

OFFICIAL REPORT OF PROCEEDINGS**Wednesday, 6 February 1985****The Council met at half past two o'clock****PRESENT**

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

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

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

THE HONOURABLE THE ATTORNEY GENERAL (*Acting*)
MR. JEREMY FELL MATHEWS. J.P.

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

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 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

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

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

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

THE HONOURABLE HU FA-KUANG. O.B.E., 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. O.B.E., 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. O.B.E., 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. C.B.E., 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 KEITH LAM HON-KEUNG. J.P.

THE HONOURABLE CARL TONG KA-WING

THE HONOURABLE JOHN WALTER CHAMBERS. J.P.
SECRETARY FOR HEALTH AND WELFARE

THE HONOURABLE MICHAEL LEUNG MAN-KIN. J.P.
DIRECTOR OF EDUCATION

THE HONOURABLE PETER TSAO KWANG-YUNG. C.P.M., J.P.
SECRETARY FOR HOME AFFAIRS

ABSENT

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

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

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

THE HONOURABLE STEPHEN CHEONG KAM-CHUEN, O.B.E., J.P.

THE HONOURABLE KIM CHAM YAU-SUM, J.P.

IN ATTENDANCE

THE CLERK TO THE LEGISLATIVE COUNCIL
MR. LI WING

Papers

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

subject *L.N.No.*

Subsidiary Legislation:

| | |
|---------------------------------------------------------------------------------------------------|----|
| Pensions Ordinance. | |
| Pension Offices (Amendment) Order 1985..... | 14 |
| Registration of Persons Ordinance. | |
| Registration of Persons (Application for New Identity Cards) Order 1985----- | 15 |
| District Court Ordinance. | |
| District Court Civil Procedure (General) (Amendment) Rules 1985..... | 16 |
| Road Traffic (Parking) Regulations. | |
| Designation of Car Parks Notice 1985..... | 17 |
| Public Health (Animals and Birds) Regulations. | |
| Public Health (Animals and Birds) Regulations (Amendment of Second Schedule) Notice 1985 | 18 |
| Inland Revenue Ordinance. | |
| Inland Revenue (Interest Tax) (Exemption) (Amendment) (No. 2) Notice 1985 | 19 |
| Tax Reserve Certificates (Fourth Series) Rules. | |
| Tax Reserve Certificates (Rate of Interest) (No. 2) Notice 1985..... | 20 |
| Road Traffic Ordinance. | |
| Road Traffic Ordinance (Amendment of Fourth Schedule) Order 1985 | 21 |
| Civil Aviation Act 1949. | |
| Air Transport (Licensing of Air Services) (Amendment) Regulations 1985..... | 22 |
| Interpretation and General Clauses Ordinance. | |
| Specification of Public Office..... | 23 |

Sessional Papers 1984-85:

- No. 40—Supplementary provisions approved by the Urban Council during the third quarter of the financial year 1984-85.
- No. 41—Trustee's Report on the Administration of the Education Scholarships Fund for the year ended 31 August 1984.

No. 42—Li Po Chun Charitable Trust Fund Annual Report for the period 1 September 1983 to 31 August 1984.

No. 43—Changes to the approved estimates of expenditure approved during the quarter ending 31 December 1984—Public Finance Ordinance: Section 8.

Oral answers to questions

Consultation with functional constituencies

1. MR. CHAN YING-LUN asked:—*In preparing the legislation for the indirect election of Unofficial Members of Legislative Council through functional constituencies, can Government inform this Council what sort of consultations have been held with the nine functional constituencies involved?*

THE CHIEF SECRETARY:—Sir, following the publication of the White Paper on the Further Development of Representative Government in Hong Kong on 21 November 1984, the Director, Councils and Administration Branch of the Government Secretariat and members of his staff held a series of informal meetings with the Chairmen, Presidents and senior officials of the various representative organisations on which the two types of functional constituencies will be based, namely those comprising corporate bodies and those comprising members of certain professional pursuits. The organisations involved included:—

the Hong Kong General Chamber of Commerce
 the Chinese General Chamber of Commerce
 the Federation of Hong Kong Industries
 the Chinese Manufacturers Association
 the Hong Kong Association of Banks
 the Hong Kong Council of Social Service;

on the one hand and

the Hong Kong Medical Association
 the Hong Kong Bar Association
 the Law Society of Hong Kong
 the Hong Kong Institution of Engineers
 the Hong Kong Institute of Architects
 the Hong Kong Institute of Surveyors
 the Hong Kong Institute of Planners, and
 the five main tertiary educational institutions

on the other.

In addition, a meeting has been held with representatives of the Hong Kong Social Workers General Union, at their request; and a meeting with the employees representatives on the Labour Advisory Board, including the representatives elected by the employees trade unions, is scheduled for the afternoon of Thursday, 7 February, also at their request. I should mention in passing that the Secretary for District Administration held a meeting with representatives of the Hong Kong Institution of Engineers, the Hong Kong Institute of Architects, the Hong Kong Institute of Surveyors and the Hong Kong Institute of Planners, at their request, on 23 January; and I myself held a meeting with the Chairmen of the Hong Kong General Chamber of Commerce, the Federation of Hong Kong Industries, the Chinese Manufacturers Association and the Chinese General Chamber of commerce, at their request, on 24 January.

