is not in question. There is, however, some question as to its validity in law. Clause 3 will remove the doubt and clause 4 makes consequential provisions.

The second provision of substance is introduced by clause 9. It is concerned with prospective witnesses in criminal cases who, pursuant to a recognizance or summons, or in some other way, are under a duty to attend court to give evidence. Sometimes there is reason to believe that a witness may not come forward when required to give evidence. As the law stands, nothing can be done to improve the chances that he will attend. Under the proposed provision a court which is satisfied that a material witness is unlikely to attend may issue a warrant for his arrest. A witness who is arrested on such a warrant will be brought before the court and may then be remanded in custody or released on bail. There is provision for the interim release on bail of an arrested witness who cannot be brought immediately before a court.

Sir, the bill also proposes an important change in relation to the period of imprisonment which may be ordered by the Supreme Court or District Court in default of payment of a fine. At present the maximum period which may be so ordered is 12 months' imprisonment. The Chief Justice has drawn my attention to the fact that the existing period may not always be adequate, particularly where very large fines are imposed on conviction for offences under the Dangerous Drugs Ordinance—the maximum now being \$5 million. The existing maximum term of imprisonment in default of payment of a fine could be inadequate in other cases. Accordingly, a charge of general application is proposed. It is that there should in future be no statutory maximum period. The matter will be entirely in the discretion of the

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

Supreme Court or the District Court in all cases. I should perhaps emphasize that this new provision does not apply to the magistrates courts, for which an alternative provision is proposed in another bill.

Sir, rules with regard to indictments in the Supreme Court must now be made by the Indictment Rules Committee. There is a delightful antiquity about the composition of the committee, which has anyway been called on to act only once since it was established in 1919. It is proposed that it should be dissolved (*laughter*). Indictment rules will in future be made by the Chief Justice alone under section 9 of the principal ordinance.

Clause 16 of the bill, Sir, will give the courts complete discretion with respect to the non-disclosure of the name or address of a witness in a criminal case where the court is sitting, or could sit, in camera. At present a court may order non-disclosure only where a witness is apprehensive as to his safety or that of his family or friends or as to his business or property.

*Motion made. That the debate on the second reading of the bill be adjourned—*THE ATTORNEY GENERAL.

Question put and agreed to.

MAGISTRATES (AMENDMENT) BILL 1976

THE ATTORNEY GENERAL moved the second reading of:—"A bill to amend the Magistrates Ordinance."

He said:—Sir, the first change which it proposes will enable service of a magistrates court summons to be proved by statutory declaration. This will save the time of police officers particularly, but a magistrate may require service to be proved in the normal way if he considers that to be necessary.

Secondly, clauses 3 and 5 replace sections 9 and 18 of the principal ordinance with a view to removing unnecessary duplication and simplifying the existing provisions. Some changes of substance are also proposed.

First, the existing discretion of a magistrate to hear a case in the absence of the defendant is abrogated because it is considered wrong in principle. For many years, it has lain almost dormant.

Second, the Crown will in future be able to prevent a defendant from pleading guilty by letter to any of the minor or relatively minor offences set out in the Third Schedule to the principal ordinance. The need for this change was brought to light by the recent inclusion of speeding offences in that Schedule. As honourable Members know, a person convicted of a third such offence must in the prescribed circumstances be disqualified from driving. I consider it quite inappropriate that such a course should be taken in the absence of a defendant. There are also sound practical reasons why the defendant should be in court. As I also think it inappropriate, in the case of any of the Third Schedule offences, that the decision whether he should attend court or plead guilty by letter should rest entirely with the defendant in the absence of intervention by the court, a general provision is proposed which will enable the Crown to require his attendance. In practice it is likely that this right will need to be exercised only in rare cases.

Sir, the bill also introduces changes in relation to the award of costs against complainants and that normally means against the Crown. The main proposal is that a magistrate should be able to award costs, up to \$500, to a defendant where a case is adjourned at the request of a complainant who is at fault or where the complainant is not present at the resumption of proceedings following an adjournment. Whilst this proposal is plainly beneficial to defendants, and rightly so, I must add that it is not put forward for entirely disinterested reasons so far as the Crown is concerned. On occasions, magistrates reasonably refuse a prosecution request for the adjournment of a criminal case where the Crown is at fault because of the hardship that can be caused to a defendant who has come to court. It is hoped that the fact that costs may in future be awarded against the Crown in these circumstances will encourage magistrates to grant adjournments somewhat more readily. This is considered to be in the public interest because there are cases in which criminal proceedings ought undoubtedly to continue notwithstanding the Crown's initial fault. There is also provision for the award of costs to a defendant where proceedings are dismissed because the complainant fails to appear at all. Two other provisions in the bill relating to costs give statutory effect to judicial decisions and a third imposes some restriction on the cases in which costs may be awarded against a complainant where proceedings are dismissed after a hearing. At present magistrates have an unfettered discretion in this regard. It is considered proper to provide that costs should be awarded against the Crown after a trial only if the magistrate

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

is satisfied that the proceedings were not reasonably instituted or continued. This new provision broadly reflects the general practice.

Clause 9 of the bill, Sir, will enlarge from six months to twelve months the term of imprisonment which a magistrate may impose in default of payment of a fine exceeding \$5,000. This proposal follows a comparable proposal in relation to the Supreme Court and the District Court about which I spoke when moving the second reading of the Criminal Procedure (Amendment) Bill. It is considered preferable that in this case the matter should not be left entirely in the magistrate's discretion.

From time to time committal proceedings with a view to trial before the Supreme Court in a case involving two or more accused are completed before one of the accused is arrested. The object of the revised section 74 of the principal ordinance introduced by clause 11 is to enable a magistrate to commit the newly arrested accused for trial without a further preliminary inquiry.

