OFFICIAL REPORT OF PROCEEDINGS

Wednesday, 9 December 1981

The Council met at half past two o'clock

PRESENT

HIS EXCELLENCY THE GOVERNOR (*PRESIDENT*)
SIR CRAWFORD MURRAY MacLEHOSE, G.B.E., K.C.M.G., K.C.V.O.

THE HONOURABLE THE CHIEF SECRETARY
SIR CHARLES PHILIP HADDON-CAVE, K.B.E., C.M.G., J.P.

THE HONOURABLE THE FINANCIAL SECRETARY
MR. JOHN HENRY BREMRIDGE, O.B.E.

THE HONOURABLE THE ATTORNEY GENERAL
MR. JOHN CALVERT GRIFFITHS, Q.C.

THE HONOURABLE THE SECRETARY FOR HOME AFFAIRS
MR. DENIS CAMPBELL BRAY, C.M.G., C.V.O., J.P.

THE HONOURABLE DAVID AKERS-JONES, C.M.G., J.P.
SECRETARY FOR CITY AND NEW TERRITORIES ADMINISTRATION

THE HONOURABLE LEWIS MERVYN DAVIES, C.M.G., O.B.E., J.P.
SECRETARY FOR SECURITY

THE HONOURABLE KENNETH WALLIS JOSEPH TOPLEY, C.M.G., J.P.
SECRETARY FOR EDUCATION

THE HONOURABLE DAVID GREGORY JEAFFRESON, C.B.E., J.P.
SECRETARY FOR ECONOMIC SERVICES

DR. THE HONOURABLE THONG KAH-LEONG, C.B.E., J.P.
DIRECTOR OF MEDICAL AND HEALTH SERVICES

THE HONOURABLE ERIC PETER HO, C.B.E., J.P.
SECRETARY FOR SOCIAL SERVICES

THE HONOURABLE JAMES NEIL HENDERSON, J.P.
COMMISSIONER FOR LABOUR

THE HONOURABLE GERALD PAUL NAZARETH, O.B.E., Q.C.
LAW DRAFTSMAN

THE HONOURABLE WILLIAM DORWARD, O.B.E., J.P.
DIRECTOR OF TRADE, INDUSTRY AND CUSTOMS

THE HONOURABLE JOHN MORRISON RIDDELL-SWAN, O.B.E., J.P.
DIRECTOR OF AGRICULTURE AND FISHERIES

THE HONOURABLE DONALD LIAO POON-HUAI, O.B.E., J.P.
SECRETARY FOR HOUSING

THE HONOURABLE GRAHAM BARNES, J.P.
REGIONAL SECRETARY (HONG KONG AND KOWLOON), CITY AND NEW TERRITORIES ADMINISTRATION

THE HONOURABLE SELWYN EUGENE ALLEYNE, J.P.

DIRECTOR OF SOCIAL WELFARE

THE HONOURABLE COLVYN HUGH HAYE, J.P.
DIRECTOR OF EDUCATION

THE HONOURABLE IAN FRANCIS CLUNY MACPHERSON, J.P.
REGIONAL SECRETARY (NEW TERRITORIES), CITY AND NEW TERRITORIES ADMINISTRATION

THE HONOURABLE ALAN THOMAS ARMSTRONG-WRIGHT, J.P.
SECRETARY FOR TRANSPORT (*Acting*)

THE HONOURABLE CHAN NAI-KEONG, J.P.
SECRETARY FOR LANDS AND WORKS (*Acting*)

THE HONOURABLE ROGERIO HYNDMAN LOBO, C.B.E., J.P.

DR. THE HONOURABLE HARRY FANG SIN-YANG, C.B.E., J.P.

THE HONOURABLE LO TAK-SHING, O.B.E., J.P.

THE HONOURABLE FRANCIS YUAN-HAO TIEN, O.B.E., J.P.

THE REVD. THE HONOURABLE JOYCE MARY BENNETT, O.B.E., J.P.

THE HONOURABLE LYDIA DUNN, O.B.E., J.P.

DR. THE HONOURABLE HENRY HU HUNG-LICK, O.B.E., J.P.

THE REVD. THE HONOURABLE PATRICK TERENCE McGOVERN, O.B.E., S.J., J.P.

THE HONOURABLE PETER C. WONG, O.B.E., J.P.

THE HONOURABLE WONG LAM, O.B.E., J.P.

DR. THE HONOURABLE RAYSON LISUNG HUANG, C.B.E., J.P.

THE HONOURABLE CHARLES YEUNG SIU-CHO, O.B.E., J.P.

DR. THE HONOURABLE HO KAM-FAI, J.P.

THE HONOURABLE ALLEN LEE PENG-FEI, J.P.

THE HONOURABLE DAVID KENNEDY NEWBIGGING, J.P.

THE HONOURABLE ANDREW SO KWOK-WING, J.P.

THE HONOURABLE HU FA-KUANG, J.P.

THE HONOURABLE WONG PO-YAN, O.B.E., J.P.

THE HONOURABLE WILLIAM CHARLES LANGDON BROWN, J.P.

THE HONOURABLE CHAN KAM-CHUEN, J.P.

THE HONOURABLE JOHN JOSEPH SWAINE, O.B.E., Q.C., J.P.

THE HONOURABLE STEPHEN CHEONG KAM-CHUEN, J.P.

THE HONOURABLE CHEUNG YAN-LUNG, M.B.E., J.P.

THE HONOURABLE MRS. SELINA CHOW LIANG SHUK-YEE, J.P.

THE HONOURABLE MARIA TAM WAI-CHU

ABSENT

THE HONOURABLE ALAN JAMES SCOTT, J.P.

THE HONOURABLE JOHN MARTIN ROWLANDS, C.B.E., J.P.
SECRETARY FOR THE CIVIL SERVICE

THE HONOURABLE ALEX WU SHU-CHIH, O.B.E., J.P.

THE HONOURABLE CHEN SHOU-LUM, O.B.E., J.P.

IN ATTENDANCE

THE CLERK TO THE LEGISLATIVE COUNCIL
MRS. JENNIE CHOK PANG YUEN-YEE

Oath

Mr. CHAN NAI-KEONG took the Oath of Allegiance and assumed his seat as a Member of the Council.

HIS EXCELLENCY THE PRESIDENT:—I should like to welcome Mr. CHAN to this Council.

Papers

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

Subject	*L.N. No.*
Subsidiary Legislation:	
Electoral Provisions Ordinance 1981. Electoral Provisions (Procedure) Regulations 1981	368
Merchant Shipping Ordinance. Merchant Shipping (Certification of Officers) (Amendment) Regulations 1981	369
Import and Export (General) Regulations. Import and Export (General) Regulations (Amendment of First Schedule) Order 1981	375
Public Health and Urban Services Ordinance. Public Health and Urban Services (Public Pleasure Grounds) (Amendment of Fourth Schedule) (No. 4) Order 1981	376
Revised Edition of the Laws Ordinance 1965. Revised Edition of the Laws (Correction of Error) (No. 2) Order 1981	377
Interpretation and General Clauses Ordinance. Assistant Secretary for the New Territories (Change of Title) Notice 1981	378
Interpretation and General Clauses Ordinance. Specification of Public Officers (No. 2) Order 1981	379
Inland Revenue Ordinance. Inland Revenue (Interest Tax) (Exemption) (Amendment) (No. 5) Notice 1981	380
Hong Kong Letters Patent 1917 to 1976. Authorization by the Governor	381
Tax Reserve Certificates (Fourth Series) Rules. Tax Reserve Certificates (Rate of Interest) (No. 3) Notice 1981	382

Subject *L.N.No.*

Inland Revenue Ordinance.

Inland Revenue (Interest Tax) (Exemption) (Amendment) (No. 6) Notice 1981 383

Sessional Papers 1981-82:

No. 15—Hong Kong Productivity Council and Centre—Annual Report 1980-81

No. 16—Chinese Temples Fund—Income and Expenditure Account with Balance Sheet and Certificate of Director of Audit for the year ended 31 March 1981

No. 17—General Chinese Charities Fund—Income and Expenditure Account with Balance Sheet and Certificate of Director of Audit for the year ended 31 March 1981

No. 18—Grantham Scholarships Fund—Income and Expenditure Account with Balance Sheet and Certificate of Director of Audit for the year ended 31 March 1981

No. 19—Twentieth Annual Report of the Social Work Training Fund by the Trustee for the year ending 31 March 1981

No. 20—Supplementary Provisions approved by the Urban Council during the second quarter of the Financial Year 1981/82

No. 21—Urban Council—Estimates of Revenue and Expenditure for the year ending 31 March 1983

Oral answers to questions

Safety of gas water heaters

1. MISS DUNN asked:—*With the onset of the cold weather and the likelihood of gas heaters being used with windows closed, will the Government say what action it has taken to implement the preliminary recommendations of the Gas Safety Consultant, in regard to the safety of gas water heaters, and when the Consultant's final recommendations can be expected?*

SECRETARY FOR SECURITY:—Sir, the report to which Miss DUNN refers was received in June and considered by Your Excellency in Council in July. Actions on matters affecting the gas industry generally and also on the safety of gas water heaters has been as follows:

First it was decided that the Government should, as a matter of policy intervene more positively than before in the control of the industry. To this end

a new gas standards organization will be established under a Gas Adviser with the nucleus of a small staff. Recruitment of three management staff is now in progress. As this will take time a bridging consultancy to provide two of these officers in the interim is being proposed.

Discussions continued well into October with the Consultants on the basis of their preliminary findings and conclusions. These have revealed that much detailed planning and examination will be required before a realistic programme for improvements in the safety standards of the gas industry in Hong Kong can be implemented.

Discussions have been held with the industry to identify areas in which voluntary improvements could be introduced in advance of, or preferably in lieu of, Government controls.

Fourthly a joint publicity campaign has been agreed with the industry to draw attention to the vital importance of ensuring that there is a plentiful supply of fresh air when gas heaters are being used. The campaign started in early November and will be sustained throughout the coming winter.

Fifthly the final report of the Consultants is expected next week. Subject to Your Excellency's agreement it will be submitted for advice to the Executive Council early in the New Year. Obviously at this stage I cannot properly anticipate what action will emerge from its considerations.

On the specific question of gas water heaters, the Consultants' preliminary recommendations were for permanent solutions involving the eventual replacement, or the resiting and upgrading, of more than a quarter of a million existing heaters. Even if all the individual owners of these heaters are prepared to pay for such improvements, as I envisage they will be expected to do, and some have already done, the manpower resources of the gas industry will need to be substantially increased to cope with such a massive programme of improvements and this will inevitably take time. Meanwhile, as long as individual users heed the safety advice, keep the appliances in proper working order and ensure adequate ventilation, there is no reason why existing heaters cannot continue to be used without accident.

Aged patients abandoned in Government hospital by their families

2. DR. HO asked:—*How many elderly patients have been abandoned in Government and subvented hospitals in the last ten months compared with the same period last year, and in view of the shortage of our hospital beds, what does the Government do with these abandoned, aged patients when they are no longer in need of hospitalization?*

SECRETARY FOR SOCIAL SERVICES:—Sir, precise data on 'elderly patients ... abandoned in Government and subvented hospitals' is not readily available, if Dr. HO means cases which can be shown to have resulted from deliberate acts of

abandonment by families when they might reasonably be expected to receive the elderly persons back from hospital into their family homes.

However, by reference to the records of the Medical Social Service, during the first 11 months of 1981, 82 elderly patients could have been discharged home if they had homes to go back to, but this figure obviously includes those who were living on their own before admission to hospital. I am sorry a comparable figure for 1980 is not available as no such central records in that form were kept in the Medical and Health Department at that time.

Where the family of such patient can be traced, financial support through social security payments where warranted and/or other support services such as the provision of community nursing, home help or placement in the day care section of a multi-service centre for the elderly may sometimes persuade the family to take the aged patient home. The Medical Social Service and the Social Welfare Department work towards this end before resorting to institutional care. In the remaining cases of these homeless elderly singletons, the social worker responsible makes arrangements for them to be accommodated in public housing estates through the compassionate quota, in hostels, or homes for the elderly.

DR. HO: — *Sir, will the Secretary for Social Services inform this Council of the Government's planned provision of places in care and attention homes and hostels for the aged in the next couple of years?*

SECRETARY FOR SOCIAL SERVICES:—Sir, the Government aims to provide 4 care and attention home places for every 1 000 persons of 60 and over. On this basis, the current target of provision is 2 090 places. The current provision is 375, leaving a shortfall of 1 715. But plans in hand provide for the complete elimination of this shortfall by 1983-84. In regard to homes for the aged, our plans are for ten places for every 1 000 of the population who are aged 60 and over and the current plans provide for between 500 and 700 extra places a year between now and 1984-85.

