

OFFICIAL REPORT OF PROCEEDINGS**Wednesday, 4 July 1979****The Council met at half past two o'clock****PRESENT**

HIS EXCELLENCY THE GOVERNOR (*PRESIDENT*)
SIR CRAWFORD MURRAY MACLEHOSE, GBE, KCMG, KCVO

THE HONOURABLE THE CHIEF SECRETARY
SIR JACK CATER, KBE, JP

THE HONOURABLE THE FINANCIAL SECRETARY
MR CHARLES PHILIP HADDON-CAVE, CMG, JP

THE HONOURABLE THE ATTORNEY GENERAL
MR JOHN CALVERT GRIFFITHS, QC

THE HONOURABLE THE SECRETARY FOR HOME AFFAIRS
MR LI FOOK-KOW, CMG, JP

THE HONOURABLE DAVID AKERS-JONES, CMG, JP
SECRETARY FOR THE NEW TERRITORIES

THE HONOURABLE LEWIS MERVYN DAVIES, CMG, OBE, JP
SECRETARY FOR SECURITY

THE HONOURABLE DAVID GREGORY JEAFFRESON, JP
SECRETARY FOR ECONOMIC SERVICES

THE HONOURABLE EDWARD HEWITT NICHOLS, OBE, JP
DIRECTOR OF AGRICULTURE AND FISHERIES

THE HONOURABLE THOMAS LEE CHUN-YON, CBE, JP
DIRECTOR OF SOCIAL WELFARE

DR THE HONOURABLE THONG KAH-LEONG, JP
DIRECTOR OF MEDICAL AND HEALTH SERVICES

THE HONOURABLE JOHN CHARLES CREASEY WALDEN, JP
DIRECTOR OF HOME AFFAIRS

THE HONOURABLE JAMES NEIL HENDERSON, JP
COMMISSIONER FOR LABOUR

THE HONOURABLE GERALD PAUL NAZARETH, OBE
LAW DRAFTSMAN

THE HONOURABLE WILLIAM COLLINS BELL, OBE, JP
DIRECTOR OF PUBLIC WORKS (*Acting*)

THE HONOURABLE DONALD LIAO POON-HUAI, OBE, JP
SECRETARY FOR HOUSING (*Acting*)

THE HONOURABLE SELWYN EUGENE ALLEYNE, JP
SECRETARY FOR THE CIVIL SERVICE (*Acting*)

THE HONOURABLE GRAHAM BARNES, JP
SECRETARY FOR THE ENVIRONMENT (*Acting*)

THE HONOURABLE COLVYN HUGH HAYE, JP
DIRECTOR OF EDUCATION (*Acting*)

THE HONOURABLE JOHN WALTER CHAMBERS, JP
SECRETARY FOR SOCIAL SERVICES (*Acting*)

THE HONOURABLE ROGERIO HYNDMAN LOBO, CBE, JP

THE HONOURABLE JAMES WU MAN-HON, OBE, JP

THE HONOURABLE HILTON CHEONG-LEEN, OBE, JP

THE HONOURABLE LI FOOK-WO, CBE, JP

THE HONOURABLE JOHN HENRY BREMRIDGE, OBE, JP

DR THE HONOURABLE HARRY FANG SIN-YANG, OBE, JP

THE HONOURABLE LO TAK-SHING, OBE, JP

THE HONOURABLE FRANCIS YUAN-HAO TIEN, OBE, JP

THE REV THE HONOURABLE JOYCE MARY BENNETT, OBE, JP

THE HONOURABLE CHEN SHOU-LUM, OBE, JP

THE HONOURABLE LYDIA DUNN, OBE, JP

DR THE HONOURABLE HENRY HU HUNG-LICK, OBE, JP

THE REV THE HONOURABLE PATRICK TERENCE McGOVERN, OBE, SJ, JP

THE HONOURABLE PETER C. WONG, OBE, JP

THE HONOURABLE WONG LAM, OBE, JP

DR THE HONOURABLE RAYSON LISUNG HUANG, CBE, JP

THE HONOURABLE CHARLES YEUNG SIU-CHO, JP

DR THE HONOURABLE HO KAM-FAI

THE HONOURABLE ALLEN LEE PENG-FEI

THE HONOURABLE ANDREW SO KWOK-WING

ABSENT

THE HONOURABLE DAVID HAROLD JORDAN, CMG, MBE, JP
DIRECTOR OF TRADE, INDUSTRY AND CUSTOMS

THE HONOURABLE OSWALD VICTOR CHEUNG, CBE, QC, JP

THE HONOURABLE ALEX WU SHU-CHIH, OBE, JP

THE HONOURABLE LEUNG TAT-SHING, OBE, JP

THE HONOURABLE DAVID KENNEDY NEWBIGGING, JP

IN ATTENDANCE

THE CLERK TO THE LEGISLATIVE COUNCIL
MR STEPHEN TAM SHU-PUI

Papers

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

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Oral answers to questions

Inflation rate

1 MR CHEONG-LEEN asked:—*Sir, what is the current rate of inflation in Hong Kong and does the projected inflation rate for the second half of 1979 exceed 10%?*

THE FINANCIAL SECRETARY:—*Sir, by ‘inflation’, I assume Mr CHEONG-LEEN means the rate of increase of prices: on an annualized basis consumer prices are increasing at a rate of between 8½% and 10½% depending on whether one considers the Government’s Consumer Price Indexes covering expenditure incurred by those with incomes up to \$3 000 per month or the Hang Seng Index which covers expenditure by those with incomes between \$3 000 and \$10 000 per month. In the budget speech I forecast that consumer prices would increase by 9% in 1979 over 1978 so the present annualized rates are consistent with that forecast.*

I am not in a position yet to update my budget speech forecast of the rate of increase in the general price level as measured by the GDP deflator of 8%. I must ask Honourable Members to wait patiently for my usual mid-year review of the state of our economy in two months’ time. My present guess is that, taking all relevant factors into consideration, including recent events which I could not have foreseen six months ago and which have affected the import prices of raw materials and semi-manufactures, taking all relevant factors into consideration, the budget speech forecast of 8% is probably on the low side, but not dramatically so.

MR CHEONG-LEEN:—*Sir, would my honourable Friend clarify whether, when he was referring to recent events, that it included the announced increase in oil prices at the beginning of this month, and also would he indicate whether*

a figure of 10%, and even up to 12%, would not be dramatically on the high side for the second half of this year?

THE FINANCIAL SECRETARY:—Taking the last point first, Sir, I did not say that any figure would be dramatically high or dramatically low. I said that, in my present view, the increase in the GDP deflator for 1979 over 1978 would not be dramatically different from the Budget Speech forecast of 8%. One of the additional factors to be taken into account in revising the Budget Speech forecast is of course the unhappy events of the last few months in respect of oil prices. We did make some allowance for OPEC pricing policy during the Budget season, but clearly we underestimated the sort of attitude that OPEC countries would see fit to adopt.

Godber—judgment debts

2 MISS DUNN asked:—*Sir, now that a judgment has been made in favour of the Crown, would the Government state what action is proposed to ensure that the sum of \$4.2 million owed by Peter Godber is recovered?*

THE ATTORNEY GENERAL:—Sir, it was not possible to serve a writ upon Mr & Mrs GODBER until the United Kingdom rules of the Supreme Court were amended in April 1979. Following this, and commendably promptly, I hope Members will think, on 7 June 1979 our solicitors in London obtained a judgment in default of appearance in the sum of almost \$4.2 million. The problem now is that the present whereabouts of Mr & Mrs GODBER are not known though our enquiries lead us to believe that they are not in the United Kingdom. And I would personally, and I am sure that the Government would welcome any reliable information which members of the public can give us about their whereabouts because it is the Government's intention relentlessly to pursue them until every penny of the \$4.2 million of the money possible is recovered. So far as their assets in the United Kingdom are concerned, the Government so far has only been able to discover two. First there is a house or a cottage and a joint bank account. On 12 June that is within the week of the judgment, the Government's solicitors in London obtained a Charging Order Nisi upon the cottage, this being the first step in the legal process of sequestration and sale. In order to obtain the net value of that cottage because it may be mortgaged, for instance, an application is currently before the High Court in London to register this charge against Mr & Mrs GODBER, both solely and jointly, because it is not possible at this stage to know exactly how the title to the cottage is vested as between the husband and the wife. So far as the bank account is concerned, this has been frozen by the High Court under a Garnishee Order Nisi and in due time it will be sequestrated by due process of law. The Government apart from those two, has not been able to discover any assets belonging to the GODBERS in the United Kingdom, and again I and the Government would

welcome any firm information from Members as to such assets and their location and if any other assets are found in their names or in the name of Mrs GODBER, then we shall take whatever steps that appear appropriate and possible to attach those in settlement of the judgment.

MR LO:—*Could legal process have been taken against him whilst he was in prison in Hong Kong?*

THE ATTORNEY GENERAL:—Legal process in Hong Kong was taken against him and resulted in judgment. That judgment could not be enforced either in Hong Kong or in the United Kingdom without suing upon it in the United Kingdom. That we had done, and it is out of that, that the judgment for \$4.2 million arises.