Clause 12 makes three amendments to section 81A of the principal ordinance. That section deals with the tendering of written evidence in committal proceedings. Firstly, there is some doubt as to whether the present provision extends to statements which are written in a language other than the language used by the prospective witness when giving the statement. As a matter of necessary practice in the Police Force, statements made orally in Chinese are sometimes recorded in English with the aid of an interpreter. On rare occasions this could also be the case with statements made orally in a language other than Chinese. It is intended that such a written statement should be admissible if certified by the interpreter to be an accurate translation in English of the spoken language.

The revised section 81A also provides for the admissibility of exhibits which are satisfactorily identified in a written statement and specifically requires a magistrate to satisfy himself that an accused person understands a written statement before dispensing with the reading of it in court. The latter precaution is considered desirable following a recent case in which an illiterate accused who had been duly provided in advance with a copy of a written statement had agreed that it need not be read although he had not himself been able to read any of it.

Clause 13, Sir, will ensure that a sentence of caning is not carried out where an appeal is pending. This gives statutory confirmation to normal practice.

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

Question put and agreed to.

MARRIAGE (AMENDMENT) BILL 1976

THE ATTORNEY GENERAL moved the second reading of:—"A bill to amend the Marriage Ordinance."

He said:—Sir, it is intended that the Governor's authority under section 11 of the Marriage Ordinance to grant special licences should be delegated. A small matter stands in the way. It is that as the law stands special licences have to be "given under the Governor's personal hand". That is legally a bar to delegation. This bill seeks to amend the form of special licence as necessary. At the same time it provides for future amendment to forms by order of the Governor so that the Council will not have to be troubled.

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

Question put and agreed to.

OFFENCES AGAINST THE PERSON (AMENDMENT) BILL 1976

THE ATTORNEY GENERAL moved the second reading of:—"A bill to amend the Offences against the Person Ordinance."

He said:—Sir, section 47A of the Offences Against the Person Ordinance prescribes the circumstances in which doctors may perform a therapeutic abortion in the interest of a patient.

It has been on the statute book in temporary form for almost four years. This has provided the opportunity for an assessment of its effect which the Council thought necessary when passing the legislation in 1972. The possibility of abuse was then a cause of some concern.

[THE ATTORNEY GENERAL] **Offences Against the Person—second reading**

Sir, there is no evidence that the law has been abused and it is now considered appropriate to make section 47A part of the permanent law. The bill provides accordingly.

The Government intends, however, to review the provisions of the section. Some representations advocating modifications have already been received and these, and any further representations, will naturally be carefully considered.

DR FANG:—Your Excellency, I rise to speak against the motion now before this Council. Far from supporting the permanent retention of section 47A of the Offences Against the Person Ordinance, I strongly believe that it should never have been enacted in the first place for it is legally ambiguous, medically unsound, ethically questionable and socially unwise.

When section 47A was first added to the principal ordinance in 1972, the then Attorney General in moving the second reading of the amending bill, assured this Council that its purpose was simply to put beyond doubt the common law position affecting abortion, that is, to protect medical practitioners from legal action where abortion was performed to save the life of the mother or to prevent her from being reduced to a physical or mental wreck. With respect, Sir, it seems to me that the legislation as enacted goes further than was intended and does in fact legalise abortion generally—for the test is no longer one of risk to life or grave permanent injury to the mother but the rather nebulous one of psycho-social disturbance.

Statistics of legal abortions in Hong Kong over the past three years show that abortions increased threefold in the second year and fivefold in the third year following the enactment of section 47A. Of the total of 1,771 cases reported, only thirty were performed because of danger to life, and only three were of an emergency nature. The majority of abortions were performed on the dubious ground that continuance of the pregnancy would have involved greater risk of injury to the physical or mental health of the mother. The trend is one of steady increase and I fear that by making this provision permanent more will opt for abortion as the easiest way out. At a time when many western countries are having serious second thoughts about the moral and social consequences of their liberal abortion laws, it seems to me imprudent in the extreme to make section 47A of the principal ordinance a permanent feature of our law. I consider the grounds described

in subsections (1) and (2) of section 47A for legal abortion to be too wide and susceptible to abuse, particularly the environmental clause in subsection (2). These provisions in reality almost give *carte blanche* to abortion since as a medical man, I know only too well it would be almost impossible to prove the absence of psychiatric grounds. This means that for the unscrupulous doctor a way can always be found to keep just within the law. It must also be remembered that a large number of abortions now being carried out, especially in private hospitals are under the guise of dilatation and curettage, commonly known as D and C. In order to reflect the true figures on abortion I would urge that all curetted specimens of women of normal childbearing age should be sent for pathological examination to verify whether or not they in fact contain gestation. I am afraid that where human life is concerned it is not good enough to rely on the frailty of human nature. We go to great lengths to protect the individual's well-being. Surely our obligations are that much greater in respect of the unborn child who is helpless to protect himself? In this connection I note that we do not have any provisions equivalent to the United Kingdom Infant Life (Preservation) Act of 1929 which prohibits the killing of any viable foetus unless it is necessary to preserve the life of the mother, and this provision is in fact included in the 1967 Abortion Act. For the purpose of the earlier Act a foetus is viable after 28 weeks of pregnancy. Modern medicine has revealed that a foetus is capable of life outside the womb much earlier than 28 weeks. The absence of a similar provision in Hong Kong means that, subject only to the conditions laid down in section 47A, an abortion may be performed at any stage of the pregnancy. In other words an unborn child may be killed by process of termination of pregnancy even one day before full term with the mother and the doctor being fully protected under the present legislation.

Abortion is not only an offence against the unborn child. Its effects on the mother, both physical and psychological, are at best uncertain and at worst positively damaging. Many now readily admit that very little is known of the long-term consequences of abortion. The risk of morbidity following an abortion tends to be under-estimated and there is certainly a lack of counselling for the mother before a decision for abortion is taken. The psychiatric indications make it highly likely that psychiatric disturbance will also occur after abortion. In my view abortion must not be seen as the only alternative to a problem. It would be far better to advocate preventive and remedial measures as a more positive solution to the problem.