Maternity benefits for woman workers

3. MR. SO asked in Cantonese:—

政府可否說明，自從本年四月二十九日制訂「一九八一年僱傭（修訂）（第二號）條例」，規定女工應獲得較佳的分娩待遇後，
（甲） 勞工處接獲有關指稱僱主違例的投訴有多少宗？
（乙） 有沒有僱主利用現行法例取巧的例子？
（丙） 若然，政府會如何予以改善？

(The following is the interpretation of what Mr. SO asked.)

Since the enactment of the Employment (Amendment) (No. 2) Ordinance 1981

on 29 April 81, which contained provisions for better maternity benefits for woman workers, will the Government say:

(a) how many complaints alleging infringements of the law have been made known to the Labour Department?

(b) whether there is evidence of some unscrupulous employers exploiting the present law? and

(c) if so, what measures will Government take to improve the situation?

COMMISSIONER FOR LABOUR:—(*a*) Sir, first, since the introduction of paid maternity leave in the Employment (Amendment) (No. 2) Ordinance 1981, which was enacted on 29 April 1981 and came into force on 1 June 1981, 39 complaints of alleged infringements of the legislation have been reported to the Labour Relations Service of the Labour Department. Of these complaints, 22 were settled by conciliation, three were withdrawn by the employees concerned and four were referred to the Labour Tribunal for adjudication. The latter four were subsequently settled before hearing. The remaining ten cases are presently under investigation by the Labour Relations Service.

(*b*) There is little evidence so far of any number of employers exploiting the legislation to avoid liability. Misunderstanding or poor understanding of the law on the part of employers, in particular about the method of calculation of the allowance, accounted for the majority of the complaints. In the cases so far settled, the employers were quite ready to comply with the law when it was clearly explained to them.

(*c*) Initially, it seems that the majority of complaints result from misunderstandings of the law rather than wilful evasion or inadequacy of the law. Therefore we would propose to see what further measures could be taken to increase publicity for the new law. There are explanatory pamphlets on the law already available free of charge at all 38 Labour Department offices. A summary of the provisions will also be included in the wall sheet on labour legislation, required to be posted up in places of employment under the Employment Ordinance, which is due to be re-issued next year.

Nonetheless, the Department normally reviews the operation of new legislation about six to twelve months after enactment to see whether it is working satisfactorily and whether legal problems are arising. So far insufficient cases have been put to the Labour Tribunal for it to be clear whether the latter is the case. During our review in the next few months, we shall be studying the position in the light of experience and we shall be taking into account useful suggestions to improve the law that have been put forward.

Generalized Scheme of Preferences—Hong Kong exclusion list

4. MR. CHAN KAM-CHUEN asked:—*What steps are being taken to persuade the Japanese Government to lift its discrimination against Hong Kong in excluding five items of Hong Kong merchandise from its Generalized Scheme of Preferences,*

particularly in the light of our most unfavourable visible trade account with Japan in that for every dollar's worth of Hong Kong goods exported to Japan we import. $11 worth of Japanese goods?

DIRECTOR OF TRADE INDUSTRY AND CUSTOMS:—Sir, as it happened, I was informed only yesterday that the Japanese authorities have accepted a formal request which we made some weeks ago for discussions on the remaining five items on the Hong Kong exclusion list. These talks will be held in Tokyo next week.

This is part of a continuing effort in which we have had the full support of the British Ambassador and his staff and which has been sustained since the Japanese authorities introduced their Generalized Preference Scheme in 1972. The original Hong Kong exclusion list which covered 96 items, has been gradually reduced as a result of this effort.

The remaining five items represented nine per cent (or about $200 million worth in value) of our domestic exports to Japan last year. Our share of the Japanese import market for these products dropped from 28 per cent to 14 per cent from 1972 to 1980, demonstrating our contention that discriminatory exclusion tends to divert trade away. This argument will be forcefully restated in Tokyo next week.

Squatting and squatter fires

5. MISS DUNN asked:—*Is the Government concerned with the present size of the squatter population and the problems arising from the recent spate of serious fires in some of the new squatter areas? If so, are any changes envisaged in present policies and arrangements?*

SECRETARY FOR HOUSING:—Sir, may I have your permission to answer this question and Question No. 6 by Dr. HO together?

6. DR. HO asked:—*What measures will Government take to help the residents in squatter areas to reduce fire risks to the minimum?*

SECRETARY FOR HOUSING:—Sir, the Government is very concerned about both the extent of recent squatting and the problems arising from the recent spate of squatter fires.

As regards squatting, the first priority is being given to improving control in the urban area, particularly in east Kowloon, where most new building occurs. To this end, 350 additional posts were approved in October and all of these will be filled by the end of this month. In addition, an increased establishment has been provided for expanded control in the New Territories and the Squatter Control force for the whole of the territory will shortly number more than 3 000.

On the question of fire risks, Sir, as I said in this Council on 11 November, a new Division, headed by an Assistant Director, is being established within the Housing Department, to plan and implement a programme of improvements to squatter areas. This Division will be in operation early next month and its first task will be to reduce the risk of fires and to upgrade safety measures in these areas.

In the meantime, an examination of the large squatter concentrations at Sau Mau Ping has been completed and a similar exercise in respect of the Lam Tin squatter areas is in progress. Work is now starting on initial improvements at Sau Mau Ping, which involve the provision of fire breaks and improved access and water supplies for fire fighting. This programme will be progressively extended to other vulnerable areas.

Another way in which fire risks are being minimized is by the provision of legal supplies of electricity to these areas. During the last six months 15 schemes have been completed, nine in east Kowloon alone. It is our intention to continue to provide such supplies wherever practicable and a further 37 areas are being considered for inclusion in this programme.

The majority of the victims of these fires are recent immigrants and, in fairness to longer-term residents of Hong Kong, whose claims for public housing must be given priority, they are eligible only for temporary housing in the New Territories. However, in view of the present shortage of temporary housing, planning is in hand to establish resite areas in the New Territories as a temporary expedient. The idea is that these sites will be formed and serviced by Government, and then eligible families will be allocated space on which to build structures themselves under supervision, and the areas will be managed by the Housing Department.

Finally, Sir, I am aware of the considerable inconvenience which is presently being caused by the continued use of some schools, community centres, Kai Fong buildings and other premises as temporary shelters, particularly in the Kwun Tong District and I would like to take this opportunity to thank all concerned for their co-operation and forbearance. It is hoped to minimize the use of such premises in the future by making other arrangements for temporary shelters and, certainly, it is our intention to evacuate the premises presently occupied as soon as possible.

MISS DUNN:—*Sir, can the Secretary for Housing say where in the New Territories the resite areas will be, and can he give an assurance that the use of this land for this purpose will not hold up permanent development?*

SECRETARY FOR HOUSING:—Sir, the availability of sites is such that none of this will be in Sha Tin or Tsuen Wan but we have identified possible sites in Tai Po, Yuen Long and Tuen Mun and as soon as these sites are allocated, work will begin. We hope to be able to allocate these areas in about three months' time. The use of these sites, of course, is temporary.

DR. HO:—*I understood that the Fire Services Department has helped to train a fire watch team among the villagers in Shau Kei Wan and this team has done an excellent job in preventing fire breakouts. Will Government consider setting up more similar fire watch teams for other squatter areas?*

SECRETARY FOR HOUSING:—Certainly, Sir.

Caseloads for Family Services Caseworkers and Probation Officers

7. REVD. JOYCE M. BENNETT asked:—*What is the recommended caseload for the Social Welfare Department Family Services Caseworkers and Probation Officers? How many such workers currently exceed that caseload and by how many?*

DIRECTOR OF SOCIAL WELFARE:—Sir, the recommended caseload for Family Services Caseworkers in the Social Welfare Department is 90 per worker. All workers are at present carrying caseloads in excess of this number, ranging from 100 to 165 cases per worker. In the case of Probation Officers, the recommended caseload is 50 supervision cases or 25 social enquiry cases. Here again, all workers are carrying heavier caseloads, ranging from 60 to 80 cases per worker.

REVD. JOYCE M. BENNETT:—*Sir, surely with such heavy work-loads does this not mean that many in need of help are not receiving it and the workers must work under intolerable conditions?*

DIRECTOR OF SOCIAL WELFARE:—Sir, it is the case that our workers are at present working under conditions of severe pressure. I think I can answer Miss BENNETT's question by saying that last Friday morning when I visited the Kwun Tong District Officer and saw him and three of his Assistant District Officers, they were, I found, remarkably cheerful under very difficult conditions, seeing that they had spent most of the night at the site of a fire in Kwun Tong and there have been, as we have just heard, at least 10 fires over the last month. In the short term, I have no alternative but to appeal for the support of my staff on the ground to do more than their allotted measure as public servants and as social workers to their clients and to the public. In the longer term, we are trying to increase the manpower supply and this is being examined now by a working party in the Social Services Branch.

REVD. JOYCE M. BENNETT:—*Sir, when will this working party be presenting its report?*

DIRECTOR OF SOCIAL WELFARE:—Sir, I understand that the working party has almost completed its work and I would imagine that the result should be available fairly shortly.

Private hire car permits

8. MR. F. K. HU asked:—*Will the Government inform this Council of:—*
(a) the number of applications for private hire car permits received;
(b) the number of such permits issued; and
(c) the number of appeals received in respect of refusals,
since the Road Traffic (Registration and Licensing of Vehicles) (Amendment) Regulations were announced in April this year?

SECRETARY FOR TRANSPORT:—Sir, (*a*) 3 381 applications for private hire car permits have been received;

(*b*) 1 184 permits have been issued; and

(*c*) 784 appeals to the Transport Tribunal have been received in respect ofrefusals to issue such permits.

MR. F. K. HU:—*Sir, can the Secretary for Transport advise the Council the number of appeal cases dealt with, and the number of appeal cases the original decision of refusal of which has been reversed up to now?*

SECRETARY FOR TRANSPORT:—Yes, Sir. 240 appeals have been dealt with by the Tribunal; the remainder should be cleared within the next two or three months. As far as appeals upheld, so far 22 appeals have been upheld by the Tribunal.

Squatter-hut racketeering

9. MR. WONG LAM asked in Cantonese:—

鑒於僭建木屋出售以圖利之問題，相當嚴重，政府可否說明，在今年一月至十一月期內，有多少人因此而遭受檢控，去年同期被檢控者又有若干？政府有否採取任何新措施，以抑制非法僭建集團的活動？

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

In view of the scale of squatter-hut racketeering, will Government state
(a) how many prosecutions have been taken out against these racketeers
(i) in the period January to November this year;
(ii) during the same period last year;
(b) what new measures, if any, are being implemented to curb the activities of syndicated racketeers?

SECRETARY FOR HOUSING:—Sir, over the period January to November 1980, about 1 000 illegal hut-builders were prosecuted. During the same period this year, similar action has been taken against some 900 persons. No figures are available regarding prosecutions against racketeers, as such, but it is assumed that the majority of those brought before the courts fall into this category.

As regards measures to curb these activities, 168 additional staff are being requested for the Squatter Control Division of the Housing Department,

specifically to assist the Police in the arrest and prosecution of illegal hut-builders. In addition, consideration is being given to amending the Crown Land Ordinance to ensure that stiffer penalties are imposed when racketeers are prosecuted.

MR. WONG LAM:—

閣下，請問房屋司，增加一百六十八位職員，是否認爲足夠？

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

Sir, is the 168 additional staff enough?

SECRETARY FOR HOUSING:—Sir, in my view the additional 168 over and above existing staff should be sufficient for the time being.

MR. WONG LAM:—

閣下，有關修改官地條例，何時才可實行？

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

Sir, as regards amendment to the Crown Land Ordinance, when will it be implemented?

SECRETARY FOR HOUSING:—Sir, we hope to be able to put proposals to amend the relevant Ordinance during the current session of this Council.

REVD. JOYCE M. BENNETT:—*Sir, how many illegal huts have been put up during the dates to which Mr. LIAO refers?*

SECRETARY FOR HOUSING:—I have not got exactly the figures but during the last three years, 60 000 huts have been demolished but 20 000 have been tolerated.

Statement

Annual Report of the Hong Kong Productivity Council for the year ended 31 March 1981

MR. ALLEN LEE:—Sir, among the various papers laid on the table of this Council today is the Annual Report of the Hong Kong Productivity Council for the year ending 31 March 1981.

The response of industry to the expanded services offered by the Hong Kong Productivity Centre is favourable. During the year under review, the Centre undertook about 238 consultancy assignments, many of which were large scale projects involving different skills and efficient team work, and provided training to over 7 000 persons in industry. The Hong Kong Productivity Centre is now increasing called upon to undertake Government consultancy work linked to industrial development.

