

**OFFICIAL REPORT OF PROCEEDINGS****Wednesday, 11 January 1984****The Council met at half past two o'clock****PRESENT**

HIS EXCELLENCY THE ACTING GOVERNOR (*PRESIDENT*)  
THE HONOURABLE THE CHIEF SECRETARY  
SIR CHARLES PHILIP HADDON-CAVE, K.B.E., C.M.G., J.P.

THE HONOURABLE THE FINANCIAL SECRETARY  
SIR JOHN HENRY BREMRIDGE, K.B.E., J.P.

THE HONOURABLE THE ATTORNEY GENERAL  
MR. MICHAEL DAVID THOMAS, Q.C.

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

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

THE HONOURABLE DAVID AKERS-JONES, C.M.G., J.P.  
SECRETARY FOR DISTRICT ADMINISTRATION

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

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

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

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

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

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

SECRETARY FOR TRANSPORT

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

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

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

THE HONOURABLE ERIC PETER HO, C.B.E., J.P.  
SECRETARY FOR TRADE AND INDUSTRY

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

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

DR. THE HONOURABLE HO KAM-FAI, O.B.E., J.P.

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

THE HONOURABLE HU FA-KUANG, J.P.

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

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

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 COLVYN HUGH HAYE, C.B.E. J.P.  
DIRECTOR OF EDUCATION

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.

DR. THE HONOURABLE HENRIETTA IP MAN-HING

THE HONOURABLE PIERS JACOBS. O.B.E., J.P.  
SECRETARY FOR ECONOMIC SERVICES

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

THE HONOURABLE CHAN NAI-KEONG, J.P.  
SECRETARY FOR LANDS AND WORKS

THE HONOURABLE RONALD GEORGE BLACKER BRIDGE, J.P.  
COMMISSIONER FOR LABOUR

THE HONOURABLE CHAN YING-LUN

THE HONOURABLE MRS. RITA FAN HSU LAI-TAI

THE HONOURABLE MRS. PAULINE NG CHOW MAY-LIN

THE HONOURABLE PETER POON WING-CHEUNG, M.B.E., J.P.

THE HONOURABLE YEUNG PO-KWAN, C.P.M.

THE HONOURABLE JAMES NEIL HENDERSON, O.B.E., J.P.  
SECRETARY FOR EDUCATION AND MANPOWER

THE HONOURABLE GEOFFREY THOMAS BARNES, J.P.  
SECRETARY FOR HEALTH AND WELFARE (*Acting*)

**ABSENT**

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

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

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

THE HONOURABLE ANDREW SO KWOK-WING, O.B.E., J.P.

**IN ATTENDANCE**

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

**OATH**

MR. YEUNG PO-KWAN 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. YEUNG PO-KWAN to this Council.

**Papers**

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

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## Subsidiary Legislation:

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Road Traffic Ordinance	
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Telecommunication (Public Non-Exclusive Telecommunications Service Customers) (Exemption from Licensing) Order 1984.....	5/84
Holidays Ordinance	
General Holidays Order 1984 .....	6/84

<i>Subject</i>	<i>L.N. No.</i>
Revenue Protection Ordinance Public Revenue Protection (Motor Vehicles) (First Registration Tax) Order 1984 .....	7/84
Revenue Protection Ordinance Public Revenue Protection (Road Traffic) (Registration and Licensing of Vehicles) Order 1984.....	8/84
Road Traffic Ordinance Road Traffic (Public Service Vehicles) (Amendment) Regulations 1984.....	9/84
Road Traffic Ordinance Road Traffic (Public Service Vehicles) (Amendment) Regulations 1984.....	10/84
Sessional Papers 1983-84:	
No. 31—Annual Report of the Director of Accounting Services—Accounts of Hong Kong 1982-83.	
No. 32—Report and Certificate of the Director of Audit on the Accounts of the Hong Kong Government for the year ended 31 March 1983.	
No. 33—Public Accounts Committee Report No. 6—December 1983.	
No. 34—Hong Kong Export Credit Insurance Corporation—1982-83 Annual Report.	

### **Oral answers to Questions**

#### **Theatrical scripts required by C.T.E.L.**

1. MR. ALEX WU asked:—*Sir, will the Government confirm whether theatrical scripts are required to be scrutinised by Government prior to their productions; and if so*

*(a) will Government explain how the guidelines under which the scripts are subjected are drawn up; and*

*(b) what is the rationale behind this policy?*

SECRETARY FOR HOME AFFAIRS:—Yes, Sir, theatrical scripts are normally required by the Commissioner for Television and Entertainment Licensing before they are produced on stage. Where there are practical difficulties, the Commissioner is prepared to accept a synopsis. When well known classics are to be performed all that is necessary is an assurance that it really is the classic that is to be performed and not a substantially altered version that is to be played.

These scripts are required by the Commissioner because nobody may put on a theatrical performance open to the public without a permit from the Commissioner and he has to know what he is giving a permit for.

The law gives the Commissioner discretion to grant, refuse, cancel or grant subject to conditions the necessary permit but he has to act in a rational manner or nobody would know what he would permit.

So he has drawn up guidelines which, without fettering his discretion, let people know how far they can go.

The current guidelines were drawn up with reference to standards for films and television shows but are less restrictive because the audiences are more restricted.

MR. ALEX WU:—*Sir, how does Government ensure that these guidelines are applied with consistency and with sufficient understanding of the sensitivity of the authors in order not to affect the artistic merits of the productions?*

SECRETARY FOR HOME AFFAIRS:—*Sir, the guidelines are normally checked by complaint, that is to say when the performance has been approved and permitted we assume that it is going to be in accordance with the performance submitted unless there is a complaint.*

MR. ALEX WU:—*Sir, I would like to thank the Secretary for his statement but would he now answer the question?*

SECRETARY FOR HOME AFFAIRS:—*Sorry, could you repeat please?*

Question repeated.

SECRETARY FOR HOME AFFAIRS:—*Sir, the consistency is achieved through the employment of officers on this work who also censor films and television programmes. In addition, these officers, in the exercise of those duties have the advice of, in the case of films, a panel comprising some 88 members of the public. In the case of television shows there are 18 boards, one in each district, which give the Commissioner advice. On theatrical shows they exercise their powers in the light of their experience in censoring these more prolific forms of entertainment.*

MR. ALEX WU:—*One final question. Would Government consider extending such policy to other areas of the arts in general and to visual arts in particular?*

SECRETARY FOR HOME AFFAIRS:—*Films are covered already, Sir; television is covered already; all forms of live entertainment are covered; the big gap at the moment is the video cassette and we are considering this problem in the light of legislation that is being considered in Britain.*

## Cyclists and cycle tracks

2. MR. WONG LAM asked in Cantonese:—

政府可否告知本局：

- (甲) 過去十二個月內成功地檢控在道路上違例駕駛單車人士的數目，以及將這些檢控數字按年齡和按香港、九龍或新界地區分類；
- (乙) 當局採取甚麼行動去教育青少年如何在道路上適當地駕駛單車；以及
- (丙) 有關在新界提供單車徑的目前情況？

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

*Will Government inform this Council—*

- (a) *the number of successful prosecutions against cyclists for on-road offences over the past twelve months and a breakdown of these prosecution figures by age groups and areas, Hong Kong and Kowloon and the New Territories;*
- (b) *what action is taken to educate youngsters on the proper use of bicycles on the roads; and*
- (c) *the present position regarding the provision of cycling tracks in the New Territories?*

SECRETARY FOR TRANSPORT:—Sir, the number of prosecutions of cyclists for offences on the roads from January to the end of November 1983 was 2 252. This was a 43% increase over the same period in 1982. Of these 2 252 prosecutions, 1 464 were for negligent riding, 722 for riding a bicycle without lights at night, 39 for carrying passengers and 27 for overloading. Almost all resulted in convictions, with an average fine in the range \$50-\$70. 1 610 of these prosecutions were in the New Territories, 442 in Kowloon and 200 in Hong Kong Island. A breakdown by age groups is, I regret, not available.

Secondly, Sir, Road Safety education and publicity campaigns are continuous. The Road Users' Code, which is being revised, gives guidance to all road users including cyclists. A film on safe cycling is being made for inclusion in the secondary school teaching kit. Police Road Safety Officers continue to visit schools regularly to lecture on road safety, particularly for pedestrians and cyclists. In popular recreational cycling areas such as Tai Po, the District Office. Police Road Safety teams and the Hong Kong Cycling Association organize demonstrations at weekends and holidays and give advice to cyclists.

A working party on cycling, established by the Committee on Safety in Outdoor Pursuits, is about to report on possible additional safety measures.

Thirdly, Sir, extensive cycle tracks are planned and being provided in the New Towns, except Tsuen Wan and some of the older developed areas. The present provision totals 50 km, with 60 km more being planned for.

DR. IP:—*Sir, in relation to part (a) of the answer, I would like to ask how many of these prosecutions were actually related to traffic accidents resulting in injury or death, and when they do, since cycle insurance is not a necessity, who compensates the injured?*

SECRETARY FOR TRANSPORT:—I am afraid I cannot give you the figures in relation to the first part of that question. This is partly because, although we have data on the number of accidents involving cyclists, this is not further broken down into types of injury. I might say on that point that it is satisfying to note that the number of accidents in absolute terms involving cyclists has dropped in 1983, and in relative terms to total accidents. As to the second part of the question, Sir, may I reply in writing. I think that in fact accidents involving cyclists do come under the T.A.V.A. scheme but I would have to check that as I am not certain.

(The following written reply was provided subsequently.)

As regards accidents involving cyclists you were concerned, in the absence of cycle insurance, about who compensates the injured. I said I thought that such accidents came under the TAVA scheme, and the Secretary for Health and Welfare has confirmed this.

You were interested in how many of the successful prosecutions against cyclists related to traffic accidents resulting in injury or death. The Royal Hong Kong Police Force has provided the information: of the 2 252 prosecutions of cyclists from January to November 1983, 247 involved personal injury accidents, i.e. 10.9%.

DR. IP:—*Sir, if I could also have this question answered on paper, and that is, if this scheme that you mentioned does cover cyclists, then I would like to go on to ask do the cyclists contribute to this scheme? If not, what is the rationale behind why this scheme should cover damages that is caused by cyclists?*

SECRETARY FOR TRANSPORT:—I can reply to those questions when I have got the information to check whether I am right on the first part, and I will do so in writing.

(The following written reply was provided subsequently.)

Cyclists do not contribute to the TAVA scheme. It would be impossible in practical terms to extract contributions from cyclists, many of whom are young people, or occasional users of bicycles from hire shops. For similar reasons, pedestrians are not required to make contributions, even though they can be the main cause of a traffic accident.

More fundamentally, your question implies that the TAVA scheme is or should be related to the road user who is at fault and who causes the damage. This was not the rationale for the TAVA scheme. Its purpose is to cushion the



financial hardship resulting from death or injury in a traffic accident by making possible a quick but limited amount of compensation *without regard to fault* or cause, and with the minimum procedural delay. No element of the payment is in respect of damage done. Payments made under the scheme do not affect the common law rights of victims to take action in court.

### **Morale of the public service**

3. DR. HO:—Against the background of Government's stated policy to increase productivity, and at the same time to restrict the growth of the civil service, will the Government state what measures are being taken to enhance morale in the public service, especially in the disciplined services?

SECRETARY FOR THE CIVIL SERVICE:—Sir, I am able to report that despite the difficulties of the past year the morale of the public service, including the disciplined services, remains high. Indeed I do not recall it having been higher than it is now: the fact is that we pride ourselves on being a thoroughly professional service and we do not allow extraneous events to affect our work.

Restrictions on the growth of the service can however add to the pressures on the individual civil servant, and we are therefore taking concerted action to combat this.

All departments are now engaged on projects aimed specifically at increasing productivity by such means as simpler work processes, labour saving equipment and improved manning arrangements. Staff are participating in these projects wherever possible, so that improvements in productivity are being achieved with the support of staff, and sometimes on their initiative. The result in many cases is job enrichment, and this we find is almost invariably good for morale.

Good management becomes ever more important as workloads grow without attendant increases in staff. We are therefore pressing ahead with improvements to staff management practices, and placing renewed emphasis on training in supervisory skills.

Consultation with staff is particularly important and we are now making full and, I believe, effective use of the central and departmental consultative machinery which we have built up in recent years. Through this machinery we are able to explain our policies, to discuss with staff their reactions to them, and then to proceed in the knowledge that we have staff side support. As part of this process, my senior staff and I are engaged in a continuous round of visits to departments, during which we discuss current issues with staff representatives.

At the end of the day, however, it is the quality of leadership which most affects the morale of the service. This reply would not, I think, be complete without my acknowledging the key role which Heads of Department are playing in providing that resolute leadership which the staff both look for and appreciate.

DR. HO:—*Sir, are civil servants at the supervisory and management level required to demonstrate an ability to motivate subordinate staff to give their best and to boost their morale, and if not, would the Secretary for the Civil Service consider incorporating such efforts in annual Staff Reports?*

SECRETARY FOR THE CIVIL SERVICE:—*Sir, I think in general terms the answer to Dr. Ho's question is that we do do this, but I will certainly have a fresh look at our arrangements for achieving it, and reinforce them if necessary.*

## **Gas Safety**

4. MR. PETER C. WONG:—*Will Government report on the progress made as a result of the appointment of a Gas Adviser, the revision of relevant legislation and the extensive publicity on gas safety?*

SECRETARY FOR ECONOMIC SERVICES:—*Sir, since the Gas Adviser's appointment in 1982, much progress has been made in the implementation of the policy in relation to the safe use of gas fuels and the extension of a piped gas supply to domestic consumers.*

### *Liquified Petroleum Gas*

As far as L.P.G. cylinders are concerned, agreement has been reached with those involved in the gas industry on a number of safety measures in relation to the filling, checking, transporting and storing of these cylinders. In addition, training programmes for operators and drivers handling L.P.G. cylinders are being drawn up in conjunction with the Vocational Training Council. Similar programmes are being prepared for L.P.G. road tanker drivers.

The Gas Adviser's responsibilities in relation to bulk L.P.G. installations involve the inspection of existing installations to ensure that any design or structural defects will be rectified, and the examination of the design of new installations before construction commences. As at today's date 134 existing bulk installations have been inspected, and in addition, an average of 20 new applications are being examined by the Gas Adviser every month.

### *Gas water heaters*

The safe use of gas water heaters has been a matter of concern since 1980 when ten fatal accidents from carbon monoxide poisoning occurred. Members will recollect that on 9 March 1983 in this Council I gave details and explained the findings of the gas safety consultants in relation to the various types of gas water heater. During the cooler weather we continue to urge members of the public to take precautions by ensuring that their bathrooms are adequately ventilated when gas water heaters are in use.