[DR FANG]

Offences Against the Person—second reading

I must also draw attention to subsection (6) of section 47A which purports to safeguard the position of the conscientious objector. This does no more than merely place an intolerable burden on the conscientious objector and I am afraid that I find it very difficult to accept that any doctor or nurse who conscientiously objects should be called upon to prove his or her innocence in refusing to participate in an act which, but for the existence of section 47A, would be a crime. If there must be legislation permitting abortion in limited circumstances there must also be legislation which affords a real measure of protection for the conscientious objector. In other words, the burden of proof must not rest on them. What I find particularly disturbing about our abortion legislation is that it embodies an attitude of disregard and disrespect for human life at all stages of its development. This legislature has an obligation to ensure that in enacting legislation it has regard to the impact of such legislation on the common good and on the lives and attitudes of the people of this community. I do not consider that section 47A fulfils any of these aims. Indeed, we are saying that the human life which is unwanted or troublesome can be got rid of. This attitude, if allowed to grow, and we can already see some ominous signs of this in our pattern of crime, will undermine the very foundation of our society to the extent that the law of the jungle will prevail and only the fittest will survive. I am afraid I find the whole concept repugnant and untenable.

Sir, I have spoken at length on the medical and social consequences of legalising abortion. These cannot be dismissed only as religious prejudices or moralising for there is hard evidence in other pro-abortion western countries that all is not well. The experiences of abuse in the United Kingdom now as the abortion capital of Europe surely must compel us to pause and think most seriously before we legislate for the retention of section 47A. The advocate of liberal abortion argues that this will reduce back-street illegal abortions. There is certainly no evidence whatsoever that this is the case. Rape is another reason often quoted as justification for legal abortion yet how many of the 1,771 reported cases were performed because of rape? I would wager very few if any at all. In any event, I understand that the common law provides for legal abortion in such cases. Over 84% of legal abortions performed in the United Kingdom were authorized for unspecified social reasons. As the law does not recognize these considerations as a defence against any criminal act, why then should an exception be made in the case of the unborn child?

Prior to the abolition of capital punishment in the United Kingdom no pregnant woman could be executed on the grounds that it was immoral to take the life of the innocent party—the unborn child. The unborn child has always, in law, been considered a separate living member of the society. The enactment of the abortion law made a mockery of the legislation for the same politicians who found it repugnant to hang a pregnant woman were quick to cast their vote in favour of the Abortion Act. I therefore urge this Council to consider most seriously the implications of the bill now under debate. If I cannot persuade Members to abandon this piece of legislation altogether, let us at least extend the present trial period of section 47A so that we can review the whole question of abortion more carefully. Surely where human lives are concerned it behoves us all to proceed with the utmost concern and caution.

Finally, Sir, I wish to make it clear that the views which I have expressed this afternoon are entirely my own and in no way represent those of any of my Unofficial colleagues. Accordingly, should it be decided to proceed with the bill, I shall vote against it when the time comes.

*Motion made. That the debate on the second reading of the bill be adjourned—*THE ATTORNEY GENERAL.

Question put and agreed to.

POLICE FORCE (AMENDMENT) BILL 1976

THE ATTORNEY GENERAL moved the second reading of:—"A bill to amend the Police Force Ordinance."

He said:—Sir, I referred in moving the second reading of the Criminal Procedure (Amendment) Bill to the doubt which exists as to the authority of a court to require the deposit of cash as a condition of the grant of bail. The same doubt exists in relation to the grant of bail by police officers under the Police Force Ordinance. This bill seeks to remove the doubt.

*Motion made. That the debate on the second reading of the bill be adjourned—*THE ATTORNEY GENERAL.

Question put and agreed to.

**INDEPENDENT COMMISSION AGAINST CORRUPTION
(AMENDMENT) BILL 1976**

Resumption of debate on second reading (11th February 1976)

Question proposed.

MR LO:—Your Excellency, the Unofficial Members of Council have formed an *ad hoc* group to examine the Independent Commission Against Corruption (Amendment) Bill 1976 and the Prevention of Bribery (Amendment) Bill 1976. Although I am speaking today because I am the convener of that group, pressure of time has not permitted me to fully consult other members on the contents of this speech and so I can only hope that what I shall say will do justice to what they think.

I note that in introducing the ICAC (Amendment) Bill 1976 my honourable Friend, the Attorney General, sought to defend the proposals against public criticism by relying on the fact that he considered the proposals routine and practical, without anything exceptional or unprecedented about them and by relying on the fact that he was confident that the Commission would never pursue an enquiry into related offences more than was necessary.

However, some of the proposals were in fact quite exceptional and unprecedented and if they were put into practice to the fullest extent as a matter of routine I am bound to say that Hong Kong would become an unrecognisable place and skilful would be the timing of my honourable Friend's impending vacation. More seriously, our confidence that the Commission will in practice never abuse its powers is, in my view, utterly irrelevant in considering what legislation we should pass and I shall not dwell on this obvious point but turn instead to the proposals in the bill.

As regards the ICAC (Amendment) Bill first the new section 10(1)(b) is obviously too wide for the purpose described in my honourable Friend's speech and in the explanatory memorandum. It has even given rise to the outcry that a second police force is being established. I have no doubt that this section can be restricted considerably without detriment to the work of the Commission.

Secondly, I think that every person entering premises under the new section 10(2) should be authorized by the Commission and should, in addition to identifying himself by producing his warrant card, also state his purpose before entry.

The third point is that the new section 10(C)(1)(b) is too wide and should be restricted to a search for the person to be arrested and, after his arrest, to a search for evidence in respect of the offence for which he was being arrested.

Fourthly, while it is undeniably reasonable that the Commission should have the power itself to release a suspected person from custody in terms of the new section 10A(2), it is unreasonable for it to have the power to require a released person to attend its offices without any restrictions whatsoever as to how often he has to attend, for how long each time and over how long a period. Theoretically, the released person, on pains of forfeiting his deposit or estreating his recognizance, might be required to report three times a day each day for as long as he lived.