With the adoption of the relevant recommendations of the Advisory Committee on Diversification, the role of the Hong Kong Productivity Centre has been expanded from what was essentially a training and consultancy organization to an organization charged with the broader responsibilities of providing industry support facilities. During the year, plans were approved for expanding the Hong Kong Productivity Centre technical information services; the setting up of a Metals Industry Development Unit; the establishment of a Small and Medium Industry Extension Advisory Service and the enlargement of the Microprocessor Application Laboratory.

In addition to maintaining the momentum of its existing services, the Hong Kong Productivity Centre had to re-deploy its senior staff in planning and implementing diversification related activities. However, staff resources, particularly at senior management level, were fully stretched, and as a result, the demand for services is likely in the short term to exceed the Centre's ability to recruit and train the necessary specialist staff.

Expansion of the work of the Hong Kong Productivity Centre of this magnitude requires maximum support from the Government in terms of funding but this has not been forthcoming at the rate originally planned. The system of finance has in turn affected the Hong Kong Productivity Centre's ability to implement the Advisory Committee on Diversification projects.

The Hong Kong Productivity Council is of the view that the financial system will require some adjustments if the Centre is to assume effectively an enlarged role recommended by the Advisory Committee on Diversification. In addition to meeting the short term demand from industry, it will be necessary for the Centre to undertake an increasing proportion of medium term development work which cannot be sustained by a year-to-year discretionary subvention mechanism. In implementing these projects, the Centre requires an assurance that the expansion and development phase will be financially supported. The discretionary grant based on which the Council is subvented does not provide any degree of certainty over the amounts of funds to be made available beyond one year.

With the Hong Kong Productivity Centre assuming an enlarged role in industrial development, there is now an urgent need to review the financial system which does not really meet the needs of the centre and match the functions that Government expects it to carry out. The Council will initiate such a review shortly.

Hong Kong will need an improved infrastructure and a stronger institutional support system to meet the manufacturing challenges of the eighties. I am glad to report that the Hong Kong Productivity Centre is in a good position to play an expanding role in providing the necessary industry support services.

On behalf of the Council, I should like to pay tribute to Dr. J. C. WRIGHT, the outgoing Executive Director who assumed the post of Science Adviser to the Government with effect from 1 December 1981. Under his five-year directorship, he has enlarged the base from which the Hong Kong Productivity Centre can further fulfill its role in industrial development.

Government Business

Motions

EXCHANGE FUND ORDINANCE

HIS EXCELLENCY THE GOVERNOR moved the following motion:—Under section 3(5) of the Exchange Fund Ordinance, with the approval of the Secretary of State, that the aggregate amount of borrowings under section 3(3) of the said Ordinance shall not at any one time exceed thirty thousand million dollars.

THE FINANCIAL SECRETARY:—Sir, the bulk of the Government's accumulated fiscal reserves (the General Revenue Balance) is invested by the Treasury with the Exchange Fund against the issue by the Fund of interest-bearing certificates. Section 3(4) of the Exchange Fund Ordinance limits the amount which the Fund may borrow from any source; and under section 3(5) this limit may be altered by the Legislative Council by resolution proposed by the Governor with the approval of the Secretary of State. The current limit of HK$20,000 million was set by a resolution of this Council on 17 December 1980.

The Government's fiscal reserves are held with the Exchange Fund in order to avoid these reserves having to bear exchange risks. Furthermore, to the extent that these reserves represent part of the Exchange Fund's holdings of Hong Kong dollars, they play a part in the exercise of leverage on the need for the banking system to hold liquid assets. The mechanism for doing this is provided by section 4A of the Exchange Fund Ordinance, i.e. when the Exchange Fund holds balances with banks in Hong Kong on demand, at call, or at short notice those banks have to hold 100% liquid assets against those balances. In this way increases in those balances do not contribute to the process of credit creation.

On 30 November 1981 the total of Exchange Fund debt certificates issued to the Treasury amounted to $16,697 million. Present indications are that by the end of February 1982 the Treasury will have placed nearly $20,000 million with the Exchange Fund, and the fiscal reserves will continue to accumulate in the next few months.

As an innovation the powers of the Financial Secretary to borrow for the account of the Exchange Fund, under section 3(3) of the Ordinance, and so subject to the limit set in section 3(4), have been used to operate a new mechanism designed to give the Government some influence over the level of interest rates in the domestic money market.

The interest rate mechanism is the only monetary weapon which is currently available to provide an effective short-term influence on the exchange value of the Hong Kong dollar and the rate of growth of the money supply and of domestic credit. Other devices used overseas are not generally capable of being used efficiently and effectively in Hong Kong, because of the combination here of a total lack of exchange control and a virtually total lack of Government

debt. Reliance on interest rates is not totally effective, and there may be circumstances in which the use of other devices has to be considered. But in the meantime we have felt it important to try to strengthen the interest rate mechanism.

The mechanism hitherto available has been restricted to Government involvement on a consultative basis in the setting by the Hong Kong Association of Banks of maximum rates of interest payable on deposits with licensed banks. These rates underpin the best lending rates set by the note-issuing (and other major) banks and the deposit rates offered by deposit-taking companies: and changes in the HKAB deposit rates, whether initiated by the Association or the Government, therefore induce changes in these other rates.

This mechanism has not however been able to exert a rigid influence over the level of money market rates, which are influenced as much by the supply of and demand for funds in the money market as they are by changes in the HKAB deposit rates. Consequently an increase in best lending rate, induced for macro-economic reasons by an increase in HKAB deposit rates, may not be followed by an increase in money market rates; and conversely money market rates may decline faster than is, for macro-economic reasons, appropriate for best lending rate.

The level of money market rates is important for three reasons. Firstly this market provides almost the only opportunity for local banks with a Hong Kong dollar deposit base to make profitable use locally of the excess (unlent) element of that deposit base. But if interest rates in the local market are low in relation to US dollar interest rates, the local banks will tend to go into US dollars with their excess deposits, so exerting pressure on the exchange value of the Hong Kong dollar.

Secondly this market also enables those banks and deposit-taking companies which do not have a Hong Kong dollar deposit base to obtain Hong Kong dollars to lend to customers. Such a bank or deposit-taking company can acquire Hong Kong dollars either by borrowing US dollars which it then sells for Hong Kong dollars in the foreign exchange market either outright or on a one-month or three-month swap (which insures the exchange risk), or it can borrow Hong Kong dollars in the domestic money market. If the cost of borrowing the US dollars is less than the cost of borrowing the Hong Kong dollars, the bank or deposit-taking company will borrow and then sell the US dollars, which supports the exchange rate of the Hong Kong dollar. But if the cost of borrowing Hong Kong dollars is lower, the bank or deposit-taking company will raise its funds that way, so removing a support from the Hong Kong dollar exchange rate. Thus the level of domestic money market rates, in relation to Eurodollar rates, is an important determinant of the exchange value of the Hong Kong dollar.

Thirdly a growing number of banks and deposit-taking companies are lending to increasingly aware and financially sophisticated customers on facilities with the interest rate set at a margin over the cost of funds to the

lender—e.g. the borrower pays½% over the cost of three-month money market funds. These HIBOR-related facilities were first provided by banks and deposit-taking companies without a local deposit base, and to whom therefore the best lending rate means nothing—what is crucial to them as lending institutions is the cost of their bought-in funds. With the level of money market rates usually below (and often some way below) the level of best lending rate, a cost-of-funds facility has often proved advantageous to borrowers. So they are increasingly turning to cost-of-funds lenders from their existing best lending rate related facilities, so defeating the macro-economic purpose of an induced increase in the best lending rate.

A scheme has now been implemented to enable the Government through the Exchange Fund to influence the level of money market rates. Briefly, the Exchange Fund can bid through one or another of its major bankers in Hong Kong for deposits in the money market in the short end (say one week to one month). This will increase the demand for funds in the market. The Exchange Fund then holds the funds it has taken off the market for one or two weeks, or even longer, so that the supply in the market is not increased to match the increase in demand. That will tend to push up, or to hold up, interest rates at the short end. When market participants come to accept that the tightness in the market is not a temporary aberration, the Exchange Fund will lend out the deposits it has taken at the longer end of the market (maybe three to six months) and, if possible, at a higher rate of interest.

If the tightness in the domestic money market pushes interest rates to a higher level than banks or deposit-taking companies needing local funds are willing to pay, they will have to borrow foreign currency, usually US dollars, with which to buy Hong Kong dollars. That will directly support the exchange rate of the Hong Kong dollar. At the same time the higher level of these interest rates will be passed on to the cost-of-funds (HIBOR) customers as their drawings are rolled over.

This mechanism will be most effective when local interest rates are rising, or when they are stable and no downward movement is expected in the next few weeks or months. If an imminent downward movement is expected there is little incentive for a bank or deposit-taking company to borrow funds in the three to six months range, and so to lock in what may prove to be an expensive interest rate. Conversely when rates are rising they may be glad to lock in an interest rate which may prove to be cheap.

I must emphasize that Government is using, and will use, this new weapon in their monetary armoury selectively and cautiously. It is certainly not a panacea. Nor do we intend to be operating constantly in the money market.

Sums borrowed by the Exchange Fund in the course of this scheme are, as I said earlier, subject to the borrowing limit set by section 3(4) of the Ordinance, though the Fund does not issue debt certificates to the banks concerned Though the size of this scheme is, in its early and still somewhat experimental

state, relatively small, it nonetheless provides another reason for seeking an increase in the limit set by section 3(4).

Sir, I support the motion.

Question put and agreed to.

INTERPRETATION AND GENERAL CLAUSES ORDINANCE

THE DIRECTOR OF AGRICULTURE AND FISHERIES moved the following motion:— That the Public Health (Animals and Birds) Ordinance be amended—

(*a*) in—
  (i) sections 4, 5, 9A and 9B; and
  (ii) the Form in the Schedule, by deleting 'two thousand dollars' wherever occurring and substituting the following—
    'five thousand dollars'; and

(*b*) in section 16 by deleting 'one thousand dollars' and substituting the following—
    'five thousand dollars'.

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

The existing levels of fines under the Public Health (Animals and Birds) Ordinance and the Dogs and Cats Ordinance were stipulated in 1936 and 1950 respectively and have not been revised in the intervening years. The outbreak of rabies in 1980, after twenty-five years of freedom from this disease, highlighted the inadequacy of the present levels of fines. It is considered that the penalties for breach of the current stringent rabies control measures should be increased to maintain their deterrent and punitive effect.

Section 88A of the Interpretation and General Clauses Ordinance makes provision for this Council to amend, by resolution, any Ordinance so as to increase the amount of any fine specified.

Sir, I beg to move.

Question put and agreed to.

INTERPRETATION AND GENERAL CLAUSES ORDINANCE

THE DIRECTOR OF AGRICULTURE AND FISHERIES moved the following motion:—

1. That the Dogs and Cats Ordinance be amended—

(*a*) in section 5 by deleting 'fifty dollars' and substituting the following—
    'one hundred dollars'; and

(*b*) in section 7 by deleting 'one thousand dollars' and substituting the following—

'five thousand dollars'.

2. That regulation 23 of the Dogs and Cats Regulations be amended by deleting 'one thousand dollars' and substituting the following—

'five thousand dollars'.

He said:—Sir, my speech on the first motion standing in my name on the Order Paper covers also the subject of the second motion standing in my name. I, therefore, Sir, beg to move.

Question put and agreed to.

TEMPORARY RESTRICTION OF BUILDING DEVELOPMENT (MIDLEVELS) ORDINANCE

THE SECRETARY FOR LANDS AND WORKS moved the following motion:— Pursuant to section 6 of the Temporary Restriction of Building Development (Mid-levels) Ordinance, that the said Ordinance shall continue in force for a period of 3 months ending on 31 March 1982.

He said:—Sir, I rise to move the resolution standing in my name on the Order Paper. This resolution has the effect of further extending the period of statutory restrictions on building development in the Mid-levels areas to 31 March 1982.

The present statutory restriction was imposed in May 1979 when the Temporary Restriction of Building Development (Mid-levels) Ordinance was enacted.

The purpose of this Ordinance was to re-introduce temporary restrictions on building works in the Mid-levels area because of the concern that the unrestricted construction activities might have an adverse effect on the stability of the slopes in and around the existing developed area. The Ordinance was enacted for a period up to 31 December 1981 for a detailed geotechnical survey to be carried out to establish what restrictions and controls were needed for future building works in the area. By section 6, this Ordinance will expire on 31 December unless extended by a resolution of this Council.

The study involved thorough investigations by a team of engineers from the Geotechnical Control Office of the Public Works Department, consulting engineers and specialist consultants. The period available was quite short for a geotechnical study of this nature and extent and because of the importance of having good information on the ground water situation, it had to extend over the two wet seasons of 1980 and 1981. This geotechnical study has now been completed.