Fake \$5 coins

3 MR CHEONG-LEEN asked:—*Sir, how many fake \$5 coins have been discovered so far this year and what measures is Government taking to tackle the problem?*

THE FINANCIAL SECRETARY:—Sir, I understand Mr CHEONG-LEEN's anxiety and concern. But, as the answers to the questions he has posed could be of assistance to those in the counterfeiting business, I would therefore like him to accept from me the view that it would not be in the public interest for me to provide detailed answer to his questions.

However, I can assure him that all possible counter-measures are being explored in consultation with the Commissioner of Police and with the Royal Mint's experts; and the Secretary for Monetary Affairs is scheduled to meet with the Royal Mint and hold discussions at the Royal Mint in England early next month.

MR CHEONG-LEEN:—*Has the public been warned as to how to recognize these fake \$5 coins?*

THE FINANCIAL SECRETARY:—Banks, Sir, certainly are well aware of necessary means of identifying \$5 coins as they cross the counter, and the same applies to other major users.

MISS DUNN:—*Sir, as figures for fake coins for 1978 were published why is the Financial Secretary unwilling to provide a figure for 1979?*

THE FINANCIAL SECRETARY:—Coinage, Sir, is my unfavourite subject. I can only say that I was none too happy to be told on my return from leave that figures for 1977/78 had been published in a departmental annual report.

However, as some small comfort, by the time that annual departmental report was published the figures were substantially out of date and I would ask Miss DUNN not to press me to update them. I make this request of her because information about the number of fake coins detected would be of assistance to those in this business. They would be able to assess their degree of success or otherwise in overcoming the checks that have been introduced to detect fake coins.

MISS DUNN:—*Sir, is it true that there are no built-in anti-counterfeiting elements in the \$5 coins?*

THE FINANCIAL SECRETARY:—No, Sir, it is not true—despite what was said in a published Government report. (*laughter*) I think our successes, and we have had considerable success, prove this but I would ask Miss DUNN not to press me on the matter.

Bus accidents

4 DR FANG asked:—*Sir, in view of the 2 major bus accidents within a week in which over 40 passengers were injured, what measures, both long and short term, does the Government propose to take to reduce the incidence of such accidents?*

SECRETARY FOR THE ENVIRONMENT:—Sir, the two accidents referred to by Dr FANG were indeed serious, but fortunately they do not seem to constitute a trend, particularly as it seems likely they occurred for different reasons.

The Government's main checks on the safety of buses have been summarized in this Council many times before. Briefly they are:

(a) on the buses:

- a precommissioning full inspection resulting in a Certificate of Fitness;
- monitoring of maintenance facilities and maintenance routines;
- periodic checks on steering, brakes, tyres, suspension, lighting, and all other parts essential to accident prevention;

(b) and secondly on the operation of the buses:

- agreement on training programmes;
- testing of drivers for licensing;
- adjustments of bus schedules to meet traffic conditions;
- test runs on routes to establish special driving instructions to ensure safe driving;
- general liaison with the companies on all matters affecting drivers.

In January 1980 the Commissioner for Transport will start the relicensing of buses on inspection of steering, brakes, tyres, suspension and lighting etc. and the issue of a Certificate of Road Worthiness. He will also start a

system of spot checks. These measures will help ensure that buses are kept safe. What is still needed is a greater attention to the factors which have caused unsafe driving. This requires a fairly comprehensive investigation of the circumstances in which lead to unsafe driving. This is being done.

Sir, I can offer no immediate insurance against further accidents, but this Council can be assured that Government will use all its powers to reduce their incidence and seek more powers, if these are found deficient.

REV JOYCE M. BENNETT:—*Sir, does the Honourable Member mean insurance or assurance in his last paragraph?*

SECRETARY FOR THE ENVIRONMENT:—I said insurance. I do not mean it in the commercial sense.

Co-ordination in regional administration

5 DR FANG asked:—*Sir, in the regionalization of various Government departments in the urban areas, what co-ordinating machinery is operating at the regional level to ensure efficiency and effectiveness?*

DIRECTOR OF HOME AFFAIRS:—Sir, the answer to Dr FANG's question is that there are a great number of different arrangements, perhaps over 100 or so, for co-ordinating departmental activities at the regional level in the urban areas to ensure efficiency and effectiveness. If Dr FANG wishes to know the specific arrangements for particular departments I will ask the Director of Administration to send the information to him.

The reason why there are so many different arrangements is that Government departments operate with differing degrees of decentralization and they do not necessarily decentralize to the same operational regions. On the face of it this may seem to be untidy. But the Government has always held and rightly that it would not make good administrative sense to carve an area as small as Hong Kong Island and Kowloon into a multiplicity of administrative regions and require all Government departments wishing to decentralize their operations to conform strictly to those regions. Departments have been allowed a degree of flexibility in regionalization to suit the nature of their operations.

However, departments that provide a widely used day-to-day service to the general public have generally been encouraged to decentralize to regional offices and a number of them operate within almost identical regions. For example the Urban Services Department, Police, Recreation and Sports Service of the Education Department, and the Social Welfare Department use the administrative areas of the 10 City District Officers for their regional operations.

The City District Officers have therefore been made responsible for helping to co-ordinate the activities of these departments when there is a need for it. However, the CDOs are not at present vested with executive co-ordinating powers except for emergency relief operations so the co-ordination is done in a rather informal way. It is mainly directed towards sorting out problem situations that need concerted Government action but where responsibility is divided between different authorities. They are also able to do some co-ordinating of programmes in which the community takes an active part such as fighting crime, road safety, building cleanliness and recreation.

It is not co-ordination in the managerial sense of planning, directing and monitoring the operations of all Government departments working within the region, but within its limitations I think it does contribute towards efficiency and effectiveness.

Vehicle exhaust fumes

6 REV JOYCE M. BENNETT asked:—*Sir, how many instruments are there to measure the density of exhaust fumes from vehicles and how many prosecutions have resulted from their use so far this year?*

SECRETARY FOR THE ENVIRONMENT:—*Sir, there is a total of nine instruments in use by Government departments to measure smoke emission from road vehicles. Five of these are used by the Police Force to check vehicles on the streets for excessive smoke emission, and four are operated at various routine vehicle testing stations operated by the Transport Department. As a result the Police, using their five instruments, instituted a total of 5 600 prosecutions in 1978 and almost 3 000 in the first half of this year. Although we do not have comprehensive statistics, it would appear that this total number of prosecutions is as high as anywhere else in the world.*

However, I feel I should advise Honourable Members that emissions of smoke from vehicles represent only one component of exhaust fumes. They are, of course, the part that is most readily observable. But there are other emissions which are potentially more harmful to health, such as lead, carbon monoxide and oxides of nitrogen. These pollutants are invisible and odourless and not therefore readily observed or detected by the general public. I am, however, in the process of seeking the necessary resources, in terms of manpower and equipment, needed to measure the concentration of these pollutants in the air alongside busy roads in Hong Kong.

REV JOYCE M. BENNETT:—*How many, Sir, of these prosecutions in 1978 resulted in convictions and in the first half of this year?*

SECRETARY FOR THE ENVIRONMENT:—Sir, I will have to provide that figure in writing.

REV JOYCE M. BENNETT:—*Sir, does the Government consider that the five instruments used by the Police are sufficient?*

SECRETARY FOR THE ENVIRONMENT:—Sir, they do. Government does.

REV JOYCE M. BENNETT:—*Sir, is it possible to enlist the help of the public in reporting vehicles emitting black smoke from their exhaust by means of forms that they post to the Police giving the vehicle's registration number?*

SECRETARY FOR THE ENVIRONMENT:—Sir, the public has been appealed to in the past both by the Police and by organizations which are concerned with pollution and previously a letter has been found to suffice and the public has been invited to write to the Police. I don't know whether a form would help very significantly.

REV JOYCE M. BENNETT:—*Sir, could a form be considered to help the public?*

SECRETARY FOR THE ENVIRONMENT:—Certainly, Sir.

Solar energy

7 MR CHEONG-LEEN asked:—*Sir, to what extent is solar energy being investigated and utilized for use on public-financed projects?*

DIRECTOR OF PUBLIC WORKS:—Sir, solar energy has not so far been utilized in any public-financed project.

As early as 1969 an investigation was undertaken to assess the possibility of heating swimming pools by solar energy during the winter months, but the results were unfavourable in economic terms in relation to the cost of fuel prevailing at that time. Considerable difficulties were also experienced with the practical aspects of the scheme as a result of insufficient technological advancement.

Further investigations were carried out in 1977 and 1978, and the latest report from our consultant commissioned for the purpose was received in April last and is currently under study. These investigations relate to the heating of bathing houses as well as swimming pools. There are no plans for any further work in this field at the present time.

Noise pollution by motor cycles

8 MR WONG LAM asked in Cantonese dialect:—

請問政府如何管制電單車所發出之噪音？

(The following is the interpretation of what Mr WONG Lam asked)

Sir, how does the Government control noise pollution generated by motor cycles?