Fifthly, I wish to congratulate my honourable Friend for the new section 10A(8) which allows Your Excellency to make such provision as you may consider necessary with respect to the treatment of persons detained at the offices of the Commission. I look forward to such provision being made in the near future.

As regards the proposals contained in the Prevention of Bribery (Amendment) Ordinance 1976, I am not clear as to why the new section 14A(2) does not contain a requirement to satisfy the District Court that the suspected person has left Hong Kong or cannot be found.

Finally, Sir, I would like to refer to a persistent and illogical if understandable point of view. It derives from the sentiment that, as certain powers have already been granted to the police, why should there be any objection to the granting of those very same powers to the Commission? The first answer that comes to mind is that no legislature is ever bound by its predecessor. The better answer I think is that the time has come for us to take another look at all the ordinances which deal with the work of our disciplined forces to see if the law provides all the powers which are necessary for them to properly perform their jobs and to see if the law provides the adequate counterchecks and safeguards that any civilized society is entitled to have.

Subject to the bill being appropriately amended in committee stage on the points I have outlined, Sir, I support it.

MRS SYMONS:—Sir, as most of us know, as do many of our visitors and admirers or critics abroad, we in Hong Kong tend in time to tackle anything difficult or unpleasant or fundamentally necessary

[MRS SYMONS] **Independent Commission Against Corruption (Amendment) Bill—
resumption of debate on second reading (11.2.76)**

with more than the usual share of acumen, skill and determination. In short, we mean business. We succeed in almost every kind of trade or commercial enterprise, and when we tackle social problems, given the financial and special circumstances of Hong Kong, we sometimes times outstrip similar activities in even well-developed countries abroad. In the area of the battle against corruption, for battle it is, our enemy is an ancient foe, and one which over the centuries, has, by its corroding effect, brought crashing down whole societies, countries and even empires. Nothing but the most determined and sustained action on our part, on the part of every member of our community, will deter it. Most recent publicity has indicated that this problem affects not only our tiny part of the world, and I for one would not be surprised if a request for Mr. Cater to share his ideas does not come from abroad.

Two years after the setting up of the Independent Commission Against Corruption we have now to consider an amendment bill; at a time when surely no one is under illusions about the extent of this problem; and there are few of good-will who would not like to see the fight sustained; but many of us are aware that throughout the community there is some apprehension about the increased powers of the Independent Commission Against Corruption. Unfortunately when a trite phrase like "a second police force" is bandied about, it comes off the tongue easily, and by the time some attempt is made to rationalize the epithet, much ground is lost. Well then, since the Preventive Service section of the Commerce and Industry Department has powers to arrest and search smugglers, and kindred folk, surely the Independent Commission Against Corruption must also have adequate powers. And why not? We all agree (I hope) that corruption exists and must be fiercely opposed, we all would wish (I hope) that the corrupt will be sought out and dealt with appropriately. We all (I hope) consider that this Commission must be independent. Then let us through this amendment bill give it the stature of such independence, leaving the police to get on with their primary task of maintaining law and order.

In the last few weeks I have tried to understand why some members of the public are so worried now about the new powers which in the main correspond with the powers of the police. Worry about abuse? Worry about the integrity of the Commission's officers themselves? There must surely be safe-guards in the legislature for these very real and understandable worries. Are there other reasons?

Although my honourable Friend Mr. LO, himself a solicitor, dealt with the points of law in detail I would like to make a few comments. I realise that I personally have had the worthwhile opportunity of working with the Commissioner and some of his officers in a voluntary capacity, but I must also state quite categorically that I speak today only as a concerned citizen whose home is here.

I do not want to hinder the Commission's officers in hot pursuit of a suspect in the immediate exercise of their duty to arrest, if necessary, that suspect even in premises other than his own home or place of work. I assume, under sub-section (b) of clause 10C, that in searching what I would call other premises, such search would be conducted in co-operation with the owners or occupiers of such premises who are themselves in no way involved with the suspect in an offence under this ordinance or the Prevention of Bribery Ordinance or the Corrupt and Illegal Practices Ordinance or conspiracy, black-mail, fraud or any offence covered by the above. I imagine that if an officer of the Commission were to arrest some one in my office, that this officer would not be on a 'fishing' expedition, that he would have some definite idea of what he was looking for, and that I would be invited to co-operate, if I am innocent, in the search, and not have to hand over my office to the Independent Commission Against Corruption. Apart from anything else, the inconvenience and slight embarrassment so caused to the innocent owner or occupier of the office must be reduced to a minimum. If the Commission's officer goes away to obtain a search warrant for entry into the premises, the delay might well lead to the suspect's escape or the destruction of vital evidence.

While I suspect (an uncomfortable word to use today) that it cannot be written into the law, I personally would appreciate the fullest assurance that such searching would not be made lightly, through laziness or lack of concern, or an unsavoury desire to search property with a wrong motive, and that if Independent Commission Against Corruption officers know in advance that a suspect is in a certain place, and given time to do so, they would invariably and naturally be expected to obtain a search warrant, either from a magistrate as proposed in this amendment bill, or from the Commissioner or his authorized deputy; and if such assurance can be given, it should be publicized from time to time to allay public concern.

Properly exercised, this power is an important weapon in the armoury of the Commission; and when it is clearly explained to the public, I am confident that public co-operation will not be withheld. I believe there is great and justified worry over this power of search. I am, for what it is worth, happier about the rest of the bill, not liking

[MRS SYMONS] **Independent Commission Against Corruption (Amendment) Bill—
resumption of debate on second reading (11.2.76)**

it, but the fight against corruption like the taking of nasty medicine, should lead to cure; and must be carried out.

Finally, Sir, there is much more approval for the provision of section 13B which will be welcomed by all innocent people, since it is a deterrent against somebody maliciously making a false report to the Commission of an offence alleged to have been committed by them. A mistaken report, made in good faith is quite a different kettle of fish and one which will be dealt with (I am sure) in an understanding and correct manner.