In order to ensure that safe development can proceed in the area the consultants have recommended a number of geotechnical controls which take account of the overall stability of the hillside as well as the local stability at the individual lot. These controls concern standards of geotechnical design, site supervision, demolition temporary works and ground water drainage. Provided new building works are designed, supervised and constructed in accordance with these geotechnical controls, there will be no need to continue the ban on building developments in this area for geotechnical reasons.

To ensure that the geotechnical design of new building works is based on reliable information of the ground conditions, the quality of site investigations and laboratory testing must be of a high standard and the standards to be applied will be subject to prior approval by the Building Authority.

It is proposed that during construction the ground conditions and building works should be inspected and monitored regularly by the authorized person to ensure that the original geotechnical design assumption remains valid and, if not, that appropriate design changes are made. Prior to the granting of an occupation permit, the authorized person will be required to submit a performance review consisting of certification and supporting evidence that the requirements had been met.

The most critical stages of construction are usually demolition and excavation when they lead to a reduction in the support of a slope; so the new controls will have regard to the important of maintaining adequate ground support during this week to ensure there is no danger of collapse.

In future, demolition and excavation works which may impair stability will need to be designed and supervised by engineers, and detailed plans for such works will have to be submitted by the authorized person to the Building Authority for approval. This is intended to guard against the contractor making significant alterations to the shorting system and the working procedures without reference to the other parties concerned.

Unrestricted bulk excavation for basements and cuttings generally lead to an excessive reduction in the support of a slope. So, to minimize the cumulative adverse effects in a series of adjoining sites on the stability of a hillside, a limit will be imposed on the permitted depth of bulk excavation and the authorised person will be required to show on site formation plans for any building works that this limit is not exceeded.

Another factor which reduces slope stability is the construction of large watertight barriers for new basements, retaining walls and foundations as this impedes the natural flow of ground water down the slope. It is intended that where this might occur, the Building Authority should be able to require that ground water drainage measures be incorporated in the works.

To enable controls of this nature to be implemented, amendments to the Buildings Ordinance and Regulations are required. The nature and extent of the proposed amendments are such that it will not be possible to carry out the interdepartmental consultations and legislative drafting in time for the new legislation to come into force before the Temporary Restriction of Building Development (Mid-levels) Ordinance 1979 expires on 31 December 1981. To allow time for this process, for consideration by the Executive Council of the proposed amendments to the Regulations and for the passage of an amending Bill through this Council, it is necessary to extend the present statutory moratorium for a further period of at least three months. I hope, Sir, that it will prove possible to have the new Regulations made and to introduce the amending Bill in time for its enactment within this period.

Sir, I beg to move.

Question put and agreed to.

First reading of bills

STAMP DUTY (AMENDMENT) BILL 1981

SUPPLEMENTARY APPROPRIATION (1980-81) BILL 1981

IMMIGRATION (AMENDMENT) (NO. 4) BILL 1981

ADMINISTRATION OF JUSTICE (MISCELLANEOUS AMENDMENTS) BILL 1981

LAW REVISION (REPEALS) BILL 1981

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

Second reading of bills

STAMP DUTY (AMENDMENT) BILL 1981

THE FINANCIAL SECRETARY moved the second reading of:—'A bill to amend the Stamp Duty Ordinance 1981'.

He said:—Sir, I move that the Stamp Duty (Amendment) Bill 1981 be read the second time.

One of the purposes of the Stamp Duty Ordinance 1981, enacted last May, was to bring transactions in unit trust units within the charge to stamp duty, but implementation was deferred pending discussions with the unit trust industry on procedural matters and consideration of representations made by the industry.

The *first* purpose of the Bill now before this Council is to allow unit trust managers the relief which my predecessor said he was disposed to offer, in response to the industry's representations, when he spoke in the resumed debate on the second reading of the main Bill on 27 May 1981. Such relief is justified as unit trust managers are required by the trust deeds under which they operate to buy and sell units within a narrow range of prices. In the United Kingdom managers have long been relieved from ad valorem duty when they sell units within two months of buying them or, if these units are not resold, on their being cancelled within that period. I am persuaded that the managers of Hong Kong unit trusts are as deserving of relief as their counterparts in the United Kingdom.

The *second* purpose of the Bill concerns the charge of bearer instrument duty on international bond issues made through Hong Kong, especially Asian dollar bonds. My predecessor is on record as saying that if it was decided to exempt foreign currency deposits from interest tax, steps would be taken to ensure that Asian dollar bonds issued in Hong Kong were relieved from stamp duty also.

The interest tax issues are still being examined. It has in the meantime been represented to me that the charge of stamp duty is by itself a bar to the development of an Asian dollar bond market in Hong Kong, because it is possible for bonds to be issued on which stamp duty would be chargeable but interest on which would not be subject to interest tax. The Bill therefore provides for exemption from stamp duty in respect of foreign currency loans.

The provisions of the Bill are to come into operation at the same time as those of the principal Ordinance relating to unit trusts. This is expected to be on 1 January 1982.

Sir, I move that the debate on this motion be now adjourned.

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

Question put and agreed to.

SUPPLEMENTARY APPROPRIATION (1980-81) BILL 1981

THE FINANCIAL SECRETARY moved the second reading of: — 'A bill to approve a supplementary appropriation to the service of the financial year which ended on 31 March 1981'.

He said:—Sir, I move that the Supplementary Appropriation (1980-81) Bill 1981 be read the second time.

This Bill seeks to give final legislative authority to the supplementary expenditure authorized by Resolutions of this Council, and is the last stage in disposing of expenditure incurred during the last financial year 1980-81. It also seeks an appropriation to meet expenditure incurred by departments where receipts appropriated-in-aid fell short of the sums originally estimated.

The original estimates were given legislative form in the Appropriation Ordinance 1980, which authorized a specific sum under each Head of Expenditure. We need now to legislate further in respect of those heads of expenditure where the net effect of supplementary provisions and shortfalls in receipts appropriated-in-aid, without a corresponding reduction in spending, has resulted in an excess over the net sum appropriated in the Appropriation Ordinance 1980. The total supplementary appropriation required is $6,120 million under 62 heads as against savings of $960 million under various other heads. The largest items involved were a transfer of funds of $3,535 million for the Mass Transit Railway and of $400 million for home purchase by civil servants, and increases of appropriation of $682 million for miscellaneous defence measures and of $314 million for education subventions.

Sir, I move the debate on this motion be adjourned.

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

Question put and agreed to.

IMMIGRATION (AMENDMENT) (NO. 4) BILL 1981

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

He said:—Sir, I move the Immigration (Amendment) (No. 4) Bill 1981 be read a second time.

Before I outline the contents of the Bill it may be helpful if I refer to the circumstances that have given rise to the need for it. As honourable Members will of course recollect, on 23 October 1980 the policy and laws relating to illegal immigration were changed by legislation. That legislation was designed to bring home to those in the communes, and indeed anywhere else, the futility of attempting to enter Hong Kong illegally:—for even if they were able to avoid or evade the security net on the border, they will be totally unable to obtain work here without possessing an I.D. card and will be repatriated as soon as they are apprehended in the urban areas.

The overwhelming majority of the people of Hong Kong, Sir, have shown themselves to be fully in support of this new policy, despite the inevitable inconvenience it has caused some of them from time to time. The new policy, too, has manifestly been a benefit and has shown its beneficial effects upon the scale of illegal immigration into Hong Kong. But experience during the past year has revealed a small gap in the law which the present Bill, if enacted, will close. Recently, it has come to light that organized syndicates of snakeheads have been preying upon families and, in effect, trafficking in children, whom they smuggle into Hong Kong on behalf of relatives.

There are, Sir, four features of this obnoxious and illegal traffic which I would like to draw to the attention of honourable Members: First, it is organized by snakeheads who cynically and for money have been preying upon the family loyalty of relatives; second, frequently where this has occurred there has been only one relative in Hong Kong, the wife still remaining behind in China; third, in such cases, those who came illegally to Hong Kong prior to 23 October 1980 and are now permitted legally therefore to remain here, had in fact when they came of their own volition decided to leave their families behind and to come to Hong Kong alone; and four, it is not known how many of those now living legally in that way in Hong Kong have left behind their wives and children in China, or how many these total—all that can be said is that the number left behind in China is undoubtedly large.

Apart from other considerations, the actions of those parents or relatives who buy the services of these snakeheads are selfish in the extreme, for they are really attempting to jump the long queue within China awaiting legal permission for their relatives or children to enter Hong Kong. Moreover, a moment's reflection shows the threat which is obvious to the medical, to the educational, to the social welfare and to the other services in Hong Kong if substantial numbers of these relatives and children are able to avoid the queue in this way and to come illegally to Hong Kong.

It is imperative therefore that the adequacy of our sanctions against the traffickers who bring in these people, and those who aid and abet them, should be examined. This has been done and it is this examination which has identified the weakness to which I shall refer. Under the laws of Hong Kong, a child under the age of 7 is conclusively presumed to be incapable of committing any offence, and children between the ages of 7 and 14 are presumed to be incapable unless in their individual case evidence is called proving that they have the intention and the mental capacity to be able to commit such offence whatever it be. Section 38(1) of the Immigration Ordinance makes it an offence to land unlawfully in Hong Kong. It follows that in the case of children it is impossible in some cases and difficult in many others to prove in law that they have committed this offence—even though one can prove beyond a doubt that they are unlawfully in Hong Kong, it may not be possible to prove the necessary mental intent.

Now, the statutory power of removal contained in section 19(1)(*b*) of the Immigration Ordinance is dependant upon being able to prove that an offence

under section 38(1) of unlawfully landing in Hong Kong has been committed. Moreover many of the supplementary sanctions against the illegal landing, like the forfeiture of ships, the forfeiture of vehicles and some of the evidentary presumptions helpful in proving the offences, have at various times in the past, I suspect as a matter of convenience, been tied to the commission of an offence under section 38.

It follows, Sir, that so far as children are concerned, there are legal difficulties in prosecuting those who bring them here, and indeed also in effecting the removal of the children. This Bill remedies that situation and does so largely by deleting references to the commission of an offence under section 38(1) and substituting instead reference to landing unlawfully in Hong Kong.

So that is the gravamen of the Bill. The opportunity is also being taken at the same time of attending to three other subsidiary matters. Under the existing provisions of the Ordinance, an Immigration Officer or Immigration Assistant may only examine a person under section 4(1)(*a*) on such person's arrival or on his departure from Hong Kong but not in the interval between, even though there may be reasonable cause in that intervening period to believe that the person had entered Hong Kong unlawfully. The importance of an examination under section 4(1)(*a*), is that section 11 empowers an immigration officer to refuse a person so examined permission to land, and that is a pre-condition to the power of summary removal of such persons under section 18. Clause 3 of the Bill seeks to remedy this weakness by providing for examination at any time if there is reasonable cause to believe the person has landed unlawfully, so that he then becomes subject to the section 18 summary removal procedures.

Clause 6(*a*) of the Bill seeks to make it clear that a person refused permission to land at any time may be summarily removed under section 18 of the principal Ordinance. But since such refusal under these new provisions may now be made long after a person actually arrives in Hong Kong, that is, when he is caught and when he is then refused permission to land, clause 6(*b*) provides that a person may be summarily removed under section 18 only within 2 months of the date he arrives as opposed to 2 months from the date when he is refused permission, which latter provision is the present law. Of course I should stress that the power to remove under section 19, which has appeal procedures and so on tied to it, can still be used even after the two-month period.

Sir, the next matter is that practical experience prosecuting traffickers particularly in regard to harbouring illegal immigrants, suggests that the provision which directly penalizes the assisting of an illegal immigrant to remain would be far more effective than the present indirect means afforded by charging such offenders with aiding and abetting the offence of unlawful landing. Clause 8 of the Bill makes such provision and closely follows the existing provisions in section 37D of the Ordinance relating to the assisting of passage to and within Hong Kong of an unauthorized entrant. It will be seen that the new section 37DA introduced by clause 8 is not linked with the commission of an offence by an unauthorized entrant, so that the difficulties

that have arisen because of the need to prove that sort of link will be avoided. Obviously, prosecutions under the new section 37DA involving, as they sometimes will do, prosecuting relatives for assisting an unauthorized entrant to remain will have to be taken with discretion and after careful consideration of all the circumstances of the case. That will be ensured by existing section 37L which provides that no prosecution under Part VIIA may be brought without the consent of the Attorney General.

Sir, the speedy enactment of this Bill and the nature of its provisions should reconfirm and stress this Government's determination to take the firmest possible action against traffickers in illegal immigration. Indeed at the moment, there are 17 cases involving some 35 accused persons which are currently proceeding in the courts of Hong Kong against traffickers and aiders and abettors of illegal immigration.