SECRETARY FOR THE ENVIRONMENT:—Sir, there were 122 prosecutions for excessive noise from motor vehicles in 1978 of which 52 were motor cycles. So far this year the equivalent figures are 15 and 11.

Noise pollution from motor cycles and other motor vehicles is controlled under the Road Traffic (Construction and Use) Regulations. Police officers on patrol, or even members of the general public, who spot a motor cycle or other vehicle which is apparently defective because it is making too much noise, can report the owner who is then required to attend at a Police pound for inspection of his vehicle by a motor vehicle examiner. If the silencer or other relevant part of the vehicle is found to be defective, then the owner is prosecuted. Of course, many owners will repair their vehicles before reporting for inspection so that the number of prosecutions does not really reflect the level of control activity.

Where there have been repeated incidents or complaints of noisy vehicles on a particular road, the Police will make a special effort and set up road blocks with, where possible, a motor vehicle examiner present. In such cases a prosecution can be initiated against an offender on the spot without first referring the vehicle to inspection at a Police pound.

I should add that any action taken at present, including prosecutions, relates to vehicles that are defective. There are as yet no rules which place limits on the noise emitted by new motor vehicles although such limits are in force in many other countries. We are, however, studying whether we should introduce noise limits for new vehicles.

MR WONG LAM asked in Cantonese dialect:—

閣下，政府對於檢控合共六十三宗電單車所發出的噪音，是否認為滿意呢？

(The following is the interpretation of what Mr WONG Lam asked)

Sir, concerning the prosecution by Government, does Government feel satisfactory concerning the number of prosecutions already carried out by the Government concerning motor cycles?

SECRETARY FOR THE ENVIRONMENT:—Sir, in that we still receive plenty of complaints about these things, Government would not say that it was entirely satisfied yet.

MR WONG LAM asked in Cantonese dialect:—

閣下，政府除了不滿意之外，有沒有繼續進一步採取行動呢？

(The following is the interpretation of what Mr WONG Lam asked)

Sir, if Government is not satisfied, will Government take further actions in this area?

SECRETARY FOR THE ENVIRONMENT:—Sir, I mentioned in my main reply that we were looking into the general noise standard of motor vehicles and that is one of the parts of action we are taking and I think that that would probably have considerable effect on noise on the roads.

Carpark railings

9 DR FANG asked:—*Sir, will the Government ensure that multi-storey carpark railings are built strongly enough to prevent moving vehicles crashing through them?*

DIRECTOR OF PUBLIC WORKS:—Sir, an investigation has been carried out into the various designs and construction details of Government multi-storey carparks. It has been found that in most cases the railings and associated concrete up-stands are of sufficiently substantial construction to be able to withstand the impact of moving vehicles under normal circumstances. Where it has been found that the standards are less than satisfactory, modifications are being put in hand as a matter of urgency.

In the case of multi-storey carparks constructed by the private sector, balustrades, parapets, handrails and barriers must be able to resist horizontal static loads as specified under the Building (Construction) Regulations. The provision in the Regulations covering the dynamic effect of moving loads is however somewhat obscure and steps are being taken to review this clause as part of the general review of the Buildings Ordinance which has now almost been completed. Amendments proposed as a result of this review will shortly be submitted to the Legal Department for drafting.

Overseas Training

10 MR TIEN asked:—*Sir, will Government make a statement on the scale of overseas training for local officers in the public service given by the Government with particular reference to university studies?*

SECRETARY FOR THE CIVIL SERVICE:—Sir, over the five-year period 1974/75 to 1978/79 1 422 local officers in the Civil Service were sent on training overseas. During the current financial year another 329 local officers are expected to be sent overseas at a cost of about \$9.6 million.

In general officers are sent overseas for training only if the facilities required are not available in Hong Kong. Overseas training is aimed mainly at helping staff to acquire professional qualifications, to update specialized knowledge and to improve management skills. At present 79% of the Government's overseas training takes place in the UK, 11% in South East Asia and 10% in Europe, Australia and North America.

As regards university studies, in 1978/79 99 officers undertook various courses in overseas universities or similar institutions. During the coming academic year, 81 officers are expected to be sent on overseas university courses, mainly in the engineering, surveying, education, medical, management and administration fields. Most of these courses lead to the award of a qualification, such as a higher degree, diploma, or membership of a professional body.

MR TIEN:—*Sir, would my honourable Friend explain why the number of trainees will be reduced from 99 to 81?*

SECRETARY FOR THE CIVIL SERVICE:—*Sir, it is indeed a very very small cut, if it could be called a cut, and it is really because we have looked a little bit more critically at our overseas programmes this year.*

REV JOYCE M. BENNETT:—*Sir, on their return to Hong Kong, how long does the Civil Service employ them in the same field for which they have been given special educational training?*

SECRETARY FOR THE CIVIL SERVICE:—*Sir, I think it is normal practice for them, especially for those working in specialized fields, to continue working in that field.*

REV JOYCE M. BENNETT:—*Sir, do you mean until they retire or do you mean for 3 or 4 years or even less?*

SECRETARY FOR THE CIVIL SERVICE:—*Sir, the normal practice is that they are required to sign an undertaking and it is normally ... it depends on the length of the course, it could be for three years, yes, or it could be for less, but it depends on the length of the course.*

REV JOYCE M. BENNETT:—*Sir, is this a wise use of Government money, to send someone overseas for expensive educational training and then only use them in those fields for as short a time as two or three years?*

SECRETARY FOR THE CIVIL SERVICE:—*Sir, I think that the normal practice is that they do stay for quite a long time and especially I think in specialized fields but if ... well, what other field is the Honourable Member referring to ... administration of course, they would go on until they retire.*

MR LO:—*Sir, is there not, as a part of the Administrative Officers recruitment scheme, a two-year Oxford course?*

SECRETARY FOR THE CIVIL SERVICE:—*Sir, the course at Oxford is actually one year in duration. It started in 1974 and since then—it is really designed for local Administrative Officers on probation—and since 1974 we have sent 51 officers on this course. There are at present nine at Oxford and we hope to send, I think, 12 next year.*

REV JOYCE M. BENNETT:—*Sir, would it be more economical to invite overseas experts to do some of this training in Hong Kong?*

SECRETARY FOR THE CIVIL SERVICE:—*Sir, I am happy to say that we are in fact doing exactly that and we have a professor coming to give a course this year.*

Geotechnical survey

11 MR CHEN asked:—*Sir, has Government made a geotechnical survey in respect of the Clearwater Bay Road widening, and has any work been carried out to avoid possible land slides and road subsidence?*

DIRECTOR OF PUBLIC WORKS:—*Sir, the Clearwater Bay Road widening scheme currently under construction has been designed on the basis of geotechnical investigations.*

Regular inspections and soil testing are being carried out during the course of the work, and designs are constantly reviewed and revised if necessary in the light of soil characteristics found. This is a continuing process and these measures should ensure that the risks of land slides and soil subsidence are reduced to a minimum.

Trees in redevelopment areas

12 REV JOYCE M. BENNETT asked:—*Sir, does the Government have any policy of replacing trees cut down in urban areas in the course of private as well as public redevelopment and, if so, what numbers have been planted and have survived, compared with the numbers destroyed over the past twelve months?*

SECRETARY FOR THE ENVIRONMENT:—*Sir, it is Government's policy to protect trees from destruction wherever possible. No substantial trees on Crown land may be cut down without being subjected to a formal and very critical procedure. When it is necessary to remove or fell trees in the course of private or public development, every effort is made to ensure that the trees removed are replanted elsewhere, or replaced by new plantings.*

During the period 1 April 1978 to 31 March 1979, about 1 800 trees were felled. Replanting cannot always be carried out on a tree for tree basis, but a total of 920 trees were replanted in the same period, that means 920 out of those 1 800 went back in again.

In addition, 12 348 trees were planted in new parks, on roadsides and other new locations during the year, thus providing a total of 13 268 trees planted in the twelve months ending 31 March 1979.

All trees for new planting must meet stringent specifications. They must be at least 8 feet tall and the root system must be protected so that it is not disturbed during planting. This has resulted in a survival rate of about 90% for all new tree plantings in urban areas.

REV JOYCE M. BENNETT:—*Sir, I would like to thank the Honourable Member for his full reply. I do have one or two supplementaries. (laughter) Sir, does the reference to Crown land in the first paragraph refer to Crown land for which rent is paid?*

SECRETARY FOR THE ENVIRONMENT:—Yes, Sir.

REV JOYCE M. BENNETT:—*Sir, what effort is being made to replace a great number of mature trees cut down on the property on the corner of La Salle Road and Boundary Street?*

SECRETARY FOR THE ENVIRONMENT:—Sir, the Honourable Member has me stumped about this particular felling incident and I will have to reply in detail in writing.