I support the motion for the second reading of this bill.

MR CHEONG-LEEN:—Sir, I rise to support this bill subject to further consideration of points in regard to certain reservations made by the Unofficials, which will no doubt result in amendments to be put forward at the committee stage.

The Independent Commission Against Corruption has won much acclaim—and deservedly so—in its fight against corruption in Hong Kong. The determined and courageous efforts of the Independent Commission Against Corruption after two years are bearing fruit: dare we say that there is evolving a finer sense of integrity, esprit de corps, or moral standing within the Civil Service, the vast majority of whom are honest and upright citizens in our community?

Especially towards the Police Force, the public is now showing an increased willingness to communicate, to co-operate and to show respect where it is due for the joint efforts of the Commissioner of Police and the Independent Commission Against Corruption to rid the Police Force of all forms of corruption.

Apart from the Police Force, the Commission has also extended its efforts to other Government departments and to the private sector. It has already built up sufficient momentum in its work to turn some attention to educating the public against the evils of corruption and to fostering public support in combatting corruption. This is tantamount to a movement for moral rebuilding within the community. In this respect, the Independent Commission Against Corruption deserves full public support providing of course its officers conduct themselves at all times in a reasonable, efficient and law-abiding manner.

As the Commissioner, Mr Jack CATER, is reported to have said recently in public, the Independent Commission Against Corruption has still to break the back of syndicated corruption, and towards this end the Commission requires the additional powers as incorporated in the bill.

There has been considerable apprehension in the minds of the general public that the bill will confer on the Commission the powers of a second police force in Hong Kong. I hope that Government will take steps to make it clear by committee stage amendments that this is not the intention.

I would at the same time seek to remind the Commissioner that continuous vigilance and caution is at all times necessary to ensure that the powers given under the amended bill will not be abused. Human nature being what it is, there is always this danger, especially since quite a number of the Commission's officers have the power of arrest and carry warrant cards.

There is the ever-present danger of impersonation of officers of the Commission. Although there may have been only 22 reported cases of impersonation since May 1974, it is likely that there have been other cases which have not been so far reported.

It is therefore desirable that the Commission devise watertight procedures which will reduce the possibility of impersonation, and of abuse of power by any officer of the Commission, and that the appropriate procedures be given publicity so as to gain public understanding and support.

Of greatest importance is the need to publicise the warrant card carried by the Commission's investigators empowering them to search and arrest. Such warrant cards should be given a number and should be bi-lingual, showing the name of the holder in both English and Chinese characters, even though the holder may be a European officer.

When search warrants are used, they could include a telephone number of the Commission to which a telephone call could be made to check the *bona fides* of the investigators. Such telephone number must be given maximum publicity, and should be manned by bi-lingual officers of a sufficiently high calibre 24 hours a day.

Sir, the role of the Independent Commission Against Corruption has now reached a crucial stage, where on the one hand it has gained notable public support and where on the other hand it is poised to join battle with syndicated corruption, which could require close co-operation with the police.

[MR CHEONG-LEEN] **Independent Commission Against Corruption (Amendment) Bill—resumption of debate on second reading (11.2.76)**

There is often a link between syndicated corruption and syndicated crime, particularly in areas such as blackmail, prostitution, hawking, gambling and narcotics, and last but not least, triad activity, which has been a baneful influence in the lives of the common people since time immemorial.

I think it is the view of most people in Hong Kong that the Independent Commission Against Corruption should be seen to be giving top priority to those areas of syndicated corruption which are interlinked with syndicated crime so as to improve the state of law and order in Hong Kong. In this respect, close co-operative and complementary efforts are required on the part of both the Commission and the Police Force.

Sir, I have pleasure in supporting the motion.

THE ATTORNEY GENERAL:—Sir, I am unrepentant. The main provisions of this bill are neither exceptional nor without precedent. And I am indeed grateful for the honourable Mr Lo's congratulations on the only unprecedented provision. I share with him the hope that it will not be long before statutory provision is made about the treatment of detained persons. I do not think he will find it exceptional if I say that I agree that a similar provision might usefully be extended to other spheres.

Running through the speeches this afternoon has been the theme of potential abuse of power. I see this as a reflection by honourable Members of public concern about the powers which the Independent Commission Against Corruption already has rather, I hope, than a special concern about what the bill proposes. We must of course be careful not to confuse abuse of power with effective use of power. The fight against corruption is a stern one, as the honourable Mrs SYMONS has said, with the advantage of her service with the Target Committee. It calls for a full use of the authority vested in the Commission. Nonetheless, abuse would be intolerable and I have no doubt that honourable Members' remarks will be carefully noted by the Commission and its officers.

The honourable Mrs SYMONS has undoubtedly struck the right note when she speaks of the bill confirming the independence of the Commission. Certainly it has hitherto been dependent in important respects on police powers and in other respects has increasingly found itself lacking in adequate authority.

I wish to reply on a number of particular points, but before doing that I need to make two general remarks.

The honourable Mrs SYMONS has referred in particular to "fishing expeditions" and the exercise of powers "through an unsavoury desire to search property with a wrong motive". Sir, fishing expeditions may be fine in a part of the world you know well (*laughter*), but of all things they form no part of the British legal system. The Commission has been especially rigorous in its insistence that the powers which its officers have should not be used in that way. By her reference to searches with an improper motive I am sure that Mrs SYMONS means to highlight a danger and not to imply that it is the fact.

Secondly, the honourable Mr LO has referred to the utter irrelevance, in his opinion, of confidence that the Commission will not abuse its powers. I do not obviously question the need for proper restraints when the legislature is conferring powers, but with few exceptions statutory powers could never be safely conferred unless in doing so the legislature assumes fundamental good faith in their exercise.

Now, Sir, to the particular, and I have spoken sufficiently this afternoon not to wish to prolong the agony.