And lastly, Sir, I should point out to honourable Members that if this Bill is enacted as legislated, the case of each illegal immigrant who is caught will be dealt with as heretofore, and in accordance with the various provisions for appeal and so on which currently exist, and which ensure that each case is considered on its merits.

I should add, Sir, with the support and agreement of the Unofficial Members of this Council and to prevent false rumours circulating, it is hoped to take this Bill through all three stages at this sitting today.

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).

ADMINISTRATION OF JUSTICE (MISCELLANEOUS AMENDMENTS) BILL 1981

THE LAW DRAFTSMAN moved the second reading of:—'A bill to make better provision for the administration of justice in relation to the jurisdiction of the courts and tribunals and for connected purposes'.

He said:—Sir, I move that the Administration of Justice (Miscellaneous Amendments) Bill 1981 be read the second time.

In 1980 the Chief Justice appointed a working party consisting of representatives of the Judiciary and legal profession and chaired by a High Court Judge. Its terms of reference were to consider the extent, if any, to which first, the civil business and anxillary jurisdiction of the Supreme Court should be transferred to the District Court; and second, the jurisdiction of the Small Claims Tribunal should be altered.

The Working Party made its report in March this year and this Bill seeks to give effect to its recommendations, subject to some modification proposed by the Chief Justice.

In practical terms, probably the most important recommendation effected by the Bill is that to increase the monetary limits of the jurisdiction of the District Court and the Small Claims Tribunal. Given the continued fall in the value of money, in essence the increased limits maintain the status quo. In doing so they preserve the means for the public to recover debts and settle disputes at the lower level of costs that are incurred in the District Court and particularly the Small Claims Tribunal. Thus the Bill increases the monetary jurisdiction of the District Court from $20,000 to $40,000, and that of the Small Claims Tribunal from $3,000 to $5,000.

Another important proposal effected by the Bill is the transfer of jurisdiction in a number of different matters from the Supreme Court to the District Court. This is on the grounds of saving costs and time, of convenience and of relieving the burden on the Supreme Court. In this context the Bill transfers jurisdiction in matters of merchant shipping, of matrimonial disputes, relief and property, and of legitimacy and adoption. But of course a simple unqualified transfer of jurisdiction would not be entirely appropriate, and special provision is necessary in certain respects. Provision is therefore made for transfer of matrimonial causes and other proceedings under the Matrimonial Causes Ordinance and the under the Matrimonial Proceedings and Property Ordinance to the Supreme Court on the application of any party or at the instance of the District Court; for legitimacy proceedings to be taken in either the District Court or High Court; and for opposed adoption matters to be transferred to the High Court.

To proceed to another matter dealt with in the Bill, monetary limits on the jurisdiction of the District Court are provided not only in the District Courts Ordinance but also in several other Ordinances that confer jurisdiction upon that Court in particular matters. To facilitate the future amendment of these limits, the Bill empowers this Council to amend by resolution the monetary limit in the District Courts Ordinance; and it ties references to monetary limits in other Ordinances to that in the District Court Ordinance so that the former will automatically increase without further action.

The rate of interest payable on judgment debts cannot be totally insulated from the fluctuation of market interest rates. The Bill accordingly makes provision for the Chief Justice to fix by notice in the *Gazette* the rate of interest payable on judgment debts.

Where a decision of the High Court in a matter under the Labour Tribunal Ordinance or the Small Claims Tribunal Ordinance involves a question of law of general public importance, the Bill provides for an additional appeal to the Court of Appeal.

The Explanatory Memorandum, Sir, of the Bill details the particular clauses that give effect to the matters I have mentioned and also those that make minor tiding-up amendments and transitional provisions.

Sir, I move that the debate on this motion be adjourned.

Motion made. That the debate on the second reading of the Bill be adjourned— THE LAW DRAFTSMAN.

Question put and agreed to.

LAW REVISION (REPEALS) BILL 1981

THE LAW DRAFTSMAN moved the second reading of:—'A bill to repeal two Ordinances'.

He said:—Sir, I move that the Law Revision (Repeals) Bill 1981 be read the second time. This Bill seeks to repeal two Ordinances which are no longer required.

The first is the Chinese Recreation Ground and the Yau Ma Tei Public Square Ordinance. This was enacted in 1960 to replace legislation which designated as recreation grounds, the Chinese Recreation Ground in Hollywood Road on Hong Kong Island, and the Yau Ma Tei Public Square in Kowloon. It provided for the management and control of those grounds and for that purpose established and incorporated a Committee. Both pieces of land have been resumed for redevelopment, all assets held by the Committee have been disposed of and the Committee itself has resolved that it is *functus officio.* The Ordinance may, therefore, safely be laid to rest.

The other Ordinance is the Holts Wharf (By-laws) Ordinance, which was enacted in 1921 to authorize the making of by-laws in respect of Holts Wharf. That Wharf comprised land in the east Tsim Sha Tsui area and the godowns, piers and buildings on it. The property has changed hands and its character has completely altered. There are now hotel and office premises on it. In short the Ordinance is an anachronism and should go.

Sir, I move that the debate on this motion be adjourned.

Motion made. That the debate on the second reading of the Bill be adjourned— THE LAW DRAFTSMAN.

Question put and agreed to.

URBAN COUNCIL (DONATIONS) BILL 1981

Resumption of debate on second reading (25 November 1981)

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).

LANDLORD AND TENANT (CONSOLIDATION) (AMENDMENT) (NO. 2) BILL 1981

Resumption of debate on second reading (25 November 1981)

Question proposed.

MR. PETER C. WONG:—Sir, the main object of the Bill, which contains no less than 60 clauses, is the provision of security of tenure for tenants of domestic premises excluded from rent control. This is a new concept which may have far reaching consequences. It is therefore not surprising that the ad hoc group of the Unofficial Members examining this Bill spent considerable time in discussing this fundamental proposal which is contained in the new Part IV. The group held several lengthy meetings amongst themselves and with Government representatives including the Chief Secretary, the Attorney General, the Secretary for Housing and the Commissioner of Rating and Valuation. Public representation received has also been considered and discussed with the Administration.

I am happy to report, Sir, that our discussions have been most fruitful within the constraint of the very limited time available to us. There have been broad agreements with Government representatives on several issues and appropriate amendments will be introduced at the committee stage.

I will not attempt to elaborate on the long list of agreed amendments. Many of these are for clarification or of a technical nature. However, the following points deserve mention —

1. Fixed term tenancies of 5 years or more created after 18 December 1981 with no provision for earlier determination or rent escalation will be excluded from rent control. This is in line with the recommendation of the Committee of Review that such tenancies should be excluded from Part II (relating to post-war buildings) of the principal Ordinance as well as from the new Part IV (relating to security of tenure).

2. Conditions imposed on rebuilding in the new sections 53A and 119F are generally considered to be unnecessarily restrictive. It is now agreed that the requirements will be modified and rebuilding will be possible even though it may not result in an increase in the number of dwellings or in accommodation provided the re-development is in the public interest. This should also cover cases where buildings of better qualities are to be erected.
3. A definition of 'fair market rent' will be included in the new Part IV.
4. Under Part II and the new Part IV, landlords making false representations or concealing material facts will be subject to penalties. Similar provisions will be inserted so that tenants acting dishonestly will also be penalized.
5. Any person who has obtained possession for self-occupation or rebuilding is not permitted to re-let or assign the premises for a period of 24 months from the date of the order. Any contravention will be subject to heavy penalties. To strengthen this provision, it is proposed, inter alia, that under Part II and the new Part IV where an application for possession does not proceed and the tenant consents to deliver up vacant possession of the premises, the applicant shall be deemed to have obtained an order under the relevant section. However, the Bill is not specific in respect of the date on which the order is deemed to have been made. It is now proposed that the date should be the date of the application. This amendment will obviate difficulties which may be encountered if prosecution is instituted.
6. In applications for re-development—
   (*a*) plans of new buildings will not be subject to variations by the Tribunal;
   (*b*) where approval is required in respect of the rebuilding, the Tribunal may, on stating that it is satisfied the landlord intends to rebuild, postpone the hearing and make an order for possession when such approval is obtained;
   (*c*) the Tribunal may, for good cause, vary any order made by it, except in relation to compensation.
7. Provision will be made for the transfer of possession cases from the District Court to the Lands Tribunal. The transfer will be on a date to be gazetted.

Obviously, the Administration has not been able to meet all the points raised by Unofficial Members, nor was there time to discuss thoroughly certain points of substance. However, we realized that it would be unwise to delay the passage of this important Bill and agreed to Government's proposal that the second and third readings of this Bill would take place this afternoon. It is my view, however, that Government should as soon as possible actively consider the following issues that are still unresolved—

1. Some time limit on the period for which a tenancy can be renewed under the new Part IV.
2. Some provision in the new Part IV to enable property owners, particularly small investors, to dispose of their property with vacant possession.
3. The position of the corporate landlord who requires the premises for the occupation of its own employees. Under the existing law, a corporate

landlord is unable to obtain possession of its property on the ground that it is required for self-occupation. It is my understanding that the Government has undertaken to review this issue in 1982.

4. Specific time limits may be desirable for determination of rent under the new section 119K.
5. Section 119Q of the new Part IV provides for appeal to the Court of Appeal against a determination of the Lands Tribunal on a point of law. It may be desirable to provide some form of appeal against decisions of the Lands Tribunal generally.

Finally, a word on two related matters—

1. At present legal aid is not available in the Lands Tribunal. In view of the transfer of jurisdiction, Government may wish to consider extending legal aid to the Lands Tribunal to cover matters relating to landlord and tenant.
2. The principal Ordinance has been amended so often and so extensively that even lawyers are confused (*laughter*). I therefore agree whole-heartedly with the recommendation of the Committee of Review that 'thought should be given to redrafting the Ordinance as a whole with a view to producing a more coherent statute.' As a result of the changes now under discussion, the law will become even more complicated and difficult to find. I would therefore seek assurances from the Government that the revised Ordinance will be reprinted at the earliest possible date and further that the complete overhaul of the Ordinance recommended by the Committee of Review will not be pigeon-holed for consideration at some distant unspecified future date.

Sir, subject to the agreed amendments, I support the motion.

REVD. MCGOVERN: — Sir, I find myself in the peculiar position of supporting the Government on a Bill concerning landlords and tenants. I do not intend to go into the many technical points by which to my mind the present legislation is improved. I support the Bill chiefly because it gives a greater assurance of security of tenure to some tenants.

Believe it or not, I have considerable sympathy for a landlord, who for good reasons such as marriage or retirement, wishes to repossess his property for his own use, and finds himself unable to do so. If the proposed processing by the Lands Tribunal, rather than the District Court, works as simply as inexpensively and as fairly as is intended, such a genuine deprived landlord has a better means of redress than before. For the tenant too, the less expensive Lands Tribunal should provide a simpler and less time consuming process by which to get a fair hearing.

I have, however, one reservation. In spite of all the time and thought that my colleague, Mr. Peter WONG has given to it, I fear that the proposed five years fixed term tenancy may become the rule rather than the exception and thus provide a means by which all controlled tenancies may be changed into uncontrolled ones. Some might say this is a good thing in that it will indirectly

get rid of rent control. I do not agree, nor do I believe that we can ignore the fact that some landlords are still of the rapacious breed. That such people still exist would appear to be borne out by the fact that between 1976 and 1981, in spite of a period of partial rent control, and a period of blanket rent control, rents, as reflected in this year's assessment for the purposes of property tax, increased by as much as 300 to 500 per cent from their already very high levels. One way of lessening the possibility of abusing the proposed five-year fixed tenancy amendment would be to confine its application to the genuine small landlord who owns one flat. In this way the big time speculators could be prevented from perverting the purpose of the amendment. I hope Government will watch the situation carefully and, if necessary, introduce an appropriate amendment to tighten the five-year fixed tenancy exclusion. In the meantime, however, I am willing to wait and see how it works.

It has been said, on the subject of rent control in general, that supply and demand will solve all problems. It has also been pointed out, in proof of this thesis, that rents have in fact begun to level off or even fall because of the recent increase in supply. If this is so we must remind ourselves that from the tenant's point of view the fall is something like falling off Mt Everest and landing on Mt Kongur. Even Jardine sponsored climbers still found Kongur very steep (*laughter*).

Whatever the future may bring in the whole saga of the housing problems of Hong Kong, there is one final point which I wish to stress. It is a good thing to encourage home ownership; it is a good thing to encourage small landlords to possess some property as an investment in the future of Hong Kong. It is reasonable for such small property owners to expect a reasonable return on their investment. But property is no ordinary commodity. A roof over one's head is a necessity of life. A landlord of any sort, be he big or small, cannot expect to maximize his profits at every opportunity if by so doing he is injuring people. People are more important than property. People are more important than profits. Landlords too are people I concede, perhaps somewhat reluctantly (*laughter*), but they must in a civilized society exercise restraint in their dealings with other people. If they do not exercise such restraint, then it is the duty of Government to restrain them reasonably.