With the co-operation of the suppliers of gas appliances, unsafe gas water heaters are no longer installed in bathrooms. In addition, a new range of safe

replacement appliances, some of which have been specially designed for use in Hong Kong, are being made available and are actively promoted.

#### *Piped gas*

It is the Government's policy to encourage the use of piped gas in domestic premises. I am pleased to report that the growth rate in demand for L.P.G. cylinders is considerably reduced whereas in recent months the demand for towngas and L.P.G. bulk installations is expanding at an annual rate of approximately 25% and 14% respectively. On the basis of this rate of growth, demand for towngas is expected to outstrip the Hong Kong & China Gas Company's (Gasco) production capacity at its Ma Tau Kok plant by the end of 1986. Accordingly, a second gas production plant is required. Negotiations between Gasco and the Hong Kong Industrial Estates Corporation are taking place regarding the possibility of a gas production plant being located on a site in the Tai Po Industrial Estate. Until a new gas production plant can be brought into operation, it is the intention of Gasco to construct L.P.G./air mix gas plants to ensure that a *piped* gas supply is made available to certain areas in the New Territories.

#### *Legislation*

It is recognized that gas safety cannot be assured without the support of legislation. An amendment to the Building (Planning) Regulations was made in April last year.

This amendment provides that all new buildings be constructed with sufficiently large apertures in the external walls of bathrooms to facilitate installation of safe gas heaters. A proposal that Authorized Persons be required to include in their plans provision for correctly designed piping to facilitate the supply of piped gas into all new buildings is under active consideration. And we intend to introduce a major piece of gas legislation to regulate the manufacture, storage, transmission, distribution and utilization of gas fuels. Progress on this comprehensive legislation has been hampered by a shortage of qualified gas engineers in the Gas Adviser's Office. The situation should, however, improve with the expected increase in the number of qualified gas engineers in that office from three to 12 later this year.

Lastly, Sir, in view of the general concern in relation to gas safety, I shall shortly be submitting to the Executive Council a detailed progress report on this subject.

MR. PETER C. WONG:—*Sir, in paragraph 6 of his reply the Secretary for Economic Services stated that it is the Government's policy to encourage the use of piped gas in domestic premises. Does that imply that piped gas is safer than L.P.G. cylinders?*

SECRETARY FOR ECONOMIC SERVICES:—Yes, Sir, piped gas is safer.

MR. PETER C. WONG:—*That being the case. Sir, will L.P.G. cylinders be phased out eventually?*

SECRETARY FOR ECONOMIC SERVICES:—Sir, that, I think, is the intention of Government's policy. And if people turn to piped gas one would expect cylinders to be gradually phased out.

MR. S. L. CHEN:—*Sir, referring to the gas legislation to regulate the manufacture, storage and the handling of gas fuels, is there a firm programme for its introduction?*

SECRETARY FOR ECONOMIC SERVICES:—Sir, we are hoping to make progress with this comprehensive legislation and have it ready for introduction into this Council about the middle of next year.

### **Glass curtain-walling of buildings**

5. MR. BROWN asked:—*Is Government satisfied that there are sufficient safeguards in the Buildings Ordinance to ensure that glass office buildings in Hong Kong are able to withstand typhoon conditions?*

SECRETARY FOR LANDS AND WORKS:—Sir, the Building (Construction) Regulations require that the cladding to buildings shall be securely fixed to the main structure of the building and that the strength, stiffness, stability and durability of any such cladding shall be to the satisfaction of the Building Authority. All fixings used for cladding must moreover be of stainless steel, phosphor bronze, aluminium bronze or other non-corrodible material to the satisfaction of the Authority. Glass curtain-walling of the type referred to by Mr. BROWN is included within the definition of cladding, and it is the Building Authority's established practice to require all such curtain-walling to be designed to withstand typhoon conditions. I am satisfied, Sir, that the present Regulations and the current arrangements under the Ordinance are sufficient.

MR. BROWN:—*Sir, as wind borne debris is usually the main culprit causing damage in typhoon conditions, could the Secretary confirm that the regulations include impact standards for debris striking exposed glass?*

SECRETARY FOR LANDS AND WORKS:—Sir, our practice is that we do not check for impact by debris onto the glass. The practice is for the glass to be of the shatter-proof type so that, on impact, it will just disintegrate and therefore when it falls down it would not cause too much injury to people. I think the problem should be tackled in the way of preventing people dropping, or causing debris to be dropped, and there is provision under the Summary Offences Ordinance to prosecute people causing objects to be dropped from a height.

## Compensation for the injured worker

6. MR. CHEUNG YAN-LUNG asked in Cantonese:—

政府可否說明，一名工人因工受傷後，通常須等候多久才可獲得賠償？在此期間內，政府會如何協助該名受傷工人？

(The following is the interpretation of what Mr. CHEUNG Yan-lung asked.)

*Will Government state how long it usually takes for a worker injured in the course of employment to receive compensation and what assistance is provided by Government to the injured worker in the interim?*

COMMISSIONER FOR LABOUR:—Sir, the time taken to pay compensation to a worker injured in the course of his duties depends very much on the nature of his injuries.

Whatever the nature of his injury, his employer is bound to pay him a sum equivalent to two-thirds of his monthly salary from the time he is injured until the time he returns to work or, in the case of permanent injury, until his final compensation has been assessed, and these payments must be made within seven days of his normal pay day.

For comparatively minor injuries causing the worker to be off work less than 14 days, we have recently introduced a specially simple procedure. Under this system, which covers about 70% of all cases, the Labour Department is able to issue a 'Certificate of Compensation Assessment's to the employee in about eight days and the employer is then bound to pay any balance of compensation within 21 days.

With the 30% of cases involving more serious injuries or permanent incapacity the position is inevitably more complicated. It is sometimes impossible for doctors to assess the degree of permanent incapacity caused by an injury until the patient has recovered from its temporary effects. This means that, depending on the nature of the injury, the period of convalescence required and the employee's own willingness to follow strictly any medical advice he receives, it may take some time before the degree of permanent incapacity can be fully and fairly assessed. This period can vary greatly; on average it is about two months, but with more serious injuries it can take four or five months, or in some cases much longer.

Once the Employees' Compensation Board has been able to assess the degree of permanent incapacity and so put a figure on the employee's loss of earning capacity the employer is required to make a compensation agreement with the employee within 21 days and he must then put this agreement to the Labour Department within three days. The Labour Department normally approves the agreement within nine days and, once it has done so, the employer must pay the balance of compensation within 21 days.

In disputed cases, when the employer refuses to accept liability or disputes the amount of compensation, the Labour Department tries to conciliate the two sides and encourages them to reach a settlement. If this fails, the Department puts the employee in touch with the Legal Aid Department, which gives help and advice and, if appropriate, helps the employee pursue his claim in court.

If despite the periodic payments I have already mentioned, an injured employee is still in financial difficulty while his injury is being assessed or while he is pursuing his claim in court, he is put in touch with the Social Welfare Department for help.

MRS. NG: — *Sir, would Government consider simplifying the procedure so that compensation could be awarded to the injured worker as early as possible?*

COMMISSIONER FOR LABOUR:—As I have just mentioned we have greatly simplified the procedure recently for all straight forward injuries. I think there is a limit to the degree to which we can simplify the procedure for very complicated injuries. For example, if someone's brain is injured it may be more than a year, or even years before the doctors even know what the permanent effect on his brain will be; and I think it is only fair to wait until the final results are known before the final assessment is made. But, in the meanwhile, the worker does receive the interim payments I mentioned.

### **Cleanliness of Hong Kong's waters**

7. REVD. P. T. MCGOVERN asked:—*In view of the obviously unsatisfactory state of cleanliness of the Territories' waters, and especially of the harbour, and the apparent ineffectiveness of the present cleaning method, will Government inform this Council what steps are being taken to accelerate the study of the problem and what steps are being taken to improve the situation?*

SECRETARY FOR HEALTH AND WELFARE:—Sir, the steps being taken to improve the cleanliness of the Territories' waters fall into two main categories: those which are designed to prevent refuse and pollutants from entering our waters, and those which deal with removing refuse which has got in. The Secretary for Home Affairs described the Government's action with regard to floating refuse in his reply to a similar question 15 months ago. The six preventive programmes he mentioned then, that is to say, the screening of sewers for solids, the cleaning of nullahs, squatter area refuse clearance, reclamation refuse control and the refuse collections services from vessels entering port, and in typhoon shelters, are all continuing. Additional preventive steps are:—

- (a) the development of controls under the Water Pollution Control Ordinance to regulate discharges into water control zones—the first of which has been declared at Tolo Harbour; and

- (b) the Water Course Maintenance and Management system which I described in this Chamber three weeks ago.

As far as Victoria Harbour is concerned, the main problem is floating refuse, which is both unsightly and a danger to vessels of all sizes. To deal with this problem, the Marine Department operates a fleet of 29 vessels, including six specialized refuse collection craft known as 'waterwitches'.

These efforts have not been ineffective: they achieved the removal of over 8 000 tonnes of refuse from our waters last year, as against 4 400 tonnes in 1 980. Nevertheless, I agree that more needs to be done. The Environmental Protection Agency study commissioned at the end of 1982 will be completed by the end of next month. This study will identify the sources and movement patterns of marine refuse, including the seasonal variations observed, and will make recommendations for the more effective interception and collection of floating refuse.

In the light of the findings of this study the departments concerned will reassess their existing arrangements and deployment of resources and will review the adequacy of their expansion plans. At present these include additional vessels for the Marine Department's cleansing fleet and an extension of its coverage to include Tuen Mun, Sha Tin, Sai Kung and Tai Po in addition to the services presently provided for Victoria Harbour, Aberdeen and Cheung Chau. There are also plans to extend the collection service in the typhoon shelters to include Cheung Chau, Chai Wan, Sai Kung and Sam Ka Chuen.

The implementation of these plans will be delayed by constraints imposed upon the Marine Department's budget for 1984-85. In consequence, in the immediate future, efforts will be directed at ensuring that there is no reduction in the existing levels of service, and that approved recommendations from the E.P.A. study are implemented as quickly as possible.

REVD. P. T. MCGOVERN: — *Is Government satisfied with the performance of the 'waterwitches', that is, that they are able to work to the advertised capacity expected of them before they were bought?*

SECRETARY FOR HEALTH AND WELFARE:—Sir, I am afraid I don't have the information about the advertised capacity of the 'waterwitches' before they were bought and so I find it difficult to answer that question. But I will give Father MCGOVERN a reply in writing, if I may.

(The following written reply was provided subsequently.)

The manufacturers claim that a waterwitch can clear 81.3 tonnes of floating refuse daily. This is the theoretical maximum lifting capacity under ideal conditions. It takes no account of varying operational constraints such as wind and tide, travelling distances during the operational period, the concentration, type and weight of the refuse to be picked up and the capacity of receiving barges.

Marine Department statistics show that in 1983 the six waterwitches collected 4 774 tonnes of refuse, or 3.15 tonnes per working day per vessel. The only figures available for comparison are those for Singapore (2.0 tonnes per day) and Baltimore (2.75 tonnes per day). On 5 May 1983, three waterwitches lifted approximately seven tonnes each from Kai Tak Nullah and on 14 June 1983 one waterwitch lifted 16 tonnes in eleven hours at Shau Kei Wan Typhoon Shelter during a clean up operation.

The Marine Department consider that, having regard to maintenance and the other constraints mentioned above, the performance of the waterwitch is satisfactory.

In the next few weeks the Environmental Protection Agency will complete a study on the sources and drift of floating refuse in the harbour. From this it might be possible to devise new plans for the development and operation of waterwitches.

### **Severance pay legislation**

8. MR. CHAN YING-LUN asked:—*What is the present position regarding the preparation of legislation to revise the provisions on severance payment under the Employment Ordinance?*

COMMISSIONER FOR LABOUR:—Sir, it is hoped to put the proposed severance pay amendments to Executive Council later this month and then, subject to Executive Council's views, put them to this Council a few weeks later.

MR. CHAN YING-LUN:—*How long will Government allow for the public to comment on the Bill after its introduction in this Chamber?*

COMMISSIONER FOR LABOUR:—We have in mind to allow a fairly generous period of time, probably several weeks. I haven't the exact figure in my mind at the moment, Sir.

### **Burial grounds and public cemeteries on the outlying islands**

9. MR. CHEUNG YAN-LUNG asked in Cantonese:—

政府可否告知本局有關在離島提供墓地和公眾墳場的政策？

(The following is the interpretation of what Mr. CHEUNG Yan-lung asked.)

*Will Government inform this Council of its policy on the provision of burial grounds and public cemeteries on outlying islands?*

SECRETARY FOR HEALTH AND WELFARE:—Sir, the Government's policy generally is to encourage cremation. Nevertheless, on outlying islands there are gazetted



cemeteries available for the burials of residents. These are subject to the Government's policy for a six year exhumation cycle in order to provide grave spaces for reuse. In addition there are designated burial grounds restricted to the burials of indigenous villagers and locally-based fishermen, who may also be buried in the gazetted cemeteries.

As in other parts of the New Territories, it is unlawful for any burial to take place outside a gazetted public or private cemetery unless it is authorized in writing by a District Officer. This authorization is given only in the case of indigenous villagers and locally-based fishermen for burials in designated burial grounds.

There are three public cemeteries which serve the residents of outlying islands. These are the Cheung Chau Cemetery which caters for the residents on Cheung Chau, the Tai O Cemetery (at Lantau) for the residents of the Islands District, including Cheung Chau, and the Wo Hop Shek Cemetery (at Fanling) which is available to serve the entire Territory, including the outlying islands. There are at present 40 designated burial grounds in the outlying islands, and other sites are under consideration.

Restricting traditional burials to designated burial grounds ensures that the graves will be readily identifiable, that they will not interfere with development and will not create haphazard environmental problems such as pollution, soil erosion, fire hazard and spoiling of the landscape.

MR. CHEUNG YAN-LUNG asked in Cantonese:—

因殯葬的安排，時限緊逼，政府在制定政策的時候，是否有充份考慮到居於離島的死者家屬對交通方面所遭遇的困難，又當局有何措施以協助他們解決這項困難？

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

*As time is limited for the making of funeral arrangements, has the Government, when drawing up its policy, given adequate consideration to the transport difficulties encountered by bereaved families living in the outlying islands, and what measures does the Government have to assist them in solving these difficulties?*

SECRETARY FOR HEALTH AND WELFARE:—Sir, I can assure my honourable friend that when the Government developed its policy in 1976 it did take into consideration the various factors that have just been suggested.

### **Aluminium framed screens on balconies of public housing units**

10. MRS. PAULINE NG asked in Cantonese:—

鑒於房屋署最近宣佈，准許公共屋邨住戶在露台裝設可滑動的鋁窗，政府可否解釋，為何該署又要規定露台至少三分之一地方不得密封？

(The following is the interpretation of what Mrs. Pauline NG asked.)