Particular concern has been expressed about the power to search premises in which a person is arrested—particularly where he is arrested in premises with which he is not normally associated. Firstly, I have no doubt that Commission officers would act under a search warrant wherever practicable. Secondly, I confirm that a search of premises with which an arrested person is not normally associated would be conducted in co-operation with the occupier—unless, of course, the officers have reason to believe that the occupier may be acting in concert with the arrested person. Thirdly, the right to search is limited to a search for the person to be arrested and an amendment will be moved at the committee stage to confirm the intention that the search is also to be limited to evidence of offences for which Commission officers have power to arrest—though not limited as the honourable Mr LO has suggested to evidence of the actual offence for which a person was arrested. Fourthly, I must say that an arrest in premises with which a person is not normally associated will be by chance, and not design, unless the particular circumstances leave no alternative, as could be the case where a person is deliberately evading arrest. I hope that these four points will allay the "great and justified worry" to which the honourable Mrs SYMONS has referred.

[THE ATTORNEY GENERAL] **Independent Commission Against Corruption
(Amendment) Bill—resumption of debate on second
reading (11.2.76)**

Sir, after much deliberation with Unofficial Members, I think that we have found a way of conferring a wider power of arrest on Commission officers which is neither unnecessarily wide (as may perhaps be suggested of the existing proposal) nor unacceptably restrictive. An amendment will be moved at the committee stage. It will confirm, if that is necessary, that the Commission is not a second police force.

An amendment will also be moved to require a Commission officer seeking entry to premises for the purpose of effecting an arrest to state his purpose.

The honourable Mr LO has also referred to the terms which may be stipulated by Commission officers following the release on bail of an arrested person and to the absence of any restriction on the period for which a person may be kept on bail. At this stage I can only say that this matter remains under consideration.

This bill has been the subject of quite intense, though always cordial, discussion with Unofficial Members. It has, I know, received very detailed scrutiny at their hands. With the amendments which will be proposed in due course, it will provide the Commission with the necessary authority to ensure, as I said previously, its continued effective independent operation.

Question put and agreed to.

Bill read the second time.

Bill committed to a committee of the whole Council pursuant to Standing Order 43(1).

PREVENTION OF BRIBERY (AMENDMENT) BILL 1976

Resumption of debate on second reading (11th February 1976)

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 43(1).

**PUBLIC HEALTH AND URBAN SERVICES (AMENDMENT)
BILL 1976**

Resumption of debate on second reading (11th February 1976)

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 43(1).

COUNTRY PARKS BILL 1976

Resumption of debate on second reading (7th January 1976)

Question proposed.

MR CHEUNG:—I welcome this bill whereby the control and management of country parks and special areas are to be vested in the Authority who is to be the Director of Agriculture and Fisheries.

Having considered this bill with some care and in some detail, Unofficial Members have the following proposals to make.

First, that the Country Parks' Board should be authorized, and required, to consider the policy and programmes prepared by the Authority in respect of country parks and special areas.

Second, we think it desirable that where a draft map has been prepared by the Authority, such publicity should be given to it as is given to an Outline Zoning Plan prepared by the Town Planning Board. We think therefore the proposal contained in the bill to make available a draft map for inspection only in Government offices inadequate, unless the notice, which the bill requires to be published in the *Gazette*, should also be published in a number of issues of an English language newspaper and two Chinese language daily newspapers. It is notorious that hardly anyone outside Government reads the *Gazette* (*laughter*).

Third, clause 16 provides that where the Authority is of the opinion that any use or proposed use of any leased land by the occupier within a country park would substantially reduce the enjoyment and amenities

[MR CHEUNG] Country Parts Bill—resumption of debate on second reading (7.1.76)

of a country park as such, he may request the Land Authority to require the occupier to discontinue or modify such use. The contractual rights of the Crown lessee of the land and the occupier, therefore, could be materially affected, and we consider it right that they should be given notice that the Authority proposes to request the Land Authority to exercise such powers, and the Crown lessee and occupier be given an opportunity to make objections and representations to the Board. We conceive that the procedure should be similar to the procedure under the Town Planning Ordinance, and that the representations should be considered by the Country Parks' Board, who might uphold or reject the objections or direct the Land Authority to modify the proposed requirements of the Authority. Just as under the Town Planning Ordinance, the Crown lessee is given the right to appeal to the Governor in Council, so also we think an appeal by way of petition should be given to the Crown lessee or occupier if the Board rejects their objections, but, for administrative reasons, it may be more convenient that the petition should go to Your Excellency, and that Your Excellency should then decide whether to uphold the objections or direct that the Authority's requirements be modified, or refer the matter to the Executive Council. We so propose, and also propose that the Board should be expressly authorized under section 5 to consider such objections.

Lastly there are one or two points which can be tidied up. Under clause 8 the Authority, under your direction, Sir, is to prepare draft maps. When Your Excellency has so directed him we consider the Authority should consult the Board on the preparation of such draft maps without further seeking approval from Your Excellency to refer the matter to the Board. Under clause 6, the Board is authorized to transact any of its business by circulation of papers, and this is obviously a great administrative convenience for routine and non-controversial matters; however we think that a member of the Board should be entitled to require that the business be discussed at a meeting of the Board if he thinks it desirable.

Unofficial members have discussed these proposals with my honourable Friends, the Secretary for the Environment, the Secretary for the New Territories, the Director of Agriculture and Fisheries, and other officials, and the Secretary for the Environment will move amendments in the committee stage to give effect to them.

I wish, in conclusion, once more to acknowledge the steps taken by Government to preserve the countryside and to improve its amenities.

Members may be gratified to hear that the benches and tables in picnic areas have been made by prisoners under the direction of the Commissioner of Prisons, and very handsome and sturdy they are. I am more than gratified that the honourable the Financial Secretary proposes that \$6 million should be made available in the budget this year to develop areas in Sai Kung, Shing Mun, Aberdeen and Bridge's Pool for recreation. I shall be more than pleased, as always, to advise my friend as to additional commitments which it would be worthwhile to enter into (*laughter*).