(THE FOLLOWING WRITTEN REPLY WAS PROVIDED SUBSEQUENTLY)

The site (NKIL 1127 Sec. A) is that of La Salle College, and redevelopment proposals for this private lot involve site levels being reduced to levels below La Salle Road and Boundary Street, and thus require the removal of all existing trees on the site. The original lease for 75 years from 1898, renewable for 24 years, contains no covenants concerning tree preservation or replacement, thus no effective action may be taken in this respect. The Architect for the project has, however, been asked to provide details of the trees previously existing within the site, together with proposals for replacement and replanting.

REV JOYCE M. BENNETT:—*Sir, what provision is being made for the restoration of the green lung of trees in the area known as the Lower and Upper Fuk Wa Chuen which is under redevelopment by the Housing Authority?*

SECRETARY FOR THE ENVIRONMENT:—Sir, the arrangement for replacement of the trees in the course of normal development—and I can't be specific about Fuk Wa—is that we keep on planting everywhere. *(laughter)*.

(THE FOLLOWING WRITTEN REPLY WAS PROVIDED SUBSEQUENTLY)

The restoration of the green lung of trees in Upper and Lower Fuk Wa Chuen, an area currently under redevelopment by the Housing Authority—this area is also known as the Ngau Tau Kok Cottage Area, of which sections 3 and 6 were cleared for redevelopment purposes in February this year. During the clearance, a total of 53 trees, ranging in height from 3 to 20 feet, and a large quantity of flowering shrubs, were removed and transplanted to other estates. Once the development is completed, more trees and shrubs will be planted in this area to replace those that have been moved.

It is Housing Authority practice for trees and shrubs to be removed from pre-clearance sites and transplanted elsewhere whenever possible.

REV JOYCE M. BENNETT:—*Sir, are the plans for the new housing development regarding the replanting of trees examined by the Secretary for the Environment's Department or by the Public Works Department?*

SECRETARY FOR THE ENVIRONMENT:—The trees which suffer from development are examined in the PWD if they are in the urban area and by the New Territories Administration in the New Territories.

Government Business

Motion

CROSS-HARBOUR TUNNEL ORDINANCE

THE SECRETARY FOR THE ENVIRONMENT moved the following motion:—That the Cross-Harbour Tunnel (Amendment) (No 2) By-laws 1979, made by the Cross-Harbour Tunnel Company Limited on 22nd June 1979, be approved.

He said:—*Sir, I rise to move that the Cross-Harbour Tunnel (Amendment) (No 2) By-laws 1979, made by the Cross-Harbour Tunnel Company limited on 22 June 1979, be approved by this Council.*

The main purpose of these by-laws is to prohibit the passage of vehicles carrying certain dangerous goods through the Cross-Harbour Tunnel irrespective of whether the container tanks or cylinders on them are full or empty. Restrictions on the passage of vehicles carrying Category 2 (compressed gas) and Category 5 (petroleum) dangerous goods were imposed with effect from 15 January and 1 July respectively but these restrictions do not specifically prohibit the passage of these vehicles with empty tanks or cylinders. As a petrol tanker with a small amount of petrol in its container tank is potentially far more dangerous than a tanker carrying a full container

tank and there is a similar element of risk with gas cylinders, it is necessary to tighten the existing restrictions on vehicles in these categories.

Other amendments introduced by these by-laws include a provision for franchised buses to stop at designated bus stops in the tunnel area, an increase in the permit fee for the passage of construction site vehicles through the tunnel and the inclusion of five additional road signs in the schedule to the by-laws.

Question put and agreed to.

First reading of bills

INLAND REVENUE (AMENDMENT) (NO 6) BILL 1979

SMALL CLAIMS TRIBUNAL (AMENDMENT) BILL 1979

PUBLIC HEALTH AND URBAN SERVICES (AMENDMENT) BILL 1979

REGISTRATION OF PERSONS (AMENDMENT) BILL 1979

SHIPPING AND PORT CONTROL (AMENDMENT) (NO 2) BILL 1979

CLEAN AIR (AMENDMENT) BILL 1979

WIDOWS' AND CHILDREN'S PENSIONS (AMENDMENT) BILL 1979

MASS TRANSIT RAILWAY CORPORATION (AMENDMENT) BILL 1979

REGISTRATION OF PERSONS (AMENDMENT) (NO 2) BILL 1979

BIRTHS AND DEATHS REGISTRATION (AMENDMENT) BILL 1979

MERCHANT SHIPPING (RECRUITING OF SEAMEN) (AMENDMENT) BILL 1979

PREVENTION OF CRUELTY TO ANIMALS (AMENDMENT) BILL 1979

EMPLOYMENT (MISCELLANEOUS PROVISIONS) BILL 1979

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

Second reading of bills

INLAND REVENUE (AMENDMENT) (NO 6) BILL 1979

THE FINANCIAL SECRETARY moved the second reading of :—‘A bill to amend the Inland Revenue Ordinance.’

He said:—Sir, the present provisions under section 9 of the Inland Revenue Ordinance bring to charge, for salaries tax purposes, the value to an employee of a place of residence provided either free of rent or at below the market rent. This is notionally assessed as a percentage (usually 10%) of the employee’s salary, subject to an adjustment for the rent paid by him.

Since the Inland Revenue Ordinance was enacted in 1947, the Commissioner of Inland Revenue has always regarded a quarter to be a ‘place of residence’ for salaries tax purposes, notwithstanding the fact that the employee was directed to that particular quarter and notwithstanding the fact that he was so directed because he could better perform his duties. For example, when a departmental quarter has been provided for a civil servant, irrespective of a direction to the officer to occupy that particular quarter on operational grounds, tax is charged, has always been charged, on the notional value of the quarter.

This application of the law by the Commissioner has not been challenged until recently when the Board of Review held that the doctrine of ‘representative occupation’, which had been developed by United Kingdom courts in the course of appeals under the United Kingdom Income Tax Acts, also applied to our Ordinance. In other words, it has been suggested that the law, as it stands, leaves room for doubt whether a quarter provided by an employer is subject to tax if the employee is required to occupy them under his terms of employment in order better to perform his duties.

Briefly, the concept of ‘representative occupation’, as developed in the United Kingdom, is that if an employee is required as a condition of his employment to reside in a quarter provided by his employer, and his residence there materially assists in the performance of his duties, subject to satisfying certain tests, nothing can be assessed on the employee for this perquisite.

The decision of the Board of Review was contested in the High Court where it was held that the Board was correct in its view. An appeal against this judgment has been filed with the Court of Appeal by the Commissioner of Inland Revenue.

Now, the acceptance of this concept of ‘representative occupation’ could have far reaching implications for cases widely different from the particular case which is the subject of the appeal. For instance, several thousand Government servants and other employees in the private sector who are

enjoying subsidized accommodation provided by their employers would benefit from the application of the doctrine of 'representative occupation'. In particular, in the civil service, policemen and prison officers are required to reside at or close to their place of work on the operational grounds. Furthermore, the concept of 'representative occupation', if introduced in Hong Kong law, would pose practical difficulties in determining what does or does not constitute 'representative occupation'. In the Government's view, the existing treatment of accommodation for salaries tax purposes is already favourable enough without freeing a large class of employees from tax on what is, in the context of conditions in Hong Kong, an extremely valuable perquisite.

To put beyond doubt the intention, the undoubted intention, of the Inland Revenue Ordinance, and to endorse existing practice, *clause 1* of the Bill provides that the amendment will apply for the year of assessment 1978-79, Sir, (final assessment) and subsequent years; *clause 2* of the Bill amends section 9 of the principal Ordinance by introducing a definition of 'place of residence' which makes it clear that it includes a place of residence which the employee has been directed to occupy, whether or not, by so doing, he can better perform his duties.

*Motion made. That the debate on the second reading of the Bill be adjourned—*THE FINANCIAL SECRETARY.

Question put and agreed to.

SMALL CLAIMS TRIBUNAL (AMENDMENT) BILL 1979

THE ATTORNEY GENERAL moved the second reading of:—'A bill to amend the Small Claims Tribunal Ordinance.'

He said:—Sir, in 1976 the Small Claims Tribunal was brought into being by the Small Claims Tribunal Ordinance. The object of the legislation was to provide a court to deal with small civil claims of up to \$3 000 in a quick, informal and inexpensive manner.

Initially, tribunals were opened in Hong Kong and Kowloon, and in October 1977 a further tribunal was opened in Tsuen Wan. For the period October 1976 to December 1977 a total of 9 729 claims were dealt with and in the year ending December 1978, 11 485 were commenced.

Due to the experimental nature of the legislation and of the tribunal itself, the Ordinance which brought it into being provided that it should initially exist only for 3 years. That period is due to expire this year unless extended by this Council. It is considered, that the tribunal has been a success and that it should now become a permanent part of our

judicial system. The purpose of this Bill is to achieve that object and at the same time to make some procedural amendments to improve the service which the tribunal offers to the public.

Clause 2 amends the service provision of the principal Ordinance by making specific provision for service by registered post addressed to a defendant at his last known place of residence or business. It is hoped that this may prevent some adjournments that, I know, concern some members which currently take place.