The purpose of these meetings was to explain to these organisations the main features of the proposed legislation and the procedures which will be followed in conducting the elections to the Legislative Council later this year, and to seek their comments on what we had in mind.

When the Legislative Council (Electoral Provisions) Bill is brought before this Council in a few weeks' time. I shall seek to reassure Members that the views expressed during these meetings, and subsequently in correspondence and through the media, have been taken into account to the extent that it has been proper and practicable to do so.

MR. CHAN YING-LUN:—*Sir, has the Government consulted these nine functional constituencies before drawing up the White Paper and if not, are there situations now falling outside the two main guidelines determining the composition and eligibility to vote of these functional constituencies as set out in the White Paper?*

THE CHIEF SECRETARY:—I think the answer to those questions, Sir, is no.

MR. CHAN YING-LUN:—*Sir, during the process of consultation do we find that many individual members of the functional constituencies are not registered on the electoral roll, and if so, what is Government to do to remedy the situation?*

THE CHIEF SECRETARY:—Sir, at the meetings held with the representatives of the organisations making up these functional constituencies, the question of the eligibility of their members to vote on the basis of the proposals in the White Paper was not discussed.

Taxability of fringe benefits

2. DR. IP asked:—*Could Government inform this Council to what extent and in what manner are the following fringe benefits taxable;*

3. (a) *all types of housing benefits for private sector and civil service employees; and*
(b) *all types of passage allowances for private sector and civil service employees?*

THE FINANCIAL SECRETARY:—Sir, there is no difference in the liability to taxation of civil servants and the public.

In the case of housing, any benefits provided by the employer are thus subject to taxation in the same way.

By virtue of provisions contained in section 9 of the Inland Revenue Ordinance where an employee is provided with free quarters, the rental value of such an accommodation is assessed as equivalent to 10 per cent of his emoluments. Where, however, an employer provides a place of residence for his employee but charges that employee a rent which is less than the rental value, the difference between the rental value and the rent so charged shall be income of the employee.

Naturally when an employee receives a cash housing allowance which he is free to use in any manner he thinks fit, such a benefit will be assessed in full as part of the employee's taxable emoluments.

As for passage allowances, civil servants who are entitled to passage benefits are not given a cash allowance. Instead, costs of all leave and school passages, up to the approved limit, are paid directly by the Government to either the authorised travel agents or airlines with whom the officers booked their passages. Section 9(1)(a) of the Inland Revenue Ordinance provides a statutory exemption in respect of any holiday warrant or passage *provided* the value or allowance for the purchase of any such holiday warrant or passage is used or expended for the purpose of travel. This statutory exemption naturally applies equally to public and private sector employees.

DR. IP:—*Sir, in cases where a company lets its employees stay in accommodation it owns, would it be feasible to assess the housing benefit based on the true values recommended by the Rating and Valuation Department?*

THE FINANCIAL SECRETARY:—Sir, the law is as established by the Inland Revenue Ordinance and as later decided by various case studies. Beyond that my opinions are worth no more than anybody else's.

DR. IP:—*What reasons have Government got to offer for allowing passage benefits not related to work to be tax-free?*

THE FINANCIAL SECRETARY:—Because this is provided under the law of Hong Kong, Sir.

HIS EXCELLENCY THE PRESIDENT:—And final question, Dr. IP.

DR. IP:—*Sir, is it in line with government policy to tax fringe benefits as their true value thus broadening the tax base and keeping the percentage tax rate low?*

THE FINANCIAL SECRETARY:—I think Dr. Ip should be very cautious when she talks about fringe benefits. I believe doctors normally look after each other and those fringe benefits could be calculated. I also remind her that 45 per cent of the population of Hong Kong lives in subsidised accommodation.

Report of the Working Group of the Transport Advisory Committee on CMB Maintenance

3. MRS. FAN asked:—*With regard to the press release issued by Government in August 1984 which stated that the findings of the Working Group of the Transport Advisory Committee on CMB Maintenance would be made public, could Government inform this Council:*

- (a) when will the report be made public;*
- (b) whether the report will be published in both English and Chinese; and*
- (c) when will a final decision be taken on the recommendations contained in the report?*

SECRETARY FOR TRANSPORT:—*Sir, the Working Group forwarded its report to the Chairman of the Transport Advisory Committee on 27 December 1984. Copies of the report were then printed, and became available in mid-January. Copies were then sent to the China Motor Bus Company and the government departments concerned inviting their comments. The Transport Advisory Committee is in the process of examining the report and comments.*

A full public statement, in English and Chinese, will be made following the decision of the Governor in Council on the advice of the Transport Advisory Committee. The contents of the statement, and whether it contains the full text of the report of the Working Group, will be for the Governor in Council to decide. I should mention that the full report is 132 pages long, with 882 pages in its supplementary volumes.

The aim is to have the submission before the Executive Council, with the TAC's recommendations, around the end of March or in early April.

MRS. FAN:—*Sir, in view of the public concern over bus accidents and in the event that Government decided not to publish the full report, will Government inform the public about the reason for such a decision, apart from the length of the report, and the action that Government will take to ensure public safety with regard to public buses?*

SECRETARY FOR TRANSPORT:—Sir, I think I cannot hypothetically foresee what the Governor in Council will decide and why it will decide what it does decide, but I did say that a full public statement will be made (and my statement stems from the authority of Your Excellency) in both languages. As to the matter of public safety, I cannot say strongly enough how seriously Government takes this matter.

