

**OFFICIAL REPORT OF PROCEEDINGS****Wednesday, 30 June 1982****The Council met at half past two o'clock****PRESENT**

HIS EXCELLENCY THE GOVERNOR (*PRESIDENT*)  
SIR EDWARD YOUDE, K.C.M.G., M.B.E.

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 (*Acting*)  
MR. DAVID AKERS-JONES, C.M.G., J.P.

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

THE HONOURABLE ALAN JAMES SCOTT, C.B.E., J.P.  
SECRETARY FOR TRANSPORT

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

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

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

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 COLVYN HUGH HAYE, J.P.  
DIRECTOR OF EDUCATION

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

THE HONOURABLE MRS. ANSON CHAN, J.P.  
DIRECTOR OF SOCIAL WELFARE (*Acting*)

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

THE HONOURABLE JAMES JOHN O'GRADY  
LAW DRAFTSMAN (*Acting*)

DR. THE HONOURABLE LAM SIM-FOOK, O.B.E., J.P.  
DIRECTOR OF MEDICAL AND HEALTH SERVICES (*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, C.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 CHEN SHOU-LUM, 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, O.B.E., J.P.

THE HONOURABLE ALLEN LEE PENG-FEI, O.B.E., 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, O.B.E., 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, J.P.

#### **ABSENT**

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

THE HONOURABLE DAVID KENNEDY NEWBIGGING, O.B.E., J.P.

#### **IN ATTENDANCE**

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

**Oath**

MR. JAMES JOHN O'GRADY 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. O'GRADY to this Council.

**Papers**

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

<i>Subject</i>	<i>L.N. No.</i>
Subsidiary Legislation:	
Road Traffic Ordinance. Road Traffic (Registration and Licensing of Vehicles) (Amendment) (No. 2) Regulations 1982.....	221
Peak Tramway Ordinance. Peak Tramway (Tolls) Order 1982 .....	222
Merchant Shipping (Safety) Ordinance 1981. Merchant Shipping (Safety) Ordinance 1981 (Amendment of Schedule) Order 1982.....	223
Supreme Court Ordinance. Rules of the Supreme Court (Amendment) Rules 1982.....	224
Supreme Court Ordinance. Supreme Court Fees (Amendment) Rules 1982.....	225
Public Health and Urban Services Ordinance. Civic Centres (Amendment) By-laws 1982 .....	226
Public Health and Urban Services Ordinance. Stadia (Amendment) By-laws 1982.....	227
Public Health and Urban Services Ordinance. Food Business (Amendment) By-laws 1982.....	228
Public Health and Urban Services Ordinance. Frozen Confections (Amendment) By-laws 1982.....	229
Public Health and Urban Services Ordinance. Milk (Amendment) By-laws 1982 .....	230
Interpretation and General Clauses Ordinance. Amendment of the Definitions of 'British Territory' and 'Commonwealth'	231

<i>Subject</i>	<i>L.N.No.</i>
Water Pollution Control Ordinance. Tolo Harbour and Channel Water Control Zone Statement of Water Quality Objectives .....	232
Buildings Ordinance. Building (Administration) (Amendment) Regulations 1982.....	233
Buildings Ordinance. Building (Construction) (Amendment) Regulations 1982 .....	234
Buildings Ordinance. Building (Ventilating Systems) (Amendment) Regulations 1982.....	235
Public Health and Urban Services Ordinance. Ventilation of Scheduled Premises (New Territories) (Amendment) Regulations 1982 .....	236
Education Ordinance. Education (Amendment) Regulations 1982 .....	237
Public Health and Urban Services Ordinance. Food Business (New Territories) (Amendment) (No. 3) Regulations 1982	238
Education Ordinance. Grant Schools Provident Fund (Amendment) Rules 1982 .....	239
Education Ordinance. Subsidized Schools Provident Fund (Amendment) Rules 1982.....	240
Summary Offences Ordinance. Summary Offences Ordinance (Exemption from Section 13) (No. 2) Order 1982.....	241
Evidence Ordinance. Evidence (Authorized Persons) (No. 8) Order 1982 .....	242
Hong Kong Airport (Restricted Areas) Regulations. Hong Kong Airport (Restricted Areas and Tenant Restricted Areas) Order 1982 .....	243
Merchant Shipping (Liability of Shipowners and Others) Act 1958. Merchant Shipping (Limitation of Shipowners' Liability) (Hong Kong Dollars Equivalents) Order 1982 .....	244
Carriage of Goods by Sea Act 1971. Carriage of Goods by Sea (Hong Kong Dollar Equivalents) Order 1982 ....	245
Public Order Ordinance. Frontier Closed Area (Amendment) Order 1982 .....	246

<i>Subject</i>	<i>L.N. No.</i>
Public Order Ordinance.	
Public Order Curfew (Consolidation) (Amendment) Order 1982 .....	247
Interpretation and General Clauses Ordinance.	
Labour Department (Change of Titles of Public Officers) Notice 1982 .....	248
Fugitive Offenders Act 1967.	
Fugitive Offenders (Designated Commonwealth Countries) (Amendment) Order 1982.....	249

### Oral answers to questions

#### Counterfeiting of pharmaceutical products

1. MISS DUNN asked:—*What is the total number of prosecutions for the counterfeiting of pharmaceutical products in the first five months this year; the levels of fines imposed and the total value of these fines compared with market value of the goods seized?*

THE ATTORNEY GENERAL:—Sir, the total number of prosecutions for the counterfeiting of pharmaceutical products was 32 in the first five months of this year. There were 16 prosecutions for counterfeiting Chinese patent medicines and 16 for counterfeiting other pharmaceutical products.

As far as the levels of fines imposed are concerned, there were:

20 cases ranging between \$200 to \$1,000

10 cases where the fines were between \$1,200 to \$5,000

1 case which involved counterfeit Chinese medicine where a four-month suspended prison sentence was imposed; and

1 case (involving counterfeit pharmaceutical products) where a three-month prison sentence was imposed.

The total amount of the fines imposed:

for counterfeit Chinese patent medicine	\$18,600
for the remainder	\$18,350
Total	\$36,950

This compares with the market value of goods seized, which were:

for counterfeit Chinese patent medicines	\$454,030
for other counterfeit pharmaceutical products	\$ 84,810
Total	\$538,840

In addition, there have been ten prosecutions from January to May 1982, under the Pharmacy and Poisons Regulations, Cap. 138 for the sale of unregistered products.

The fines in these cases ranged between \$200 and \$1,500. The maximum penalty for a first offence is \$2,500.

The total amount of these fines was \$6,550. And the value of the goods seized was approximately \$20,000.

MISS DUNN:—*Sir, given that the Trade Descriptions Ordinance provides for a fine of \$½ million and five years imprisonment on conviction on indictment and a fine of \$100,000 and two years imprisonment on summary conviction reflecting the serious view taken of such offences, does the Government agree that the fines imposed by the Courts are grossly inadequate to deter counterfeiters?*

THE ATTORNEY GENERAL:—*Sir, I think it is very difficult to comment on individual cases without knowing the exact details of them and I wouldn't wish to be thought to be criticizing the fines of any individual case. Nevertheless, I suppose cynics might say that some of the people were lucky in their judge.*

### **Use of Chinese as an official language**

2. MR. WONG LAM asked in Cantonese:—

政府可否說明，在政府各部門推展中文作為官方語言之進度如何及所遇之困難為何？

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

*Will the Government make a statement on the progress towards extending the use in Government departments of Chinese as an official language and say what obstacles, if any, have been encountered?*

SECRETARY FOR HOME AFFAIRS:—*Sir, since the declaration of both the English and the Chinese languages as official languages in 1974, much progress has been made in extending the use of Chinese in official business. All important Government documents are produced in both languages. Simultaneous interpretation has been extended from Legislative Council and Urban Council meetings to District Boards and major advisory boards and committees and this service will continue to be expanded.*

As official languages, English and Chinese possess equal status and departments are required to ensure equality of use for the purposes of communication between the Government and the members of the public and it is standard practice for departments to reply in Chinese to letters or enquiries in Chinese.

The extension of the use of Chinese in official business is reflected in the increase in the number of Chinese Language Officers in Government departments from 100 in 1973 compared with the present establishment of 336. Moreover, the entry qualification for Chinese Language Officers has also been raised from the level of matriculation to that of a university degree.

The word obstacles smacks of obstruction. Constraints there are, and difficulties there are and will be, to the achievement of our objective but there is no doubt about the wholehearted commitment of the Government to this policy.

REVD. JOYCE M. BENNETT:—*Sir, has Mr. WONG been given a written answer in Chinese to this question which was asked in Chinese?*

MR. WONG LAM:—Yes (*laughter*).

REVD. JOYCE M. BENNETT:—*Sir, when will the Chinese Members of this Council on the official side answer in spoken Chinese to a question that was asked in Chinese?*

THE CHIEF SECRETARY:—*Sir, I shall answer that question if I may. We do have an elaborate arrangement for simultaneous translation and I am sure that my Chinese colleagues in this Council find that quite adequate.*

### **Radio reception in Aberdeen Tunnel, Lion Rock Tunnel and the Airport Tunnel**

3. MR. PETER C. WONG asked:—*Will appropriate devices be installed in the Aberdeen Tunnel, the Lion Rock Tunnel and the Airport Tunnel to make radio reception possible?*

SECRETARY FOR ECONOMIC SERVICES:—Yes, Sir, provided the cost is reasonable and funds are voted for it by this Council.