MR CHEONG-LEEN:—Sir, I rise to support the Country Parks Bill 1976, which includes provision for the establishment of a Country Parks Board.

Among the amendments which will be moved by the honourable Secretary for the Environment at the committee stage, I am particularly pleased with the amendment to be made to clause 5(*aa*) which widens the functions of the Country Parks Board so that it will take an active role in advising on the policy and programmes in respect of all country parks and special areas.

The passage of this bill should give the Agriculture and Fisheries Department the opportunity to preserve as much as is possible of the natural environment of Hong Kong Island and in the New Territories for the recreation and well-being of our population.

The department could, for example, look into the possibility of having a youth lodge or hostel in one or more of the larger country parks where selected groups of young people could stay overnight away from the noise and pressures of city life, and with their beings attuned to nature and the outdoor life.

There is much scope for the imaginative development of the special areas, by way of planned selection of their floristic content and their capacity for wild birds and animals. No doubt the department will be able to discover and open up to the public quite a few good "fung shui" woods for week-end family excursions.

The department could even go further and establish one or two deer parks, where the different species of local deer which have been frightened away by urban encroachment can be coaxed out once again into the open and be seen at close quarters by the public.

As to the egret sanctuary near Sha Tau Kok, I am sure that the department will do all it can to preserve it as virtually the northernmost

[MR CHEONG-LEEN] **Country Parks Bill—resumption of debate on second reading**
(7.1.76)

point of the annual pilgrimage of a large number of egrets, the southern-most point being, I am told, somewhere in Indonesia. Perhaps viewing stands at respectable distances could be established for the public to watch and learn something about these annual visitors to our shores.

In time, the special areas could be most valuable for purposes of nature education classes organised by the Education Department, the Agriculture and Fisheries Department, the Museum of History, individual schools and specialist voluntary societies.

I assume that the department will not lose time in seeking provision for a long-term commitment of the necessary resources which include qualified staff and sufficient funds. Let us hope that the Finance Branch of Government will respond with equal enthusiasm.

With these remarks, Sir, I support the bill.

SECRETARY FOR THE ENVIRONMENT:—Sir, I should like to thank the Unofficial Members of this Council for the keen support which they have shown to this bill and for the opportunity of discussing and agreeing with representatives the ways in which the bill can be improved. I shall propose and explain briefly agreed amendments to the bill at the committee stage and will limit myself at this stage to thanking my honourable Friends, Mr Oswald CHEUNG and Mr Hilton CHEONG-LEEN, for their support and kind words.

Question put and agreed to.

Bill read the second time.

Bill committed to a committee of the whole Council pursuant to Standing Order 43(1).

Committee stage of bills

Council went into Committee.

PUBLIC HEALTH AND URBAN SERVICES (AMENDMENT)
BILL 1976

Clauses 1 and 2 were agreed to.

Clause 3

SECRETARY FOR THE ENVIRONMENT:—Sir, I move that clause 3 be amended as set out in the paper before honourable Members.

It simply substitutes the Director of Housing for the Secretary for Housing.

Proposed amendment

Clause

- 3 That clause 3(b) be amended in the proposed new subsection (6)(b) by deleting "Secretary for Housing" and substituting the following—
"Director of Housing".

The amendment was agreed to.

Clause 3, as amended, was agreed to.

Clauses 4 to 16 were agreed to.

COUNTRY PARKS BILL 1976

Clauses 1 to 4 were agreed to.

Clause 5

SECRETARY FOR THE ENVIRONMENT:—Sir, I move the clause 5 be amended as set out in the paper before honourable Members.

It has been represented to me that clause 5 as it stands appears to restrict unnecessarily the functions of the Country Parks Board. This is certainly not the intention and I hope the new subclause (1)(aa) will make it clear that the Authority will consult the Board on major policies and programmes in respect of country parks and special areas.

The minor amendment to sub-clause (1)(b) of clause 5 is consequential upon amendments to clause 16 and the introduction of a new clause 16A which I will explain later.

Proposed amendment

Clause

- 5 That clause 5(1) be amended—
(a) by deleting "and" at the end of paragraph (a);

Country Parks Bill—committee stage

- (b) by inserting after paragraph (a) the following new paragraph—
 ""(aa) consider and to advise the Authority on the policy and programmes prepared by the Authority in respect of country parks and special areas, including proposed country parks and special areas; and"; and
- (c) in paragraph (b) by inserting after "section 11" the following—
 "or section 16A".

The amendments were agreed to.

Clause 5, as amended, was agreed to.

Clause 6

SECRETARY FOR THE ENVIRONMENT:—Sir, I move that clause 6 be amended as set out in the paper before honourable Members.

The purpose of this amendment is to allow members of the board to have a greater say in what should be discussed before the meeting.

*Proposed amendment**Clause*

- 6 That clause 6 be amended—
- (a) by being re-numbered as subclause (1) thereof;
- (b) in subclause (1) by inserting before "a resolution in writing" the following—
 ", subject to subsections (2) and (3),"; and
- (c) by inserting the following new subclauses—
- "(2) Any member of the board may, by notice in writing to the Chairman, require any business which is being transacted by circulation of papers to be transacted at a meeting of the board.
- (3) Where a notice under subsection (2) has been given to the Chairman, any resolution in respect of the business the subject of the notice

which has been approved in writing by a majority of the members under subsection (1) shall be void."

The amendments were agreed to.

Clause 6, as amended, was agreed to.

Clause 7 was agreed to.

Clause 8

SECRETARY FOR THE ENVIRONMENT:—Sir, I move that clause 8 be amended as set out in the paper before honourable Members.

In the interest of administrative efficiency, it is considered that the authority should not be required to obtain the approval of the Governor before consulting the board on the preparation of any draft map under clause 8. The amendment to sub-clause (4) of clause 8 removes this requirement.

Proposed amendment

Clause

- 8 That clause 8(4) be amended by deleting "With the approval of the Governor, the Authority" and substituting the following—

"The Authority".