MRS. FAN:—*As long as the report of the Working Group is kept confidential the public is of course not in the position to judge the accuracy of various news media reports on this matter. In view of the seriousness of and concern for public safety, does the Government feel that it is their duty to rectify any incorrect information publicly.*

SECRETARY FOR TRANSPORT:—Sir, I think it would be beyond the labours even of Hercules to rectify all the omissions and errors of the media.

Eligibility for appointment to the Dental Council of Hong Kong

4. DR. IP asked:—*Could Government inform this Council why persons registered under section 8(1)(c) of the Dentists Registration Ordinance are not eligible for appointment to the Dental Council of Hong Kong?*

DIRECTOR OF MEDICAL AND HEALTH SERVICES:—Sir, under the present provisions of the Dentists Registration Ordinance, persons registered under section 8(1)(c) are not eligible for appointment to the Dental Council of Hong Kong and this has been the position since it was set up by law in August 1959. Further, it is not possible to establish the reason for the original provisions at this point in time.

However, my friend may be pleased to know that *inter alia* the Dental Council is scheduled to examine the legal provisions for its composition at its next meeting in March. I am therefore most grateful to my friend for her timely question as this aspect will certainly be covered in the Dental Council's deliberations.

Clothes-drying facilities in public housing estates

5. MRS. NG asked in Cantonese:—

政府可否告知本局：

(甲) 過去兩年內，公共屋邨曬衣竹引致意外的報案數字；以及

(乙) 現時為公屋居民提供的曬衣設備，即將曬衣竹鑿入短金屬管的方法，政府認為是否安全和合適？

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

Can Government inform this Council:

- (a) *the number of reported accidents involving laundry-poles in public housing estates in the last two years; and*
- (b) *whether Government considers the present clothes-drying facilities provided to estate tenants i.e. laundry-poles inserted into short metal tubes, safe and desirable?*

SECRETARY FOR HOUSING:—Sir, during the last two years, there were three reported accidents involving laundry-poles in public housing estates among a total of 500 000 flats. These involved two cases of slight injuries because of falling objects and one fatal case where an old lady slipped and fell off the balcony while standing on a high stool. It is reported that she was manoeuvring her laundry-pole at the time.

From the very small number of accidents reported, I would suggest that the laundry-poles drying system is reasonably safe. The present facilities are much favoured by occupants of small flats where ready drying facilities are inevitably very limited. They offer minimum inconvenience to users and neighbours and meet the tenants' desire to air their clothes in the sunlight, and so remain popular. Drying racks suspended from the ceiling of the balcony are also provided in estates but the traditional method of a pole in the sunlight is preferred. Nevertheless, the Authority is continuing to look for improvements and indeed on a number of new estates, new methods for drying are being tried out.

MRS. NG asked in Cantonese:—

很高興知道政府已經在部份新型的屋邨改用新的晾衣設施，如果這個計劃證明是成功的話，政府可否考慮改良舊有的晾衣設施，以保障使用者及路人的安全？

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

Sir, I am very pleased to learn that the Government has been trying out new drying facilities in new housing estates. If this proves successful will the Government consider improving the drying facilities in the older estates to ensure that users as well as pedestrians are safe?

SECRETARY FOR HOUSING:—Sir, we are trying out a few new methods and these are still in experimental stage. Of course if any of them proves to be more effective and popular, we will certainly consider replacing some, or all, of them in the old estates.

Schemes of control over public utilities

6. MR. SO asked in Cantonese:—

政府可否告知本局：

- (甲) 目前有多少間公用事業公司受管制法則所管制。而這些管制法則將於何時期滿？
- (乙) 有多少間公用事業公司仍未受管制法則所管制？它們為什麼未受管制；以及
- (丙) 政府有沒有計劃為更多公用事業公司訂定管制法則？

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

Could Government inform this Council:

- (a) *how many public utilities are currently under a scheme of control and when will the present control schemes terminate;*
- (b) *how many public utilities are not yet under a scheme of control and why not; and*
- (c) *are there plans to bring more public utilities under schemes of control?*

SECRETARY FOR ECONOMIC SERVICES:—Sir, in answer to the first part of Mr. So's question, scheme of control agreements have been entered into with seven companies and their associates in relation to the public utility services that they provide. The companies involved are named and the effective periods of the schemes of control are set out in the relevant agreements, the publication of which Members will remember welcoming in this Council on 24 November 1982 on the motion of Mr. So.

As to the second part of the question, the answer must depend upon the precise definition of public utility, but certainly there are a number which are not subject to schemes of control. They include the Mass Transit Railway, the Kowloon-Canton Railway, the Waterworks, the two Ferry Companies, Hong Kong Tramways, the Peak Tram and the New Lantao Bus Company. In relation to these public utilities, there is adequate control over fares or charges either through legislative provision or under the terms of the relevant franchise. The Hong Kong and China Gas Company Ltd does not operate under either a scheme of control or franchise because its services are not provided in a monopoly or quasi-monopoly situation.

Lastly, Sir, there are at present no plans no plans to bring more public utilities under schemes of control.