Clause 3 contains a new procedure which will enable a claimant to obtain judgment on the basis of written evidence in the form of an affidavit where a defendant does not appear at the hearing. A claimant may call oral evidence if he wishes, and judgment will not be entered unless the tribunal is satisfied that service has been effected in accordance with the principal Ordinance. In the past some claimants and witnesses have been inconvenienced owing to the need to attend at hearings which have been adjourned because of the non-appearance of a defendant. It is hoped that this new procedure will obviate the need for adjournments but will at the same time enable the tribunal to receive evidence a claimant might wish to call in support of his claim.

Clause 4 amends section 32A of the principal Ordinance which provides for an application to set judgment aside. The amendment extends the existing time of 7 days within which such an application must be made, to such further time as the tribunal may allow.

Clause 5 repeals the section in the principal Ordinance which limits the life of the tribunal. The effect of that repeal will be to abolish the limitation of 3 years on the life of the tribunal, and make it now a permanent feature in the judicial landscape.

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

Question put and agreed to.

PUBLIC HEALTH AND URBAN SERVICES (AMENDMENT) BILL 1979

THE SECRETARY FOR HOME AFFAIRS moved the second reading of:—‘A bill to amend the Public Health and Urban Services Ordinance.’

He said:—Sir, during recent years, many public libraries in Hong Kong have introduced a wide range of educational and cultural activities, such as story hours for children, talks, lectures and various exhibitions. In addition, a scheme is being formulated to introduce audio-visual aids like

slides and filmstrips. As all these activities are not covered by the Public Health and Urban Services Ordinance, it is necessary to amend the Ordinance to enable the Urban Council and the Director of Urban Services to regulate and control the new activities and implement them where they have not already been provided.

Clause 2 of the Bill replaces the definition of 'book' in section 2 of the Ordinance and adds a definition of 'library material'. Clause 3 adds a new subsection (4) to section 105K, providing specifically for the setting aside of parts of a library for a variety of educational and cultural purposes, and for provision of the necessary equipment and facilities. Clause 4 repeals and replaces section 105L, which confers the power to make regulations and by-laws to cover the new library services. These provisions together with a couple of minor changes are explained more fully in the Explanatory Memorandum to the Bill.

Care has, and will continue to be, taken to ensure that new activities are not introduced at the expense of the supply of books or the provision of space for reading. In fact most of the new activities are both educational and serve as an added attraction in particular to young people to utilize the libraries' basic facilities better and more extensively.

Motion made. That the debate on the second reading of the Bill be adjourned—THE SECRETARY FOR HOME AFFAIRS.

Question put and agreed to.

REGISTRATION OF PERSONS (AMENDMENT) BILL 1979

THE SECRETARY FOR SECURITY move the second reading of:—'A bill to amend the Registration of Persons Ordinance.'

He said:—Sir, I have proposed that this Bill should proceed through all its stages at one sitting, because the amendments are required urgently to improve our capacity to deal effectively with illegal immigration from China.

Details of the proposed amendments are given in the Explanatory Memorandum which is attached to the Bill.

As Honourable Members are aware, there has been a substantial increase in the number of illegal immigrants entering Hong Kong from China this year. By the end of June 45 943 had been apprehended. Although the numbers arrested have fallen sharply recently it remains as necessary as ever to pursue our policy to prevent and deter illegal entry and to apprehend those who enter illegally.

The amendment proposed in this Bill will authorize the Governor in Council to make regulations providing that persons must carry their identity

cards when visiting designated areas. This provision will be of assistance to the Security Forces in helping to identify those who have entered Hong Kong illegally and to apprehend them.

It is not the intention, at this juncture anyway, to designate large areas of population as places in which persons will be required to carry their identity cards. There are however particular areas in which their carriage will be of assistance. One such area is Ping Chau in Mirs Bay. Any decision of the Governor in Council to require the carriage of identity cards will be publicized extensively and a period of notice will be given before any order takes effect.

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).

SHIPPING AND PORT CONTROL (AMENDMENT) (NO 2) BILL 1979

THE SECRETARY FOR ECONOMIC SERVICES moved the second reading of:—‘A bill to amend the Shipping and Port Control Ordinance.’

He said:—Sir, the Shipping and Port Control Ordinance provides for the control of ports and of vessels in Hong Kong waters. Under section 2, ‘authorized officers’ for the purpose of enforcing the provisions include, among others, police officers of the rank of Station Sergeant and above.

The Commissioner of Police has advised that, with the present demand on his marine police resources, he needs to be able to use Sergeants to command launches from time to time. The amending Bill before Honourable Members accordingly seeks to include Sergeants among the ‘authorized officers’ defined in section 2 of the principal Ordinance.

*Motion made. That the debate on the second reading of the Bill be adjourned—*THE SECRETARY FOR ECONOMIC SERVICES.

Question put and agreed to.

CLEAN AIR (AMENDMENT) BILL 1979

THE COMMISSIONER FOR LABOUR moved the second reading of:—‘A bill to amend the Clean Air Ordinance.’

He said:—Sir, several operational problems have arisen in the administration of the Clean Air Ordinance (Cap. 311) and the regulations made under it. Doubts have been expressed on whether or not the appointment of the Air Pollution Control Officer (APCO) as a ‘competent authority’ for the purposes only of the regulations is valid. It is also uncertain whether or not the practice whereby the Air Pollution Control Officer issues smoke abatement notices under section 4 of the Ordinance is ultra vires, as the APCO is not himself a ‘competent authority’ for the purposes of the Ordinance. As a result, I have to approve personally the issue of smoke abatement notices and to exercise personally the functions as a competent authority for the purposes of the Ordinance and its two sets of regulations.

Due to the six-month time limit for laying an information prescribed under section 26 of the Magistrates Ordinance, legal action is time-barred if an offence under the Clean Air Ordinance or its subsidiary regulations is discovered later than 6 months from the time when the offence took place. As it is not practicable for the existing staff to inspect each and every fuel-using plant bi-annually, some offenders may escape prosecution. In addition, this provision as it stands presents possible opportunities for corruption.

The Bill before Council, Sir, is intended to remedy these operational problems. The Bill provides for the appointment by the Governor of an Air Pollution Control Officer and authorizes him to issue smoke abatement notices under section 4 of the principal Ordinance. In addition, the Bill provides in clause 4 for a two-year time limit on the institution of proceedings from the time an offence is committed. This provision, however, will apply to offences committed only after this Bill passes into law.

The amendments are sought mainly for internal administrative purposes and together with proposed amendments to the regulations they will lead to an improvement in enforcement efficiency and, I am advised by the Corruption Prevention Department of the Commission Against Corruption, will reduce possible chances of corruption.

*Motion made. That the debate on the second reading of the Bill be adjourned—*THE COMMISSIONER FOR LABOUR.

Question put and agreed to.

WIDOWS’ AND CHILDREN’S PENSIONS (AMENDMENT) BILL 1979

THE SECRETARY FOR THE CIVIL SERVICE moved the second reading of:—‘A bill to amend the Widows’ and Children’s Pensions Ordinance.’

He said:—Sir, since the Widows’ and Children’s Pensions Ordinance was enacted in January 1978, two points have come to notice which require

clarification of the legislation and this Bill provides for the necessary amendments to the Ordinance.

Clause 2 amends section 2(5) of the principal Ordinance to make it clear that the Directors of the Widows' and Children's Pensions Scheme are empowered to determine that a period during which a child is not actually undergoing instruction may nonetheless be treated as a period of full-time education for the purposes of a pension payable under the Ordinance. This amendment will remove any doubt that the pension of a child undergoing full time education may continue to be paid during vacations, whilst awaiting examination results or pending entry to another educational institution.

Clause 3 amends section 14(6)(b) of the principal Ordinance to make it clear that the total period of an officer's contributory service to the Widows' and Children's Pensions Scheme in complete months shall be taken into account when calculating the interest payable on contributions to be returned. This amendment is needed to cover cases where an officer's service has included a period without pay (*eg* study leave without pay) and hence a period during which he did not contribute to the scheme. As previous contributions will have continued to be held by the scheme during the period of leave without pay, it is considered proper to include such periods in calculating interest payable on contributions which may be refunded under the provisions of the Ordinance.

Motion made. That the debate on the second reading of the Bill be adjourned—THE SECRETARY FOR THE CIVIL SERVICE.

Question put and agreed to.

MASS TRANSIT RAILWAY CORPORATION (AMENDMENT) BILL 1979

THE SECRETARY FOR THE ENVIRONMENT moved the second reading of:—'A bill to amend the Mass Transit Railway Corporation Ordinance.'

He said:—Sir, the first section of the Modified Initial System of the Mass Transit Railway between Kwun Tong and Shek Kip Mei will open on 1 October 1979, and the remainder of the Modified Initial System including the section to Central District will be operating by early 1980.

Sir, the primary responsibility for the safety of passengers and workers of the Mass Transit Railway must lie with the Corporation. Workers on the Railway are already afforded the protection of the Factories and Industrial Undertakings Ordinance. The purpose of the Mass Transit Railway Corporation (Amendment) Bill 1979 is to provide the legislative machinery to ensure the safe operation of the Railway when it starts to carry passengers. I will cover the scope of the amending sections briefly.