Sir, I believe Government is doing this to some extent by providing some security of tenure for some tenants and therefore support the motion.

MR. BROWN:—Sir, my colleague Mr. Peter C. WONG has already spoken with authority on most of the issues raised by this Bill. My observations are confined to a few matters of principle.

Legislation concerning rent control and security of tenure is important to all members of the community, whether they are landlords, big or small, or tenants, and it is desirable that both are quite clear as to Government's present and future intentions. Any uncertainty will only lead to unease on the part of tenants and perhaps unwillingness of investors to construct new domestic accommodation.

The implementation of the recommendations of the Committee of Review in a piecemeal manner—necessary though this may be—*is* causing uncertainty. Although we are today discussing security of tenure, as opposed to rent control per se, the man in the street may perhaps be forgiven if he can see little difference between the two, for both represent an interference with market forces the consequences of which are difficult to predict.

Given present conditions I do not think any of us would dispute that some form of rent control will be necessary for sometime to come. However, the long term objective is and must remain decontrol, and it would be helpful if Government could reiterate its commitment to bring this about as soon as possible and, at the same time, reconfirm that the recommendations of the Committee of Review on future policy for rent control and security of tenure remain generally acceptable.

Sir, I am uneasy at the speed with which this Bill is being passed for it has left little time to consider its possible consequences not only to landlords and tenants but also to the overall investment climate and the economy as a whole. I recognize the need for urgency, and for this reason I support the Bill, but I believe we must look upon this as an interim measure only. In the long term the best method of protecting tenants is to ensure that there is an adequate supply of new rented accommodation, whether it be provided by the small landlord or the big one, and when framing our laws for rent control and security of tenure we must ensure that our actions do not run contrary to this vital consideration.

Sir, I support the motion.

MR. CHAN KAM-CHUEN:—I rise to support the Landlord and Tenant (Consolidation) (Amendment) (No. 2) Bill 1981.

According to the report of the Committee of Review (Page 38), of the 620 000 households in private housing in March 1980, 42% (258 000) were owner- occupiers, 50% (311 000) were tenants, whilst the rest lived in employer- subsidized or rent-free accommodation.

Though relevant statistics are not available, it may probably be deduced that the majority of the owner-occupiers are mainly small property owners or worker-owners of small means. Taking the average size of their household as 4 (Annex 7 of the Report), then there would be about 1 million persons on the worker-owner side, and 1.2 million on the worker-tenant side. Due to various factors, the prices of domestic premises are likely to be stabilized and the trend appears to be that the number of worker-owners would gradually increase. Therefore, those who formulate housing policy and those who have influence over public opinions should watch carefully the swing of public interests over this controversial issue of rent control.

The principal Ordinance and the Bill aim to control basically two items namely duration and rent of domestic premises.

There is no provision limiting the maximum number of the renewals of tenancies. 'Perpetual' security of tenure forces a worker-owner who works and saves hard for a flat to ironically leave it on death not to his beloved ones, but to his not so beloved tenant. Nor is he able to recover it for sale with vacant possession, i.e. at full market value, when in serious financial difficulties or when he and his family emigrate. He can ill afford the time and expenses to recover what is after all his rightful property.

When two parties enter into a written tenancy agreement, of their own free will, for a fixed period and consideration, this is a solemn promise and is enforceable in a court of law. When the breaking of this promise is legalized, albeit with good cause, it does irreparable damage to the confidence between men in our society. The black and white dividing-line of ownership blurs into a gloomy grey area. This engenders uncertainties and anxieties. It further creates opportunities for the grabbing of other's properties and, under whatever pretences, the squeezing of the rightful owner. I'm afraid it might eventually lead to the extreme examples in Europe where squatters forced open doors and occupied vacant premises as though they had a right to do so.

The adoption of the 'fair market rent' to be determined by the Lands Tribunal is an improvement but whether this is rent control or otherwise depends, in my view, on whether the 'fair market rent' is equivalent to or not less than the recently updated 'assessable value' of the same domestic premises for property tax purposes. One may say that these two figures have nothing to do with each other. However, if the 'fair market rent' is lower than the 'assessable value', then the owner is taxed unfairly on their rental income at a rate higher than the standard rate of 15%, or viewed from another angle, the 'fair market rent' becomes just another ceiling for controlled rent under a different name.

Given the objective of closing the loophole of abuse by some owners in repossession cases for personal use and later changing their mind, our legal experts have done a brilliant job in making the provision water-tight. But, in the process it seems this has been made too air-tight for the owner and the tenant. This is so because once a writ is issued, the parties have passed the point of no return: the landlord cannot change his mind and withdraw the writ to settle outside the court without being constrained by the 2-year no letting or selling restriction. I have some reservation on this point as it is contrary to the practice in other civil action cases. Like gladiators in the area, landlord and tenant must fight to the bitter end. The hopes of the tenant who may get a lump sum as compensation from his landlord as downpayment for a small flat are dashed.

Encouragement for settlement out of court is not against the spirit of justice. Moreover, less Tribunal and legal aid cases would be required, and money and time would be saved for all parties concerned. Above all, there would be less bitterness in society. Rent control has split our society into two distinct camps of landlords and tenants. For those worker-owners, it is hard to say whether they are necessarily financially better off than their worker-tenants. But all the

same, hatred would be bred and invisible damage done to the normal relationship between people in our society. I feel that settlement outside the court should be encouraged. This is not inconsistent with the good old Chinese tradition of settling disputes peacefully without formal confrontation.

In our Labour Tribunals before an official judgment is made, there are concilliation services provided by Tribunal Officers and the Labour Department for private settlement. If one is not already in existence, I wonder whether a similar system can be profitably applied to the Lands Tribunal cases. The landlord should be able to give notice to his tenant in a prescribed form of his intention to apply for a writ, but before so doing both parties should go to the Rating and Valuation Department for concilliation service for settlement.

Rent control is like drug addiction. It seems good at first but later it is very difficult and painful to unwind the process. It only buys time, at a very high social cost, for supply and demand to stabilize the domestic rental market and for more public housing units to be built during the interim. However, prolonged use of rent control would clearly be a serious disincentive to the land investors and developers. This would eventually strangle the supply of rented accommodation in the private sector and even if available the first or fresh lettings would be set at extremely high levels to take into account the controlled returns on rent and high inflation. We may well be faced with a large reserve of empty flats for sale and speculation, but not for letting. But, at such high prices how many of our salaried workers are able to afford even the smallest and remotely located flats?

Hong Kong always prides herself with the free enterprise system and the freedom of movements of capitals and profits. But this is not so for investments in domestic premises. With a sitting tenant, it is hard to find a willing buyer at a reasonable price because the property very often comes with a ‘law-suit’ as a free gift (*laughter*).

One may ask what about the poor tenants? It is my firm belief that the final solution of our housing problem lies in the building of more public housing and home ownership flats. The recent increase by several times of the ‘assessable value’ would net an estimated $800 million in property tax this year. This is a right step in taxing rental income to the full rate. This and future annual contributions to the public coffers would be used, I hope, for the building of *even more* public housing and home ownership units which are a stabilizing factor to our society both economically and socially.

When social security is provided for everyone, controlling landlord’s rental income may be justified. However, as most people do not enjoy a pension or similar retirement benefits in Hong Kong, the creation of an income for old age for the working class through small property investment should be viewed with sympathy.

Sir, with these observations and some reservation, I support the motion before Council.

MISS TAM:—Sir, the Landlord and Tenant (Consolidation) (Amendment) (No. 2) Bill is a much welcomed piece of legislation in that it provides for better protection to the tenants of both Part II and the proposed Part IV premises. However, some of my senior colleagues and myself have reservations in respect of one particular sub-clause in the Bill and I would like to make use of this opportunity to state the reasons.

The sub-clause in question is 36(*h*) proposing an additional subsection (7F)(*b*) to section 53 of the Ordinance. In effect, this amendment says that where a landlord applies to the Lands Tribunal for an order for possession on the ground that he (or members of his family) requires it for his (or their) own use, he cannot sell or let out the premises for 2 years without the prior consent of the Tribunal, even if he settles the case with his tenant out of court and the tenant deliver up vacant possession of the premises.

I understand that the reasons in favour of having sub-section 7F(*b*) in the Bill are as follows:

(1) that where the landlord has issued a writ against the tenant for possession on ground of 'own use' the landlord should be prepared to accept the restriction on sale or letting for 2 years;
(2) that having issued his writ on the said ground the landlord would be lying to the court if he settles the action with the tenant and then (be permitted to) sell or let out the premises;
(3) that the writ or legal action is a 'threat' to the tenant to make him compromise and move out;
(4) that the amendment eliminates an existing 'loophole' as observed in the Criminal Appeal case of CHU Kin Ying against the Crown; in this case, the landlord had obtained a Consent Order and vacant possession from the tenant and because it was a Consent Order, he escaped the penalty.
(5) that both parties should and do compromise without the landlord making any application.

In my view, sub-section 7F(*b*) is imposing protection on tenants who do not need it, and restriction on both landlords and tenants who wish to solve their own problems without litigation.

For presentational purpose I would like to deal with these points in reverse order:

(6) *answering point 5* (that parties do settle out of court without a writ)
    (*a*) No percentage figure has been referred to here on how frequently landlords and tenants can work out a happy solution without the landlord lodging an application. In reality, the tenants adopt a wait- and-see position and rarely give up their 'protected tenancies' without bargaining for ex-gratia payment or testing the strength of the landlord's cases, especially where the tenants cannot afford a lawyer, and at this stage they get no legal aid. I hope legal aid will be given to Land Tribunal cases as it is much needed.

(*b*) The parties do not normally get down to serious discussion unless a writ is issued by the landlord to show that there are such persons requiring the premises for their own use and that the landlord is serious about recovering possession.

(7) *answering point 4* (that is, to block the loophole)

This is covered by the proposed sub-section 7F(*a*) which in fact says a Consent Order situation is also attracting the restriction of two years without sale or letting. So I go on to answering point 3.

(8) *answering point 3*

(*a*) I appreciate that the tenant must be worried when he receives the writ. However, most tenants get legal aid (landlords do not) and are fully advised of their rights. Those who cannot get legal aid can usually afford a solicitor without going to a barrister. Hence if he settles the action, he is rarely unaided by his legal adviser.

(*b*) Also, the real situation is that a tenant rarely settles a case with the landlord if—

(i) he believes that he can win the case; and /or

(ii) he has no alternative accommodation; and /or

(iii) his loss cannot be compensated by money; and /or

(iv) the amount of ex-gratia payment as compensation is not satisfactory; and/or

(v) he wishes to avoid litigation.

(*c*) In such circumstances, it is not just and /or fair to assume that because the parties settle out of court the landlord is necessarily lying to the court, or that the tenant is necessarily threatened. Also, the landlord's ground of recovering possession may no longer be an operative or the sole operative factor that persuaded the tenant to settle the case.

(9) *answering point 2* (which is that having issued the writ, the landlord would be lying to the court if he settled the action and then let out the premises)

(*a*) I repeat paragraph 8; the points are related. I fully agree that no one should condone an abuse of the process of the law. On the other hand, one should be careful in assuming a man has a guilty mind. This is not a corruption case or drug trafficking case where we should presume there exists a guilty mind and/or act.

(*b*) When the landlord settles the case with the tenant by ex-gratia payment of compensation he *pays* to recover possession of his premises and *not* because he threatened the tenant into delivering vacant possession.

(*c*) Even after recovering possession by settlement the landlord may still prefer (or require) to have the premises for 'own use' instead of risking having another protected tenant by letting out the premises.

(*d*) Where the tenant cannot afford to settle out of court the case will go to trial. So if the landlord pursues a false case and if he conducts his case in a frivolous or vexatious manner, he will be penalized by the

Tribunal awarding costs against him. (This is in the proposed clause 48). He may lose the case altogether. And if he wins he is caught by the 2 years restriction.

(10) answering point 1(that is, where the landlord has issued a writ on the ground of own use, he should be prepared to accept the restriction for two years)

(*a*) I repeat paragraph 9(*b*) which is related.

(*b*) This fact is probably overlooked: Without an action on the file the parties are not obliged to exchange documents and particulars. (We call that interlocutories and mutual discoveries). If in the course of these exchanges the landlord finds that he has a weak case he can withdraw the action and suffers no loss. If, however, the tenant finds that he has a weak case he will want to settle. But the landlord will not allow him to do so because once the landlord issues the writ, the proposed sub-section 7F(*b*) says that the premises is under restriction for 2 years. The landlord will fight on in order to get rid of the tenant without paying 'ex-gratia compensation'.