MR. SO asked in Cantonese:—

閣下，中華煤氣公司並不是一個專利或半專利的公共事業，那麼政府根據甚麼來釐訂一間公共事業公司究竟是專利或是半專利？

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

Sir, the Hong Kong and China Gas Company is neither a monopoly nor a quasi-monopoly, so how does Government decide when a public utility is a monopoly or a quasi-monopoly?

SECRETARY FOR ECONOMIC SERVICES:—Sir, we look at the extent of the competition; if there is no competition or no real competition then we might well regard the utility as being provided in a monopoly or quasi-monopoly situation.

MR. SO asked in Cantonese:—

閣下，根據這個邏輯，當地下鐵路港島支線一旦通車後，政府會否考慮取銷管制中華巴士公司呢？

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

Sir, if we follow that logic, will the Government consider cancelling the scheme of control over CMB when the MTR Island Line comes into operation?

SECRETARY FOR ECONOMIC SERVICES:—No, Sir.

Vietnamese refugees

7. MR. S. L. CHEN asked:—*Could Government inform this Council of the number of Vietnamese refugees in Hong Kong as at 31 December 1984 and the position regarding their resettlement overseas?*

SECRETARY FOR SECURITY:—Sir, as at 31 December 1984, there were 11 832 Vietnamese Refugees in Hong Kong.

On their position regarding resettlement, for about 6 per cent, the Office of the United Nations High Commissioner for Refugees (UNHCR) had secured firm acceptance by resettlement countries: 27 per cent were awaiting a decision by the country or countries to which the UNHCR had submitted their cases for resettlement; and the remaining 67 per cent, or 7 957 refugees, were either cases for which the UNHCR had not yet been able to put forward submissions *or* were the UNHCR had made submissions which had been rejected by at least one resettlement country. The UNHCR estimates that, of this 67 per cent, about 5 250 have been rejected at least once.

MR. S. L. CHEN:—*Sir, what plans does Government have to hasten the resettlement of Vietnamese refugees or to return them whence they came?*

SECRETARY FOR SECURITY:—Sir, the United Nation High Commission for Refugees is responsible for resettling elsewhere refugees who arrive in Hong Kong as a place for first asylum. The Hong Kong Government works closely with the local UNHCR Office; and with the full agreement of the UNHCR we also work closely with the consulates and commissions of the main resettlement countries here. For example, we participate in regular meetings with them to discuss matter relating to the resettlement of Vietnamese refugees from Hong Kong.

We also approach other countries, through the UNHCR and direct, with a view to getting more resettlement places from them. Our overseas offices are also in regular contact with the governments of the resettlement countries in an effort to persuade them to take more. Finally the Hong Kong Government attends, or is represented at, relevant international meetings overseas, the latest one being the UNHCR Executive Committee meeting held in Geneva in October 1984.

As regards returning Vietnamese refugees whence they came, our international obligations prevent us from returning refugees to Vietnam. However, if those arriving here were judged to be illegal travellers rather than genuine refugees then the Hong Kong Government would consider it a viable option to return them to Vietnam *provided* that the Government of Vietnam would accept them back and *provided* that we could be satisfied that they would not be treated inhumanely on their return.

MR. ALLEN LEE:—*Sir, what are the reasons that UNHCR have given Hong Kong or are there any reasons given about the 5 250 being rejected at least once? What are the reasons for rejection?*

SECRETARY FOR SECURITY:—Generally speaking, Sir, it is because the resettlement countries have their own particular criteria for whom they are prepared to accept. The UNHCR submits the lists to these countries and these countries then decide which cases meet their criteria and which do not. The ones which have been rejected fall into the latter category. They will then be put by UNHCR without questions to other resettlement countries to see if they meet the criteria there.

MRS. FAN:—*Sir, can the Secretary for Security inform this Council the percentage of Vietnamese refugees from Hong Kong resettled in UK, Australia, Canada and the United States during the year 1982, 1983 and 1984?*

SECRETARY FOR SECURITY:—Yes, Sir,

| | 1982 | 1983 | 1984 |
|-----------|------|------|------|
| USA | 72% | 49% | 42% |
| Canada | 12% | 13% | 27% |
| UK | 3% | 2% | 2% |
| Australia | 5% | 22% | 20% |

MR. ALLEN LEE:—*Sir, may I get back to the question of rejections of the 5 250 by UNHCR or other countries. Does it mean that no countries are willing to accept these refugees based on their terms of acceptance or settlement? Are we, the Hong Kong Government, going to end up with these 5 250 in Hong Kong and also are they in closed camps?*

SECRETARY FOR SECURITY:—*Sir, to answer the last part of the question first, some are in closed camps and some are in the open centres. As to whether or not we, at the end of the day, have to absorb them into our own community, it will depend on when we decide that there really is no hope for them ever being resettled. Then, I am afraid, there will be no option but to absorb them into our community.*

Pollution of watercourses in the New Territories

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

政府可否告知本局，新界一般河流，特別是元朗防洪渠，經常嚴重污染的原因？

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

Will the Government inform this Council what are the causes of the persistent heavy pollution of the rivers in the New Territories in general and of the Yuen Long Nullah in particular?