MR. PETER C. WONG:—*Sir, does this mean that the Government will be looking into the matter?*

SECRETARY FOR ECONOMIC SERVICES:—*Sir, the Government has been looking at this possibility for some months and we should be in a position to put a request to the Finance Committee very shortly.*

### **Licensing of motor vehicles**

4. MR. PETER C. WONG asked:—*Does Government take any follow-up action if the licence of a motor vehicle is not renewed; and, if not, why not?*

SECRETARY FOR TRANSPORT:—Sir, if the licence of a vehicle is not renewed for two years, the Transport Department informs the registered owner by post that the registration of the motor vehicle will be cancelled, if the licence is not renewed within fifteen days. This is a requirement under the Road Traffic Ordinance. In 1981-82, 13 016 vehicles were de-registered in this manner.

The Police prosecute drivers who are found using unlicensed vehicles, and the owners of the vehicles who permit such use. In 1981-82, there were 581 prosecutions for these offences.

MR. PETER C. WONG:—*Sir, I note from the Secretary's answer that in the year 1981-82 more than 13 000 vehicles were de-registered. May I know whether the Government knows what happens to the de-registered vehicles?*

SECRETARY FOR TRANSPORT:—No, Sir, not in detail, but they are either scrapped or destroyed, or abandoned or exported (*laughter*).

MISS DUNN:—*Sir, referring to the 581 prosecutions in 1981-82, how many licences were not renewed in 1981-82?*

SECRETARY FOR TRANSPORT:—Sorry, Sir, I cannot give exact figures but will provide them in writing, but it was running at an average of 600 per month when I last checked the figures.

(THE FOLLOWING WRITTEN REPLY WAS PROVIDED SUBSEQUENTLY.)

According to Transport Department records, 20 176 such licences were not renewed between April 1981 and March 1982. In recent months, the numbers of unlicensed vehicles have been increasing and as I said in Council, the Police are keeping this under close watch so they can act appropriately if these unlicensed vehicles are actually being driven on the roads.

MISS DUNN:—*Sir, does that imply that there is a substantial number of unlicensed vehicles on the roads given that prosecutions in one year were only 581?*

SECRETARY FOR TRANSPORT:—I am not sure whether it is an implication or an inference, Sir, but the fact is there are a large number of unlicensed vehicles, overall about 39 000 out of 338 000 odd vehicles in Hong Kong. The Police advise me that they do not think there is a particular problem over the use of unlicensed vehicles but, in the light of measures which were so extensively discussed recently in this Council, we are keeping a very close eye on the possibility of an increase.

MISS DUNN:—*Is there any reason why there should be a two-year grace?*



SECRETARY FOR TRANSPORT:—That's the present provision, Sir, under the Road Traffic Ordinance. We have been looking at it to see whether it might be reduced. I think it dates back to 1956.

(THE FOLLOWING WRITTEN REPLY WAS PROVIDED SUBSEQUENTLY.)

A contributory problem is that in disposing of a vehicle, people often fail to take action to de-register it. Under the existing regulations, if the owner does not de-register a vehicle, it is removed from the register by Transport Department after remaining unlicensed for two years. These 'automatic' de-registrations now amount to some 700 per month.

You also queried the length of the period of grace allowed before unlicensed vehicles are de-registered, and in principle I agree that this should be substantially reduced. This will be proposed together with other amendments to the Registration and Licensing of Vehicles Regulations. A point to remember in this connection is that if a person wishes to re-register a car which has been de-registered, he must pay the appropriate registration tax.

### **Casualty staff level at United Christian Hospital**

5. REVD. JOYCE M. BENNETT asked:—*In view of the recommendations by the coroner at the inquest into the death of MAK Chi-fai, will Government state whether it is accepting his recommendation regarding the casualty staff level at United Christian Hospital and other subvented hospitals in order that they may have the same doctor-patient ratio as that in Government hospitals? If so, when will this be implemented?*

DIRECTOR OF MEDICAL AND HEALTH SERVICES:—Sir, irrespective of the recommendations of the Coroner in connection with the recent case, it has always been our policy to regard all units in public hospitals whether Government or subvented which are performing similar levels of work under identical circumstances should have the same doctor-patient ratios. Doctor-patient ratios, however, I must emphasize are in fact only a general guide in the planning for staffing units in medical institutions. The actual number of doctors working in a casualty department must be determined by the actual situation in the field and this differs from hospital to hospital whether they are Government or subvented.

There are established channels in all hospitals for the implementation of doctor-patient ratios in the form of Medical Committees which are responsible for identifying the needs for staff and to make out a good case for such. My Department will always support justified requests from all subvented hospitals.

REVD. JOYCE M. BENNETT:—*Sir, would Mr. LAM consider that there are sufficient doctors in Emergency Departments of hospitals when one doctor, at night, on a*

*nine-hour shift, has to see 90 patients and, in the hot summer months, 104 or 105 patients?*

DIRECTOR OF MEDICAL AND HEALTH SERVICES:—Sir, obviously a need is there and if the case is justified, we will consider the request for more staff.

REVD. JOYCE M. BENNETT:—*Sir, since, at the coroner's inquest, the Crown Counsel stated that at the Tang Shiu Kin Hospital doctors saw four patients per hour in the Emergency Department and at the Queen Elizabeth Hospital doctors saw six patients per hour, will Mr. LAM agree that the United Christian Hospital, where they frequently see ten or more patients per hour, is seriously under-staffed?*

DIRECTOR OF MEDICAL AND HEALTH SERVICES:—Sir, in the three years from 1980 to 82 the United Christian Hospital requested for an additional two Senior Medical and Health Officers and five Medical Officers. These were supported and approved by the Government. In 1982-83 they have requested for an additional one Consultant and two Senior Medical and Health Officers. These have again been supported by the Department and is being processed by Government.

### **Workers losing employment as a result of employers winding up business**

6. MR. SO asked in Cantonese:—

政府可否說明：

- (甲) 在過去十二個月內，共有多少工人因僱主結束營業以致失業？
- (乙) 目前有那些規定能保障工人獲發還累積欠薪？
- (丙) 該等規定是否足夠？

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

*Will Government say:*

- (a) *how many workers have lost their employment during the past 12 months as a result of employers winding up their businesses;*
- (b) *what provisions are there to safeguard the accrued wages of such workers; and*
- (c) *whether it is satisfied that such provisions are adequate?*

COMMISSIONER FOR LABOUR:—Sir, (a) according to the records of the Labour Relations Service, there were 208 cases of insolvency of employers involving 5 099 workers who were referred to the Legal Aid Department during the past 12 months (June 1981-May 1982) to pursue their claims by bankruptcy or winding-up proceedings. (The amount of claims involved in these cases was approximately \$13.8 million). Not all cases though are referred to the Labour Relations Service and employers are not required to notify the Labour

Department of every closure of business, and there is, therefore, no precise information on the number of employees who lost their jobs as a result of employers winding-up their business operations.

(b) Under the Employment Ordinance wages become due on termination should be paid within seven days. The Ordinance lays down that if an employer wilfully and without any reasonable excuse fails to pay wages due, he shall be guilty of an offence and may be fined up to \$5,000 upon conviction.

If an employee finds his employer financially unable to pay him wages or other statutory entitlements, he may pursue his claims through winding-up or bankruptcy proceedings. Under the Companies Ordinance or the Bankruptcy Ordinance an employee is entitled to the following payments out of the assets of the employer in par with crown debts but in preference to all creditors other than debenture holders:

- (a) wages and salary up to a maximum of \$8,000;
- (b) one month's wages in lieu of notice up to \$2,000; and
- (c) a severance payment up to \$8,000.

(c) The existing legislation does not aim to guarantee full payment of claims to employees as satisfaction of these claims depends on the money and assets the employer may have which the liquidator may be able to recover and sell. Furthermore, the procedures involved are inevitably time-consuming. Consequently, it may be a considerable time before the employees affected could receive any payment. The nature of these proceedings is slow-moving because of the need to ensure that all creditors which include employees themselves get the most favourable return on the available assets of the insolvent employer. However, clearly it would be helpful to employees if ways of speeding up payment without detriment to their own long-term interests, and those of other creditors, could be found. I would, therefore, propose to examine the possibilities for achieving this together with the other departments involved in these matters.

### **Textile negotiations with the E.E.C.**

7. MR. TIEN asked:—*Will Government make a statement—*

- (a) *on the progress of the textile negotiations with the E.E.C. so far; and*
- (b) *whether the demands by the E.E.C. for cut-backs on Hong Kong's quotas are consistent with the terms of the M.F.A.?*

DIRECTOR OF TRADE, INDUSTRY AND CUSTOMS:—Sir, a first round of negotiations on the future of the bilateral textiles agreement between Hong Kong and the European Economic Community was adjourned on 15 June 1982 in Brussels.

At these negotiations, the E.E.C. presented statistical data purporting to support their request that Hong Kong continue restraints on all the products subject to restraint under the current five year agreement which expires in December 1982; and also to support their claim of 'unique problems' in eight categories of products where they sought a 12% cutback on the existing quota levels for the five apparel items and the suspension of all flexibility provisions for three yarn and fabric categories. They also proposed that annual growth rates for these categories be reduced to 0.1%.

The Hong Kong Delegation accepted that, on the evidence shown, the continuation of restraints on 34 of the total number of 45 categories concerned could be considered justified. E.E.C. demands for cutbacks in eight categories were, however, both unjustified and inconsistent with the terms of the M.F.A. In all but one instance, E.E.C. imports from Hong Kong of these eight categories over the life of the current Agreement (i.e. from January 1978) have declined, on average by about 14%. Hong Kong was not in all cases the principal supplier and Hong Kong prices were in some instances higher than those of significant suppliers which were, and are, unrestrained.

Discussion of growth rates and flexibility provisions was postponed until the question of base levels was resolved. There was, however, some progress made on technical aspects of the proposed agreement.

As regards the consistency of E.E.C. demand for cutbacks with the terms of the M.F.A., I have already said that in our view they are inconsistent. The E.E.C. argued, however, that an exchange of letters which took place between the Hong Kong and E.E.C. delegations in Geneva just prior to the extension of the M.F.A. in December 1981 qualified the Protocol of Extension and provided the necessary cover.