New sections 23A and 23B provide for the appointment of inspectors by the Governor, their powers of inspection, the duty of employees and contractors of the Corporation to co-operate with or provide information to them, and finally penalties for non-co-operation or provision of false information.

New section 23C empowers the Chief Secretary to order the MTRC to remedy defects regarding the condition and operation of any part of the MTR if he considers that they are likely to cause a risk of injury to any person, enables him to set time limits for remedial works, and specifies fines for non-compliance with his orders.

New section 23D imposes criminal liability on an employee of the Corporation who endangers safety through the negligent performance of his duty. Section 23E makes it an offence for any person wilfully to do anything which endangers safety. The penalty in each of these cases is a fine of \$5 000 and imprisonment for 6 months.

The Bill also provides for the making of regulations regarding the reporting and investigation of accidents and the powers of inspectors making such investigations.

Motion made. That the debate on the second reading of the Bill be adjourned—THE SECRETARY FOR THE ENVIRONMENT.

Question put and agreed to.

REGISTRATION OF PERSONS (AMENDMENT) (NO 2) BILL 1979

THE SECRETARY FOR SECURITY moved the second reading of:—‘A bill to amend the Registration of Persons Ordinance.’

He said:—Sir, it is not proposed that this Bill should pass through Council at a single sitting and accordingly its second reading will be adjourned.

The amendments in this Bill and in the related Births and Deaths Registration (Amendment) Bill arise from the need to improve the reliability of the present registration system. In the long term computerization will be required to effect major improvements, but this cannot be undertaken for some time, so some short-term and necessary changes are proposed.

The three main changes which are proposed are as follows:—

- (a) The names under which residents are registered. Under the existing law a registrant can elect the name under which he is to be registered, he can change this name on registering for an adult card and he can also have his given names amended in the birth register until he reaches

21 years of age. All this leads to confusion and duplication of Government records and also inconveniences the individual if, as happens, he is registered with Government departments under different names. To overcome this, clause 5 of the Bill requires a person to use the name which appears on his identity card in his dealings with Government. It is not intended to make failure to do so an offence, but I believe that the practice of doing so will gradually develop and become well established.

- (b) Under the existing provisions there is no statutory requirement for persons already in Hong Kong to register and clause 3 makes the necessary amendment.
- (c) An increase in the period from 2 to 3 years from the commission of certain offences in which a prosecution can be brought. This longer period already exists in section 46(2) of the Immigration Ordinance to which the Registration of Persons Ordinance is related. It is convenient for there to be consistency between the two Ordinances.

Motion made. That the debate on the second reading of the Bill be adjourned—THE SECRETARY FOR SECURITY.

Question put and agreed to.

BIRTHS AND DEATHS REGISTRATION (AMENDMENT) BILL 1979

THE SECRETARY FOR SECURITY moved the second reading of:—‘A bill to amend the Births and Deaths Registration Ordinance.’

He said:—Sir, in thus moving the second reading of the Registration of Persons (Amendment) Bill, 1979 I referred to the proposed restrictions on the procedure under which persons may change their names for purposes of registration.

Clause 2 of this Bill provides that once a child reaches 11 years of age, his parents should no longer be able to change his given names in the Register of Births. However, it will still be possible for a person to change his name either by deed poll or by showing that he is known by some other name by common repute and usage. In either case, an identity card will be issued in the new name.

Motion made. That the debate on the second reading of the Bill be adjourned—THE SECRETARY FOR SECURITY.

Question put and agreed to.

MERCHANT SHIPPING (RECRUITING OF SEAMEN) (AMENDMENT) BILL 1979

THE SECRETARY FOR ECONOMIC SERVICES moved the second reading of:—‘A bill to amend the Merchant Shipping (Recruiting of Seamen) Ordinance.’

He said:—Sir, under section 17A(1) of the Merchant Shipping (Recruitment of Seamen) Ordinance (Cap. 135), the Superintendent of the Seamen’s Recruiting Office has the power to suspend a seaman’s registration if he has reason to believe that the seaman has deserted his ship or refused to join his ship. The Superintendent may then require the seaman to surrender his service record book, under regulation 14(2) of the Merchant Shipping (Recruitment of Seamen) (Service Record Books) Regulations.

But the Superintendent does not have such powers in respect of other serious breaches of discipline. Misconduct or indiscipline can have serious effects on the authority of a ship’s master and have in some cases resulted in a general breakdown of discipline, thereby jeopardizing the safety of those on board. The Director of Marine considers that the Superintendent’s powers to suspend a seaman’s registration and to retain his service record book should be extended to circumstances involving serious disciplinary offences, including offences related to dangerous drugs, bribery and wounding other persons on board ships.

Clause 2(a) of the Merchant Shipping (Recruitment of Seamen) (Amendment) Bill 1979 accordingly amends section 17A(1) of the Ordinance to widen the circumstances in which the Superintendent may suspend a seaman’s registration. In addition, clauses 2(b), 4 and 5 provide seamen with the rights of appeal.

The Seamen’s Recruiting Advisory Board has been consulted and supports the Amendment Bill.

I would like to place on record my thanks to my honourable Friend Mr Peter WONG whose question in this Council was instrumental in drawing to our attention the deficiencies of the present legislation.

*Motion made. That the debate on the second reading of the Bill be adjourned—*THE SECRETARY FOR ECONOMIC SERVICES.

Question put and agreed to.

PREVENTION OF CRUELTY TO ANIMALS (AMENDMENT) BILL 1979

THE DIRECTOR OF AGRICULTURE AND FISHERIES moved the second reading of:—‘A bill to amend the Prevention of Cruelty to Animals Ordinance.’

He said:—Sir, I have little to add to the Explanatory Memorandum annexed to the Bill. The main object of this Bill is to enable me to authorize certain of my staff, whose work places them in a position to detect apparent cases of cruelty to animals, to effect arrests without warrant. This obviates the need in such cases for the officer concerned to have to leave the place of the incident to summon help of a police officer or other officers presently empowered under section 4 sub-section 1 of the Ordinance thus giving the alleged offender a chance to escape or remove the evidence.

Opportunity is also taken to make certain other relatively minor improvements including the updating of penalties which should assist towards the more effective enforcement of the Ordinance.

Motion made. That the debate on the second reading of the Bill be adjourned—THE DIRECTOR OF AGRICULTURE AND FISHERIES.

Question put and agreed to.

EMPLOYMENT (MISCELLANEOUS PROVISIONS) BILL 1979

THE COMMISSIONER FOR LABOUR moved the second reading of:—‘A bill to amend the Employment Ordinance to provide therein for powers of entry into places of employment and to enable regulations to be made thereunder in relation to employment; and to amend that Ordinance and certain other Ordinances in relation to the employment of young persons and children; and for matters connected therewith.’

He said:—Sir, you will recall, Sir, that when you addressed this Council on 5 October 1977, you outlined the Government’s intentions—

firstly, to make junior secondary education compulsory up to a child’s 15th birthday or until the Form III course has been completed, if that is earlier, by extending the powers of the Director of Education under the Education Ordinance to serve a school attendance order in respect of 12 and 13 year-old children with effect from 1 September 1979 and in respect of 14 year-olds from 1 September 1980; and

secondly, by similar stages, to extend the existing prohibition of employment to children in industrial undertakings to non-industrial undertakings as well. The intention was to prohibit employment which would interfere with a child’s schooling, but flexibility would be maintained to allow for part-time employment, and summer jobs. Those who had completed their Form III education before reaching 15 years of age would be allowed to work if they so wish.

To implement the first part of these policies this Council has already passed the Education (Amendment) Ordinance 1979 which will come into operation

on 1 September of this year. In order to bring into operation the second part, I now move before this Council the Employment (Miscellaneous Provisions) Bill 1979.

This Bill seeks to amend the Employment Ordinance, and consequentially the Employment of Young Persons and Children at Sea Ordinance, the Factories and Industrial Undertakings Ordinance and Regulations, and the Protection of Women and Juveniles Ordinance, all of which deal, inter alia, with minimum ages of employment.

In brief, the Employment Ordinance will be amended by introducing a definition of 'child' for the purposes of employment so as to raise generally the minimum age to 14 in September 1979 and to 15 in September 1980. The definition of 'young person' has to be amended as a consequence, also in two stages. In order that the proposed regulation and prohibition of child labour in non-industrial sectors can be enforced and verified, powers of entry under this Ordinance are necessary. Authorized public officers, Labour Officers and Inspectors in practice will be empowered to enter into premises where persons are employed, similar to those powers that already exist for entry into factories and industrial undertakings. This will *not* apply to premises which are used for dwelling purposes except with a warrant issued by a magistrate, and only for purposes of inspection and enforcement of the provisions of the Employment Ordinance. Penalties will be provided to cover contraventions of the new provisions.

New provision is also introduced to enable the Governor in Council to make regulations prohibiting or controlling the employment of persons or any class of persons; requiring if necessary the keeping of employment records, and other matters for better securing compliance with the regulations. The Commissioner for Labour will be empowered to exempt, in writing, any person or class of persons from any regulations thus made for such period and such conditions as he may impose. Contravention of the regulations prohibiting the employment of children carries a fine up to a maximum of ten thousand dollars, which is in line with that at present imposed under the Factories and Industrial Undertakings Regulations dealing with illegal employment of children in industry.