SECRETARY FOR HEALTH AND WELFARE:—*Sir, there are three major causes of pollution of the watercourses in the New Territories. First and most important is the indiscriminate disposal of farm waste, mainly the excreta of pigs, chickens and ducks, at a rate of about 2 000 tonnes per day by direct or indirect flushing into nearby watercourses. This is the main cause of the noxious appearance and smell of many streams in the New Territories. Secondly, outside new town boundaries, where there are generally no communal sewage disposal facilities, wastes arising from the human population in some villages and squatter areas add to the pollution load on watercourses. Thirdly, many industrial establishments have rudimentary or non-existent waste treatment facilities and thus contribute to the pollution by discharging their effluents more or less directly into the environment. All of these problems are exacerbated by the general lack of flushing flow through the watercourses during much of the year.*

In Yuen Long, the problems are similar to the rest of the New Territories. According to a 1979 survey the Yuen Long Nullah receives the bulk of the wastes from about 76 000 pigs, 532 000 chickens and 57 000 ducks, together with the wastes from the majority of about 30 000 people who live in old style village housing and temporary structures in the area.

MR. CHEUNG YAN-LUNG asked in Cantonese:—

閣下，政府有否考慮過是否可能將河流上游的養豬場及養雞場遷往一個地區，以方便集中管理？

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

Sir, has the Government considered whether it is possible to move the pigsties and the chicken breeding areas in the upper courses to one area for centralised management?

SECRETARY FOR HEALTH AND WELFARE:—Yes, Sir. this is one of the options which are being considered in the formulation of a territory-wide farm waste disposal strategy—the possibility of designating special sites to be provided with the essential basic infrastructure to facilitate the transportation and collection of waste and the installation where necessary of centralised effluent treatment plants by farmers.

MR. CHEUNG YAN-LUNG asked in Cantonese:—

請問政府有沒有任何計劃去徹底解決這個問題，特別是禁止將動物的糞便傾入河裏？

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

Sir, is there any plan to eradicate the problem with particular reference to prohibiting the discharge of animal waste into the watercourses?

SECRETARY FOR HEALTH AND WELFARE:—Sir, controls on the disposal of farm waste are being developed as subsidiary legislation under the Waste Disposal Ordinance. The intention is to replace or try to replace the present practice whereby most of such wastes are flushed into the streams with more sanitary means of waste storage and disposal. I hope it will be possible to bring forward such legislation before the end of this year.

Reduction of classes in private secondary schools

9. MR. CHAN YING-LUN asked:—*Can Government inform this Council whether:*

- (a) *there has been any significant reduction in the number of classes in private secondary schools; and*
- (b) *if so, what are the reasons for this?*

DIRECTOR OF EDUCATION:—Sir, it is true that there has been an overall reduction in the total number of classes in private secondary schools in recent years. There are several reasons for this, the first of which is purely technical. In 1982 and 1983, 59 private non-profit-making secondary schools became fully aided. Their classes are thus no longer classified as private secondary.

Excluding these 59 schools, between 1980 and 1984, the average annual rates of reduction in the number of operating classes in all private secondary schools were 8.6 per cent in Forms I to III and 9.2 per cent in Forms IV to V, although in Forms VI to VII there was an average annual increase of 3.8 per cent.

The general reduction in Forms I to V classes is due to two main factors. Between 1980 and 1984, there was an average annual decrease of 3.7 per cent in the number of children in the 12-16 age group. Secondly, during the same period, there was a continuous increase in the supply of public sector places upon the completion of 46 new government and aided schools in the Secondary Schools Building Programme.

MRS. CHOW:—*Sir, how many of the reduced classes belong to the more satisfactory private schools and why can't these places be bought by Government so as to increase the number of subsidised Form IV and V places thereby increasing the overall provision for JSEA allocation?*

DIRECTOR OF EDUCATION:—*Sir, of the reduction in the number of classes in Forms I to III, practically all of these classes are of an inferior quality. Therefore the Government does not consider it justified to buy places from these schools to phase out the JSEA.*

Overseas domestic helpers

10. MR. BROWN asked:—*Would Government inform this Council how many domestic helpers recruited from overseas held immigration approval to work in Hong Kong as at the end of 1982, 1983 and 1984 respectively?*

SECRETARY FOR SECURITY:—*Sir, at the end of 1982, there were 21 517 domestic helpers from overseas who held immigration approval to work in Hong Kong.*

At the end of 1983, there were 26 314; and at the end of 1984, there were 24 590.

MR. BROWN:—*Sir, would the Secretary for Security say whether Government contemplates any change in the immigration rules which would restrict the entry of additional domestic workers or curtail the ability of existing workers to renew their employment permits?*

SECRETARY FOR SECURITY:—*No, Sir, we sought the advice of Executive Council on this issue last year and at present we see no cause to seek Executive Council's advice again. Nevertheless we are monitoring the situation extremely carefully.*

Services for the elderly

11. DR. IP asked:—*Could Government make a statement on:*

- (a) its overall plan for the provision of services for the aged in the next ten years; and*
- (b) its policy towards the subvention of voluntary agencies providing services for the elderly?*

SECRETARY FOR HEALTH AND WELFARE:—Sir, the Government's policy on the provision of services for the elderly, as set out in the 1979 White Paper on Social Welfare, is to promote the well being of people over 60 primarily through care in the community. Detailed plans for the implementation of the policy are set out in the Five-Year Plan for Social Welfare Development, which is reviewed and rolled forward each year. In addition to the services specially provided for them, elderly people also benefit from the social security system of which they form the majority of the beneficiaries.