*Given that the Housing Department has announced that it will allow the installation of sliding aluminium framed shutters on the balconies of public housing units, will Government explain why the Department imposes a condition that one third of the balcony area should be left unenclosed?*

SECRETARY FOR HOUSING:—Sir, the condition has been imposed for safety reasons. In most of the public housing units, kitchens and toilets are ventilated through the balcony area. Enclosure of the balcony opening would, thus, create a health hazard and contravene the Building Regulations and, therefore, should not be allowed.

However, in view of the large number of unauthorized wind shutters already existing and the fact that many of them are being replaced by aluminium framed screens, the Department has found it necessary to lay down a certain minimum standard within which such installations can be tolerated.

Furthermore, many tenants still use flueless gas water heaters in the balcony area itself or in the kitchen or toilets, ventilating through the balcony area. It is important therefore, that the balcony should be kept at least partially open to ensure adequate ventilation and generally to adhere to the gas safety measures.

MRS. NG asked in Cantonese:—

閣下，既然法例並沒有規定私人樓宇的住戶，一定要將部份的窗門長期打開，房屋署可否考慮放寬公屋住戶保留三份之一空間之規定，等他們按照天氣及通風情況，自己決定應當打開或關閉窗戶？

(The following is the interpretation of what Mrs. NG asked.)

*Sir, since there is no legislation to stipulate that residents of private units must keep their windows permanently open, could the Housing Department consider easing this particular restriction that one-third of the area of balconies in public housing units should be left unenclosed, and let the residents decide for themselves whether to open or close windows according to weather and ventilation conditions?*

SECRETARY FOR HOUSING:—Sir, the aperture in the balcony is provided in compliance with the Building Regulations which require a certain area to be left open for ventilation and lighting purposes. Therefore enclosure of such area would be in contravention of the minimum standard which is devised in the interests of public safety.

MRS. NG asked in Cantonese:—

閣下，假如房屋署認為必定採取管制的措施，以確保公屋單位空氣要流通，該署可否考慮採用其他通風辦法，例如裝設抽氣扇等等？

(The following is the interpretation of what Mrs. NG asked.)

*Sir, if the Department considers that control is absolutely necessary to ensure that there is adequate ventilation in public housing units, could the Department consider other means of ventilation, for instance, the installation of ventilation fans, etc.?*

SECRETARY FOR HOUSING:—Sir, mechanical ventilation is just one of many ways of ventilating. The design of the public housing unit is such that, because of the structural limitations, the front is small and the minimum is now being provided, and any interference with the minimum that is provided will contravene the Regulations.

MRS. NG asked in Cantonese:—

閣下，房屋司提及有關空氣流通及健康的理由，我們都很清楚了。但到底他是否根據他的推斷或事實來作出這項提議呢？同時，可否告訴我們有關的數字和報告來顯示下列兩點：—

(甲) 現在在露台裝置鋁窗而未有保留三份之一空間的公屋住戶的數字有多少？

(乙) 這些住戶的健康有沒有受不良影響？

(The following is the interpretation of what Mrs. NG asked.)

*Sir, the Secretary for Housing has informed us that there are reasons concerning ventilation as well as health; we are very clear about his explanation. However is it based on his own deduction or is it based on facts that he is making such suggestions, and can he also inform us the relevant figures and reports to show the following two points:—*

*(a) how many public housing units are there which have aluminium framed shutters installed without leaving any unenclosed area; and*

*(b) has their health been adversely affected?*

SECRETARY FOR HOUSING:—Sir, of the nearly half million Housing Authority flats about 7 700 flats have had their balconies enclosed by aluminium framed shutters. Certainly those people living in public housing are enjoying their good health, but I don't think we should wait until any fatal accident to take action.

## Statements

### **Hong Kong Export Credit Insurance Corporation—1982-83 Annual Report**

SECRETARY FOR TRADE AND INDUSTRY:—Sir, in accordance with section 28 of the Hong Kong Export Credit Insurance Corporation Ordinance the Report and Accounts of the Corporation for 1982-83 are tabled today.

Since its establishment in 1966, the Corporation has been offering protection for Hong Kong's manufacturers and exporters against the risk of not being paid for the goods and services they have supplied to overseas buyers. Its function is not to compete with commercial insurers, but rather to provide insurance cover not normally provided by the private sector. Although its capital of \$20 million is wholly provided by the Government and its liabilities further guaranteed up to \$3,000 million, the Corporation operates on a commercial basis and has to pay its own way.

In 1982-83 there was moderate growth in the Corporation's business, with a net increase of 148 policies issued, bringing the total to 1 357; a small increase in the value of total insured exports at \$3,919 million; and 8% growth in gross premium income, to \$21 million; but unfavourable market conditions overseas resulting in the payment of a number of big claims and the writing off of \$7.8 million of the expenditure arising from office removal, fitting out of the new premises and computer hardware purchase, led to a net deficit of \$6 million for the year.

As in the previous year, exports insured with the Corporation represented just under 5% of Hong Kong's total domestic exports. Europe remained the Corporation's largest exposure area with a stable \$2,463 million worth of insured exports, while there was an encouraging growth of 18% in business with North America to register a total of \$654 million worth of insured exports—though this represented only 2% of Hong Kong's domestic exports to that latter area. However, the products covered by the Corporation remained consistent with the overall pattern of our exports: textiles and clothing were predominant with 41% of exports insured, followed by toys at 11%.

The large claims payable in the period under review are directly attributable to the recession in our major overseas markets which has brought about bankruptcies in its wake. Political instability in other markets have added to the substantial claims on the Corporation. Overall, buyer risks (i.e. where the overseas buyer defaults on payment or becomes insolvent or repudiates the contract) accounted for some 79% of payments and country risks for 21%. The percentages of these two types of risks for 1981-82 were 84% and 16% respectively. The areas of major claims in 1982-83 were the United Kingdom, Latin America and Africa.

Sir, I regret to say that the difficulties facing the Corporation are not yet a thing of the past as two major insolvencies have occurred in Europe in the current year, and the problems arising from the indebtedness of a number of countries are a long way from being resolved. In addition the Corporation's reinsurer gave notice of termination of the re-insurance treaty with effect from 1 September 1983 unless the contract was re-written in terms which were unacceptable to the Corporation. Accordingly, the Corporation is without re-insurance cover at present, but on the advice of the Advisory Board discussions are in progress with other interested re-insurers.

The Corporation has brought to the Government's notice that the meeting of fresh claims coupled with the utilization of some \$32 million of the Corporation's liquid funds in the purchase and fitting out of its new premises (which after the sum written off in 1982-83, of course, remains as a fixed asset of \$25.4 million in the Balance Sheet) may result in it having to call on the Government's guarantee for its liquidity. The Corporation, on the advice of its Advisory Board, has asked for an injection of \$20 million to its capital by Government to make its total investment \$40 million. This request is receiving the administration's attention with a view to the making of a submission to the Finance Committee of this Council to ease the Corporation's cash flow.

In conclusion, Sir, I must record the Government's appreciation of the work of the Advisory Board under the chairmanship of Mr. W. C. L. BROWN. As the Commissioner of the Hong Kong Export Credit Insurance Corporation, Mr. A. W. WERNAS, will have retired from his post by the time the next Report is tabled. I would also like to take this opportunity to record the Government's thanks to him and his staff for their hard work and dedicated service.

### **Public Accounts Committee Report No. 6—December 1983**

MR. S. C. CHEN:—Sir, in accordance with Standing Order 60(A), the Director of Audit's Report on the Accounts of the Government for the year ended 31 March 1983 is laid on the table today, together with the Sixth Report of the Public Accounts Committee.

Sir, when I spoke on the Fifth Report of the Public Accounts Committee in this Chamber last year I drew attention to the need to inculcate a greater sense of financial awareness in managers in the Government, and the need for a more highly developed sense of cost-benefit. I should like to quote, if I may, from the final paragraph of the Committee's Report this year: 'The Committee is disappointed and distressed that the Director of Audit should have found it necessary in so many areas of his report to draw attention to oversights, omissions and failures by civil servants which point to what we would term inefficiencies in the system of administration. Senior management must accept the responsibility for a continuous critical appraisal of the procedures in force in departments so as to ensure that these procedures are both adequate in their conception and effectively implemented'.

Sir, the Committee was frankly discouraged on occasions when interviewing some of the witnesses who appeared before it by the sense given that financial considerations were often a poor second to other concerns in the minds of controlling officers. There is all too little evidence that value for money carries the weight which it should with those who have the executive responsibility of public affairs. Although the Committee never doubted the diligence and

dedication of controlling officers, there was more than one occasion when it felt that some officers in grappling with the very real problems which they face felt constrained to press on regardless either in terms of finishing a project or retaining an old and inefficient system because their departments did not have the capacity to initiate a thorough review of what they were doing.

Having made those criticisms, Sir, I am of course obliged on behalf of the Committee to make suggestions. It is the view of the Committee that Government should be making more use of cost accountants in its management structures that the management team of almost any department which deals with large sums in terms of either revenue or expenditure should include a cost accountant seconded from the Treasury whose responsibility would be to advise the head of that department on appropriate yardsticks for the measurement of cost-benefit, and necessary measures to improve productivity and efficiency. I should stress, however, that the thinking here is not just to have one man in each department who is the *only* one concerned with these matters; but one who can promote awareness of these considerations among his colleagues.

Sir, in the United Kingdom which has a Public Accounts Committee since 1861, pre-dating even the establishment there of an Audit Department, the Accounting Officer for each head of expenditure receives on appointment a letter which lays down his personal responsibility. The letter says, and I quote: 'In your capacity as Accounting Officers you will be responsible for safeguarding the public funds in your charge and ensuring they are applied only for the purposes intended by Parliament. But this is only part of your responsibility for efficient and economic administration throughout your department and it is this broad responsibility for good management for which you will be called to account by the Public Accounts Committee'.

Sir, I believe that the issuing of a similar letter would be a good practice to follow in Hong Kong: our objective should be the same standard if not higher among the stewards of public money.

## **Government business**

### **Motion**

#### **ROAD TRAFFIC ORDINANCE**

THE SECRETARY FOR TRANSPORT moved the following motion:—That the period for which there remains in force the limit on the number of motor vehicles which may be registered as New Territories taxis, specified in the Taxis (New Territories Taxis) (Limitation on Number) Notice 1981 published as Legal Notice No. 230 of 1981, be extended to 31 January 1985.

He said:—Sir, I rise to move the motion standing in my name on the Order Paper. It provides, under section 7E(3) of the Road Traffic Ordinance (Chapter 220), that the period for which there remains in force a limit on the number of motor vehicles which may be registered as New Territories taxis, (specified as 3 000 in the notice published in the *Gazette* as Legal Notice No. 230 of 1981), be extended to 31 January 1985.

Council will wish to know that, while agreeing to the continued issues of New Territories taxi licences at the intended rate of 50 per month, the Governor in Council intends that the number of urban taxi licences shall be frozen for a period of two years at the present number of 13 000. Later today, Sir, when moving two Bills, I shall expand upon this and other measures relating to taxis.

*Question put and agreed to.*

### **First reading of bills**

#### **MOTOR VEHICLES (FIRST REGISTRATION TAX) (AMENDMENT) BILL 1984**

#### **ROAD TRAFFIC (REGISTRATION AND LICENSING OF VEHICLES) REGULATIONS (AMENDMENT) BILL 1984**

#### **DANGEROUS DRUGS (AMENDMENT) BILL 1984**

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

### **Second reading of bills**

#### **MOTOR VEHICLES (FIRST REGISTRATION TAX) (AMENDMENT) BILL 1984**

THE SECRETARY FOR TRANSPORT moved the second reading of:—‘A bill to amend the Motor Vehicles (First Registration Tax) Ordinance’.

He said:—Sir, I rise to move the second reading of the Motor Vehicles (First Registration Tax) (Amendment) Bill 1984. Subsequently I shall move the second reading of the Road Traffic (Registration and Licensing of Vehicles) Regulations (Amendment) Bill 1984.

2. These Bills were, as directed by the Governor in Council, published in an *Extraordinary Gazette* earlier today, together with two Public Revenue Protection Orders. A short press statement accompanied the Orders. I trust

that Members of this Council will understand the need to introduce these Bills without normal notice, for revenue protection purposes. Debate on both Bills will today be adjourned and resumed at a subsequent sitting. May I, Sir, emphasise strongly that the use of Public Revenue Protection Orders does not indicate a foregone conclusion in respect of that part of the policy package that I shall be outlining; nor should it inhibit debate. The Orders do simply what they say: they protect the revenue, during the period of debate in this Council, by not permitting interested parties to register taxis or to renew annual licences at the old rates, pending the legislative decision of this Council. This is an important point, sometimes misunderstood and sometimes, unhappily, outside this Council, deliberately misrepresented.

3. The two Bills are interrelated, and I shall explain the background and proposals of both at the same time. In May 1982, when I addressed the Council with a similar introduction, the subject for debate was the control of the rate of growth of private motor vehicles. Today, Sir, it is the role of the taxi in the complex Hong Kong transport scene, following an examination by the Governor in Council of the most comprehensive review yet carried out of the subject.

#### *BACKGROUND*

4. By the middle of the 1970s, when the number of taxis on our roads had not grown for several years, it was generally thought that more should be provided. Private cars numbered a little more than 100 000; bus services were about to be more effectively controlled and improved under the new Public Omnibus Service Ordinance; and work had not begun on the building of our two modern electric railways. Taxis numbered only 4 754 and because of their low fares, were in great demand.

5. There were serious problems with public cars which plied illegally for hire in the urban areas, and with 'pak pais' operating illegally throughout the territory.

6. Therefore in April 1976, the Government rationalized taxi policy. Public cars were converted to legal taxis; the category of New Territories taxi was created; and urban taxi licences were to be issued at the continuing rate of 100 per month, in quarterly batches. This last part of the policy has been scrupulously implemented, together with the subsequent direction by the Governor in Council that N.T. taxi licences should issue at the rate of 50 every month. There are now registered some 12 500 urban taxis and 2 000 N.T. taxis. 500 urban and 330 N.T. licences, issued as a result of recent tenders, have yet to have taxis registered under them. During 1984 therefore, we can expect the number of registered urban taxis to reach 13 000, and of registered N.T. taxis to reach 2 330.

7. By 1979, with increasing numbers of vehicles of all categories on the road, and despite a large and expensive construction programme of transport



infrastructure and facilities, congestion on the roads had become an issue of great concern.

8. In May 1982, when introducing restraints on the growth of private vehicles. I explained in some detail how this very serious problem of congestion had arisen; its transport and economic aspects, and the need for firm action. Members will, I hope, be happy to know that today, in respect of this important background, I shall only invite them to refer to page 764 onwards of Hong Kong Hansard of 1982 (that will save about twenty minutes).