Some concern has been expressed by the entertainment industry that this new legislation might prevent the employment of paid child performers. This is not the intention if conditions are suitable. There are not likely to be very many such cases and I will use the exemption powers with appropriate educational and other conditions set for this purpose.

The Employment of Young Persons and Children at Sea Ordinance is to be amended by raising the minimum age of employment from 14 to 15 with effect from 1 September 1979, since the number of children involved is minimal. This will enable Hong Kong to comply fully with International Labour Convention No. 58 which deals with employment at sea.

The definitions of 'child' and 'young person' in the Factories and Industrial Undertakings Ordinance are to be amended so they will have the same meaning assigned to them as in the Employment Ordinance.

Certain provisions in the Factories and Industrial Undertakings Regulations, which will be incorporated into new regulations to be made, are in consequence to be deleted.

The Protection of Women and Juveniles Ordinance concerning the minimum age (which is now 12 years) for female domestic servants is to be deleted since this provision will be superseded by the proposed amendments to the Employment Ordinance regulations.

If Honourable Members of this Council approve the passage of this Bill, recommendations will be made to the Governor in Council to make a set of regulations concerning the employment of children. Such regulations will contain definitions of 'day', 'parent', 'secondary education', 'school', 'school attendance certificate', 'week' and so forth. It will be the intention to prohibit the employment of children generally except where specific conditions are laid down in the regulations. However, a child under the age of 13 will not be prevented from being employed in a genuine family business by virtue of the already existing section 4(b) of the main Ordinance itself, or from 14 as an apprentice under the Apprenticeship Ordinance. Children who have completed Form III but are still within the definition of 'child' may, however, with the consent of their parents, engage in full-time employment in non-industrial establishments subject to certain restrictions aimed to protect their health and welfare.

Children aged 13 or over and who have not yet completed Form III may, however, with the consent of their parents, engage in *part-time* employment in non-industrial establishments subject to the restrictions aimed to protect their physical and moral health or to assist the enforcement of compulsory junior secondary education. For this reason those taking up part-time employment will have to produce a school attendance certificate to show that they are attending school full-time. Their period of employment and hours of work will be laid down by regulations, but broadly speaking they will be limited to 2 hours a day during school days, four hours on other days, and eight hours during summer holidays. Finally there will be a schedule of completely prohibited occupations which are highly undesirable, for health, moral or hazard reasons, for children to be involved with.

The Labour Advisory Board have been consulted on the main points and principles in the Bill and proposed regulations, and have expressed their general concurrence.

The position with regard to child labour in Hong Kong has improved enormously over the last decade, and in industry it is no longer a serious problem. The Labour Inspectorate are vigilant in their work in eradicating what little remains. The present proposals to extend this control of child

employment into the non-industrial sector are a big step towards the eradication of the problem. Hong Kong has often been unfairly criticized without regard to its vigorous efforts to eliminate child labour. But as I and my predecessors have said many times in the past, this effort cannot succeed ultimately until the educational facilities are available for all the children in these age groups. This will be achieved in September 1979 and September 1980. I hope therefore that the measures I have outlined today, and the Education (Amendment) Ordinance 1979 already passed, will do much to diminish the outside criticism in this field.

Sir, finally, as I said to this Council when speaking in the debate on Your Excellency's address, with this legislative reform Hong Kong will make a substantial contribution to the International Year of the Child in 1979.

*Motion made. That the debate on the second reading of the Bill be adjourned—*THE COMMISSIONER FOR LABOUR.

Question put and agreed to.

ESTATE DUTY (AMENDMENT) (NO 2) BILL 1979

Resumption of debate on second reading (20 June 1979)

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).

RATING (AMENDMENT) BILL 1979

Resumption of debate on second reading (20 June 1979)

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).

MERCHANT SHIPPING (AMENDMENT) (NO 2) BILL 1979**Resumption of debate on second reading (20 June 1979)**

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).

Committee stage of bills

Council went into Committee.

ESTATE DUTY (AMENDMENT) (NO 2) BILL 1979

Clauses 1 and 2 were agreed to.

RATING (AMENDMENT) BILL 1979

Clauses 1 to 6 were agreed to.

REGISTRATION OF PERSONS (AMENDMENTS) BILL 1979

Clauses 1 to 3 were agreed to.

MERCHANT SHIPPING (AMENDMENT) (NO 2) BILL 1979

Clauses 1 to 5 were agreed to.

Council then resumed.

Third reading of bills

THE ATTORNEY GENERAL reported that the

ESTATE DUTY (AMENDMENT) (NO 2) BILL

RATING (AMENDMENT) BILL

REGISTRATION OF PERSONS (AMENDMENT) BILL and the

MERCHANT SHIPPING (AMENDMENT) (NO 2) BILL

had passed through Committee without amendment, and moved the third reading of each of the four Bills.

Question put on each Bill and agreed to.

Bills read the third time and passed.

Adjournment

*Motion made, and question proposed. That this Council do now adjourn—*THE CHIEF SECRETARY.

Poverty is not a crime

MR PETER C. WONG:—Sir, in the light of the social and economic circumstances that prevail to-day, I query the wisdom of retaining on our statute-book provisions which empower the Court to commit civil debtors to prison. They are out-dated, wrong in principle and repugnant to our social conscience.

(A) Historical Background and Present Position in England

For the purpose of this debate, it would be useful to examine briefly the historical background of the law in England in this regard and see how it has, through the years, undergone modifications and changes until to-day when the power to imprison civil debtors is virtually abolished.

As early as 1285 a debtor by statute merchant could be arrested for failure to keep his obligations. By the 14th century, a creditor could take his debtor's body in execution in practically every case.

However, the harshness of the law was felt even at an early stage and attempts were made from time to time by the Legislature to soften the severity of the law. In 1671 by an Act of Parliament, it was provided that if the prisoner swore before a justice of the peace that he had no estate above the value of £ 10 and that he had not disposed of his estate to defraud his creditors, he would be discharged from prison. The debtor would not be discharged, however, if the creditor could disprove the contents of his oath.

The next major attempt was made in 1869 when the Debtors Act was passed. As a result, imprisonment is now confined to certain narrowly defined exceptions. But until recently it was still possible to order the imprisonment

of a debtor for a term not exceeding 6 weeks if he had the means to pay the debt but refused or neglected to do so. However even this very limited power to order imprisonment for contempt of Court was abolished by Part II of the Administration of Justice Act 1970, enacted as a result of the recommendations of the Payne Committee Report 1969. The present position in England is that imprisonment for civil debt is virtually abolished, with certain exceptions which include all maintenance orders and Crown debts such as taxes and national insurance contributions.

(B) *Present Position in Hong Kong*

The law in Hong Kong in this regard is substantially the same as that which was in force in England between 1671 and 1869. The position here is governed by Order 49B of the Rules of the Supreme Court. A debtor can be imprisoned at the instance of the creditor. The period of imprisonment may be up to one year. If the debt is less than \$1 000, it is six months, less than \$500, three months and less than \$100, one month. Rule 6 of this Order provides for application to the Court for discharge from prison and this is similar to the provisions under the 1671 Act. Nevertheless, it is frightening to know that if a person owes less than \$100, he may be imprisoned for a month. Section 67 of the District Court Ordinance extends to the District Court the power to imprison for debt.

A related provision which needs to be examined is Order 44A of the Rules of the Supreme Court. If the Court is satisfied that there is probable cause for believing that the defendant may leave the jurisdiction, it may issue a warrant to the bailiff enjoining him to bring the defendant before the Court to show cause why he should not give security for his appearance to answer any judgment that may be given against him. If the defendant does not comply with the Court order he may be committed to prison. As far as I am aware, this is a provision totally unknown in English Law. Obviously, there is need for revision.

(C) *Reasons for Abolition*

1. Imprisonment is an extreme form of penalty because it deprives a citizen of his personal liberty. According to the modern approach in penology, imprisonment as a form of punishment should operate only within the province of the criminal law. It should have no place in the enforcement procedures of the civil law. Indeed, action taken against the person as distinct from the property of the debtor can hardly be justified conceptually.

2. Even in the criminal sphere, it has long been recognized that the means and background of an offender should be investigated before sentence is passed. This is especially so when dealing with 'young offenders'. In fact, there are alternative institutions for young offenders, such as reformatory schools, detention centres and training centres. However, a civil debtor, whatever his age, can be imprisoned at the instance of the creditor without the necessity of furnishing the Court with a social enquiry report. By virtue of section 46

of the District Court Ordinance, infancy is no defence within the jurisdiction of the District Court.

3. On an academic note, one may say that it is difficult to argue that there is a casual connection between the threat for imprisonment for debt and a disposition among citizens to honour their obligations arising out of commercial transactions freely contracted. Admittedly, there are people whose morality is below the average commercial morality of the age, but the existence of the commercial morality can hardly be made dependent upon the threat of imprisonment.