I cannot rehearse here, Sir, the lengthy and detailed analyses of these exchanges presented by both sides. Suffice it to say the Hong Kong side maintained, and will continue to maintain, that a first priority must in all reason be to establish to what extent, if any, specific E.E.C. problems are being actually or potentially caused by imports from Hong Kong. Where that can be established, solutions can be found, but only solutions consistent with the M.F.A. These could legitimately lead to reductions in growth and flexibility provisions, such exigencies having been specifically envisaged in the Protocol of Extension of the M.F.A.; but not to cutbacks in quota limits.

The Hong Kong stand in this respect is not a doctrinaire posture but a legitimate defence of our essential interests and of the proposition that in any negotiation, even between very unequal partners, due regard must be had to both the rights *and* obligations of each party.

The negotiations are scheduled to resume in Brussels on 13 September 1982.

MR. TIEN:—*Sir, are other supplying countries reacting in a similar manner to E.E.C. demands?*

DIRECTOR OF TRADE, INDUSTRY AND CUSTOMS:—Sir, this is an important point. We do tend perhaps to give the impression that this is strictly a bilateral matter between Hong Kong and the European Economic Community, but it does bear remembering that the Community has some 27 bilateral agreements to re-negotiate this year. The answer to Mr. TIEN's question is that, of the ten negotiations that have so far taken place, only three of them have resulted in agreement; two with minor suppliers, Peru and Sri Lanka, and the third with a rather highly qualified agreement with Pakistan. The other suppliers, besides Hong Kong, who have either recessed the consultations *sine die* or to a date some time, as in the case with Hong Kong (in September), are India, Singapore, Malaysia, Mexico, Egypt and the Philippines. This week in Brussels, three consultations are in progress—with Korea, Thailand and Indonesia.

The attitudes which have been adopted by those who have recessed the consultations have indeed been similar to those of Hong Kong, although not necessarily because of objections over the same elements in E.E.C. demands. These demands have been rather tailored to the suppliers in question, the question of cut-backs being reserved for the so-called 'dominant' suppliers of whom there are only three in M.F.A. terms—Hong Kong, Korea, Macau.

MR. TIEN:—*Does the Director agree that one of the major considerations in the situation is the effect E.E.C. demands might have on the attitude of other trading partners?*

DIRECTOR OF TRADE, INDUSTRY AND CUSTOMS:—Yes, Sir, very much so. This is in a way complementary to the answer to Mr. TIEN's previous supplementary question. That is to say, these negotiations cannot be seen in isolation either as regards other suppliers to the E.E.C., or from the Hong Kong point of view as regards other major trading partners. And one of the things that we have tried to impress upon the E.E.C. in the course of the consultations is that not only would their demands be harmful to Hong Kong's interests in the short term, they will be harmful in the long term in that we are talking about agreements which will run for four or five years, and that they would be potentially harmful laterally in that they would set an example which would be very tempting for other major partners of Hong Kong to follow.

### **Manning scales of Special Schools**

8. DR. FANG asked:—*With the increase of some 2 100 teachers in ordinary schools, starting in September this year, will Government state what plans are in hand to improve the manning scale for Special Schools at the same time, to avoid a*

*more than likely drain of teachers from such Special Schools which are already seriously understaffed?*

DIRECTOR OF EDUCATION:—Sir, proposals have been made to improve the manning scales of Special Schools in September this year to match the improvements already approved for ordinary schools. These include a better teacher to class ratio, additional teachers for language classes, more senior teacher posts, promotion posts for heads of schools with large numbers of classes, and allowances for heads of other schools with fewer classes. It is thought that these proposals, which incidentally were blessed recently by the Rehabilitation Development Co-ordinating Committee chaired by Dr. FANG, if approved by the Finance Committee of this Council, will induce many teachers to join or remain in Special Schools.

REVD. JOYCE M. BENNETT:—*Sir, why have these matters not yet come before the Finance Committee so that, if approved, the schools can be informed? It is now June 30 and it is possible that these improvements may already be announced too late.*

DIRECTOR OF EDUCATION:—*Sir, these matters were put to the R.D.C.C. on 7 June and I gather one of the purposes of Dr. FANG's question is to give them some airing now so that schools will be reassured that better manning scales and better conditions are on the way so that their staff will not in fact be leaving these schools in droves for other schools.*

REVD. JOYCE M. BENNETT:—*Is the Director of Education not aware that well-run schools engage their staff from early on in the year and by June hope that they have already engaged all their staff?*

DIRECTOR OF EDUCATION:—*Sir, I am indeed aware of this, but I am also aware that there are other, perhaps not so well-run, schools that need the sort of reassurance posed by Dr. FANG's question and by my reply (laughter).*

### **List of approved geotechnical engineers**

9. MR. S. L. CHEN asked:—*In view of the growing demand for geotechnical studies in building and engineering development work, does Government publish a list of approved geotechnical engineers who can provide this specialist service? If not, is there a way in which such specialists may be identified?*

SECRETARY FOR LANDS AND WORKS:—Sir, Government does not publish a list of approved geotechnical engineers.

The current geotechnical standards in building and engineering development work in Hong Kong have now been in practice for well over two years.

Notwithstanding the large volume of work during this period, from the experience of the Geotechnical Control Branch in the Buildings Ordinance Office with geotechnical submissions from Authorized Persons it seems that industry has had no difficulty in finding suitable geotechnical engineers for their geotechnical studies.

MR. S. L. CHEN:—*Under the Buildings Ordinance there is an official register of authorized persons for building work, will Government consider establishing a similar register for geotechnical engineering work?*

SECRETARY FOR LANDS AND WORKS:—Sir, the question of a statutory list of engineers suitable for carrying out geotechnical work is being actively considered and debated in my Branch and relevant departments. However, we see many practical difficulties in implementing a statutory list. These problems will take some time to resolve. The most important problem is that geotechnical engineering does not have its own professional chartered engineer qualifications as do civil and structural engineering, hence it will be necessary to obtain agreement within the profession of the academic qualifications, training and experience that will be considered basic requirements for the qualifications of the engineer. It will also be necessary to consider an examination system and standards for checking the geotechnical knowledge and ability of the candidates.

In practice, geotechnical problems vary considerably in nature and size. Many civil and structural engineers have the academic geotechnical training and practical experience to deal satisfactorily with most of the ordinary geotechnical problems. There will, therefore, be some difficulty in establishing a consensus within the profession to decide which work will require a specialist geotechnical engineer and defining in detail what his standards of qualifications, experience and competence should be.

Despite all these difficulties I have mentioned, should after thorough consideration of this question, we find the public interest is best served by having a list and that this public interest overrides the practical difficulties that I have mentioned, I would like to assure this Council that the matter will be pursued to its logical conclusion.

### **Effects of laser-beam equipment on the human body**

10. MR. LO asked:—*With the increasing use of laser-beam equipment in beauty clinics and the entertainment field, will Government make a statement on:—*

- (a) whether its use has any harmful effects on the human body both immediate and in the long term; and,*
- (b) if so, how would its use be controlled?*

DIRECTOR OF MEDICAL AND HEALTH SERVICES:—Sir, the use of lasers for beauty therapy and in the entertainment field is generally safe as these are low energy, non-ionizing electro-magnetic emissions of radiation. There could, however, be isolated cases of danger to persons especially in the long term with prolonged exposure. These involve mainly the eyes.

As the subject is comparatively new in Hong Kong, it needs to be explored in depth. To this end, I have proposed that the matter be referred to the Advisory Committee on Science and Industrial Research for their investigation and report to Government. The Science Adviser who is Chairman of this Committee agrees that this would be the most sensible first step.

MR. LO:—*Sir, what does 'low energy' mean when the Government says the laser-beam is safe and what does 'prolonged exposure' mean when the Government says it might be dangerous?*

DIRECTOR OF MEDICAL AND HEALTH SERVICES:—Sir, low energy emissions are non-ionizing. Therefore, unless it is used over a prolonged period there is absolutely no danger.

MR. LO:—*Sir, in view of the Government's admitted lack of information on laser effects and its dangers, may I ask if the Science Adviser has been given a time limit in which to report and whether his report can be shown to Members?*

DIRECTOR OF MEDICAL AND HEALTH SERVICES:—Sir, the Science Adviser has assured me that this subject will be brought up at the meeting of his Committee in September this year.

### **The J.P. Court system**

11. MR. CHAN KAM-CHUEN asked:—*Will Government consider reviving the J.P. Court system to deal with such minor offences as littering, illegal hawking, and minor moving traffic offences?*

THE ATTORNEY GENERAL:—The system I am told was tried in Hong Kong some ten years ago. At that time difficulties were experienced finding members of the community who had sufficient time to devote to a full-day court on a regular basis as a J.P. And, of course, if for some reason a J.P. does not turn up, that means that those who are to appear in front of him, witnesses as well as accused, have a wasted day and have to return, and it is thought that today similar difficulties remain in finding suitable people. Indeed, in England at the moment it is becoming very difficult to find people to become lay Justices though the system there has been in operation for many centuries.



There is a further problem with the increasing sophistication of the law in Hong Kong. People have become more alive to the legal defenses open to them even in cases of the type which Mr. CHAN refers to, and it would be necessary perhaps to consider having legally qualified clerks to assist the lay Justices, in particular if their duties were to extend to a slightly wider field.

Instead, therefore, of having lay Justices on a part-time basis, a different approach is being tried. Recently, Lay Magistrates courts have been set up to deal with offences of the type my honourable Friend mentions and two full-time Cantonese-speaking Magistrates have already been appointed and are sitting. It is also being considered whether or not it would be a suitable area into which to introduce the concept of the fixed penalty type ticket or conviction.