9. Members will recall that taxis were excluded from the 1982 measures. I was, however, careful to say: 'In regard to taxis, I confirm that they are a necessary and useful adjunct to public transport, but there can be no assumption that they will always be treated as favourably as at present, namely, 15% first registration tax and \$900 annual licence fee. The position will be monitored accordingly.'

#### *TAXI POLICY UP TO THE 1979 WHITE PAPER ON INTERNAL TRANSPORT POLICY*

10. Taxis have always been classified as 'personalized transport'; an odd phrase, perhaps, but one which aptly defines their principal use. This view was affirmed in the 1976 Governor in Council decision to which I referred a moment ago. It was re-stated in the 1979 White Paper on Internal Transport Policy. The Green Paper which preceded that White Paper and was quoted again in it—

'taxis, because they spent a great deal of time cruising on busy streets seeking passengers, contributed more to congestion than hire cars or private cars. Taxi fares were low and this probably produced a demand wider than in most cities. If road congestion had to be eased in Hong Kong, and provided alternative public transport was conveniently available, there would be a case for gradually reducing the importance of the taxi to the level to be found in many other cities.'

11. The White Paper in two places refers to the role of taxis, in the context of congestion and the use of road space, a valuable commodity provided at the public expense. Paragraphs 27 and 161-164 of the White Paper refer, and are reproduced in footnote (1) to the typed version of this speech.

#### *THE SITUATION BY 1982*

12. As recognized in May 1982, taxis were still needed in a supporting role while major improvements continued in public transport. These had included the Mass Transit Railway which began with the Modified Initial System in October 1979; crossed the harbour in February 1980, and extended to Tsuen Wan in May 1982; and the modernized K.C.R. which began service to Sha Tin in May 1982 and is now fully electrified to the border; and further, a wide range of road projects and associated improvements. I will not go into detail on the road programme nor the delay which has been inevitably caused in the recent

period of financial stringency in which we find ourselves. Nevertheless, as regards buses, enormous improvements have been made by the two principal franchised operators, and by a growing range of subsidiary and supporting bus services. The number of passengers carried by the two principal companies has increased from 2.5 million in 1976 to 3.5 million in the last seven years. Buses today are bigger, more comfortable, less crowded and they move more freely, with the help of the programme of public transport priority measures. These buses are supported by maxicabs, by residential bus services and a variety of public and private licensed operators.

13. The need for the taxi as an adjunct to public transport has therefore diminished significantly. Although it will always be needed, its use is increasingly related to particular situations, for example, parts of the New Territories where public transport is for economic reasons unable to offer full services; and at certain times when public transport, again for economic reasons, is infrequent. Increasingly, the taxi is being used as a preferred mode of transport, not because public transport is unavailable, but by individual consumers using their individual judgment, and taking into account time, convenience and cost. There is, of course, nothing wrong with this, but Government's duty is to get the mix of transport modes and costs as right as possible, to enable the primary objective of 'Keeping Hong Kong moving' to be achieved.

14. Late in 1982, it was decided, and I mentioned it in this Council in reply to a question, that a very close look had to be taken at the role of the taxi in the transport world of Hong Kong, in the light of the policy that road public transport in the form of mass carriers, that is, buses and goods vehicles, must have priority. A taxi, like the private car, is a relatively inefficient user of valuable road capacity in terms of passengers carried per vehicle. That qualifying phrase at the end of that sentence should be borne in mind. I am not saying that a motor car or a taxi is inefficient, I am saying that it is relatively inefficient in terms of passengers carried per vehicle.

15. During 1983, therefore, a Review was undertaken of all aspects of taxi policy and operations, in greater scope and detail than ever before. The report—a very comprehensive document—and its recommendations were studied by the Transport Advisory Committee and then considered by the Governor in Council. Particular care was taken to obtain a wide range of opinion as well as of facts, and all District Boards were invited to discuss an information paper and to put forward their views. The fourteen urban and N.T. taxi associations were also consulted. Public opinion as expressed in the media was monitored throughout the year. A special section on taxi use was included in the General Household Survey conducted by the Census and Statistics Department.

16. I will now, Sir, briefly present the significant findings of the Review.

*THE 1983 REVIEW—SIGNIFICANT FINDINGS**Taxis and public transport*

17. The numbers of passengers daily carried on public land transport and in taxis in April 1976 and September 1983 were respectively—

	<i>September 1983</i>	<i>April 1976</i>
K.M.B./C.M.B.	3 537 000	2 560 000
M.T.R.	1 175 000	—
Tramways	364 000	350 000
K.C.R.	164 000	31 000
	<hr/>	<hr/>
	5 222 000	2 941 000
	<hr/>	<hr/>
Taxis	1 030 000	396 000

Taxi passengers increased by 160% over the period, compared with an increase of 78% in passengers carried on public land transport. Even taking into account the advent of the M.T.R., taxis are carrying a large number of passengers who could be carried by public transport. The General Household Survey found that only 9% of taxi users said that their destination was not accessible by public transport, another further 9% not have public transport available at the time of their strips. Only 5% of frequent taxi users turned to the use of a private car when a taxi was not available.

*Reasons for using taxis*

18. The General Household Survey provided useful evidence on the use of taxis and opinions on standards of service. It showed that almost 60% of taxi trips are made for social and recreational purposes, that 22% are made to and from work or on business journeys, and only 7% are made for urgent trips. This puts in proper perspective the role of taxis as *essential* carriers, which is a concept sometimes expressed by those who comment on transport affairs.

*Growth in taxi numbers*

19. The number of taxis has more than trebled since April 1976. Private cars and the total vehicle fleet over the same period have increased by just over 80%. Since the May 1982 increases in first registration tax and annual licences for private vehicles, taxis as a proportion of total traffic in all the major corridors have increased substantially, and private cars have decreased by a roughly corresponding proportion. On ten major routes surveyed in 1982, taxis averaged 31% of the total vehicle flow, and private cars were 44%. In 1983, on those same routes, taxis have increased their share to 40% of all vehicle movements, while cars had dropped to 32%. In five of these ten major corridors, taxis are well above this average figure.

*Distance travelled by taxis*

20. The taxi fleet of some 14 500 vehicles travels the same total distance each day as does the licensed private car fleet of 163 000 vehicles; and the taxis

concentrate quite largely in congested areas. About 40% of their travelling distance, that is of taxis, is covered by vacant taxis cruising for fares, and on other unpaid journeys.

#### *Levels of service*

21. The review found that the average passenger waiting times at taxi stands are now at an all time low of 0.3 minute on Hong Kong Island and 1.2 minutes in Kowloon. These are, of course, average figures and on certain occasions, waiting times will be longer: but it will never be practicable to have a taxi fleet big enough to cope with peak demand on a wet day, particularly a wet racing day, particularly also while we have the relatively low fares structure which we have. There have been no complaints in the past two years to the Transport Complaints Unit about levels of taxi service, about malpractices, or of levels of police enforcement against taxi offences. I found that statistic so remarkable that I have had it checked. It is so. There have, of course, been letters to the newspaper complaining about these matters.

#### *Taxi fares*

22. Taxi fares in Hong Kong remain low. There was no increase from 1946 to 1974. Despite the increases in 1978, 1980 and 1982, taxi fares actually fell in real terms over the period 1974 to 1982. Of fifteen cities and states surveyed by the review, including Singapore, fares in Hong Kong are the lowest. They are, for example, about a quarter of London taxi fares. The increases which I shall describe later on would bring them up to about 30% of London fares.

#### *DECISIONS OF THE GOVERNOR IN COUNCIL*

23. After considering the recommendations of the Review, and the advice of the Transport Advisory Committee, the Governor in Council decided as follows—

#### *The role of taxis*

24. Taxis are a form of personalized transport, and in terms of policy should be treated like private cars, not like public transport, in the transport hierarchy.

#### *Limitation of taxi numbers*

25. The number of taxis should be limited to what the road network can bear in terms of mobility and congestion, recognizing that taxis, like private cars, are relatively inefficient users of road space.

#### *Freeze on issue of taxi licences*

26. The Review recommended a freeze of the issue of urban and New Territories taxi licences at the numbers tendered for in the December 1983 tender exercise, for an initial period of two years, and subject to annual review. It was noted that during the next two years public transport will continue to improve, particularly with the opening of the M.T.R. Island Line and the Island Eastern Corridor.

27. The Governor in Council accepted this recommendation in respect of urban taxis but observed that, with the rapid development of the New Territories and its geographical pattern presenting different travelling requirements, public transport is not always readily available and congestion is not such a problem. N.T. taxi licences will therefore continue to be issued by tender at the current rate of 50 per month (in quarterly batches) up to the gazetted limit of 3 000. The necessary resolution of this Council to extend the validity of the limit as from 1st February next for a further year was passed earlier this afternoon.

*Removal of preferential taxation*

28. There is no longer justification for preferential taxation for taxis. The two Bills which I am moving follow up the provisions of the two Revenue Protection Orders which came into effect today.

*First registration tax*

29. A taxi will pay the same first registration tax as a private car, instead of the present flat 15% of Cost Insurance and Freight value. Those rates are, in other words, they are for a private car, and they will become for a taxi—

(a) where the C.I.F. value of the taxi does not exceed \$20,000	70%
(b) where the C.I.F. value of the taxi exceeds \$20,000 but does not exceed \$30,000	80%
(c) where the C.I.F. value of the taxi exceeds \$30,000	90%

Virtually all taxis fall in category (c).

*Annual licence fees*

30. Recognizing that each taxi covers many times the distance that the average private car does, the annual licence fee for taxis will be set at twice the level for private cars. This replaces the present flat fee of \$1,600 per annum. The new rates will be—

(a) For a taxi where the cylinder capacity of the engine does not exceed 1 500 cubic centimetres	\$ 4,600
(b) Where the engine exceeds 1 500 c.c. but does not exceed 2 500 c.c.	\$ 6,800
(c) Between 2 500 and 3 500 c.c.	\$ 9,000
(d) Between 3 500 and 4 500 c.c.	\$11,200
(e) Over 4 500 c.c.	\$13,400

Practically all taxis fall in category (b), and it is highly likely that this will change, but it is necessary to provide for all categories.

*Diesel engine surcharge*

31. Private cars with diesel engines pay an annual surcharge of \$1,000. Taxis with diesel engines will in future pay an annual surcharge of \$2,000.

32. These three measures taken together, Sir, would increase the cost of operating a taxi by about 7½ per cent.

#### *TAXI FARE INCREASE*

33. The Governor in Council has also reconsidered the application made in 1983 by taxi operators for a fare increase, and concluded that an increase of approximately 10% is justified for both urban and New Territories taxis, based on identifiable increases in their expenditure as at November 1983 compared with the time of the last fare increase in October 1982. Taking this into account as well as the increase in expenditure arising from the new taxation, the Governor in Council on 3rd January 1984 approved amendments to the Road Traffic (Public Service Vehicles) (Amendment) Regulations 1984 which have the effect of increasing urban and New Territories taxi fares by about 17 per cent. with effect from the 1st February 1984.

34. Urban taxi fares will go up from the present flagfall of \$4.50 for the first two kilometres to a flagfall of \$5.30. The additional distance charge will increase from 60 cents to 70 cents for each 266.6 metres. For N.T. taxis, the flagfall will increase from \$3 to \$3.50. The additional distance charge will increase from 30 cents for every 0.2 of a kilometre to 70 cents for every 0.4 of a kilometre. Waiting time for both urban and N.T. taxis will be set at 70 cents for every two minutes. The additional fare for each article of baggage, animal or bird, which has been unchanged since 1969, will be raised from 50 cents to \$1.

35. Sir, we have, in Hong Kong, possibly one of the most efficient taxi services in the world, as well as the cheapest. The measures now introduced will not alter that position; they will emphasize the place of the taxi in the transport hierarchy as a form of personalized transport, in the order of priority to which we are committed, namely that the movement of public transport and of goods vehicles is more important to the community than that of private vehicles and taxis.

#### *EFFECT ON THE PUBLIC REVENUE*

36. Before the cry is raised that these carefully thought-out transport measures are really only designed to increase the revenue to Government from the taxi trade and its passengers, let me say briefly but emphatically that their net effect is likely to produce in 1984/5 about \$12 million more than was forecast at the time these measures were under consideration. This is less than 5% of the total revenue involved, and is as close as one can reasonably get, granted the difficulty of forecasting the level of premia tendered for licences.

#### *THE DISTRICT BOARDS' VIEWS*

37. I mentioned earlier that the District Boards were asked for their views on taxi services. The Urban Boards generally thought that the number of taxis was sufficient. The New Territories Boards were more concerned with the extension of the N.T. taxi boundaries than with the number of taxis. Three extensions into

urban interchanges were announced on 9th December and will come into effect shortly. All District Boards hoped that fare levels would not be increased unduly but appreciated that the cost of operating taxis has increased.

#### *THE FUTURE*

38. The 1983 Review provided many other useful recommendations the most important of which are listed as footnote (2) to this speech, and which will be pursued. Annual surveys of the taxi trade will continue to be carried out, not necessarily of course in the prodigious detail as that of 1983. The position at the end of the first year of the freeze on the issue of urban taxi licences will be carefully examined. The sufficiency of N.T. taxis when the present limit of 3 000 on their numbers is reached early in 1985, will be reviewed.

39. Perhaps, Sir, I may go a little further into the possible future. The tax and licence fee increases now proposed will be passed on to taxi users through increased fares. These new fares will affect taxi users equally whatever the time of day and whether or not they are travelling in congested areas. As in the case of private vehicles, as was pointed out by several Members of this Council in a May 1982 debate, rather than increasing tax and licences across the board for transport policy reasons, it would, by analogy with what was said about private motor cars, be more equitable to charge a higher fare for the use of taxis in peak periods and at congested locations; and to provide for correspondingly lower fares otherwise. If the pilot stage of Electronic Road Pricing (E.R.P.) proves successful and if a full system is introduced, it would be useful for the electronic number plate to be linked to the taxi meter so that the charges incurred on the E.R.P. system could be included in the fare for the journey. The consulting engineers have accordingly been asked to include this possibility in their work on the pilot stage at no extra cost.

40. Meanwhile, Sir, I beg to move that the debate be now adjourned.

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

*Question put and agreed to.*

*Footnote (1) Paragraphs 27 and 161-164 of the 1979 White Paper on Internal Transport Policy*

27. Taxis and private hire cars are (also) major contributors to traffic congestion. Taxis are even less efficient users of road space than private cars because they travel without passengers for most of their time on the road ... and they tend to congregate in the highly congested urban areas. Whilst it proposes to increase the supply of taxis the Government has taken steps to control the demand by raising fares while, at the same time, requiring an improvement in the quality of the services they provide by taking firmer action against malpractices.