Community support services in the form of home help, personal care and limited nursing services, counselling, social and recreational activities are available in multi-service centres for the elderly. By the end of 1985, there will be 12 such centres, and it is intended to meet the full demand for 24 centres (roughly 1 centre for every 250 000 population) by 1990. In addition social centres for the elderly are planned on the basis of one for 30 000 of the general population. On present plans, the total estimated requirement of 204 centres by 1995 should be met provided the necessary resources can be made available.

For those whose primary need is decent accommodation, a variety of arrangements exist in both public and private housing, the latter financed from the Gold Coin Suspense Account. In addition there are some 1 400 places in hostels operated by welfare agencies, with a further 2 000 places planned over the next ten years.

Plans for the provision of homes for the aged (including hostels which provide meals) and for care-and-attention homes are based on ratio of ten places per thousand and four places per thousand people over 60 respectively. On this basis our present plans provide for the shortfall in both these areas to be met by 1990. The Director of Social Welfare is however reviewing these ratios to establish whether they are still appropriate.

For infirmaries the planning ratio is five beds for every 1 000 people over 65. Plans are to expand the present total of 1 060 infirmary beds threefold during the next ten years. In addition there will be geriatric wards in all new general hospitals, while the community nursing service which largely benefits elderly people will expand from 46 to 61 centres in the next five years.

Dr. Ip also enquired about Government's policy towards the subvention of welfare agencies providing services for the elderly. The present policy is to

provide 100 per cent support for services which meet a fundamental need; these include residential institutions, day care centres and home help. For those services which are basically social and recreational in nature (including social centres and pool bus services) less than 100 per cent is provided as it is intended to encourage community participation as well as to retain the voluntary character of these services. Most hospitals and other medical projects are subvented on a deficiency grant basis.

DR. IP:—*Sir, how did these planning ratios of ten and four places per 1 000 people over the age of 60 come about and are they synonymous with the actual demand?*

SECRETARY FOR HEALTH AND WELFARE:—*Sir, these ratios were devised quite a number of years ago and it seems to me that the basis on which they were calculated is very much in need of revision. This is why I have asked the Director of Social Welfare to look at them.*

DR. IP:—*Sir, have Government or the Hong Kong Council of Social Services attempted to work out the actual demand for homes for the aged and care-and- attention homes?*

SECRETARY FOR HEALTH AND WELFARE:—*Sir, this is a very difficult exercise to carry out. The only method which we have at the moment is by looking at the waiting lists for these particular types of institution and the general effect, I think, is that if the places are very short then many people are not put on the waiting list because they have no hope of getting any accommodation in the foreseeable future. So I would say it is very difficult to work out the exact requirement.*

DR. IP:—*Sir, how many subvented agencies applied for the subvention of new centres for the homes for the aged and care-and-attention homes and is this number adequate to meet Government's aim to offset the shortfall?*

SECRETARY FOR HEALTH AND WELFARE:—*Sir, I take it that Dr. Ip is asking for the current year. I am afraid I do not have the exact figures but I will provide them to Dr. Ip in writing.*

(The following written reply was provided subsequently.)

The Social Welfare Department have provided the following information:

Home for the Aged

There are at present 4 440 places in homes for the aged. including the meals sections of hostels in public housing estates. An additional 3 600 places are planned in 38 projects over the next ten years. Based on the present planning ratio of ten places per thousand people over 60, the shortfall in this category

should be met by 1990. For the year 1985/86, four projects are in the pipeline, these are:

| <i>Name</i> | <i>Capacity</i> |
|----------------------------------|-----------------|
| Lok Wah Hostel for the Elderly | 84 |
| Kwong Fuk Hostel for the Elderly | 76 |
| Shek Lei Hostel for the Elderly | 108 |
| Ko Chiu Road Home for the Aged | 116 |
| | Total: |
| | 384 |

All four projects have been matched with subvented agencies, and the Social Welfare Department has received subvention applications for three of them. The fourth project has also been matched with an agency but its application for a subvention has not yet been received. For the year 1986-87, another nine hostels for the elderly are planned which will provide 844 places. All but one of these projects have been matched with subvented agencies. We do not envisage any difficulty in finding agencies willing to take up the projects required to meet the shortfall.

Care-and-Attention Homes

There are at present 880 care-and-attention places and a further 2 104 places are planned in 14 projects over the next four years. Based on the present planning ratio of 4 places per thousand population over 60, the demand should be fully met by 1988. For the year 1985-86, three projects are planned, these are:

| <i>Name</i> | <i>Capacity</i> |
|---------------------------------------------|-----------------|
| Shuen Wan (Phase 1) Care-and-Attention Home | 188 |
| Ping Ha Road Care-and-Attention Home | 100 |
| Ko Chiu Road Care-and-Attention Home | 126 |
| | Total: |
| | 414 |

Another 50 places are being planned for 1986-87. All the projects have been matched with subvented agencies and two of them have already applied for subventions.