MR. CHAN KAM-CHUEN:—*Sir, with reference to the last paragraph of the Attorney General's reply, as it is important to involve Hong Kong citizens in all aspects of popular affairs in a responsible manner such as Advisory Boards, Lay Magistrates, Lay Assessors, would the lack of participation of Justices of Peace give the impression that these appointments have changed into an award?*

THE ATTORNEY GENERAL:—I hope not, Sir. The courts are assisted, as my honourable Friend mentioned, by Lay Assessors who sit with Magistrates during their first either six or twelve months' sitting in Hong Kong. These are local people who give up their time to do that.

Secondly, if the experimental full-time Lay Magistrates scheme turns out to be a success, then it is hoped that it may be extended to a wider area. And there are a number of non-qualified, in the legal sense not qualified, people who perhaps might make very suitable lay magistrates who are willing to come forward.

### **Parking near public lavatories**

12. MR. CHAN KAM-CHUEN:—*Will Government consider installing short-term parking meters at on-street car parking spaces near public lavatories for the convenience of motorists in general and professional drivers in particular?*

SECRETARY FOR TRANSPORT:—Sir, the reply to this question falls in two parts—

first, the theory and practice of provision of on-street parking spaces;

second, the convenience of motorists, in particular professional drivers, in relation to public lavatories.

On-street parking spaces are designated where they will not hinder the flow of traffic. Where the demand for parking is high, meters are installed to facilitate a higher turn-over in the use of the spaces. Depending on traffic patterns and locations, meters of half-hour, one-hour or two-hour duration are installed.

Half-an-hour is considered the shortest practicable duration, on traffic grounds. In designating such spaces, the need of motorists to visit facilities at any location, including public conveniences, is taken into account.

In Hong Kong, compared with most other territories, vehicle trips are of short duration. There is therefore not the same need for provision on-street as is the case where long motorway trips, for example, are a regular feature of the traffic. Professional drivers in Hong Kong can make use of facilities located near transport interchanges, bus termini and taxi stands.

May I assure Mr. CHAN that the Transport Department will continue to keep in mind his point, in the further planning of metered parking spaces.

MR. CHAN KAM-CHUEN:—*Sir, I do agree with the Secretary for Transport's reply regarding the on-street parking spaces that they should not hinder the flow of traffic, and in planning for new public conveniences, would Government consider having and providing parking bay type of spaces with very short meters, possibly say quarter of an hour meters, where possible, to counter the allegation of motorists that they are being penalized even for their own physical needs (laughter)?*

SECRETARY FOR TRANSPORT:—*Sir, I have to say that Government is not aware of any large number of motorists making this allegation, but we will bear in mind the point made.*

MR. CHAN KAM-CHUEN:—*Does Government supply information if asked as to where the facilities in paragraph 3 in the Secretary's reply are available?*

SECRETARY FOR TRANSPORT:—*Yes, Sir, there are 205 public lavatories. I can provide the honourable Member with an exact statement of where they are. 51 of these have metered parking spaces close by, 26 have unmetered parking spaces nearby and nine of these public lavatories are in the vicinity of car parks.*

MR. CHARLES YEUNG:—*Are there any lavatories on the high roads in the New Territories, if not, how do the motorists relieve their urgent needs, Sir?*

SECRETARY FOR TRANSPORT:—*Sir, I would have thought that the honourable Member would be much more aware than I of the provisions in the New Territories. I repeat Government is not aware of any great public clamour, least of all in the New Territories.*

### **Psychiatric community nursing service**

13. REVD. JOYCE M. BENNETT asked:—*In view of public concern regarding patients discharged from psychiatric hospitals, will Government extend the*

*psychiatric community nursing service to subvented hospitals which wish to have their community nurses follow-up their discharged psychiatric patients?*

SECRETARY FOR SOCIAL SERVICES:—Sir, of the 3 788 beds currently available for the mentally ill, 30 are at a subvented hospital. The community nursing service based on that hospital is already handling discharged psychiatric cases referred to it.

REVD. JOYCE M. BENNETT:—*Sir, is that hospital receiving subvention to cover the cost to its community nursing service for the handling of these discharged psychiatric patients and are those community nurses treating those patients trained to deal with psychiatric patients?*

SECRETARY FOR SOCIAL SERVICES:—Sir, the hospital in question *is* fully subvented and I have no reason to suppose that the nurses who are specifically handling the discharged psychiatric patients are not so subvented. As regards the proficiency of the nurses in handling psychiatric cases, as these cases have been referred by medical doctors, I can only assume that they are considered to be competent.

REVD. JOYCE M. BENNETT:—*Is the Secretary for Social Services not aware that the request for subvention to the psychiatric community nurses at United Christian Hospital was rejected?*

SECRETARY FOR SOCIAL SERVICES:—No, Sir. The position regarding a specialist psychiatric community nursing service is that a pilot scheme has been set up at the Kwai Chung Hospital and until this scheme has been fully evaluated, it will be unrealistic for the Government to divert a group of staff who are in particularly short supply, namely psychiatric nurses, into this area.

REVD. JOYCE M. BENNETT:—*Sir, is it possible that we might be able to attract back into nursing service psychiatric nurses who would like to do day-time nursing in the community nursing service and therefore we shall not be taking them out of hospitals?*

SECRETARY FOR SOCIAL SERVICES:—Sir, psychiatric nurses are fully registrable nurses under the Nursing Board and I see no reason why any suitable psychiatric nurse who is suitable for employment under the community nursing service should not be so employed.

### Arbitrary dismissal of workers

14. MR. SO asked in Cantonese:—

政府可否說明：

- (甲) 在過去十二個月內，共接獲多少宗工人遭無理解僱之投訴，與去年同期比較怎樣？
- (乙) 目前有何法例保障工人免受僱主任意解僱？
- (丙) 於接獲投訴後，政府曾採取甚麼行動？

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

*Will Government say:*

- (a) how many complaints have there been from workers alleging dismissal without reasonable grounds during the past 12 months compared with the same period last year;*
- (b) what legislation exists to protect workers against arbitrary dismissal; and*
- (c) what action has been taken in cases brought to Government's attention?*

COMMISSIONER FOR LABOUR:—Sir, (a) during the last twelve months from 1 June 1981 to 31 May 1982, the Labour Relations Service recorded a total of 8 813 claims for dismissals without notice or wages in lieu of notice. There is, however, no statistical breakdown by the cause of dismissals.

(b) Under the Employment Ordinance, a contract of employment may be terminated by either party giving the other party a period of notice or wages in lieu of such notice. However, the law also allows dismissals by reason of redundancy, in which case severance pay would become payable, and summarily without notice on grounds as stipulated under section 9 of the Employment Ordinance. These grounds which must be justified by the employer include employee's fraud, dishonesty or wilful disobedience of a lawful and reasonable order.

(c) In every case of complaint alleging wrongful dismissal, i.e. dismissal in breach of the contract or the law, an investigation would be made by the Labour Relations Service and conciliation service would be rendered to the parties concerned and, where necessary, the claim would be referred to the Labour Tribunal for adjudication. In most circumstances, this proved to be successful to safeguard the legal entitlements of the workers including wages in lieu of notice. In other cases alleging dismissal without reasonable grounds, an investigation would also be made by the Labour Relations Service and advice would be given to the employer concerned. The employees, if not reinstated, would receive their legal entitlements under the Employment Ordinance and, in some cases, an ex-gratia payment over and above the law would be made as compensation.

MISS DUNN:—Sir, what percentage of the total workforce does the number of complaints of 8 813 constitute?

COMMISSIONER FOR LABOUR:—Off the top of my head, Sir, I think the overall workforce is of the order of two million, so the percentage represented by this figure would be fairly small.

MISS DUNN:—*Sir, were all complaints justified? If not, how many were found to be unjustified?*

COMMISSIONER FOR LABOUR:—I take Miss DUNN's point but I don't think our records would show it in quite that way, and in many cases there may be fault on both sides. It would be very difficult to form a classification of this kind.

MISS DUNN:—*Sir, is there any protection for employers in cases of frivolous complaints?*

COMMISSIONER FOR LABOUR:—Not in the law, but we might well have something to say to employees in conciliation proceedings.

### **Study room facilities for school children**

15. MRS. CHOW asked:—*Does Government have any overall plan to provide study room facilities for school children and are extra facilities being provided during the examination months?*

DIRECTOR OF EDUCATION:—Sir, the Government recognizes the need for study rooms for children whose domestic circumstances prevent them from studying at home; and rooms are provided on a permanent basis—

- in public libraries run by the Urban Services Department,
- by voluntary agencies, and
- as an integral part of children's and youth centres or community centres operated by the Social Welfare Department or voluntary agencies.

During examination periods additional study rooms are provided in schools.

This overall and special provision is co-ordinated by the Education Department, which reviews the demand for study rooms annually. Most of the costs are borne by the Government.

The provision of facilities is widely publicized through the agencies concerned, general press releases, school circulars and recently by eye-catching posters distributed to schools, City District Offices, the Housing, Urban Services and Social Welfare Departments, and voluntary agencies for display.

The Education Department is always happy to consider requests for additional study rooms, provided there is a clearly demonstrated demand.

MRS. CHOW:—*Can the Director of Education confirm that during examination periods the extra facilities are still inadequate and the duration of the use of them has to be rationed in many cases, while other unsuitable venues such as the Kai Tak Airport Waiting Lounge are being used as a substitute. If so, is the Government planning to remedy the shortage?*

DIRECTOR OF EDUCATION:—I would be very grateful for any details that Mrs. CHOW can supply me because a current survey has revealed that, in actual fact, in the additional rooms supplied for study during the examination periods, the usage runs between 30% and 60%. The use of facilities at Kai Tak seem to be related to the particularly lush surroundings of the airport lounge and, in particular, the air conditioning there (*laughter*).