161. Taxis and contract hire cars are considered alongside private transport because they offer personalized services akin to those provided by private cars. Although they are more comfortable and flexible than public transport, they are also very extravagant users of road space. The demand for taxis has been stimulated by relatively low fares which, given general inflation, have steadily fallen in real terms: and this has, in recent years, led to a shortage of taxis at prevailing meter charges. Moreover, the constraint on the numbers of taxis and contract hire cars has led to the emergence of illegal taxis and hire cars (pak pais). It is estimated that there are at least 1 000 pak pais now operating in the territory, about 7 000 urban taxis and about 750 N.T. taxis. The latter bear a distinctive livery and are restricted to operate outside the urban area and Sha Tin and Tsuen Wan.

162. Taxis are more extravagant in the road space which they use to achieve a given volume of passenger movement than are buses, trams or PLBs. Moreover, profitable operation requires them to congregate in areas of high demand such as Central District, Tsim Sha Tsui and Mong Kok which are among the most congested districts in Hong Kong. Furthermore, taxis are empty for much of their operating time while they seek passengers and, during these periods, they add to road congestion without contributing anything to passenger movement. For these three reasons, there must be some limit to the number of taxis allowed to operate in the urban area if mobility is to be maintained. Indeed, to limit the number of private cars would, in fact, add to road congestion if those denied the use of cars switched to an unlimited supply of taxis.

163. In the past, taxi fares have seriously lagged behind the growth in incomes with the result that demand, at these fares, has risen continuously and, particularly, since the recovery of the economy in 1975. In the course of 1978, as the demand for taxis in relation to their supply became more pronounced, there was increasing evidence of malpractices by taxi drivers in seeking to choose more lucrative fares e.g. shorter journeys, less congested routes and destinations where a return fare was likely to be available. This was followed by evidence that drivers were bargaining for fares above the legitimate meter charge.

164. New taxi licences are continuing to be issued but it has been necessary, in the interests of eliminating malpractices and containing road congestion, to limit the demand for taxis by increasing fares. This will make it easier for those who are prepared to pay to obtain a taxi and it should also help to improve the standards of behaviour of the taxi trade. At the same time, stiffer penalties for malpractices have been introduced.

*Footnote (2) Other significant recommendations of the 1983 Taxi Review*

- (a) The Attorney General's Chambers should be asked to re-examine whether enforceable restrictions on speculation and transfer of licences can be devised, although it must be stated that this seems very unlikely.
- (b) For any new future licences, the period which a successful tenderer has to put a taxi on the road should be reduced from nine to three months.
- (c) The tender deposit (at present \$25,000) is adequate.
- (d) Possible improvements in the shift changing system, which causes inconvenience, should be followed up.
- (e) Legislation should be amended to enable taxis to use Government car parks at all times instead of only overnight.
- (f) Operators should be required to install electronic taxi meters within a period of two years (such meters are more reliable and easily recalibrated than mechanical meters).
- (g) Taxi 'sharing' is not at present feasible but enforceable methods should continue to be studied.

**ROAD TRAFFIC (REGISTRATION AND LICENSING OF VEHICLES) REGULATIONS (AMENDMENT) BILL 1984**

THE SECRETARY FOR TRANSPORT moved the second reading of:—'A bill to amend the Road Traffic (Registration and Licensing of Vehicles) Regulations'.



He said:—Sir, I rise to move the second reading of the Road Traffic (Registration and Licensing of Vehicles) Regulations (Amendment) Bill 1984. I have, Sir, in my preceding speech set out the background to the proposals in this Bill and simply therefore now move that the debate on this Bill be adjourned.

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

*Question put and agreed to.*

## **DANGEROUS DRUGS (AMENDMENT) BILL 1984**

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

He said:—Sir, I move the second reading of the Dangerous Drugs (Amendment) Bill 1984.

The main purposes of the Bill are to close a loophole in the Dangerous Drugs Ordinance (Cap. 134) relating to drugs in transit through Hong Kong and to provide for the presumption that a person who has been manufacturing a dangerous drug knew that the drug was indeed a dangerous drug.

To take first the loophole in respect of drugs in transit. Section 4 of the Dangerous Drugs Ordinance prohibits trafficking in a dangerous drug, except in accordance with the Ordinance or with a licence granted by the Director of Medical and Health Services. Section 7 of the Ordinance stipulates no person shall have in his possession a dangerous drug for the purpose of unlawful trafficking.

Section 4(4) states section 4, does not apply to the ‘import or export ... of a dangerous drug in transit’. The courts have now ruled that section 4(4) governs section 7 as well. In consequence, a person bringing illicit drugs into Hong Kong and charged with being in possession of dangerous drugs for the purpose of trafficking can plead that as the drugs were in transit, he was not trafficking. Section 2 of the Ordinance defines ‘in transit’ to mean ‘imported into Hong Kong for the sole purpose of being exported from Hong Kong to another country.’ Several cases have occurred in which the prosecution was not able to establish conclusively that the drugs were to be disposed of in Hong Kong, and the Court of Appeal quashed convictions of drug traffickers under section 7 on the grounds that the drugs found in their possession on entry to Hong Kong were in transit. In such cases, offenders may be found guilty of simple possession of dangerous drugs, the maximum sentence for which is imprisonment for three years and a fine of \$10,000 whereas a person found guilty of trafficking is liable to a fine of \$5,000,000 and to imprisonment for life.

I trust Members will agree that this loophole for traffickers is absolutely unacceptable. The Bill now before this Council is designed to amend the Ordinance so that a dangerous drug may be held to be in transit only if it has been lawfully exported from the country of origin for lawful importation into the country of destination, and if it is accompanied by valid authorizations or diversion certificates issued by the exporting country which is itself a party to the United Nations conventions governing the control of dangerous drug. This amendment will emphasize Hong Kong's total commitment to combat international drug trafficking and trafficking in Hong Kong.

We are also taking the opportunity to clarify that medical preparations containing small amounts of dangerous drugs, and having no or a negligible risk of abuse, do not fall within the ambit of sections 4 and 7 of the Ordinance.

Turning now to the provision for manufacturing dangerous drugs. At present, as provided for in section 45, a person who is found in, or escaping from, any premises in which a dangerous drug was being manufactured or in which drug manufacturing equipment or material was found, would be presumed to have taken part in the manufacture of the drug. But independent of this presumption, the prosecution must also prove that the person concerned knew that what was being manufactured was a dangerous drug. By contrast, under section 47 (3) of the Ordinance, a 'person who is proved or presumed to have had a dangerous drug in his possession shall, unless the contrary is proved, be presumed to have known the nature of such a drug'. As trafficking and manufacturing of dangerous drugs have the same serious consequences for the community, I am now proposing that the Ordinance be amended to bring the presumption under section 45 into line with that in section 47 by incorporating in the new section 45 an additional provision of presumption of knowledge that what was being manufactured in the premises was a dangerous drug.

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

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

*Question put and agreed to.*

## **DEBTORS (ARREST AND IMPRISONMENT) BILL 1983**

### **Resumption of debate on second reading (7 December 1983)**

*Question proposed.*

MR. PETER C. WONG:—Sir, under Order 49B of the Rules of Court debtors may be sent to prison at the mere behest of judgment creditors. Clearly, this is fundamentally wrong in principle. In my view, only the Court has the power to

deprive a person of his personal liberty, and the Court would only do so after that person has been given an opportunity to be heard and the Court is satisfied that there are compelling reasons for sending him to prison.

I must stress here that we are not talking of criminal offences, but of failure to meet civil obligations freely contracted between the parties. In all criminal cases, only the Court has the power to commit a person to prison. Obviously, it must be right that in civil cases a Court Order is essential if a judgment creditor seeks to commit the debtor to prison. I am happy to report, Sir, that Unofficial Members of this Council support this general principle.

The *ad hoc* group of Unofficial Members set up to examine the Bill and the Legislation Scrutiny Group have met several times to consider the provisions of the Bill as well as representations received. Lengthy discussions have also been held with the Administration. As a result of these meetings and discussions, several amendments have been agreed and will be moved at the committee stage. The Bill in its proposed amended form was gazetted on 23 December 1983 for public information, and a statement was issued by the Government inviting comments on the amended version. This has proved helpful as representations received after 23 December 1983 resulted in further amendments, which may be described as refinements to the Bill.

The main changes proposed by the Bill in its amended version are—

- (1) No debtor shall be arrested or imprisoned without an order of the Court.
- (2) Provision for examination of the debtor and for his arrest in certain cases.
- (3) The Court shall have power to order the imprisonment of the debtor in appropriate cases.
- (4) Provision for ordering the payment of the debt by instalments. There is no such provision under the existing legislation.
- (5) The period of imprisonment shall not exceed three months. The existing law provides for a maximum period of one year.
- (6) The Court may order the imprisonment of a debtor on each occasion of a failure to comply with an order. The existing law allows imprisonment on one occasion only.
- (7) The Court shall have power to make an order prohibiting a debtor from leaving Hong Kong. This new provision is most helpful as it will allow a creditor to pursue his claim in Court without the necessity of sending the debtor to prison.
- (8) Under the existing Order 44A of the Rules of Court it is open to a person who claims that he is owed money to arrest the alleged debtor if he appears likely to leave Hong Kong. The original proposal was that such procedure should not be available against foreigners who come to visit Hong Kong. The amended version gives the Court power to make a prohibition order against an alleged debtor, including a visitor, from leaving Hong Kong but there will be no power to order imprisonment. This must be right as the debt in such cases has not yet been established.

A prohibition order will ensure that the debtor will remain in Hong Kong.

The Bill in its amended form should meet most of the objections raised. In fact, the introduction of prohibition orders is an improvement upon the existing legislation. Furthermore, the provision of detailed rules regarding the examination of debtors and other related matters will facilitate court proceedings.

The amendments have been batched and will be moved by the Attorney General, Messrs. Charles YEUNG and John SWAINE and myself. Most of the essential amendments have already been included in the revised version of the Bill published on 23 December 1983. No doubt, other Members speaking this afternoon will have more to say on the Bill and the agreed amendments. I will confine my remarks to the following amendments which I myself will move—

*Clause 7*

This clause refers to examination of debtors. The new rule 1A provides that where the examination is adjourned, the Court may order that the debtor be imprisoned until the resumption of the examination. It was considered that imprisonment should only be ordered in special circumstances as the debtor may at the end of the examination be released by the Court. Under normal circumstances, a prohibition order should be an adequate safeguard to ensure the debtor's appearance at the resumed hearing of the examination. Amendments to that effect will accordingly be made.

Other amendments are refinements or of a technical nature.

*Clause 8*

This clause amends Appendix A to the Rules of Supreme Court relating to forms. The proposed amendments will make the forms more readily understandable and easier to use.

Sir, I remain of the view that the crux of the problem is to devise an effective machinery to recover money from a debtor who has either assets or regular earnings. Imprisonment is inadequate to meet this need and its many injustices and abuses should be terminated. As the Attorney General ably puts it, many countries do not tolerate imprisonment for civil debt. The measures now proposed are a compromise which go far to meet the legitimate needs of the financial and trading community in the special circumstances of Hong Kong whilst recognizing that the liberty of the person is an important freedom which only the courts should take away.

These reforms are long overdue. While preserving the rights of the creditor, the Bill removes a glaring inequity and abolishes an anachronism which belongs to another age. If this Bill is passed into law, it will be a triumph for the legal and constitutional system which we all cherish and would like to see preserved.



*(The following is the interpretation of what Mr. YEUNG said.)*

Sir, imprisonment of debtors had a long history in the English legal system. From the writings of authors in the same era of the great Charles Dickens, who wrote novels of social realism, we could see that the really poor were sent to prison and thus deprived of opportunities to make a living and to earn money to repay the debts. It was a truly inequitable society.

In the early 20th century, there were some changes in English law. Internationally, the United Nations Commission on Human Rights also spent seven years from 1947 in drafting the International Convention on Civil and Political Rights and the International Convention on Economic, Social and Cultural Rights to protect civil rights. One of the provisions was that people should not be imprisoned because of their failure to fulfill their contractual obligations. These two draft conventions were not accepted by the United Nations General Assembly until 1966 and were implemented in 1976. The law of England and Wales was also amended in 1970 in that the law to imprison debtors was revoked except for debts arising from taxation and matrimonial causes.

However, under the unique social, human and geographical conditions of Hong Kong, most people, particularly those in business, think that the present law on the imprisonment of debtors has not, so far, produced anything too inequitable, and therefore consider that it should be preserved.

The present Hong Kong law on imprisonment of debtors may be divided into two categories. The first is where after due legal process and judgment is given by the Court, if the debtor has not been permitted by the judge to postpone repayment of the debt or to repay by instalments, the creditor may, through the Bailiffs of the Court, enforce the Court order and thus imprison the debtor. However, the debtor may immediately repay the debt, or apply to the Court for release, on the ground that he has no means to repay the debt. The second category is where the debtor intends to flee Hong Kong, or to sell his property or transfer it abroad, in order to avoid liability, the creditor may, before judgment is given, request the Court to grant an order to imprison the debtor, unless the latter can provide financial security.

As a matter of fact, when a debtor realizes that the Court's Bailiff is going to take him to prison, he would usually repay the debt immediately or come to terms with the creditor in order to avoid imprisonment. Therefore the number of people imprisoned is not high. From information derived from the records, 214 people were imprisoned in 1981, of whom 113 applied to the Court within a short time and were released, and 91 were released with the agreement of the creditors. In 1982, 310 people were imprisoned, of whom 169 were released on Court order, and 131 were released with the agreement of the creditors. In 1983, up to November, 423 people were imprisoned, of whom 228 were released by the Court, and 174 released with the agreement of the creditors. From these records, we know that the present law to imprison debtors has certain deterrent

effects on debtors who are generally able to pay, and has no oppressive element on those who are genuinely unable to repay the debts, because they can apply to the Court before they are imprisoned for postponement of paying or to pay by instalments. Even if they are imprisoned, they may immediately apply to the Court for release. From the statistical records of eight years, a debtor stayed in prison on the average but some 20 days. Therefore in a free and trade-oriented society like Hong Kong, it is understandable that most people would like to maintain this law of imprisonment of debtors.

The official letter dated 10 March 1981 from the Attorney General to the Hong Kong Law Society mentioned that most judges were in favour of the present legal system of imprisoning debtors. In the same year of 1981, the then Attorney General appointed a special working group, which, after long and careful studies, were also in general agreement to maintain the present system. And the membership of this working group included the Chief Justice, the Secretary for Home Affairs, Director of Legal Aid, Commissioner of Inland Revenue, Commissioner of Prisons, and representatives of the Bar Association and the Hong Kong Law Society etc.