4. The debtor is imprisoned because of his failure or inability to pay his debt. Ironically, imprisonment makes it more difficult, if not impossible, for the debtor to discharge his present or future debts. A debtor imprisoned is not engaged in any productive activity and his financial position cannot be improved through imprisonment.

5. Statistics provided by the Commissioner of Prisons show that the average annual number of prisoners for debt over the past seven years is less than 100. On 15 April this year there were 12 debtors in custody. The average length of stay in prison in 1977 was 24.3 days and in 1978, 19.7 days. These figures are revealing. One conclusion is that the need to resort to Order 49B and section 67 is minimal. On the other hand, it is disturbing to note that on the average an imprisoned debtor who had not committed any crime had to spend some 3 weeks in prison. This is particularly so when one realizes that at least in some cases the debt could be astonishingly small. The stigma and adverse psychological effects of imprisonment could have far reaching consequences.

Rule 2 of Order 49 provides that a creditor is required to pay monthly allowance not exceeding \$30 per day for the support and maintenance of the debtor. Considering the time and labour of judges, clerical staff and bailiffs involved in enforcing this form of execution and the cost of imprisonment, this modest sum appears insufficient to cover the expenses incurred by the Judiciary and the Administration. It is hardly fair to expect the public to finance the attempts by creditors to recover their debts in this manner. And although any subsidy by the Crown is not recoverable, Rule 5 of the Order enables a creditor to recover from the debtor all sums incurred by the creditor in imprisoning the debtor. Incidentally, the abolition of imprisonment for debt may help ease the strain on our congested prisons.

6. In England, Canada and many other parts of the world, alternative means of enforcement are being used effectively and no reliance has been placed upon imprisonment.

(D) *Conclusion*

Imprisonment for debt might have been justified 100 years ago, but in our relatively advanced and sophisticated community to-day, this justification no longer exists.

The crux of the problem is to devise an effective machinery to recover money from a debtor who has either assets or regular earnings. Imprisonment is inadequate to meet this need and its many injustices and abuses should be terminated. Debts owed to the Crown or to one's spouse in the form of maintenance payment may deserve separate consideration. The solidarity of our community and the sanctity of marriage should be upheld even at a price. Apart from these two special cases, the enforcement of civil debts should be undertaken without invoking imprisonment. Alternative procedure should be devised, perhaps along the lines laid down by the Attachment of Earnings Act 1971.

In recent years Hong Kong has not been slow in taking advantage of legislative progress in England. Surely, the questionable use of imprisonment in the enforcement procedures in our civil law is an area which should and must be intelligently reviewed. Clear thinking followed by effective action is what the public expects of this Council.

Sir, poverty is not a crime. Is it too much to ask that the law should not view it as such?

THE ATTORNEY GENERAL:—Sir, I am sure that, like myself, Honourable Members are very grateful to Mr WONG for bringing this matter to the attention of this Council because it is only right that at all times we should be vigilant to safeguard the liberties of people living in Hong Kong, and that we should examine all our procedures from time to time to see that those liberties are safeguarded.

I believe however that although Mr WONG has summarized the position as it is in Hong Kong accurately as one would expect, because of the brevity with which he has summarized it, it wasn't possible for him to reveal the entire picture. It is quite true that at the instance of a judgment creditor a debtor can be imprisoned for varying periods of between 1 month and 12 months depending upon the amount of the debt. But what, I think, Mr WONG did not make clear is that the debtors may at any time make application to the Court to be released, and that he *must* then be released unless the creditor succeeds in proving one of three things: either, first, that his failure to satisfy the judgment is attributable to his unjustifiable extravagance in living; or, secondly, that he sought to avoid payment of the debt by wilfully and deliberately concealing his property from his creditor, or thirdly, that to avoid the payment of his debt he has fraudulently transferred it, say, to his wife or to some other person again with the deliberate object of avoiding payment of his debts or has committed some similar act of bad faith. The burden of proving these three grounds or one of them rests throughout on the creditor: unless he succeeds in doing that, the debtor must be discharged and once he has been discharged, then he cannot be rearrested for the same debt.

I would venture to suggest, despite my own short experience so far in Hong Kong, that most people in Hong Kong would regard those provisions as fair. Why should *not* a man be imprisoned for a comparatively short period if, but only if, it can be proved that he has financed his own unjustifiable extravagance in living through his creditors, or alternatively if it can be shown that he has deliberately and fraudulently attempted to hide his money from them when perfectly well he could pay it.

I agree entirely with Mr WONG that normally action to recover civil debts should be taken against the property and not against the person of the debtor, but in cases we are talking about that can't be done, because the debtor has fraudulently put his assets out of the reach of the creditor and many would, I think, argue that the threat of imprisonment, were it not to exist, would cause far more people to hide their assets from their creditors than do so at the moment.

Sir, I am emboldened to make these assertions partly by the fact that in May 1970 my predecessor as Attorney General wrote asking the Law Society of Hong Kong for their views upon this very subject. The Secretary of that Society consulted his Committee and replied with their considered views. Now it is interesting to note when I read the letter that on the letter head that Mr WONG himself was at that time a member of the Committee and indeed another distinguished Member of this Council, Mr T. S. LO, was its President, and I was particularly pleased to see that the Committee composed of such eminent people stated that 'it is felt that the present procedures relating to the imprisonment of civil debtors in Hong Kong are functioning satisfactorily and that no change in the law is required at the present time. (*laughter*) Sir, despite the elapse of 9 years since then, it does not seem to me that circumstances have materially changed and that is borne out, I would submit, by the fact that neither my predecessors nor myself have since then received any representations arguing for change.

Indeed quite the contrary. In 1973 when one of my predecessors raised the matter, the then Colonial Secretary was of the opinion that 'the general consensus of departments (in Government) would appear to be that the advantage of retaining imprisonment for debt is that arrest has in many cases resulted in the debt being paid.' At the same time the Commissioner of Inland Revenue whose interests are close to all our hearts said that the abolition of the provision would make the collection of arrears of tax even more difficult than they are at the moment; (*laughter*) and similarly the then Chief Justice, when consulted, was of the opinion that he would not advocate the abolition of the power.

In so far as the present position is concerned and in so far as the present policy of Government in Hong Kong is concerned, imprisonment for debt will only be resorted to after all other avenues have been explored and have not resulted in payment and when furthermore it appears clear that the debtor is a recalcitrant case who possesses the means to pay, but doesn't have the

necessary inclination to do so. In other words, the Government will not resort to this procedure unless they are of the opinion before commencing the arrest procedure that they can prove that the case falls within one of the three grounds for refusing which I have mentioned just a moment ago.

I would add that it doesn't appear that this problem is a large one. In 1977 and 1978 respectively, 99 and 85 persons altogether were imprisoned for varying periods and at the present moment only 12 people are imprisoned.

Mr WONG has, with a plead to the heart which I am sure didn't go unobserved, suggested that in some cases the debts may be small and of course that is absolutely true. But the converse is also true and I discovered since 1974 only four persons have in fact spent 12 months imprisonment following proof by their creditors either that they were deliberately concealing funds or fraudulently transferred them and in those four cases the debts were as follows: \$630 000, \$90 000, \$880 000 and \$190 000. So I don't think we should run away with the idea that it is necessarily only small people who are involved.

All this being said, in two particular regards I am most grateful to Mr WONG because I am persuaded that he is absolutely right. I agree that it would be preferable for the means and background of the debtor to be investigated before he is imprisoned rather than later upon an application by him for his release: it would seem to me to be preferable that the creditor should have to show the existence of one of the three grounds before rather than after the debtor is imprisoned. Accordingly, I propose to institute a review aimed at ensuring that whilst the possibility of imprisonment remains as a deterrent to the dishonest or to the unduly extravagant debtor, nevertheless, however short a period of imprisonment, it should never become effective until those preliminary enquiries have been made and the creditor has satisfied the court that there are grounds of concealment or whatever involved in the individual case. This review will also consider whether there are in other parts of the world, may I say not only in England because that doesn't have the monopoly of wisdom, but in all other countries too, other effective procedures for collecting debts, including matrimonial maintenance which perhaps is the most important area that we may be concerned with in the debt field and, to find whether or not any of those could appropriately be adopted for use in Hong Kong and I do hope that if either Mr WONG or any other Honourable Member or indeed any member of the public has knowledge of any such methods, or even knows in which corners of the world we ought start to look then they will let me know of it.

Lastly, Sir, I accept that the monthly allowance of \$30 per day may be too low, and I shall see that this too is reconsidered. I am sure I can look forward to the support at least of my honourable Friend, the Financial Secretary, in raising it, should it in fact prove to be too low because I know he is a strong believer in the maxim 'every little helps'.

Sir, naturally I support Mr WONG in the actual wording of his motion that poverty is not a crime, of course, it isn't.

Adjournment and next sitting

HIS EXCELLENCY THE PRESIDENT:—In accordance with Standing Orders I now adjourn the Council until 2.30pm on Wednesday the 18 July 1979.

Adjourned accordingly at thirteen minutes past four o'clock.