The answer to your question therefore is that on the basis of the present planning ratios the Social Welfare Department are confident that subvented agencies will be willing to undertake the provision of the places required to meet the shortfalls. However as I mentioned in my main answer the Department is now undertaking a review of the ratios, if this review results in an increase in the requirement, we may need a larger number of places to meet the shortfall.

Compulsory education

12. MRS. NG asked in Cantonese:—

自從實施九年強迫教育以來，政府對沒有遵守這項規定的家長，是否有採取行動？

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

Since the introduction of nine-year compulsory education, has Government taken any action against those parents who refrain from sending their children to school?

DIRECTOR OF EDUCATION:—Sir, I confirm that my department has taken action against those parents who refrain from sending their children to school.

First, Student Guidance Officers give advice to the parents concerned and try to persuade them to send their children back to school. Where necessary, cases are referred to the Social Welfare Department or the Special Education Section of my department for further advice or help. District Education Officers also assist in seeking school placement for the children concerned.

If there are no good reasons for non-attendance and if repeated advice fails, the parent will be warned verbally and then in writing. The written warning requires the parent to cause the child to resume schooling within 14 days. If this still fails to result in any positive action by the parent, an attendance order under section 74 of the Education Ordinance will be served.

Over the years most parents have taken our advice and it was necessary to issue attendance orders in six cases only.

MRS. NG asked in Cantonese:—

閣下，很高興知道教育署將特別個案轉交社會福利署及特別教育組處理，請問政府有否分析過學生退學之原因及作出防患未然之措施？

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

Sir, I am very pleased to know that the Education Department refers special cases to Social Welfare Department and the Special Education Section. Has Government analysed the reasons for non-attendance and provided preventive measures?

DIRECTOR OF EDUCATION:—Yes, Sir, we have kept very detailed statistics on the reasons for these non-attendance cases. In general, I would say that most of the reasons related to the family and personal particular circumstances, for example, the family problems of the children concerned and in some cases the lack of motivation of the children concerned. We have tried our very best to assist those families. In particular, home visits were made by the Social Welfare Department and our officers concerned and we have done our best to persuade them and to help them overcome these difficulties including welfare assistance.

By and large we have managed to help many of the families to overcome these problems and this is why in fact the number of cases requiring action is so little.

Security in schools

13. MR. YEUNG PO-KWAN asked:—*Will Government inform this Council:*

- (a) *the number of burglary cases in schools in Hong Kong, Kowloon and the New Territories in 1984 as compared with 1983;*
- (b) *whether the computer equipment stolen recently by burglars from Lee Wai Lee Technical Institute was fully covered by insurance; and*
- (c) *what measures have been taken to improve security to minimise the risk of burglaries in educational institutions run by Government?*

SECRETARY FOR SECURITY:—Sir, in 1984 there were 46 burglaries in schools and in other educational institutions on Hong Kong Island, 136 in Kowloon and 211 in the New Territories. In 1983 the corresponding figures were 66, 160 and 166.

The computer equipment stolen recently from the Lee Wai Lee Technical Institute was *not* insured.

The Police Crime Prevention Bureau Surveys all new government and government subvented school premises at the design and construction stage to ensure that suitable security features are incorporated into them. For existing schools, the Crime Prevention Bureau provides general crime prevention advice for the Education Department to pass on to individual schools. The Bureau also visit such schools upon request to give advice.

The schools and other institutions take special measures to secure valuable items of equipment, such as locking away television sets and tape-recorders after school and during school holidays. For computer rooms, schools install anti-burglar bars on windows, replace wooden doors with iron ones and reinforce door locks. Finally, most government schools have two quarters for junior staff to live on site. Part of the responsibility of this staff is to report criminal activity.

MR. YEUNG PO-KWAN:—*Sir, will the Secretary for Security state the financial loss incurred by Government in this burglary case, and to prevent future financial losses will Government consider insuring expensive computer equipment in schools?*

SECRETARY FOR SECURITY:—Taking this slightly outside the area of the Secretary for Security, my understanding is that the value of this computer equipment that disappeared or was burgled from the Lee Wai Lee Technical Institute was \$380,000. Whether the cost is borne by the Hong Kong Government or by some other institution or by someone else in the private sector I don't know. As

regards insurance it is of course a well established government policy to bear its own insurance as far as its own equipment is concerned and that presumably is the policy that will apply to government schools. As regards aided schools and other institutions that are not fully controlled by the Government there seems to be some doubt as to precisely what the policy is on insurance and this doubt is now being looked at again.

MR. YEUNG PO-KWAN:—*Sir, how many government schools have two quarters for junior staff to live on site?*

SECRETARY FOR SECURITY:—Sir, I shall have to admit defeat but I will try and answer the question in writing.

(The following written reply was provided subsequently.)

All the 36 government secondary schools are provided with two or more quarters for junior staff to live on site. There is similar provision in 24 out of a total of 26 government primary schools. The remaining two government primary schools have only one quarter each because of restrictions on available space due to the fact that one is located on the ground floor of a public housing estate and the other is in a comparatively old building.

MR. YEUNG PO-KWAN:—*Sir, if the provision of quarters for junior staff in most government schools is justified from the security point of view, will Government consider providing similar facilities wherever possible to other government schools and aided schools to improve their security at night?*

SECRETARY FOR SECURITY:—Sir, that would seem to me a very sensible idea and we will certainly have a look at it.