However, one point open to criticism in the present law of imprisoning debtors is that a debtor who is genuinely unable to pay the debt, and being ignorant of the legal procedure, is deprived of his liberty as he is put in prison for a short time. He thus has to endure the shame of being imprisoned, which is unfair.

For this reason, the Attorney General proposed in this Council the Debtors (Arrest and Imprisonment) Bill 1983. Generally speaking, this Bill has the above point as its objective. After the Bill was published, we received representations from many quarters and after careful examination of their points, numerous amendments have been proposed. With the assistance of the Government, special steps were taken to publish the amended Bill on 23 December 1983 in the *Government Gazette*. Further representations were received thereafter, and as a result further changes to the Bill have been made in order to provide a better balance between the proper interests of both creditors and debtors. Therefore in the committee stage, the *ad hoc* group will be proposing many amendments. I think if all amendments are accepted, the new Ordinance would be a piece of fair legislation which will receive the support of the community.

Sir, I therefore support the motion.

MR. WONG PO-YAN:—Sir, I spoke in this Council eleven weeks ago (26. 10. 1983) on the vulnerability of unsecured creditors to malpractice and default on the part of the debtors in the course of trading. Today, eleven weeks later, I am pleased to be able to speak on the Debtors (Arrest and Imprisonment) Bill as a step forward in the better protection of these creditors.

When this Bill was published for comment, I was aware that there was, indeed, a popular misconception on the provisions of the Bill: that debtors

would be unduly protected and that it would be more difficult, if not impossible, for creditors to recover their money. After careful study of the provisions of the Bill, I am now reasonably satisfied that the Bill, in its amended form after going through the committee stage, will provide essential and adequate protection for both creditors and debtors with due consideration to their respective interests.

The proposed Bill makes fundamental modifications to the present procedure whereby debtors are protected against arrest without court hearing and examination and creditors are afforded improved means of compelling debtors to fulfil their contractual obligations.

*First*, the provisions of the Bill accord the judgment creditor greater insight into the debtor's affairs.

Under the existing legislative framework, a creditor has no formal access to the debtor's financial affairs and dealings that might affect the debtor's ability to repay. In attempting to ascertain the true state of the financial status of his debtor who pleads inability to pay, the creditor has to go through a maze of costly and time-consuming legal processes to activate the machinery of bankruptcy to secure the debtor's appearance in court, and eventually, though without any degree of certainty, to obtain an order to permit the investigation of the debtor's affairs.

Rule 1A(1) of the proposed amendment of Order 49B of the Rules of the Supreme Court seeks to provide the necessary rectification to remedy this cumbersome process.

The amendment obliges the judgment debtor to attend an examination whereby he may be examined under oath by the judgment creditor and the court without invoking the expensive and ponderous bankruptcy machinery.

*Should he fail* to attend, the court is empowered to order the arrest of the judgment debtor.

Rule 1A(2) requires the judgment debtor to 'make a full disclosure of all his assets, liabilities, income and expenditure and of the disposal of any assets or income ... and answer all questions put to him.'

*Should he 'wilfully fail* to make a full disclosure' the court is empowered to order the imprisonment of the judgment debtor (rule 1B) for a period of up to three months.

*Secondly*, the court is empowered, under rule 1B(2), to order the judgment debtor to satisfy the judgment debt 'wholly or partly, by instalments or otherwise,' according to his ability to pay.

*Should he fail* to comply, the judgment creditor may apply to court on each occasion of a failure to pay, for an order for the imprisonment of the debtor.

Thus, the judgment debtor is forced to disclose his assets and to make payments he can afford. In this manner, the interest of the judgment creditor is



better safeguarded.

With regard to debts arising in the course of trading, it must be stated that in the commercial and industrial sectors, creditors do accept such inability to pay as part of the risk an entrepreneur or business has to undertake. In cases of genuine business hardship where no element of fraud is suspected, they would be prepared to write off such loss and treat the matter with understanding and sympathy. In such cases, court judgments were sought mainly for tax purposes. However, should these creditors suspect that the debtor is unable to pay because he has disposed of his assets with the intention to defraud (a situation which is not all that infrequent in the present circumstances of Hong Kong), there being no immediate sanction to compel the dishonest debtor to repay and not certain of the effectiveness of the new Bill, would be taking the attitude of prudence by being less willing to extend credit.

Should these traders adopt an over-cautious and over-conservative policy in credit extension, the growth of our trade and industry, and consequently, our overall economic development, would be adversely affected.

The court should, therefore, exercise appropriate caution in cases where an element of fraud is suspected so that dishonest debtors can be detected and accordingly penalized.

In welcoming this Bill, I would like to congratulate the Attorney General on presenting a prudent and pragmatic Bill that endeavours not only to rectify the anomaly of the existing procedure but offers to alleviate the burden of creditors with such speed and expediency.

With these remarks, Sir, I support the motion.

MR. CHAN KAM-CHUEN: — Sir, since the publication of the Debtors (Arrest and Imprisonment) Bill 1983, the Unofficial Members have received only strong objections from the legal profession and manufacturing sector but no support even from debtors. This is understandable in a 98% Chinese community for even when a debtor may quibble in court about his assets, deep in his conscience, he knows that the Chinese standard of morality and fairness of (殺人填命, 欠債還錢) ‘those who kill should pay with their lives and those who owe should pay their debts’ can not be erased by excuses of any sort. This is therefore a far cry from the words of praise made in the Attorney General’s speech on 10 November 1983 during the Policy Debate. Despite efforts to rush the Bill through, the strong opposition voiced on it led to the deferment of the Bill, the publication of a revised bill incorporating some amendments on 23 December 1983. Further amendments will still be necessary and they will be made by my learned colleagues later in this Council.

I hasten to add that my learned friend, the Honourable Peter C. WONG is not unworthy of the praises. He is indeed a man with the Buddhist heart (菩薩心腸) but after considering the ripple effect of this Bill, it may result in Asuras dancing

in glee (阿修羅欣然起舞) I agree that article 11 of the International Convention on Civil and Political Rights provides that 'No one shall be imprisoned merely on the ground of inability to fulfil a contractual obligation' but first we must consider in principle whether Hong Kong should always faithfully and religiously follow all international conventions without modifications, for the good of our community and consider in detail, before undergoing the acid test, whether we are, in fact, imprisoning the poor or the professional fraud.

I am not here to speak for the loan sharks who want to extract their pound of flesh but we must protect not only the business community but also the men of small means. Those professionals who get their fee deposited in advance and those whose business gets credit of supplies from others, may not be aware of the painful and sleepless nights which creditors have to spend when the goods they supplied inadvertently to a professional fraud may cause their own bankruptcy. Credit is the lifeblood of many businesses in Hong Kong but credit control facilities are not perfect. This can be proven by the 14 000 High Court writs issued in a year. The average of 44 debtors imprisoned per month is only the tip of the iceberg, in fact, it represents only a minute fraction of the tip which is usually about one-eighth of an iceberg's total bulk.

It is the swift action of the existing system and the fear of imprisonment which keeps the bulk of cases being settled without appearing before a judge. I have used the bailiff procedure once some years ago, and found that it was a cheap and efficient way of getting one's loan back, in fact, before the end of the working day. The present Bill will complicate the existing procedure for the judgment creditor to recover his lawful debt from unscrupulous debtors. If most of the 14 000 cases have to be heard before a judge, we would have a logistic problem which would mean either long delays or the appointment of more judges. Are we therefore wasting judicial talent or should we delegate the authority downwards to magistrates or adjudicators. There was also 25 255 cases in the Small Claims Tribunal during 1982, for these small creditors, the existing quick method of recovering debts without legal expense which is out of proportion to the small debt of under \$5,000 will no longer be available to them. Is this fair to the sandwich class again? The serving of summons to appear before a court would mean plenty of notice to unscrupulous debtors to vanish with his assets.

There is a potential social cost arising out of these changes. The increased cost and delay caused by the change in procedure may encourage those who are not so law-abiding and those for whom the new legal process is too expensive to take the short cut of using hired muscle to undertake the collection of debts. The community will feel the effect of increased violence. In the post-war years, I recollect that there was a chopping case for a five-cent debt. Rightly or wrongly, the public will get the impression that hurdles are being put in front of courts, tribunals and creditors, and debtors are encouraged not to pay up, and Government must emphasize in no uncertain terms that this is not the intention of this Bill.

Sir, I have expressed my reservations on the Bill and those of a large sector of the community, and have pointed out the possible consequences arising from its enactment. However, provided Government monitors these possible consequences, I support the Bill.

MR. SWAINE:—Sir, the Attorney General moved the second reading of this Bill on 7 December 1983, and even then envisaged that there would be amendments at the committee stage. Since then the Bill has undergone very close scrutiny by the Unofficials working group in consultation with the Attorney General's Chambers. In consequence, a very large number of amendments will be moved at the committee stage, and some of these will involve points of substance, although the underlying principle has not been changed. That principle is of course that no person should be imprisoned without an order of the Court, and judgment debtors are no exception. In addition, the Bill also seeks to reform the law in the related and important area of arrest of a defendant in civil proceedings *before* any judgment is obtained against him. This area of law reform has perhaps received less publicity than that of the judgment debtor, but is at least as deserving a candidate, because the potential for abuse is, if anything, greater in a case where judgment has not even been obtained.

The proposed amendments run to over 30 pages and were in danger of becoming unmanageable because of the difficulty of cross-referencing them to the original Bill as gazetted and presented in this Council. It therefore greatly assisted the Unofficials working group as well as all interested parties that the Bill together with all proposed amendments then current was published in a special supplement of the *Gazette* on 23 December, 1983 for information. I wish to express my appreciation to the Attorney General's Chambers for having this done.

As it happens, I shall be moving the bulk of the amendments at the committee stage, at least in terms of paper weight. This in no way detracts from the pioneering efforts of my Unofficial Colleagues, notably Mr. Peter C. WONG, towards bringing about this measure of law reform. Rather it is a reflection of the system of batching where a fairly modest amendment may touch many of the provisions of the Bill.

It would be convenient therefore if I were to run through the proposed amendments which I shall be moving at the committee stage, and this will also serve to present the outlines of the Bill as reformulated.

The Bill seeks to amend the Supreme Court Ordinance, the Rules of the Supreme Court and also the District Court Ordinance. Under the proposed new section 21A of the Supreme Court Ordinance, the Court's jurisdiction to make an order for arrest or imprisonment of a defendant in a civil case is limited to enforcing, securing or pursuing a judgment for the payment of a specified sum of money. Such an order for imprisonment shall not exceed three months, but under the proposed Order 49B Rule 1B(3)(b) the Court may order the imprisonment of the judgment debtor on each occasion of a failure to comply

with an order to satisfy the judgment by instalments or in such other manner as the Court thinks fit, or more than once in respect of a continuing failure to comply with such an order.

The proposed new section 21B introduces the new concept of a prohibition order, namely an order prohibiting a person from leaving Hong Kong in certain specified circumstances. These are broadly in two categories, namely where there is already a judgment against that person and where there is no judgment as yet but only a claim. It is that latter category which I had said earlier was potentially the most open to abuse, and the concern of the Unofficials was (as indeed with all the other provisions of the Bill) to strike a balance between the desire to protect the claimant's legitimate needs and to prevent injustice being done to the defendant.

As to the first category, namely where a judgment has already been obtained, the prohibition order is to be available not only where the judgment is for the payment of a specified sum of money, but also where the judgment is for the payment of an amount to be assessed or for delivery of any property or performance of any other act. This casts the net very wide indeed and is intended to prevent the absconding of just about every class of judgment debtor. The final sanction of imprisonment under the Bill is however confined to judgment debtors who wilfully refuse to pay a judgment for money or who knowingly contravene a prohibition order.

As to the second category, namely where there is a claim but as yet no judgment, the absconding defendant may be stopped where there is a claim against him for money, or damages, or the delivery of any property or the performance of any other act. This remedy will be available against all who are ordinarily resident in Hong Kong, or carry on business here, or who incurred the liabilities in Hong Kong while present in Hong Kong. The area of immunity has been cut down very sharply from that envisaged when the Bill was first before Council, and the net will catch all save the genuine visitor who does not himself engage a liability while in Hong Kong.

The prohibition order is initially good for one month but may be renewed for a total of not more than three months. Under proposed amendments to Order 44A of the Rules of the Supreme Court, the person so prohibited may apply to the Court for the order to be discharged. In the case of a defendant against whom there is a claim but as yet no judgment, he may have the prohibition order discharged on showing to the Court that he has a substantial defence to the claim. If the claimant applies for a prohibition order on insufficient grounds or keeps it going after it was no longer required, he is liable to pay compensation to the aggrieved defendant. This again exemplifies the Bill's aim to strike the right balance as between the claimant and defendant.

Similar provisions are made for cases within the jurisdiction of the District Court, and these are reflected in the new sections 52D and 52E of the District Court Ordinance.

Sir, with these proposed amendments and also the amendments to be moved by Mr. Peter C. WONG, Mr. Charles YEUNG, and the Attorney General, I support the Bill.

MR. STEPHEN CHEONG:—Sir, from the number of representations received since the gazetting of the provisions of this Bill and the further gazetting for information of the revised Bill incorporating the agreed amendments, one can reasonably draw the conclusion that there has been a tug of war between the conservatives and the liberals. There were cries from the conservative camp claiming that nothing need be done to upset a piece of legislation that had been designed with local conditions in mind, tested and proven acceptable.

I do not subscribe to this view because I believe that those who hold such views have grossly overlooked one important basic principle and that is that in any civilised country with an acceptable legal system only the Judiciary should have the right to hand down judgments involving jail sentences. Up to the time when this Bill comes into effect, after being passed in this Council, as I hope. later this afternoon, creditors have the power to throw debtors into jail without the need to go through the process of examination or trial by our independent Judiciary. Theoretically therefore any debtor can be disgraced and at the mercy of the mere whim of any creditor.

Some claim that the introduction of this Bill takes away the rights of the creditors but with due respect to the advocates of this notion, such rights run against the basic spirit of our legal system and should never have been granted in the first place. In any case, the rights of creditors to pursue and sue for a debt will not be diminished with the enactment of this Bill. Furthermore, it should be pointed out that with the detailed amendments to be introduced later this afternoon, in some respects their rights have even been enhanced and strengthened. Some have claimed that the enactment of this Bill might lead to a credit squeeze and thereby adversely affect trading activities in Hong Kong. Sir, we all know the suspect validity of this argument as no sensible human being can be persuaded to believe that Hong Kong's growth in trading activities during the past three decades has been the fruit of the creditors' kind heartedness.