### **Vehicles involved in offences specified in the First Schedule to the Road Traffic Ordinance**

16. MR. F. K. HU asked:—*With specific reference to pak pai operations, will Government say:*

- (a) how many motor vehicle owners charged with an offence specified in the First Schedule of the Road Traffic Ordinance have been convicted so far this year;*
- (b) how many of such offending owners sold their vehicles in the period between preferment of charge and conviction; and*
- (c) how can members of the public, when buying a used vehicle, ensure that the vehicle has not been used in connexion with such an offence?*

THE ATTORNEY GENERAL:—Sir, (a) 56 motor *drivers*—not owners—drivers were convicted of an offence specified in the First Schedule during the first quarter of 1982. Of these, 34 were drivers of private cars being driven for hire, and 22 were drivers of goods vehicles. Of the private cars, 31 were in the New Territories, two in Kowloon and one on Hong Kong Island. The figures for the second quarter of 1982 are not yet available from the computer. It is not possible to say if each, or how many, of the 56 drivers was the owner of the vehicle without checking all the individual case papers for the registration number and the defendant's name and then comparing these with the name of the registered owner. It has not been possible to obtain that information since the question has been put down. If Mr. HU wishes us to go through the exercise and it is necessary, then of course we will do that.

(b) It is not possible either, without checking the papers in the same way, to say how many offending *owners* sold their vehicles in the period between being summonsed and convicted. But perhaps an indication may be given by the following information: the Transport Tribunal in all such cases have the power of suspending the licence of a vehicle which is a penalty on the owner rather than the driver and in all such cases steps are taken to bring the matter before

the Transport Tribunal with that in view. On the first conviction the licence may be suspended for three months, on the second conviction, for six months.

17 cases were heard in the three months to 1 April and in 13 of these cases the licence was suspended, in four not. There are at present 48 cases pending.

(c) So far as the public are concerned they may protect themselves against buying such a vehicle by checking with the Licensing Officer of the Transport Department before completing the purchase and may obtain a certificate from the Licensing Officer stating whether or not any fixed penalty tickets are outstanding. Similarly, under section 26M of the Road Traffic Ordinance the Commissioner for Transport keeps a record of the registration mark of every motor vehicle in connection with which any person is alleged to have committed an offence of the type my honourable Friend asks about. A potential buyer may apply to the Commissioner for a certificate which is valid for 72 hours, which will state whether or not any person is alleged to have committed such an offence in connection with that vehicle, and the purchaser is protected during that period whilst he has the certificate in force.

MR. F. K. HU:—*Sir, will the Attorney General explain the logic of suspension of car licence which affects the car owner in relation with the offence committed by the driver?*

THE ATTORNEY GENERAL:—The logic is that frequently the driver may be the employee of the owner, and the object is to punish the owner. Secondly, in those cases where the owner is not personally involved at all, he may appear in front of the Tribunal, satisfy them of that fact and the Tribunal is then entitled not to suspend the licence if the merits and justice of the case so require. I imagine, Sir, that in the four out of 17 cases where the licence was not suspended, factors such as that will have caused the failure to suspend.

MR. F. K. HU:—*Sir, will Government consider taking measures to prevent vehicle owners charged with an offence specified in the First Schedule of the Road Traffic Ordinance from selling their vehicles during the Period between preferment of charge on driver and conviction, which I understand could be as long as five months?*

THE ATTORNEY GENERAL:—Sir, I think in practice to prevent them selling it is almost impossible, because the Government cannot control the meeting of two people where that sale may take place. Certainly we will look again at the problem to which Mr. HU has referred.

### **Drowning in and around open pits at construction sites**

17. MR. CHEUNG YAN-LUNG asked:—*In the last ten years, how many children have died as a result of drowning in and around open pits at construction sites?*

SECRETARY FOR LANDS AND WORKS:—Sir, I regret that statistics are not readily available to enable me to reply to this question.

The Labour Department maintains data only on accidents to *workmen* on construction sites; the Royal Hong Kong Police Force compiles statistics on drowning generally, but not classified or categorized in such a way as to enable easy extraction of this particular type of accident; the Fire Services Department is able to produce figures relating to children drowned in various types of situation, but only if firemen had actually been called to the scene.

It will therefore be seen that a great deal of research involving several Departments would be necessary in order to provide the information which Mr. CHEUNG seeks.

The danger associated with pools or flooded pits, whether on construction sites or elsewhere, has been highlighted by the tragic death of two young boys at a construction site in Tsuen Wan at the beginning of this month. I fully share Mr. CHEUNG'S concern and would like to assure him that my Branch is considering possible ways of reducing the risk of a recurrence of this type of accident.

MR. CHEUNG YAN-LUNG:—*Can any safety measures be implemented to prevent these tragic sacrifices of lives?*

SECRETARY FOR LANDS AND WORKS:—Adequate law is available in the Construction Site Safety Regulations. It is the responsibility of contractors to comply with the requirements of these regulations. For certain civil engineering contracts we have required in the contract the contractor to appoint a site safety officer. The duties of a site safety officers would include, among other things, the inspection of all open pits before the close of a day's work and to arrange for safety fencing as necessary. So consideration will be given to whether a more widespread and more rapid implementation of this policy is practicable bearing in mind there is a general shortage of suitably qualified safety officers. Apart from that, consideration will also be given as to how the effectiveness of our site inspections can be further improved so that there is a greater compliance by contractors with the Safety Regulations.

MR. LO:—*Doesn't the coronor keep statistics on accidental deaths?*

SECRETARY FOR LANDS AND WORKS:—I have not explored that route. But if this statistic is required, we can certainly explore it and provide it.



MR. LO:—*It is not a question of exploring. Sir, there was a question on the number of accidental deaths and I think the Coronor's Office is the proper place to get the statistics.*

SECRETARY FOR LANDS AND WORKS:—The point is taken, Sir.

### **Land resumption programme for road construction and improvement**

18. MR. CHARLES YEUNG asked:—*Consequent upon the enactment of the Roads (Works, Use and Compensation) Ordinance 1982, will Government make a statement on whether the land resumption programme for road construction and improvement, particularly for the New Territories circular road, will be impeded or delayed?*

SECRETARY FOR LANDS AND WORKS:—Sir, prior to the enactment of the Roads (Works, Use and Compensation) Ordinance the process of resuming land for road construction could be carried on simultaneously with the advancement of the construction project towards the stage of calling for tenders. The extent of the land required having been ascertained, it remained only for the Governor in Council to be satisfied that the land was needed for a public purpose before the necessary resumption orders could be made. It was normal however for the scheme to have been authorized under the Streets (Alterations) Ordinance before resumption was formally authorized.

Under the new Ordinance in addition to the longer period required for the gazetting of the scheme the Governor in Council may refer the plan and the scheme and objections to the Town Planning Board, which is required to exhibit the plan and the scheme as it were a draft Town Plan. Following which the Town Planning Board will consider the plan and scheme together with the original objections and any received as a result of the Board's action before advising the Governor in Council. This would inevitably cause some delay.

Having said that, Sir, I must stress that for road construction projects planned for commencement at some distance in the future the actual date of resumption should not be delayed at all, since it should be possible for the critical path of activities leading up to the commencement of works to be adjusted to allow sufficient time for the new procedures to be met without delaying either the project or the acquisition of the necessary land.

It is only in the case of current road construction projects for which, at the time of enactment of the new law, the resumption process was already well advanced but not completed, that there will inevitably be some delay due to the need to follow the new procedures.

In respect of the N.T. circular road specifically mentioned by Mr. YEUNG all land resumption procedures have been completed or are in hand for the length of road from Tai Po to Fanling and for the Fanling By-pass. Action will have to be taken under the new Ordinance with respect to the length of road from Fanling to Au Tau and preparations for gazetting are well in hand. Providing there are no major objections to the project and providing the Governor in Council does not see the need to refer the scheme to the Town Planning Board I do not anticipate any significant delay in the land resumption programme due to the change in ordinances.

MR. CHARLES YEUNG:—*Sir, will the Secretary for Lands and Works inform this Council how many current road construction projects referred to by him will be delayed and how much and how long will they be delayed barring or assuming that there is no objection from the public?*

SECRETARY FOR LANDS AND WORKS:—I do not have the exact figures. I would say only a handful of projects are caught in this transitional period. Barring any major objection and barring the possibility of referral to the Town Planning Board, I would anticipate the maximum delay to be of two to three months.

MR. CHARLES YEUNG:—*If the Roads (Works, Use and Compensation) Ordinance 1982 is to streamline the procedures of resumption so that road construction can be expedited, it is an alternative to the then existing law. Will the Government consider using the Crown Land Resumption Ordinance to resume land for road constructions in the N.T. particularly when the land concerned is open land?*

SECRETARY FOR LANDS AND WORKS:—Sir, although it is legally possible to use the Crown Lands Resumption Ordinance to resume land for road construction, it is normal that we only authorize the resumption when the scheme has been authorized by the Governor in Council under either the old Streets (Alteration) Ordinance or the new Ordinance. The reason for that is that in the statutory process the Governor in Council may approve the scheme with amendments, and also it is a principle that under the Crown Lands Resumption Ordinance there is no provision for objection, whereas there is under the Road Works Ordinance.

MR. CHARLES YEUNG:—*About the fact that there is no appeal procedure in the Crown Lands Resumption Ordinance, it is in a sense blatantly unfair. Will the Government consider cancelling that completely?*

SECRETARY FOR LANDS AND WORKS:—Sir, I did not say that the Crown Lands Resumption Ordinance was completely unfair. I said that it did not have a provision for objections. It has provisions for compensation.

**Attendances at evening out-patient clinics**

19. DR. HENRY HU asked:—*Will Government inform this Council:*

- (a) *of the numbers of out-patient attendances at evening clinics during the last 12 months and compared with the same period last year; and*
- (b) *whether it is satisfied that the need for such services is being met adequately on a geographical basis?*

DIRECTOR OF MEDICAL AND HEALTH SERVICES:—Sir, in 1981 there were 717 482 attendances at 15 evening out-patient clinics providing 43 doctor sessions from the hours of 6 p.m. to 10 p.m. This represents an increase of 42 295 (or 6.3%) over the previous year 1980.