The amendment was agreed to.

Clause 8, as amended, was agreed to.

Clause 9

SECRETARY FOR THE ENVIRONMENT:—Sir, I move that clause 9 be amended as set out in the paper before honourable Members. The purpose is to ensure that the public is given sufficient warning of the proposed designation of any country park. It will be noted that clause 9 has been expanded to require the Authority to advertise in English and Chinese newspapers, as well as in the *Government Gazette*, a copy of the notice specified under sub-clause (1) of this clause, and also to require the display of a copy of the notice in some conspicuous part of the proposed country park.

Country Parks Bill—committee stage*Proposed amendments**Clause*

- 9 That clause 9 be amended by deleting subclause (2) and substituting the following—

"(2) Where the Authority publishes a notice under subsection (1) he shall—

- (a) publish a copy of the notice in three issues of one English language and two Chinese language daily newspapers; and
- (b) display a copy of such notice in some conspicuous part of the proposed country park."

The amendments were agreed to.

Clause 9, as amended, was agreed to.

Clauses 10 to 15 were agreed to.

Clause 16

SECRETARY FOR THE ENVIRONMENT:—Sir, I move that clause 16 be amended as set out in the paper before honourable Members. This is consequential upon the introduction of a new clause 16A. Since the board is to consider objections arising from notices issued under clause 16, it is not considered appropriate for the board to be consulted before the Country Parks Authority directs the Land Authority to exercise the powers conferred by this clause. This requirement has therefore been deleted from sub-clause (1) of clause 16.

The new sub-clause (2A) will ensure that the recipient of any notice issued under this clause is aware of his right to object to the Land Authority's directions and the addition of sub-clause (3A) is to suspend the operation of the notice until any such objection has been finally determined.

*Proposed amendments**Clause*

- 16 That clause 16 be amended—

- (a) in subclause (1) by deleting ", after consultation with the Board,";

- (b) by inserting after subclause (2) the following new subclause—
- "(2A) A notice under subsection (2) shall notify the occupier, and where the occupier is not the Crown lessee, the Crown lessee, of his right to object under section 16A.";
- (c) by inserting after subclause (3) the following new subclause—
- "(3A) Where an occupier or Crown lessee objects under section 16A the operation of the notice against which he is objecting shall be suspended until the final determination of the objection."; and
- (d) in subclause (5) by deleting "In this section" and substituting the following—
- "In this Part".

The amendments were agreed to.

Clause 16, as amended, was agreed to.

Clauses 17 to 27 were agreed to.

New clause 16A "Objection to notice under section 16(2)".

Clause read the first time and ordered to be set down for second reading pursuant to Standing Order 46(6).

SECRETARY FOR THE ENVIRONMENT:—Sir, in accordance with Standing Order 46(6), I move that new clause 16A as set out in the paper before honourable Members be read a second time.

When the bill was first drafted it was decided that the administration of the legislation should be kept as simple as possible so that protective measures could be introduced quickly. It was, however, suggested by UMELCO that the rights of occupiers and owners of land involved should be further protected by allowing them the right to object to any notice, issued under clause 16, requiring them to stop or modify an existing land use. Although this is likely to cause delay in certain cases, I agree with UMELCO, and clause 16A sets out the procedure for hearing such objections by the board and for an appeal to the Governor if the Board's decision is challenged. Honourable Members may wish to note that while the Governor may uphold an appeal, its dismissal can only be ordered by the Governor in Council.

Country Parks Bill—committee stage

Question put and agreed to.

Clause read the second time.

SECRETARY FOR THE ENVIRONMENT:—Sir, I move that new clause 16A be added to the bill.

*Proposed addition**Clause*

New clause That there be added in Part IV after clause 16 the following new clause—

16A

"Objection to notice under section 16(2). **16A.**(1) Where a notice is served on an occupier or Crown lessee under section 16(2) in respect of the use or proposed use of any land held by him—

- (a) under a Crown lease or any agreement for such lease; or
- (b) under any Ordinance,

he may, within 1 month of the service on him of such notice, send to the Authority, the Land Authority and to the Secretary of the Board a written statement of objection to the notice.

(2) A written statement under subsection (1) shall set out the nature of and reasons for the objection.

(3) Where the Authority and the Land Authority receive a written statement under subsection (1) they may within 14 days of receipt of the statement send to the Secretary of the Board their written representations concerning such objection.

(4) Upon receipt of a written statement under subsection (1) and any representations under subsection (3), the Secretary of the Board shall fix a time and place for the hearing of the objection by the Board and shall give 14 clear days' notice thereof to the objector.

(5) The objector may attend the meeting of the Board at which the objection is to be heard, and may be heard in person or by his authorized representative.

- (6) Upon the hearing of the objection, the Board may—
- (a) reject the objection;
 - (b) uphold the objection; or
 - (c) direct the Land Authority to amend the notice served under section 16(2).
- (7) Where the Board rejects the objection or directs the Land Authority to amend the notice the Secretary shall notify the objector in writing of the Board's decision and shall also notify the objector of his right of appeal under subsection (8).
- (8) Any objector aggrieved by the Board's decision may appeal by way of petition to the Governor within 1 month of being notified of the Board's decision.
- (9) Upon consideration of a petition under subsection (8) the Governor may—
- (a) direct the Land Authority to withdraw or amend the notice served under section 16(2); or
 - (b) direct that the petition be referred to the Governor in Council.
- (10) The Governor in Council, upon considering a petition referred to him under subsection (9) may—
- (a) direct the Land Authority to withdraw or amend the notice served under section 16(2); or
 - (b) dismiss the petition.
- (11) The decision of the Governor or the Governor in Council shall be final."

The addition of the new clause was agreed to.

Council then resumed.

Third reading of bills

THE ATTORNEY GENERAL reported that the

Public Health and Urban Services (Amendment) Bill and the
Country Parks Bill

had passed through Committee with 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.

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 24th of March.

Adjourned accordingly at twenty minutes to five o'clock.