Sir, we pride ourselves on being able to live under the protection of a well-defined system of law. We have reiterated with firm conviction that the retention of the independence of the Judiciary and the preservation of our legal system is a major key towards our future stability and prosperity. Can we be really proud of such a system if one sector of our community, namely creditors, is allowed perpetually to have the right of judgment, resulting in throwing another sector of the community, namely the debtors, into prison without trial simply because the creditors feel that the debtors might have salted away some money owed or might have lived beyond their means? I salute the Honourable Peter C. WONG's efforts and the Honourable Attorney General's response in helping us to see the light of our past mistakes. We must accept that the introduction of this Bill in

fact has corrected an anomaly of our otherwise near to perfect legal and judicial system.

With these remarks, Sir, I have pleasure in supporting the motion.

THE ATTORNEY GENERAL:—Sir, this Bill has attracted considerable interest since it was introduced into this Chamber on 7 December last year. Both the Government and UMELCO have received representations from the Law Society, the Bar Association, the Association of Banks, from businessmen, from businessmen's representative associations, from legal practitioners and from many others. Arising from all these representations, and following discussions my draftsman has had with Unofficial Members of this Council, a number of amendments will be moved at the committee stage, Sir, as you have heard. which I am confident will improve the Bill without departing from the essential principles I stated when I moved the second reading.

Some people have expressed the view that the law should be left as it is. Indeed, Mr. Charles YEUNG and Mr. K. C. CHAN have expressed some of their reasons and views most eloquently today. Unfortunately, Sir, in view of differing views expressed by the judges themselves, it is not altogether clear just where the law stands at the moment, and indeed, that is one of the factors that has brought about the speed with which we have moved in bringing forward these proposals. But in any event, I still believe it is wrong in principle that debtors, whose only fault may be a genuine inability to pay a debt, should be sent to prison at the behest of a creditor without any Court first considering the matter, and I am very glad that a number of those who have spoken this afternoon have given powerful support to that point of view.

Sir, I do not, with respect, agree with the conclusions that Mr. Charles YEUNG draws from the figures that he quotes. The fact that a creditor agrees to the release of a debtor may be because the debt has been paid, or it may be because he accepts that the debtor simply cannot pay. And similarly, whilst I agree with his assertion that an impecunious debtor can, and that is, can in theory, immediately apply for his release, the fact is that it does take several days in practice, and sometimes considerably more than a week to come before a Court. The figure that worried me most of all was that in 1983, about half those debtors who were cast into prison languished there for more than two weeks and up to three months in all; and I simply do not believe, Sir, that all of them were mischievously concealing their assets or withholding their assets from their creditors.

Sir, I have noted Mr. CHAN's warning that some creditors may choose to pay ruffians rather than solicitors to aid them in debt collection, and, of course, that would be a matter of concern to me, just as it would be a matter of concern to solicitors as well. (*laughter*) Sir, the police will continue to watch the situation carefully, I have no doubt, and to prosecute where appropriate. Indeed, there was a recent case of such a prosecution. I hope Mr. CHAN will also appreciate that the proposals are designed, as a number of Members have pointed out, to

assist creditors recover their debts by due process of law; many improvements on existing procedures have been introduced and, surely, Sir, and of them deserve now a fair trial.

Lastly, no one except, I think, for Mr. WONG Po-yan has mentioned that lending is a risky business. The creditors can and should be prudent granting loans. Indeed, it would be wrong in principle, surely, to aid imprudent creditors by adding horrors to indebtedness, (*laughter*) although I hasten to add that I have no plans to introduce proposals for imprisonment for prudent civil creditors. (*laughter*)

Sir, others, of course, believe that imprisonment for debt should be abolished altogether. I have some sympathy for this view but I accept, as indeed does the Bill, that Hong Kong has special problems relating to the ease of movement of assets and the mobility of people which justifies retention of imprisonment in appropriate cases.

Sir, the Bill, as amended, will, I believe, provide a reasonable and just solution to the problem of reconciling the protection of creditors with the avoidance of unjustified imprisonment. It will enable the creditor to prevent the debtor leaving Hong Kong until the Court has had the chance to consider the merits of the claim, and the introduction of the prohibition order is an important improvement on present procedures. On the other hand, the Bill will confine the imprisonment of debtors to those who are acting in bad faith. I believe, therefore, Sir, that the Bill is a balanced measure consistent both with the realities of commercial life in modern Hong Kong and with Hong Kong's traditional concern for individual freedom.

Unofficial Members and many outside this Chamber have devoted much time, effort and wisdom to their consideration of this Bill. And, Sir, I am most grateful to all of them, not only for the views they have expressed on the proposals and for the views they have expressed on the proposals and for the powerful and eloquent speeches today, but also for the enthusiastic welcome that they have in general given to this compromise solution to the competing interests of creditors and debtors which the Courts will now be asked to administer. This is, Sir, as Mr. Peter C. Wong has pointed out this afternoon, a long overdue reform of the law, and I would submit that Members of this Council, particularly Mr. Peter C. WONG himself, may feel proud to give it a second reading.

*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).*

**SUMMARY OFFENCES (AMENDMENT) BILL 1983****Resumption of debate on second reading (21 December 1983)**

*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).*

**IMPORT AND EXPORT (AMENDMENT) (NO.2) BILL 1983****Resumption of debate on second reading (21 December 1983)**

*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).*

**INDUSTRIAL TRAINING (CLOTHING INDUSTRY) (AMENDMENT) BILL 1983****Resumption of debate on second reading (21 December 1983)**

*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).*

**CROWN LANDS RESUMPTION (AMENDMENT) BILL 1983****Resumption of debate on second reading (21 December 1983)**



*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.

### **DEBTORS (ARREST AND IMPRISONMENT) BILL 1983**

Clause 6 was agreed to.

Clauses 1, 3, 4, 10 and 11

THE ATTORNEY GENERAL: —I move that the clauses specified be amended as set out in the paper circulated to Members for the reasons already covered by remarks in this Chamber this afternoon, or for reasons too obvious to mention.

#### *Proposed amendments*

#### **Clause 1**

That clause 1 be amended by deleting ‘1983’ and substituting the following—  
‘1984’.

#### **Clause 3**

That clause 3(1) be amended by deleting the words after ‘following—’ and substituting the following—

‘, including—

- (i) the prohibition of judgment debtors and persons against whom civil claims are made from leaving Hong Kong and ordering the payment of compensation to them in prescribed circumstances;
- (ii) ordering the appearance of judgment debtors or officers of corporate judgment debtors for examination and their examination; and
- (iii) the arrest and imprisonment of judgment debtors’.

**Clause 4**

That clause 4 be amended by inserting, immediately after ‘payment of money’, the following—

‘and orders prohibiting persons from leaving Hong Kong’.

**Clause 10**

That clause 10 be amended—

- (a) by deleting ‘undergone before 13 December 1983 and’; and
- (b) by inserting, immediately after ‘sealed by the Registrar’, the following—  
‘before the commencement of this Ordinance’.

**Clause 11**

That clause 11 be amended—

- (a) in subclause (2), by deleting the words after ‘order the release of the defendant’ and substituting the following—

‘;and the Court may, if it has jurisdiction to do so, substitute an order prohibiting the defendant from leaving Hong Kong.’; and

- (b) in subclause (3) —

- (i) by inserting, immediately after ‘an order of the Court made’, the following—  
‘, or a writ of *fieri facias* issued,’; and

- (ii) by inserting, immediately after ‘discharge of the order’ and ‘discharge the order’, the following—  
‘or writ’.

The amendments were agreed to.

Clauses 1, 3, 4, 10 and 11, as amended, were agreed to.

Clauses 2, 5 and 9

MR. SWAINE:—I move that the clauses specified be amended as set out in the paper circulated to Members and for the reasons given in my speech.

*Proposed amendments***Clause 2**

That clause 2 be amended by deleting the proposed new section 21A and substituting the following—

‘No arrest or imprisonment without order.

**21A.**(1) Subject to section 21B, a person shall not be arrested or imprisoned to enforce, secure or pursue a civil claim for the payment of money or damages except under an order of Court; and the Court shall have jurisdiction to make such an order for arrest or imprisonment only to enforce, secure or pursue a judgment for the payment of a specified sum of money.

(2) An order for imprisonment under subsection (1) shall be for a period not exceeding 3 months.

(3) The period mentioned in subsection (2) may be amended by resolution of the Legislative Council.

(4) (a) The Court may, on application, discharge, vary or suspend an order for arrest or imprisonment made under this section, either absolutely or subject to such conditions as the Court thinks fit.

(b) The Court may make an order for arrest or imprisonment under this section subject to such conditions as it thinks fit, including conditions as to the time and place of execution of the order and the condition that the judgment debtor be released on the payment of the judgment debt and costs, the provision of security by him or on his behalf or on the surrender of his travel documents.

(5) In this section, “Court” includes the Registrar or any deputy or assistant registrar.

(6) This section shall not affect any jurisdiction of the Court to make orders of committal in relation to—

(a) contempt of court; or

(b) disobedience of a judgment or order of the Court.

Prohibition on debtor leaving Hong Kong.

**21B.**(1) The Court shall have jurisdiction to make an order prohibiting a person from leaving Hong Kong (a prohibition order) to facilitate the enforcement, securing or pursuance of—

(a) a judgment against that person for the payment of a specified sum of money;

(b) a judgment or order against that person—

(i) for the payment of an amount to be assessed; or

(ii) requiring him to deliver any property or perform any other act; or

(c) a civil claim (other than a judgment) —

(i) for the payment of money or damages; or

(ii) for the delivery of any property or the performance of any other act.

(2) The Court shall not make an order under subsection (1)(b) unless it is satisfied that there is probable cause for believing that—

- (a) the person against whom the order is sought is about to leave Hong Kong; and
- (b) by reason of paragraph (a), satisfaction of the judgment or order is likely to be obstructed or delayed.

(3) The Court shall not make an order under subsection (1)(c) unless it is satisfied that there is probable cause for believing that—

- (a) there is a good cause of action;
- (b) the person against whom the order is sought—
  - (i) incurred the alleged liability, which is the subject of the claim, in Hong Kong while he was present in Hong Kong; or
  - (ii) carries on business in Hong Kong; or
  - (iii) is ordinarily resident in Hong Kong;
- (c) that person is about to leave Hong Kong; and
- (d) by reason of paragraph (c), any judgment that may be given against that person is likely to be obstructed or delayed.

(4) (a) The Court may, on application, discharge a prohibition order, either absolutely or subject to such conditions as the Court thinks fit.

(b) The Court may make a prohibition order subject to such conditions as it thinks fit, including the condition that the order shall have no effect if the judgment debtor or person against whom the claim is made satisfies the judgment or the claim or provides such security as the Court may order.

(5) (a) An order under subsection (1) shall lapse—

(i) on the expiry of one month but the Court may, on the application of the judgment creditor or claimant, extend or renew the order for a period which does not exceed, with the initial period of one month and any other period of extension or renewal, 3 months; and

(ii) on the service upon the Director of Immigration and the filing with the Registrar of a notice by the judgment creditor or claimant advising that the order is no longer required.

(b) The judgment creditor or claimant shall serve and file the notice mentioned in paragraph (a)(ii) as soon as reasonably possible after the order is no longer required.

(6) A copy of an order under subsection (1) and, any other order ancillary thereto shall be served on the Director of Immigration, the Commissioner of Police and, if he can be found, the judgment debtor or person against whom the claim is made.

(7) Where the Court makes an order under subsection (1) prohibiting a person from leaving Hong Kong, any person who, having been served with a copy of the order or otherwise informed of its effect, attempts to leave Hong Kong in contravention of that order may be arrested by any Immigration officer, police officer or bailiff.

(8) (a) A person arrested under subsection (7) shall be brought before the Court before the expiry of the day after the day of arrest and the Court may—

(i) in the case mentioned in subsection (1)(a), make such order, for the examination or imprisonment of that person, under rules of court, as is appropriate;

(ii) in the case of any other person, make an order for the imprisonment of that person until the lapse or discharge of the prohibition order; or

(iii) in any case, make an order discharging that person from arrest either absolutely or upon compliance with such conditions as the Court thinks fit.

(Cap. 1.) (b) Section 71 of the Interpretation and General Clauses Ordinance shall not apply to this subsection.

(9) The Director of Immigration shall not be liable for any failure to prevent any person against whom an order is made under this section from leaving Hong Kong.

(10) In this section, “Court” includes the Registrar or any deputy or assistant registrar.

(11) The form of order under this section may be prescribed by rules of court.’

## Clause 5

That clause 5 be deleted and the following substituted—

‘Amend-  
ment of  
Order 44A  
of the Rules  
of the  
Supreme  
Court.

5. Order 44A of the Rules of the Supreme Court is amended—

(a) by deleting the heading “ARREST AND ATTACHMENT BEFORE JUDGMENT” and substituting the following—

“PROHIBITION ORDER BEFORE OR AFTER JUDGMENT AND ATTACHMENT OF PROPERTY BEFORE JUDGMENT”;

- (b) by deleting the sub-heading “*Arrest of absconding defendant*” and substituting the following—

“Prohibition order against debtor”;

- (c) in rule 1, by adding, at the end, the following—

‘(3) In paragraph (1), “plaintiff” means a person who intends to commence an action and elsewhere in this Order, where the Judge has made an order under paragraph (1), “plaintiff” includes a person who intends to commence an action and “defendant” or “debtor” includes a person against whom a plaintiff intends to commence an action.’;

- (d) by deleting rules 1A, 2, 3, 4, 5 and 6 and substituting the following—

“*Application for an order prohibiting a debtor from leaving Hong Kong*

2. A plaintiff or judgment creditor may apply *ex parte* to the Court for an order prohibiting a debtor from leaving Hong Kong.

*Making of prohibition order*

3. (1) Where the Court, after making such investigation as it thinks fit, is satisfied that it has jurisdiction to do so, it may make an order prohibiting the debtor from leaving Hong Kong.

(2) The order prohibiting a debtor from leaving Hong Kong shall be in Form No. 106 in Appendix A.

*Application to discharge order*

4. (1) Where a debtor is prohibited from leaving Hong Kong, he may, on 2 days clear notice to the plaintiff or judgment creditor and upon being present in person in Court, apply for the order to be discharged.

(2) In an application under paragraph (1) by a debtor under a judgment for money, the Court shall, after the assessment of the amount due to the judgment creditor if appropriate—

(a) discharge the order; and

(b) proceed as if the judgment debtor appears under arrest for examination under Order 49B.

(3) Where, in an application under paragraph (1), a debtor for money, other than a judgment debtor—

(a) consents to judgment being entered against him; or

- (b) satisfies the Court that he has a substantial defence to the plaintiff's claim; or
- (c) consents to judgment being entered against him in respect of part of the plaintiff's claim and, as to the remainder of that claim, satisfies the Court that he has a substantial defence to the plaintiff's claim.

the Court shall—

- (i) discharge the order; and
- (ii) where the defendant consents to judgment being entered against him in respect of the whole or any part of the plaintiff's claim, give judgment in accordance with that consent and thereafter proceed as if the defendant appears under arrest for examination under Order 49B.