As to whether these satisfy the need on a geographical basis; the answer is 'yes'; because the basic role of the evening clinics is to compliment the day out-patient clinic services.

The basic objectives of the out-patients service which have been adequately met are:—

1. it is a surveillance mechanism for the prevention and control of epidemics of communicable diseases.
2. it serves to identify the more serious cases for referral to Specialist Clinics for consultations, investigations and treatment including hospitalization.
3. it enables patients with ailments that are treatable on an ambulatory basis to be treated.

My Department is keeping the situation under constant review and will provide the services in those areas where a need is identified.

**Government business****Motion****MAGISTRATES ORDINANCE**

THE LAW DRAFTSMAN moved the following motion:—That the Magistrates (Forms) (Amendment) Rules 1982, made by the Chief Justice on 1 June 1982, be approved.

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

Form 1A of the forms prescribed under Part 1 of the Schedule to the Magistrates (Forms) Rules, is the form of notice which is used under section 8A of the Magistrates Ordinance for the purpose of bringing certain offenders, especially litter offenders, before the magistrates.

At present about 4 000 such notices are issued each month. This is likely to increase as the use of Form 1A is extended to cover the growing problem of marine littering.

In its existing format, however, Form 1A is not regarded as a convenient document for day-to-day enforcement purposes, and it has therefore become necessary to simplify and re-arrange the existing format so as to reduce its size and also to make it more readable. In addition, the new format is designed to facilitate the keeping of records to assist in dealing with litter recidivists.

The Rules have accordingly been amended by the Chief Justice under section 133 of the Magistrates Ordinance to replace the existing form with a more suitable form. But by virtue of that section, the amending Rules will not take effect unless they are approved by this Council.

Sir, I beg to move.

*Question put and agreed to.*

### **First reading of bills**

**SUPREME COURT (AMENDMENT) (NO. 2) BILL 1982**

**DANGEROUS DRUGS (AMENDMENT) (NO. 2) BILL 1982**

**IMMIGRATION (AMENDMENT) BILL 1982**

**CROWN LAND (AMENDMENT) BILL 1982**

**EVIDENCE (AMENDMENT) BILL 1982**

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

### **Second reading of bills**

**SUPREME COURT (AMENDMENT) (NO. 2) BILL 1982**

THE ATTORNEY GENERAL moved the second reading of:—‘A bill to amend the Supreme Court Ordinance’.

He said:—Sir, I move the second reading of the Supreme Court (Amendment) (No. 2) Bill 1982.

The main purpose of this Bill is to permit the appointment as High Court Judges in Hong Kong of solicitors in Crown Service in Hong Kong.

The present position as some Members of this Council are aware is that no solicitors, however eminent, are entitled to become High Court Judges. In the past, those solicitors who had hoped to do so have retired from their profession and have sought admittance into a different branch of the profession to which I have the pleasure and honour of belonging. A number of the existing and past High Court Judges in Hong Kong have taken that route to the High Court Bench.

The traditional justifications advanced for that differentiation between the openings available to branches of the legal profession are that if one is to properly play the part of a High Court Judge and control the jury trials and certain of the civil trials that appear before him, then one should if possible, as an advocate, have had the experience of conducting that very type of case; and because solicitors don't have the right of audience in the High Court, that opportunity and experience is not open to them. Against that I think it is only fair to point out that there are other arguments that it may be that one ought to and one does have regard to the need to allow the appointment of some of the ablest lawyers in Hong Kong as High Court Judges, and one must also bear in mind the fact that solicitors in Hong Kong, unlike those in the United Kingdom, do have the opportunity of conducting in the District Court some very serious cases indeed, so that they do have experience of criminal trials albeit not of jury trials. However, so far as solicitors in Government service are concerned and particularly those in my Chambers, there is a distinction because they do have the opportunity and do frequently appear in the High Court. Solicitor members of my Chambers, on a week-by-week basis, are in fact conducting cases in the High Court, jury trials, civil cases and so on all the time. It is felt also that District Court Judges who although they may not have conducted such cases, have sat for some period as judges, have other relevant experience which would be as important to them, namely, the judicial experience when they came to sit and that that would outweigh the handicap of not having as an advocate appeared in court. Accordingly it is felt—and the Bar Committee and Law Society who have been consulted have agreed—that solicitors in Government service should now be made eligible for appointment as High Court Judges in Hong Kong. Of course, under the Ordinances, in each such case, the advice of the Judicial Service Commission will be obtained as to the individual suitability of each candidate in the same way as that advice is obtained at present about any other candidate for any post in the Judiciary or Magistracy.

The opportunity, Sir, is also taken in the Bill to propose two further small amendments.

The first is to restrict eligibility for appointment as a Commissioner in the High Court to persons who are eligible themselves to become Supreme Court

Judges. Commissioners exercise exactly the same rights, powers and obligations as a High Court Judge and it seems appropriate therefore, that they should in fact have the same qualifications. Secondly, the Bill seeks to permit the High Court to use such seal as the Chief Justice may direct on any of its papers. At present the court may use only the full seal of the Supreme Court (as honourable Members can imagine, this is not exactly very convenient) and accordingly it is proposed that the Chief Justice be allowed to prescribe what seal as he wishes, whether it be a rubber stamp or whatever according to the document and the needs of the document which it is proposed to seal.

Sir, I move that the debate on the second reading of this Bill be now adjourned.

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

### **DANGEROUS DRUGS (AMENDMENT) (NO. 2) BILL 1982**

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

He said:—Sir, I move the Dangerous Drugs (Amendment) (No. 2) Bill 1982 be read a second time.

The main purpose of this Bill is to deter traffickers in dangerous drugs from using ships to carry on their nefarious trade. The Bill imposes sanctions on the owners of ships which are found on more than one occasion to have smuggled excessive quantities of drugs into Hong Kong.

Since the disruption of the system of smuggling drugs into Hong Kong by Thai fishing trawlers in 1974, traffickers turned to the use of individual couriers to smuggle drugs. One of the methods favoured was the use of ocean-going vessels. Between 1974 and this month, 675 seizures of 670 kilogrammes of illicit drugs have been made on board 231 vessels, resulting in 104 arrests. 43 of these seizures involved substantial quantities of drugs, principally of opium and heroin, 14 of which were made on four vessels belonging to one company. Eight of these 14 seizures were made on one ship, five of them in a period of less than six months. Ships of three other companies were also repeatedly involved in smuggling drugs five times (in 12 months), twice (in four months) and again twice (in 30 months) respectively.

Because ingenious hiding places, usually in public areas, were used for smuggling drugs, and despite protracted enquiries, no arrests were made in many cases. So, despite the efforts of the Customs and Excise Service, the seizures have had little real deterrent effect; without identification of those responsible nothing beyond seizure of the drugs has been possible. These vessels

continue to be used for carrying illicit drugs and under the existing law no positive action can be taken against them.

This situation is unacceptable, especially because drug abuse represents a continuing social menace to the community, and particularly to young people. The Government has concluded that effective deterrent measures to counter this evil traffic must be introduced. After careful and lengthy consideration of the issue and some alternative methods, it was concluded that the most effective way of dealing with this menace is by amendment of the Dangerous Drugs Ordinance to impose financial penalties on the owner of the ship which is found to have carried excessive quantities of drugs on two occasions within a period of 18 months; and if the penalty imposed by the Court is not paid, the ship may be forfeited to the Crown. In view of the comparatively higher value of such oceangoing vessels, the maximum financial penalty has been put at \$5 million in order to produce the greatest possible deterrent effect; and forfeiture of ships is intended as the ultimate sanction in the event of the penalty not being paid.

The proposed criterion of two occasions in 18 months has been adopted as past records indicate that such a provision could have dealt with all the ships, with the exception of one, which were repeatedly found to be smuggling drugs since 1971.

In coming to these conclusions the Government considered:

- the imposition of penalties on masters/officers. This was considered unduly harsh, especially in cases where the drugs are found in places easily accessible to all crew members and perhaps impractical where masters/officers of individual ships are changed at periodic intervals;
- the additional deterrent which might be achieved by covering cases where the ownership of a ship is deliberately changed after one seizure or conviction. Although such a provision seems attractive it has been concluded that it may constitute an unjustifiable and undesirable intrusion into the *bona fide* buying and selling of ships;
- a proposal that legal powers should be taken to detain a ship for extended and continued searches. While there are some advantages to holding such ships for searches (for example, it would avoid or minimize any legal process required to detain the ship and also enhance the chance of finding any undiscovered drugs on board), it was concluded that these would be outweighed by the operation of the scheme as a whole and the lack of a line of appeal by ship-owners through the courts.

The purpose of this Bill is set out in the Explanatory Memorandum. It is, as I have said, to impose sanctions against the owners of ships which have been found carrying excessive quantities of dangerous drugs (defined as 3 000 grams of opium or cannabis or 500 grams of any other dangerous drug) on at least two occasions within a period of 18 months, even though the first occasion may have been before the enactment of this Bill.