Result: tenant gets nothing. Some of my senior colleagues have expressed their sympathy in these particular circumstances.

(11) I have a few general points in favour of accepting settlement out of court without the landlord suffering restriction over his property:—

(*a*) The tenant is given the alternatives: he can *either* fight the case if he has nowhere else to live, *or*, say if he has alternative albeit a less satisfactory accommodation, take/or invest the compensation payment. The landlord will be *prepared to pay* what he can afford, and the tenant can also ask for a longer period to plan his move to the new home.

(*b*) In no other civil proceedings can we find a party (here the landlord) penalized for settling out of court, or the court entertaining an assumption that a party (tenant) is necessarily worse off, or that a party (landlord) has lied to the court, especially where both parties are sui juris and aided by lawyers.

(*c*) Keeping sub-section 7F(*a*) and deleting sub-section 7F(*b*) means that the parties must make an *early* decision to settle or to litigate to the end. A settlement can save the court's time and the litigants' costs.

(*d*) Where the tenant accepts money instead of protection this indicates that he needs no protection, i.e. he has other feasible plans.

(*e*) Although the landlord can ask for the Tribunal's consent to lift the restriction he will have to show a change of circumstances which justifies his application. Where he obtains possession of the premises by settling out of court there is no evidence on record to contradict or support him. The Tribunal can only make a decision on his words, whether true or false. So do we read his application as a continuing act of abuse of the process of the law, or do we reject our presumption that he has a guilty mind because he goes through the mechanism of applying for release? We are dealing with the same person.

For the above reasons, Sir, and in particular those stated in paragraphs 8(*b*) and (*c*), 9(*b*), 11(*a*) and (*e*), I must express my reservations on keeping the proposed subsection 53 (7F)(*b*) in the Bill.

Sir, I support, however, the other amendments which have been agreed between my senior colleagues and the Administration.

THE ATTORNEY GENERAL:—Sir, I would like first to thank my honourable and learned Friend, Miss TAM, for her thoughtful arguments and for the points she made, but I regret that we cannot accept the suggestion she makes to delete section 7F(*b*) from section 53 of the Ordinance. Sir, I can put the reasons very shortly and they are these.

First, the experience over the last two years has shown that the issuing of a writ in these circumtances can become a strong means of pressure upon tenants and has become, not to put too fine a point on it, in some cases, a racket which the Ordinance has been unable to prevent. A racket, in that unscrupulous landlords, in a few cases where there are such (*laughter*), have issued writs, knowing quite plainly that they were false writs.

So far as the particular arguments are concerned, first, there is nothing under the Ordinance as amended, and if enacted today, to prevent a landlord and tenant negotiating and reaching a bargain for the tenant to give up possession for a price prior to the issue of the writ. But after the writ has been issued, the position seems to be this: that either the landlord has truthfully issued it, in which case he suffers no harm because either he gets possession (he presumably) will take it up for the reason that he issued the writ), or, if circumstances change, then he goes back to the court which has the right to release him from the 24- month obligation. If, on the other hand, it is a false writ, why should he be enabled to get away with a lie which he knew to be a lie from the beginning, and to use that lie to bring pressure upon a tenant in persuading him to agree to quit? And I respectfully adopt what Father MCGOVERN said, that there is a special quality about landlord and tenant in that a home is perhaps one of the most important rights that man requires.

Sir, it follows that only where a landlord has a guilty mind need he fear this section. In those circumstances, it seems to us, at this stage, that Miss TAM'S suggestion, though interesting, is not one which we ought to accede to. However, I will give the undertaking that over the period into the future, this particular section will be watched in its operation, and if difficulties are seem to arise in regard to it, then the administration will look again at the matter she has raised and see whether at the next review, something should be done about it.

SECRETARY FOR HOUSING:—Sir, I must first thank Mr. WONG for summarizing so succinctly the proposed amendments to the Bill which have resulted from consultation between the Administration and Unofficial Members of this Council. I should like to expand on two of the points he has mentioned.

Fixed Term Tenancies

At the suggestion of Unofficial Members, it has been decided that, in introducing the new Part IV of the Ordinance, which provides basic security of tenure for all tenants not protected by rent control, we should put into effect a further recommendation of the Committee of Review.

This is that landlords who seek a guarantee that at a fixed time in the future they may recover vacant possession of their property, may achieve this by letting for a fixed term of not less than five years, at a constant rent. Tenants who choose to rent premises on these terms will benefit from security of tenure for the period of the tenancy only. That is, unlike tenants with shorter leases, they will have no right to a further tenancy at the expiry of their lease.

We expect that by providing this avenue for landlords to avoid any legislation impinging on the contractual relationship between them and their tenants, some who might otherwise avoid renting out premises, will release their property onto the rental market.

From the tenant's point of view, he will have at least five years of secure tenure at a constant rent, and, knowing from the outset that he has no right to renewal at the end of the lease, will have ample time to make alternative arrangements well in advance.

Father MCGOVERN has expressed concern that such fixed term tenancies could become the rule rather than the exception. Were the minimum term to be less than five years, I concede that there could be a real danger of this. But with the minimum term set at five years, I believe that the majority of landlords, whose primary concern is rental income rather than capital value with vacant possession, will not insist on leases of this length at a fixed rent. My belief is rather that such leases will appeal to the smaller landlord, who regards the benefit of having his options open at a fixed time in the future more highly than maximizing rental income in the intervening period.

Part II Possession Cases

When I introduced this Bill on 25 November, I referred to the recommendation of the Committee of Review that all landlord and tenant matters, other than those involving criminal offences, should be transferred to the jurisdiction of the Lands Tribunal. It had been our intention that the jurisdiction in respect of possession cases under Part II of the Ordinance would be transferred from the District Court to the Lands Tribunal by way of a separate bill at a later date. However, it has now been decided that the opportunity of this Bill should be taken to transfer this function also.

In view of the substantial volume of such cases now dealt with by the District Court, it would not be practicable for the transfer of jurisdiction to take place immediately. The amendment I shall be proposing at the committee stage will therefore provide for the transfer to take effect at a future date to be determined when the related practical and policy issues have been resolved.

With regard to the issues which Mr. WONG mentioned as being still unresolved, I must make the following points—

(*a*) *Time limit on Security of Tenure*
The new Part IV introduced by this Bill gives effect to a fundamental recommendation of the Committee of Review that tenants not protected by rent controls, should, nonetheless, be afforded basic security of tenure so long as they are prepared to pay a fair market rent. The Committee considered that this should be a long term measure, and the question of a time limit does not, therefore, arise.

(*b*) *Disposal of Property with Vacant Possession*
The exclusion from the new Part IV of fixed term tenancies, which Mr. WONG will propose at the committee stage of this Bill, will provide a facility whereby property owners can recover vacant possession at a fixed future date.

(*c*) *Possession by Corporate Landlords for Occupation by Employees*
The Committee of Review, in Chapter 19 of its Report specifically recommended against extending the law to allow for this, considering that corporate landlords should rely upon obtaining possession by offering alternative accommodation, or by agreement.

(*d*) *Time Limits for Determination of Rent*
This is an area where we consider legislation would serve no useful purpose. Once the Tribunal has ordered the grant of a new tenancy, it is up to landlord and tenant to negotiate the rent. It is open to either party to apply for a determination by the Tribunal of a fair market rent, if this cannot be agreed, and, of course, either party can so apply at any time.

(*e*) *Appeals against Lands Tribunal Decisions*
There is provision for appeals on a point of law, but in all other matters, the decision of the Lands Tribunal is final. Whether or not it may be desirable to provide for appeals generally is something that can be judged only in the fullness of time, when the Lands Tribunal has gained experience of the landlord and tenant matters that will now fall to its jurisdiction.

Sir, the speeches made by my Unofficial colleagues in this debate have once again demonstrated the difficulty which the Government faces in formulating balanced proposals in the field of control over rents and security of tenure. In reply to Mr. BROWN I would reconfirm Government's acceptance in principle of the recommendations contained in the Report of the Committee of Review. The Bill now before Council is a further manifestation of that acceptance. As Mr. BROWN points out, the ultimate solution to the problem of high rents is an adequate supply of new accommodation for rent. The Committee of Review recognized this, and it was against this background that it formulated its package of recommendations, including those to be given effect by this Bill.

Having said this, however, I need not remind Members that the situation which this legislation is designed to control is a constantly changing one. No set of recommendations and no legislation can therefore be regarded as providing the answer to the problem for all time. The situation and the controls imposed

on it will be kept under constant review, and as the opportunity arises, further changes will be introduced aimed at achieving the long term objective of an eventual return to a free market in rented domestic accommodation.

Finally, may I admit to being somewhat relieved at Mr. WONG'S admission that even lawyers are confused by the present much-amended state of the principal Ordinance. When the present Bill is passed into law, the Ordinance will have been substantially amended no fewer than eight times since the last revised edition was published. I am pleased to be able to inform Members that a revised edition will be available in the next few months which will incorporate all changes introduced in the interim, including the substantial volume of amendments contained in the present Bill.

Sir, I beg to move.

(Mr. T. S. Lo, Mr. D. K. NEWBIGGING, Miss Lydia DUNN, Mr. Charles YEUNG, Mr. E. P. Ho, Mr. Peter C. WONG and Mr. F. K. HU declared interest and abstained from voting on the motion.)

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).

ROAD TRAFFIC (DRIVING-OFFENCE POINTS) BILL 1981

Resumption of debate on second reading (8 July 1981)

Question proposed.

SECRETARY FOR TRANSPORT:—Sir, in accordance with Standing Order No. 52, I rise to announce the withdrawal, for the time being, of the Road Traffic (Driving-Offence Points) Bill 1981. Members will recall that this Bill was introduced into the Legislative Council on 8 July 1981 following publication in the Gazette on 3 July 1981. The publication of the Bill attracted considerable interest and, during the past months, discussions have been held between Unofficial Members of this Council and the Administration to consider the proposed driving-offence points system in detail. The aim has been to ensure that the system would be an effective, but fair, deterrent against bad driving behaviour.

In the meantime, the Road Traffic Bill, which comprises a major revision of overall road traffic legislation, has reached an advanced stage and is likely to be put to this Council early in the new year.

Since the Road Traffic (Driving-Offence Points) Bill will be related to various provisions in the revised principal Ordinance, to avoid inconsistencies, Unofficial Members of this Council and the Administration have agreed that it should follow rather than precede consideration of the Road Traffic Bill.

Although this deferment may be welcomed by some, I believe that the majority of the public will be disappointed at the delay in the introduction of measures designed to promote safety and deter repeated bad driving behaviour. Bearing this in mind, the Unofficial Members of the Council have indicated that they fully support in principle the introduction of a driving-offence points system in Hong Kong. Sir, with this encouragement, the Administration will continue its work on the development of the system. I hope to table a new Road Traffic (Driving-Offence Points) Bill before this Council as soon as Members have completed their consideration of the Road Traffic Bill.

Bill withdrawn pursuant to Standing Order 52.

Committee stage of bills

Council went into Committee.

URBAN COUNCIL (DONATIONS) BILL 1981

Clauses 1 to 4 were agreed to.

IMMIGRATION (AMENDMENT) (NO. 4) BILL 1981

Clauses 1 to 11 were agreed to.

LANDLORD AND TENANT (CONSOLIDATION) (AMENDMENT) (NO. 2) BILL 1981

Clause 1

SECRETARY FOR HOUSING:—I move that clause 1 be amended as set out in the paper circulated to Members. This amendment provides the District Court to continue to exercise jurisdiction in respect of Part II possession cases until this function is transferred to the Lands Tribunal.

Proposed amendments

Clause 1

That clause 1 be amended in subclause (2)—

(*a*) in paragraph (*a*)—

(i) by deleting 'Sections' and substituting the following—

'Subject to paragraph (*b*), sections'; and

(ii) by deleting '56' and substituting the following—

'57'; and

(*b*) by inserting after paragraph (*a*) the following paragraph—

'(*aa*) Until a day appointed by the Governor by notice in the *Gazette* as the day upon which the Lands Tribunal shall assume the functions under sections 53 and 53A of the principal Ordinance, those sections and section 68B shall have effect as if for "Tribunal" wherever it appears, there were substituted "District Court".'

The amendment was agreed to.

Clause 1, as amended, was agreed to.

Clauses 2 to 31 were agreed to.

Clause 32

MR. PETER C. WONG:—I move that clause 32 be amended as set out in the paper circulated to Members.

Proposed amendment

Clause 32

That clause 32 be deleted and the following clause substituted—

'Amendment of section 50(6).