(4) Where, in an application under paragraph (1), a debtor, other than a debtor for money or a debtor under a judgment for money, satisfies the Court that he has a substantial defence to the plaintiff's claim, the Court shall discharge the order.

(5) In an application under paragraph (1), the Court may either for the purposes of the application or to achieve a speedy determination of any issue in dispute, give such directions as it thinks fit as to the filing of statements of claim, defences and counter-claims, the filing of affidavits, the assessment of the amount due or otherwise.

(6) Paragraphs (2), (3) and (4) shall not prevent the Court from discharging the order, either absolutely or subject to conditions, in any circumstances in which it thinks fit to do so.

*Power to award compensation*

5. (1) Where it appears to the Court that the order prohibiting a debtor from leaving Hong Kong—

- (a) was applied for on insufficient grounds; or
- (b) was not caused to lapse by the plaintiff or judgment creditor as soon as reasonably possible after it was no longer required,

the Court may, on the application of the debtor, award against the plaintiff or judgment creditor reasonable compensation to the debtor for any injury or loss sustained by the debtor by reason of sub-paragraph (a) or (b):

Provided that the Court shall not award a larger sum by way of compensation under this rule than is competent to the Court to award in an action for damages.

(2) An award of compensation under this rule shall bar any action for damages in respect of the prohibition order.”’.

### Clause 9

That clause 9 be amended by deleting the proposed new section 52D and substituting the following—

‘No arrest  
or impri-  
sonment  
without  
order.

**52D.** (1) Subject to section 52E, a person shall not be arrested or imprisoned to enforce, secure or pursue a civil claim for the payment of money or damages except under an order of Court; and the Court shall have jurisdiction to make such an order for arrest or imprisonment only to enforce, secure or pursue a judgment for the payment of a specified sum of money.

(2) An order for imprisonment under subsection (1) shall be for a period not exceeding 3 months.

(3) The period mentioned in subsection (2) may be amended by resolution of the Legislative Council.

(4) (a) The Court may, on application, discharge, vary or suspend an order for arrest or imprisonment made under this section, either absolutely or subject to such conditions as the Court thinks fit.

(b) The Court may make an order for arrest or imprisonment under this section subject to such conditions as it thinks fit, including conditions as to the time and place of execution of the order and the condition that the judgment debtor be released on the payment of the judgment debt and costs, the provision of security by him or on his behalf or on the surrender of his travel documents.

(5) This section shall not affect any jurisdiction of the Court to make orders of committal in relation to—

(a) contempt of court; or

(b) disobedience of judgment or order of the Court.

Prohibition  
On debtor  
leaving  
Hong  
Kong.

**52E.** (1) The Court shall have jurisdiction to make an order prohibiting a person from leaving Hong Kong (a prohibition order) to facilitate the enforcement, securing or pursuance of—



- (a) a judgment against that person for the payment of a specified sum of money;
  - (b) a judgment or order against that person—
    - (i) for the payment of an amount to be assessed; or
    - (ii) requiring him to deliver any property or perform any other act; or
  - (c) a civil claim (other than a judgment) —
    - (i) for the payment of money or damages; or
    - (ii) for the delivery of any property or the performance of any other act.
- (2) The Court shall not make an order under subsection (1)(b) unless it is satisfied that there is probable cause for believing that—
- (a) the person against whom the order is sought is about to leave Hong Kong; and
  - (b) by reason of paragraph (a), satisfaction of the judgment or order is likely to be obstructed or delayed.
- (3) The Court shall not make an order under subsection (1)(c) unless it is satisfied that there is probable cause for believing that—
- (a) there is a good cause of action;
  - (b) the person against whom the order is sought—
    - (i) incurred the alleged liability, which is the subject of the claim, in Hong Kong while he was present in Hong Kong; or
    - (ii) carries on business in Hong Kong; or
    - (iii) is ordinarily resident in Hong Kong;
  - (c) that person is about to leave Hong Kong; and
  - (d) by reason of paragraph (c), any judgment that may be given against that person is likely to be obstructed or delayed.
- (4) (a) The Court may, on application, discharge a prohibition order, either absolutely or subject to such conditions as the Court thinks fit.
- (b) The Court may make a prohibition order subject to such conditions as it thinks fit, including the condition that the order shall have no effect if the judgment debtor or person against whom the claim is made satisfies the judgment or the claim or provides such security as the Court may order.
- (5) (a) An order under subsection (1) shall lapse—
- (i) on the expiry of one month but the Court may, on the application of the judgment creditor or claimant, extend or

renew the order for a period which does not exceed, with the initial period of one month and any other period of extension or renewal, 3 months; and

(ii) on the service upon the Director of Immigration and the filing with the Registrar of a notice by the judgment creditor or claimant advising that the order is no longer required.

(b) The judgment creditor or claimant shall serve and file the notice mentioned in paragraph (a)(ii) as soon as reasonably possible after the order is no longer required.

(6) A copy of an order under subsection (1) and any other order ancillary thereto shall be served on the Director of Immigration, the Commissioner of Police and, if he can be found, the judgment debtor or person against whom the claim is made.

(7) Where the Court makes an order under subsection (1) prohibiting a person from leaving Hong Kong, any person who, having been served with a copy of the order or otherwise informed of its effect, attempts to leave Hong Kong in contravention of that order may be arrested by any immigration officer, police officer or bailiff.

(8) (a) A person arrested under subsection (7) shall be brought before the Court before the expiry of the day after the day of arrest and the Court may—

(Cap. 4. sub. leg.)

(i) in the case mentioned in subsection (1)(a), make such order, for the examination or imprisonment of that person, under the Rules of the Supreme Court, as is appropriate;

(ii) in the case of any other person, make an order for the imprisonment of that person until the lapse or discharge of the prohibition order; or

(iii) in any case, make an order discharging that person from arrest either absolutely or upon compliance with such conditions as the Court thinks fit.

(Cap. 1.)

(b) Section 71 of the Interpretation and General Clauses Ordinance shall not apply to this subsection.

(9) The Director of Immigration shall not be liable for any failure to prevent any person against whom an order is made under this section from leaving Hong Kong.

(10) The form of order under this section may be prescribed in the Rules of the Supreme Court.

The amendments were agreed to.

Clauses 2, 5 and 9, as amended, were agreed to.

Clause 7

MR. CHARLES YEUNG:—Sir, I move that clause 7 paragraph (1) of the new rule 1 be amended as set out in the paper circulated to Members.

The purpose of the proposed amendment is to enable the judgment creditor who has obtained a judgment from the Court for a specified sum of money and such sum is either wholly or in part unpaid to obtain a Court Order as of right on an *ex parte* application to require the judgment debtor to appear before the Court for an examination or in special circumstances to have him arrested and brought before the Court.

*Proposed amendment*

**Clause 7**

That clause 7 be amended in paragraph (1) of the new rule 1 by deleting ‘money is, wholly or partly, unsatisfied, the Court may, on an *ex parte* application by the judgment creditor, for the purpose of securing the attendance of the judgment debtor at an examination under rule 1A—’ and substituting the following—

‘a specified sum of money is, wholly or partly, unsatisfied, the Court shall, on an *ex parte* application by the judgment creditor, for the purpose of securing the attendance of the judgment debtor at an examination under rule 1A either—’.

The amendment was agreed to.

Clause 7

MR. PETER C. WONG:—I move that clause 7 be amended as set out under my name in the paper circulated to Members and for the reasons stated in my speech.

*Proposed amendments*

**Clause 7**

That clause 7 be amended in the new rule 1—

(a) (i) by inserting, immediately after paragraph (1), the following—

‘(2) On an application under paragraph (1), the Court may make an order prohibiting the judgment debtor from leaving Hong Kong’s

- and
- (ii) by renumbering paragraphs (2), (3) and (4) as paragraphs (3), (4) and (5);
- (b) by deleting paragraphs (3) and (4) of the new rule 1A and substituting the following—
- ‘(3) Where the examination is adjourned, the Court shall order that the judgment debtor appear at the resumption of the examination and may—
- (a) order that he be prohibited from leaving Hong Kong; or
- (b) where it appears to the Court that there is reasonable cause, from all the circumstances of the case, including any evidence heard by the Court and the conduct of the judgment debtor, to believe that he may not appear at the resumption of the examination, order that he be imprisoned until that resumption.
- (4) The order under paragraph (3)(b) shall be in Form No. 103 in Appendix A.’;
- (c) in paragraph (2) of the new rule 1B, by lettering the existing provision as sub-paragraph (a) and inserting, at the end, the following—
- ‘(b) The Court may, on application, discharge, vary or suspend an order made under sub-paragraph (a), either absolutely or subject to such conditions as it thinks fit.’; and
- (d) by deleting the new rule 1C and renumbering new rule 1D as rule 1C.

The amendments were agreed to.

Clause 7, as amended, was agreed to.

Clause 8

MR. PETER C. WONG:—I move that clause 8 be amended as set out in the paper circulated to Members and for the reasons as stated in my speech.

*Proposed amendments*

**Clause 8**

That clause 8 be amended—

- (a) in the new Form No. 102, by deleting the words after ‘and it is further ordered that’ and substituting the following—
- ‘the bailiff be authorized to release the Judgment Debtor—

1. upon payment to him of the sum of \$ \_\_\_\_\_, being the amount of the judgment debt, together with the sum of \$ \_\_\_\_\_ for costs of this action and such costs as may be due for the obtaining and execution of this warrant;
2. upon payment to him of the sum of \$ \_\_\_\_\_ as security or the provision of bail in that sum by a surety or sureties;
3. upon the surrender to him of the judgment debtor's travel documents.

*[Delete, amend or substitute conditions in accordance with the order of the Court.]*

Dated the \_\_\_\_\_ day of \_\_\_\_\_ 19

NOTE: The Judgment Debtor may apply to the Court to discharge this order.';

- (b) in the new Form No. 103, by deleting the semicolon and the words after 'for further examination' and substituting a full stop and the following—

'The Court has fixed the support and maintenance allowance at the rate of \$ \_\_\_\_\_ a day.

It is further ordered that the bailiff be authorized to release the Judgment Debtor—

1. upon payment to him of the sum of \$ \_\_\_\_\_, being the amount of the judgment debt, together with the sum of \$ \_\_\_\_\_ for costs of this action and such costs as may be due for the obtaining and execution of this warrant;
2. upon payment to him of the sum of \$ \_\_\_\_\_ as security or the provision of bail in that sum by a surety or sureties.

*[Delete, amend or substitute conditions in accordance with the order of the Court.]*

Dated the \_\_\_\_\_ day of \_\_\_\_\_ 19

NOTE: The Judgment Debtor may apply to the Court to discharge this order,'; and

- (c) by adding, at the end, the following—

'No. 106'  
Order prohibiting departure from Hong Kong  
(O. 44A r. 3)  
IN THE SUPREME COURT OF HONG KONG  
HIGH COURT

Between *A.B.*

*Judgment Creditor/  
Plaintiff/Claimant*

and

*C.D.*

*Judgment Debtor/  
Defendant/Person  
against whom claim  
is made*

Upon the application of *A.B.* and upon hearing the solicitor for *A.B.* and upon reading the affidavit of  
filed the                      day of                      19

It is ordered that *C.D.* is prohibited from leaving Hong Kong.

This order shall lapse after the expiry of one month (unless extended or renewed) and shall have no effect if—

1. *C.D.* makes payment of the sum of \$                      , being the amount claimed by *A.B.*, [together with the sum of \$                      for costs of this action] and such costs as may be due for the obtaining the execution of this order;
2. *C.D.* makes payment of the sum of \$                      as security or provides bail in that sum by a surety or sureties.

*[Delete, amend or substitute conditions in accordance with the order of the Court.]*

Dated the                      day of                      19

*NOTE: C.D. may apply to the Court to discharge this order.'*

The amendment was agreed to.

Clause 8, as amended, was agreed to.

New clause 8A. 'Amendment of Appendix C of the Rules of the Supreme Court'.

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

MR. SWAINE:—Sir, in accordance with Standing Order 46(6) I move that new clause 8A as set out in the paper circulated to Members be read a second time. This is consequential on points already made in my speech.

Question put and agreed to.

Clause read the second time.

MR. SWAINE:—I move that new clause 8A be added to the Bill.

*Proposed Addition*

**New Clause 8A**

That the Bill be amended by inserting, after clause 8, the following new clause—  
‘Amend-  
ment of  
Appendix C  
of the Rules  
of the  
Supreme  
Court.  
**8A.** Appendix C of the Rules of the Supreme Court is  
amended by deleting Forms 1, 2, 3 and 4.’

The addition of the new clause was agreed to.

**SUMMARY OFFENCES (AMENDMENT) BILL 1983**

Clauses 1 and 2 were agreed to.

**IMPORT AND EXPORT (AMENDMENT) (NO. 2) BILL 1983**

Clause 1

SECRETARY FOR TRADE AND INDUSTRY:—I move that clause 1 be amended as set out in the paper circulated to Members, correcting the title of this legislation.

*Proposed amendment*

**Clause 1**

That clause 1 be amended by deleting ‘(No. 2) Ordinance 1983’ and substituting the following—

‘Ordinance 1984’.

The amendment was agreed to.

Clause 1, as amended, was agreed to.

Clauses 2 to 4 were agreed to.

**INDUSTRIAL TRAINING (CLOTHING INDUSTRY) (AMENDMENT) BILL 1983**

Clause 1

SECRETARY FOR TRADE AND INDUSTRY:—I move that clause 1 be amended as set out in the paper circulated to Members.

*Proposed amendment*

**Clause 1**

That clause 1 be amended by deleting '1983' and substituting the following—  
'1984'

The amendment was agreed to.

Clause 1, as amended, was agreed to.

Clauses 2 to 5 were agreed to.

**CROWN LANDS RESUMPTION (AMENDMENT) BILL 1983**

Clauses 1 to 8 were agreed to.

Councils then resumed.

**Third reading of bills**

THE ATTORNEY GENERAL reported that the

SUMMARY OFFENCES (AMENDMENT) BILL and the

CROWN LANDS RESUMPTION (AMENDMENT) BILL

had passed through Committee without amendment and the

DEBTORS (ARREST AND IMPRISONMENT) BILL

IMPORT AND EXPORT (AMENDMENT) (NO. 2) BILL and the

INDUSTRIAL TRAINING (CLOTHING INDUSTRY) (AMENDMENT) BILL



had passed through Committee with amendments, and moved the third reading of the Bills.

*Question put on the Bills 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, 25 January 1984.

*Adjourned accordingly at ten minutes to five o'clock.*