The Bill includes provision for the following course of action:

- The Commissioner of the Customs and Excise Service, with the written consent of the Attorney General, is empowered to seize and detain for 48 hours, any ship he reasonably suspects of being one on which an excessive quantity of a drug has been carried on two occasions within a period of 18 months.
- A magistrate, on application by the Commissioner, can continue the detention of a ship already seized and detained, or can order the arrest and detention of a ship. The magistrate will then order that the proceedings be transferred to the High Court (new section 38C).
- The Registrar of the Supreme Court will give notice of the time and place at which the High Court will hear an application by the Commissioner the imposition of a financial penalty on the owner not exceeding \$5,000,000. (new section 38D).
- The owner or master can apply to a judge to admit the ship to bail or bond in an amount of not less than \$5,000,000. (new section 38E).
- Where the High Court is satisfied beyond reasonable doubt that a ship has carried an excessive quantity of dangerous drugs in the circumstance described already, it may order the owner to pay a financial penalty not exceeding \$5,000,000. This penalty may be recovered from any bail or bond paid or given, and if no satisfactory arrangements for the payment of the penalty are made, the ship may be forfeited. But, importantly, no financial penalty shall be imposed if the owner and master prove that, in respect of the second of the occasions on which drugs were carried, they had taken all reasonable and practicable steps to prevent the carriage, and finally.
- There is a right of appeal in certain circumstances.

The Bill is supported by the Action Committee Against Narcotics. In addition, the views of both the Port Committee and the Hong Kong Shipowners Association on the Bill have been obtained and taken into consideration in the formulation of the provisions.

In framing these proposals, the Government has been alive to the possible damage which might be caused to shipping interests and our image as a free and efficient trading port. I admit that the Bill could result in some degree of delay to a ship, but this would be minimized if the owner agreed to pay a bail or give a bond for the release of the vessel ship. Our aim must be to balance the advantages to be gained from an effective deterrent to traffickers against the disadvantages of affecting the trading image of Hong Kong. I believe that this Bill does so.

In the Government's judgment the need to take these measures justifies the proposition that any finding of illicit drugs on board a ship within the previous 18 months, but before the enactment of the new law, will be counted as the first of the two occasions for the purposes of prosecution. To give shipowners a grace period to take whatever action they deem



necessary, the Bill, if enacted, will come into operation on a date to be appointed. It is intended that this should be six months after enactment.

Given the drug trafficking situation generally and the use of ships in the past, I believe that the provisions of this Bill are necessary. We must use all reasonable means to discourage the import of illicit drugs. I commend this Bill to Members and move that the debate on this motion be adjourned.

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

## **IMMIGRATION (AMENDMENT) BILL 1982**

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

He said:—Sir, I move the Immigration (Amendment) Bill 1982 be read a second time.

Few of us need any reminder of the events connected with the outflow of Vietnamese refugees in 1979 and how Hong Kong responded to this challenge in a humane and effective way. It did so despite the extent of overcrowding in this territory and its other immigration problems at that time.

The Geneva Conference of July 1979, called as the result of a British initiative, produced a balanced ‘plan of action’. This involved:—

- the provision of temporary asylum by countries of first arrival;
- support for U.N.H.C.R. by third countries in the provision of funds and/or resettlement places; and
- restraint by the Vietnamese Government on illegal departures.

Nearly three years later what is the position? Hong Kong has honoured its obligations to provide temporary asylum to Vietnamese refugees. No boat has been towed out to sea and no refugee has been turned away. But, almost alone in the region, and at the original request of the United Nations High Commissioner for Refugees, refugees have been accommodated in camps without restrictions and thus been able to work.

Resettlement has proceeded apace and refugees have been found places in 30 countries. But by 1981 the number of resettlement countries had fallen to 20 with the U.S. resettlement programme easily the largest, but with Canada, the United Kingdom, Australia and Germany having accepted quite large numbers. By the turn of the year our refugee population was about 12 000—the highest refugee population of boat people in the region—and this notwithstanding our record and the density of our own population.

Unhappily, these resettlement programmes are now slowing down. The United Kingdom quota is exhausted with no prospect of a further one. The Australian Government has adopted more restrictive criteria and the Canadian quota has also been reduced. The United States, which has up till now been responsible for resettling on average 60% of refugees from Hong Kong, but

more recently up to 80%, has reduced its quota and, more importantly, at the same time tightened the criteria governing eligibility for resettlement. The U.N.H.C.R.'s attempts to find more resettlement places in these and other countries have met with little success and so our refugee population is starting to rise again. Today it is 10 800.

Meanwhile the outflow into the region from Vietnam has continued though at a much reduced rate when compared to the sombre days of 1979. Even so 74 000 arrived in 1981 of whom 8 470 came here.

At the same time, there is a growing conviction here and in resettlement countries that many of those refugees leaving Vietnam now are no longer fleeing persecution, as they were in 1979, but are seeking a more attractive life elsewhere. Although the Vietnamese authorities appear to be taking firm measures to prevent people leaving Vietnam, the fact remains that they are still getting away, though at a reduced rate. This has led countries of first asylum and the main resettlement countries to consider other means to deter people from leaving Vietnam. The term used is humane deterrence.

What therefore is the prognosis for Hong Kong? There is a very real danger that, in the face of greatly reduced resettlement opportunities, Hong Kong, with its open camps for refugees, will become the main destination for those who are now seeking to leave Vietnam. Indeed, some may be misled into believing that Hong Kong itself may be a likely place of permanent resettlement. To underline that this is not the case the Bill before Council makes it clear that refugees cannot gain Chinese resident status. The number of refugees coming into the region as a whole in the first five months of 1982 as compared with the same period in 1981 has dropped from 39 500 to 21 200, about 46%. But—the number coming to Hong Kong has only dropped from 3 500 to 3 200—8.6%—the lowest percentage fall in the region. These figures indicate that some positive changes must be made to reduce the 'pull' of Hong Kong as a destination.

Against this background, the Government has recently undertaken a thorough review of its policy. The main aim has been to find a way to deter refugees leaving Vietnam for Hong Kong. We already know from experience elsewhere that the most effective deterrent is repatriation. In theory such a course is possible, but in practice it is not feasible without the co-operation of the Vietnamese authorities. There is no early prospect of securing this.

Various other options have been considered and the U.N.H.C.R. has been consulted. Having regard to the importance of maintaining the U.N.H.C.R.'s responsibility for the maintenance and eventual resettlement of refugees, the Government has concluded that the only immediate option is to set up closed camps in which to accommodate refugees.

In adopting this option, the Government is bringing Hong Kong into line with the rest of the region. This move should make Hong Kong less attractive

for refugees. When the message gets back to Vietnam, it should help to deter people from setting out. This option has another advantage. Some refugees have interpreted our hospitality as something which can be taken for granted, or even abused. We have experienced unruly behaviour and unlawful activities. This cannot be tolerated. In order to increase the sanctions available the Government will in future be prepared to put troublemakers in closed camps as well. This should deter the unruly and will assist in the better management of existing open refugee centres and prevent recurrences of the type of disturbances recently seen in the Kai Tak centre.

Subject to the Bill being passed in Council today, and to the necessary financial resources being voted by the Finance Committee of this Council, it is therefore the Government's intention to establish closed camps with effect from 2 July 1982. Chi Ma Wan is immediately available for this purpose. Once funds are approved construction will also start immediately on another closed camp on Hei Ling Chau so that it is ready, if needed, early next year. All Vietnamese refugees arriving in Hong Kong on, or after, 2 July 1982 will be detained in these camps.

Camps will be managed by the Correctional Services Department who have already rendered such sterling service in looking after refugees. The system of management and control will be similar to that already applied to detainees under the Immigration Ordinance. Refugees will be confined and subject to regulation and control. Members of families will not be separated but will be accommodated together in the same camp. We shall keep this arrangement under review. Contact with the general public will be restricted, although arrangements for visits will be made as appropriate. We are also in discussion with U.N.H.C.R. about their access to the refugees which we will arrange.

The Immigration (Amendment) Bill 1982 gives effect to this new policy. It provides the Government with the necessary powers to set up closed camps, to detain refugees in them and to draw up rules for their good management.

The powers of detention provided under the proposed sections 13A(1), (9) and (10) and section 13D are for an indefinite period. However, the proposed section 13A(11) would enable any refugee so detained, and who so wishes, to leave Hong Kong. All reasonable facilities would be provided to enable him to do so.

Powers are provided under the proposed sections 13A(6) and 13A(6A) to transfer certain refugees from open centres to closed camps. Under these powers, any refugee who has contravened any condition of stay, or who has been found guilty of any offence punishable with a term of imprisonment, may by order of the Director of Immigration be detained in a closed camp.

In addition, the Director may, by certification, detain any refugee in a closed camp even though the refugee has not been proved to have breached his conditions of stay or the law. This power, deliberately far reaching, is an

indication to refugees who are already here that we intend to maintain better order in open refugee centres in the future than some of them have been ready to accept in the past. This power will be exercised by senior directorate members of the Department and is limited to where they are satisfied that an order in respect of a particular refugee is necessary in the interests of order and good management in an open camp. There is also, an appeal by way of review by the Secretary for Security. The legality of any detention may thereafter be tested in the Courts and, at the committee stage, I propose to move an amendment making clear beyond argument that this right remains open.

The proposed section 13E, provides additional legal powers to repatriate any refugee, if and when circumstances permit. This is impossible at present in view of the attitudes of the Vietnamese Government. However, the Government will keep this possibility under review.

This change of policy will not be cheap. The recurrent cost is likely to be about \$18m, plus the cost of some staff already charged to Departmental votes. The capital costs, will be \$50 million. We are in touch with U.N.H.C.R. over the sharing of the costs of maintaining refugees in closed camps and its contribution might amount to about \$9 million for the rest of this year.

To achieve the optimum deterrent effect, I propose that this Bill should pass through all stages at today's sitting. We are now in the midst of the season when conditions are favourable for Vietnamese refugees to set off in their boats for Hong Kong. It is urgent that word gets back to Vietnam at once that those who come will be greeted by closed camps.

The saga of the Boat People and Hong Kong's role has progressed through a number of chapters. I believe this Bill provides the right response at this time and I hope events will prove me right. In any case, we shall be ready to respond to any new developments and meet them in the same way we have done in the past by discharging our responsibility to Hong Kong people and internationally. We look to others to do the same and assist countries of first asylum. This will allow us once again to deploy all our energies in meeting the needs of our own people.