32. Section 50(6) of the principal Ordinance is amended—

(a) by deleting paragraphs (*f*) and (*g*); and

(b) by inserting, immediately after paragraph (*m*), the following paragraph—

"(*n*) a tenancy or sub-tenancy in writing created after 18 December 1981 for a fixed term of 5 years or longer which contains no provision—

(i) for earlier determination by the landlord otherwise than by forfeiture; and

(ii) for any premium or fine or for any increase in the rent during the fixed term.".'.

Clause 32, as amended, was agreed to.

Clause 33 was agreed to.

Clause 34

SECRETARY FOR HOUSING:—I move that clause 34 be amended as set out in the paper circulated to Members. This amendment relates to the transfer of jurisdiction under Part II from District Courts to the Lands Tribunal.

Proposed amendment

Clause 34

That clause 34 be amended by inserting before paragraph (*a*) the following paragraph —

'(*aa*) in paragraph (*d*) of subsection (2), by deleting "court" and substituting the following—
"Tribunal";'.

Clause 34, as amended, was agreed to.

Clause 35 was agreed to.

Clause 36

SECRETARY FOR HOUSING:—I move that clause 36 be amended as set out in the paper circulated to Members. These amendments:

(*a*) relate to the transfer of jurisdiction under Part II from the District Court to the Lands Tribunal;
(*b*) re-define unnecessary annoyance and unauthorized sub-letting as grounds for possession;
(*c*) lay down the date of the commencement of the period of restriction on disposition where an application for possession for self-occupation or rebuilding does not proceed and the tenant delivers up vacant possession; and
(*d*) provide for compensation by a tenant who may, through misrepresentation, successfully oppose an order for possession.

Proposed amendments

Clause 36

That clause 36 be amended—
(*a*) in paragraph (*a*), by deleting 'court' and substituting the following—
'Tribunal';

(*b*) by deleting paragraph (*c*) and substituting the following—

'(*c*) in subsection (2)—

(i) by deleting "A court" and substituting the following—

"The Tribunal";

(ii) in the proviso to paragraph (*b*), by deleting "court" from the three places where it appears and substituting the following—

"Tribunal";

(iii) in paragraph (*d*)—

(A) by deleting ", principal tenant or to the occupants of the premises, as the case may be" and substituting the following—

"or the principal tenant or to any other person"; and

(B) in the proviso, by deleting "court" and substituting the following—

"Tribunal"; and

(iv) in paragraph (*e*), by deleting "without the consent in writing of the landlord" and substituting the following—

"in breach of the contractual tenancy";';

(*c*) by inserting, immediately after paragraph (*c*), the following paragraphs—

'(*ca*) in subsection (3), by deleting "court"and substituting the following—

"Tribunal";

(*cb*) in subsection (4), by deleting "court" from the five places where it appears and substituting the following—

"Tribunal";';

(*d*) in paragraph (*d*) by deleting 'court' from the five places where it appears and substituting the following—

'Tribunal';

(*e*) in paragraph (*f*), by deleting 'court' from the two places where it appears and substituting the following—

'Tribunal';

(*f*) in paragraph (*g*), by deleting 'authority of the court' and substituting the following—

'authority of the Tribunal';

(*g*) in paragraph (*h*), in the new subsection (7F) by deleting the full stop and inserting at the end the following—

'; and, in a case mentioned in paragraph (*b*) of this subsection and for the purposes of fixing the commencement of the period mentioned in subsection (7), the date of the order shall be deemed to be the date upon which the application for possession is issued from the Tribunal.'; and

(*h*) by inserting, at the end, the following paragraphs—

'(*i*) in subsection (8), by deleting "court" from the two places where it appears and substituting the following—

"Tribunal"; and

(*j*) by inserting, after subsection (8), the following subsection—

"(9) Where a tenant or sub-tenant successfully opposes an order for possession of the premises under subsection (2) and it is subsequently made to appear to the Tribunal that the opposition was successful by reason of the misrepresentation or concealment of material facts, the Tribunal may order the tenant or sub-tenant to pay to the landlord or principal tenant such sum as it thinks fit by way of compensation for damage or loss sustained by the landlord or principal tenant as a result of that opposition.".'.

Clause 36, as amended, was agreed to.

Clause 37

MR. PETER C. WONG:—I move that clause 37 be amended as set out in the paper circulated to Members.

Proposed amendments

Clause 37

That clause 37 be amended in the new section 53A—

(*a*) in subsection (1)—

(i) by deleting 'court' and substituting the following—

'Tribunal';

(ii) by deleting 'a material' and substituting the following—

'an';

(iii) by inserting after 'number of dwellings' the following—

'or in accommodation';

(iv) by deleting 'desirable for environmental reasons' and substituting the following—

'in the public interest'; and

(v) by deleting the full stop at the end, substituting a comma and inserting the following—

'and, where the approval or authority of any person is required in respect of the rebuilding, the Tribunal may—

(i) state that it is satisfied as mentioned in paragraph (*c*) of section 53(2) and this subsection, if that be the case;

(ii) postpone the hearing of the application to enable the landlord or principal tenant to apply for that approval or authority; and

(iii) if that approval or authority is obtained, but not otherwise, make an order for possession of the premises.';

(*b*) in subsection (2)—

(i) by deleting ‘, subject to any variations authorized by the court’;

(ii) by deleting ‘court’ from the two other places where it appears and substituting the following—

‘Tribunal’;

(iii) by deleting the full stop at the end and substituting a colon; and

(iv) by inserting at the end the following proviso—

‘Provided that the Tribunal may, for good cause, vary any order made under this subsection, except in relation to compensation.’;

(*c*) in subsection (3), by deleting ‘court’ and substituting the following—

‘Tribunal’;

(*d*) in subsection (4), by deleting ‘court’ from the three places where it appears and substituting the following—

‘Tribunal’; and

(*e*) in subsection (5)—

(i) by inserting after ‘in fewer dwellings’ the following—

‘or less accommodation’;

(ii) by deleting ‘court’ from the three places where it appears and substituting the following—

‘Tribunal’; and

(iii) by inserting, after ‘may’ in the three places where it appears, the following—

‘, on the application of the Commissioner,’.

Clause 37, as amended, was agreed to.

Clauses 38 to 45 were agreed to.

Clause 46

SECRETARY FOR HOUSING:—I move that clause 46 be amended as set out in the paper circulated to Members.

Proposed amendment

Clause 46

That clause 46 be amended by deleting paragraphs (*e*), (*f*) and (*g*) and substituting the following paragraphs—

‘(*e*) by deleting subsections (3), (4) and (5); and

(f) in subsection (7), by deleting “of the court” and substituting the following—

“, other than a conviction, of the court or the Tribunal”.’.

Clause 46, as amended, was agreed to.

Clause 47

SECRETARY FOR HOUSING:—I move that clause 47 be amended as set out in the paper circulated to Members.

Proposed amendment

Clause 47

That clause 47 be amended by deleting paragraph (a) and substituting the following—

'(*a*) in subsection (1)—

(i) by inserting, after "order" where it appears for the first time, the following—

"other than a conviction"; and

(ii) by inserting, after "court" in the two places where it appears, the following—

"or the Tribunal".'.

Clause 47, as amended, was agreed to.

Clause 48

SECRETARY FOR HOUSING:—I move that clause 48 be amended as set out in the paper circulated to Members.

Proposed amendment

Clause 48

That clause 48 be amended by deleting 'the court or'.

Clause 48, as amended, was agreed to.

Clause 49 was agreed to.

Clause 50

SECRETARY FOR HOUSING:—I move that clause 50 be amended as set out in the paper circulated to Members.

Proposed amendment

Clause 50

That clause 50 be amended by deleting the words after 'repealed'.

Clause 50, as amended, was agreed to.

Clause 51 was agreed to.

Clause 52

MR. PETER C. WONG:—I move that clause 52 be amended as set out in the paper circulated to Members.

Proposed amendment

Clause 52

That clause 52 be amended—

(*a*) in the new section 115—

(i) by deleting the definition of 'tenant' and substituting the following—

' "tenant" does not include a Crown lessee but includes—

(*a*) a sub-tenant; and

(*b*) a public body, corporation, foreign or Commonwealth Government, partnership or firm which is the tenant of premises which is the subject matter of a tenancy to which this Part applies;'; and

(ii) by inserting, after the definition of "domestic tenancy", the following definition—

'"fair market rent" means the rent, exclusive of rates at which premises the subject matter of a tenancy to which this Part applies might reasonably be expected to be let on the terms of the new tenancy granted under this Part, but disregarding the effect of this Ordinance;';

(*b*) in paragraph (*b*) of the new section 116(2), by deleting 'or (*h*)'and substituting the following—

',(*h*) or (*n*)';

(*c*) in paragraph (*a*) of the new section 119D(3)—

(i) in sub-paragraph (ii), by deleting the full stop and substituting the following—

'; or'; and

(ii) by inserting at the end the following sub-paragraph—

'(iii) after the current tenancy has terminated in accordance with this Part.';

(*d*) in paragraph (*d*) of the new section 119E(1), by deleting 'the occupants of the premises, as the case may be' and substituting the following—

'any other person';

(*e*) in the new section 119F—

(i) in subsection (1)—

(A) by deleting 'a material' and substituting the following—

'an';

(B) by inserting after 'number of dwellings' the following—

'or in accommodation';

(C) by deleting 'desirable for environmental reasons' and substituting the following—

'in the public interest'; and

(D) by deleting the full stop at the end, substituting a comma and inserting the following—

'and, where the approval or authority of any person is required in respect of the rebuilding, the Tribunal may—

(i) state that the landlord has established the ground mentioned in paragraph (*c*) of section 119E(1) and one of the matters mentioned in paragraphs (*a*), (*b*) and (*c*) of this subsection;

(ii) postpone the hearing of the application to enable the landlord to apply for that approval or authority; and

(iii) if that approval or authority is obtained, but not otherwise, decline to make an order for the grant of a new tenancy.';

(ii) in subsection (2)—

(A) by deleting ', subject to any variations authorized by the Tribunal';

(B) by deleting the full stop at the end and substituting a colon; and

(C) by inserting at the end the following proviso—

'Provided that the Tribunal may, for good cause, vary any order made under this subsection, except in relation to compensation.'; and

(iii) in subsection (5), by inserting, after 'may' in the three places where it appears, the following—

', on the application of the Commissioner,';

(iv) in subsection (5)(*a*) by inserting after 'in fewer dwellings' the following—

'or less accommodation';

(*f*) in the new section 119H—

(i) in subsection (7) by deleting the full stop and inserting at the end the following—

'; and, for the purposes of fixing the commencement of the period mentioned in subsection (1), the date of the decision of the Tribunal declining to make an order for the grant of a new tenancy shall be deemed to be the date of the notice under section 119(1) or 119A(3), as the case may be.'; and

(ii) by inserting after subsection (9) the following subsection—

'(10) Where a tenant obtains the grant of a new tenancy under section 119D and it is subsequently made to appear to the Tribunal that the grant was obtained by reason of the misrepresentation or

concealment of material facts, the Tribunal may order the tenant to pay the landlord such sum as it thinks fit by way of compensation for damage or loss sustained by the landlord as a result of that grant.';

(*g*) in the new section 119K(1), by deleting the words after 'to be' and substituting the following—

'a fair market rent';

(*h*) in the new section 119M(4), by deleting 'apart from this Part, have come to an end' and substituting the following—

'apart from section 119N, have come to an end by virtue of a notice given under section 119(1) or under section 119A(5)';

(*i*) in the new section 119Q(1), by inserting, after 'section 117(1)', the following—

'or against an order under section 119F(5) or section 119H(9) or (10)';

(*j*) by inserting, immediately after the new section 119R, the following section—

Proceedings.

119S. (1) Subject to subsection (2), neither the Commissioner nor any public officer employed in the Department of Rating and Valuation shall be called to give evidence in proceedings before the Tribunal and no subpoena shall be issued against the Commissioner or such public officer.

(2) The Commissioner or any public officer employed in the Department of Rating and Valuation may be called to give evidence in any proceedings under section 51(8), 117(1) or 119F(5).

(Cap. 336)

(3) The District Court shall have the jurisdiction mentioned in section 119H(3) and (4) notwithstanding anything in the District Court Ordinance.

(4) Subject to section 119Q, any determination or order of the Tribunal under this Part shall be final.';and

(*k*) in the new section 120, by deleting '68,'.

Clause 52, as amended, was agreed to.

Clauses 53 to 60 were agreed to.

The Schedule was agreed to.

Council then resumed.

Third reading of bills

THE ATTORNEY GENERAL reported that the

URBAN COUNCIL (DONATIONS) BILL 1981 and the

IMMIGRATION (AMENDMENT) (NO. 4) BILL 1981

had passed through Committee without amendment and that the

LANDLORD AND TENANT (CONSOLIDATION) (AMENDMENT) (NO. 2) BILL 1981

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, 23 December 1981.

Adjourned accordingly at eighteen minutes to five o'clock.