Sir, I beg to move.

MR. LOBO:—Sir, I rise to support the Immigration (Amendment) Bill 1982 and speak also for my Unofficial Colleagues.

As my Friend the Secretary for Security has just said for more than three years Hong Kong has taken a humanitarian stand in providing temporary asylum for refugees from Vietnam. Despite having serious over population problems of our own, we have nonetheless done our best and set an example to the world. But hospitality has its limits and sadly we note other countries have become increasingly reluctant to ease our burden. It has perhaps become too easy to believe these people may be abandoned here.

We are certainly grateful to the U.N.H.C.R. and not unmindful of the help of those countries which have taken refugees from Hong Kong. However, there is a real danger that many of the so-called refugees themselves who have been here for some time are coming to look upon Hong Kong as a place for permanent residence and that others may think of joining them. This must be discouraged at all costs and all reasonable steps must be taken to deter further arrivals. Unpleasant though it may be—and the measures proposed have not been decided on lightly—the confinement of newcomers to closed camps is seen as a necessary step towards this end. This is no more than many countries have done from the outset. However, I am pleased that an amendment is to be introduced at the committee stage to provide within this Bill a safeguard against unlawful detention.

There are other refugees who have been here for some time and have shown they would abuse our hospitality and would turn their open camps into battlefields. The community has no sympathy for these trouble makers and they have no right to freedom here. We therefore fully endorse the Government's intention to confine such persons to closed centres.

Finally, we urge Government to pursue the resettlement of these refugees outside Hong Kong with renewed vigour and, at the same time, to examine all possible means of securing their repatriation. I can only add that the Unofficial Members of this Council pledge our wholehearted support towards the achievement of these objectives.

Sir, with these remarks, I support 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).*

## **CROWN LAND (AMENDMENT) BILL 1982**

SECRETARY FOR HOUSING moved the second reading of:—‘A bill to amend the Crown Land Ordinance’.

He said:—Sir, to move the second reading of the Crown Land (Amendment) Bill 1982.

*Controls in respect of illegal structures on Crown land*

In recent years, illegal occupation of Crown land by squatters has presented serious problems and a large number of new huts have been built. Many of these huts are built on dangerous hill slopes or are themselves precariously sited on

inadequate foundations. The tragic results of this were seen in the fires of last winter and the rainstorms at the end of May.

Very few squatters build their own huts. Nearly all new squatter hut building is undertaken by racketeers for sale.

An essential element in control of new squatter hut building is the arrest and prosecution of the builders. The maximum penalty at present prescribed under section 6(4A) of the Ordinance is a fine of \$10,000 and imprisonment for six months. On average more than 50 persons are charged each month, but the penalties imposed appear to have little deterrent effect.

Furthermore, it is extremely difficult to provide substantial evidence or produce witnesses to testify to the effect that such offenders are racketeers building huts for sale. Without such evidence, the court cannot presume that a hut which is the subject of a charge is intended other than for self-occupation.

In order to strengthen the existing controls in respect of illegal structures on Crown land, the Bill proposes that where structures are erected for gain, the offender shall be liable to a maximum fine of \$50,000 and to imprisonment for one year. Additionally, it is proposed that a new section be added to the principal Ordinance to introduce a legal presumption that an offender is building a hut for sale; the burden of proof will then be on him to show that he did not erect the structure with a view to gain.

*Procedure for proving offences*

In proceedings for an offence under section 6 of the Ordinance, the court has to be satisfied that:

- (a) the land in question is *unleased* Crown land; and
- (b) no licence, deed or memorandum of appropriation has been granted that would authorize construction on the land.

There is no provision in the Ordinance which permits the acceptance by the court of a certificate to this effect. The court therefore requires the attendance of a Government officer on each occasion to give evidence on these formal but basic matters which are very seldom challenged.

To simplify the procedure for proving these matters, it is proposed to add a new section to enable the court to accept as *prima facie* evidence certain facts contained in a certificate signed by an Estate Surveyor.

Sir, I move that the debate be now adjourned.

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

*Question put and agreed to.*

**EVIDENCE (AMENDMENT) BILL 1982**

THE LAW DRAFTSMAN moved the second reading of:—‘A bill to amend the Evidence Ordinance’.

He said:—Sir, I move the second reading of the Evidence (Amendment) Bill 1982.

This Bill is concerned with a technical problem which has arisen relating to the use of certified translations of documents and transcripts of tape recordings as evidence in legal proceedings. The object of the Bill is to remove doubts as to the validity of the practice of allowing different people to carry out the work of translating and transcribing on the one hand, and to sign certificates in relation to such translations and transcripts on the other.

The existing law, that is, sections 27 and 29A of the Evidence Ordinance, provides that where documents or recordings in a language other than English are admitted in evidence, the relevant translation or transcript may likewise be admitted if it is signed by a duly appointed person and purports to be a certified translation or transcript ‘made by him’. Those words, as quoted, are at the root of the problem.

The new provisions in clauses 2 and 3 of the Bill make it clear that a person who is appointed under the principal Ordinance to make and to certify translations or transcripts, may certify whether or not he himself has made the translation or transcript in question.

Because a great many documents and recordings admitted in evidence in legal proceedings are in a language other than English, translations into English are constantly required for the assistance of the courts. Apart from Cantonese, languages for which translators and transcribers have been appointed under the Ordinance include French, Japanese, Thai, Vietnamese, Italian and German. At present, there are about 130 official interpreters in the Judicial Department and of these, in addition to their ordinary duties, about 90 have been appointed to deal with documents and eight to deal with recordings. A number of non-department people have also been appointed.

The certifying process is the largest part of the work carried out by the staff appointed under the Ordinance. It is estimated that their monthly output, in terms of translations and transcripts supplied, exceeds 14 000 pages and is increasing steadily. But in no more than about 5 *per cent* of cases, apart from cases where litigants are unrepresented, are the relevant translations actually prepared by the certifying officer. Usually, translations are submitted to the Department in the form of drafts which have been prepared by solicitors, or the Police, or the I.C.A.C. or whatever authority is involved in the preparation of the case, many of whom have competent linguists on their own staff. The drafts are then checked and corrected in the Department before being certified as

accurate. On the basis of this certificate, the relevant translation is produced in court and, by virtue of the Ordinance, admitted in evidence as an accurate translation of the original.

The workload in this area is such that the present practice could not be changed without a significant increase in staff, time and cost. On the other hand, the practice has been working satisfactorily, and proper standards of accuracy have been maintained. It is proposed accordingly, to remove any doubt as to its legality and correctness.

For that purpose, the existing sections 27 and 29A, relating to documents and recordings respectively, are repealed and replaced by new sections which restate the present requirements and safeguards in a way that expresses the intention more clearly, and at the same time permit the existing practice with regard to certification to continue. In each case, the new sections contain additional provision which is intended to ensure that certified translations or transcripts admitted in evidence under the existing provisions will not be held to have been wrongly admitted merely on the ground that they were not actually made by the certifying officer himself.

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 LAW DRAFTSMAN.

*Question put and agreed to.*

## **SUPREME COURT (AMENDMENT) BILL 1982**

### **Resumption of debate on second reading (16 June 1982)**

*Question proposed.*

*Question put and agreed to.*

Bill read the second time.

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

### **Committee stage of bills**

Council went into Committee



**IMMIGRATION (AMENDMENT) BILL 1982**

Clauses 1 to 4 were agreed to.

Clause 5

SECRETARY FOR SECURITY:—I move that clause 5 be amended as set out in the paper circulated to Members.

*Proposed amendments***Clause 5**

That clause 5 be amended—

- (a) in paragraph (b), in the proposed subsection (2)—
  - (i) by deleting ‘securities’ and substituting the following—‘security’; and
  - (ii) by inserting a comma after the words ‘hygiene in’; and
- (b) in paragraph (d), in the proposed subsection (4) by deleting ‘which is under the control of the Commissioner for Correctional Services’.

The amendments were agreed to.

Clause 5, as amended, was agreed to.

Clause 6 to 8 were agreed to.

New clause 4A. ‘Addition of new section 13BA’.

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

SECRETARY FOR SECURITY:—In accordance with Standing Order 46(6), I move that the new clause 4A as set out in the paper circulated to Members be read a second time.

*Question put and agreed to.*

Clause read the second time.

SECRETARY FOR SECURITY:—I now move that clause 4A be added to the Bill.

*Proposed addition*

**New clause 4A**

That there be added after clause 4 the following—

‘Addition of new section 13BA.

**4A.** The principal Ordinance is amended by adding, after section 13B, the following section—

“Lawfulness of detention.

**13BA.** (1) For the avoidance of doubt it is hereby declared that any Vietnamese refugee deprived of his liberty by detention under section 13A(6) or (6A) shall be entitled to apply to the High Court, in order that that court may decide without delay on the lawfulness of such detention and order his release if the detention is not lawful.

(2) The jurisdiction, practice and procedure of the High Court relating to writs of *habeas corpus ad sub-jiciendum* shall apply in relation to such applications.”’.

The addition of the new clause was agreed to.

**SUPREME COURT (AMENDMENT) BILL 1982**

Clauses 1 to 3 were agreed to.

**Third reading of bills**

THE ATTORNEY GENERAL reported that the

SUPREME COURT (AMENDMENT) BILL

had passed through Committee without amendment and that the

IMMIGRATION (AMENDMENT) BILL

had passed through Committee with amendment and moved the third reading of each of the Bills.

*Question put on each Bill and agreed to.*

Bills read the third time and passed.

**Adjournment and next sitting**

HIS EXCELLENCY THE PRESIDENT:—In accordance with Standing Orders I now adjourn the Council until 2.30 p.m. on Wednesday, 14 July 1982.

*Adjourned accordingly at twenty-four minutes past four o'clock.*