(The following written reply was provided subsequently.)

All government and aided primary and secondary schools built to the standard design are provided with two units of caretaker's quarters. each with a floor area of 32 m².

Subject to the availability of funds and space, favourable consideration will be given to requests for the provision of caretaker's quarters from existing public sector schools which are not currently provided with such.

Statement

Changes to the approved estimates of expenditure approved during the quarter ending 31 December 1984—Public Finance Ordinance: Section 8

THE FINANCIAL SECRETARY:—Sir, in accordance with section 8(8)(b) of the Public Finance Ordinance, I now table for Members' information a summary of changes made to the approved estimates of expenditure in the third quarter of 1984-85.

Supplementary provision of \$441.3 million was approved, of which \$338.1 million was for a payment to the Mass Transit Fund: \$248.1 million to enable the Mass Transit Railway Corporation to pay the premium for the Pak Chai Wan depot and the development rights above plus \$90 million to meet its liability for rates for operational and works areas in 1985-86 and 1986-87 both by way of equity issue to the Government. Other major provisions include \$28.5 million for a grant to the Arts Centre to enable it to repay a bank syndicated loan and a loan from the Government with accumulated interest; \$16 million for the building cost of two new technical institutes in 1984-85; \$8.4 million to meet increased expenditure on refunds of rents and rates to kindergartens; \$6.6 million to meet increased expenditure for engaging lawyers and expert witnesses in connection with contractual disputes and criminal cases; \$5.2 million to meet additional expenditure on maintenance and repairs of government buildings; and \$4.8 million for the purchase of equipment and associated expenses for the Standards and Calibration Laboratory. The transfer to the Mass Transit Fund for payment of land premium is to be offset by land revenue of the same amount and the grant to the Hong Kong Arts Centre is to be offset by a matching transfer to General Revenue from the Special Coin Suspense Account. Other supplementary provisions approved have been offset either by savings under the same or other heads of expenditure or by deletion of funds under the additional commitments votes.

In the same period, an increase of \$7.5 million in the gross provision for purchases of Correctional Services industries materials was approved to meet increased expenditure due to increase in the number of inmates employed, the average price of materials consumed and considerable expansion of the industries. No increase in the net provision was necessary because the additional costs will be recovered from client departments and organisations.

A net increase of 1 326 posts, including posts for the Housing Authority and the Urban Council, was also approved.

Approved commitments (referring to capital items only) were increased by \$209.8 million and new commitments of \$947.2 million were approved. The new commitments and increases in commitments approved since 1 April 1984 totalled \$1,479,540,672 representing a 48.6 per cent increase over the total commitment balance of \$3,044.9 million in the 1984-85 Estimates.

Items in the summary were approved either by the Finance Committee or under delegated authority. The latter have been reported to the Finance committee in accordance with section 8(8)(a) of the Public Finance Ordinance.

Government Business

Motion

HONG KONG ROYAL INSTRUCTIONS 1917 TO 1984

THE CHIEF SECRETARY moved the following motion:—That with effect from 13 March 1985 the Standing Orders of the Legislative Council of Hong Kong, made by the said Council on 9 October 1968, be amended in Standing Order No. 60—

- (a) in paragraph (3) by deleting ‘The sittings shall be held in private unless the committee otherwise order or except as provided under paragraph (9) of this order.’ and substituting the following—

‘The sittings shall be held in public unless the chairman otherwise orders in accordance with any decision of the committee.’

- (b) in paragraph (5) by deleting ‘(7)’ and substituting the following—
‘(6)’

- (c) in paragraph (9) by deleting ‘shall, unless the committee otherwise order, meet in public and’.

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

This resolution proposes amendments to Standing Order 60 so as to permit the Finance Committee to conduct all its meetings in public unless the Chairman orders otherwise in accordance with any decisions of the Committee.

Members will recall that Standing Orders were amended in 1983 to enable the Finance Committee to sit in public to examine the draft Annual Estimates before the Appropriation Bill is considered in committee of the whole Council; and further amendments were made in 1984 to enable the Public Accounts Committee to hold its hearings in public.

I am sure that Members will agree with me that those public meetings held last year in March by the Finance Committee and in November by the Public Accounts Committee were well received by the public at large. As another major step towards more open government, it is only right that regular meetings of the Finance Committee, and not just those meetings at which the draft Annual Estimates are considered, should be held in public as well. For confidential items, the Committee will still meet in private and the resolution recognises this.

The opportunity has also been taken to correct a cross reference in Standing Order 60 which concerns the appointment of a clerk to the Finance Committee.

The resolution, Sir, if passed, will come into effect on 13 March 1985.

SIR ROGER LOBO:—Sir, on behalf of my Unofficial colleagues, I would like to place on record our support for these amendments to the Standing Orders and this further welcome step towards the development of more open government.

Sir, we beg to move and support the motion.

Question put and agreed to.

First reading of bills

PENSIONS (SPECIAL PROVISIONS)(CUSTOMS OFFICERS) BILL 1985

INLAND REVENUE (AMENDMENT) BILL 1985

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

Second reading of bills

PENSIONS (SPECIAL PROVISIONS)(CUSTOMS OFFICERS) BILL 1985

THE CHIEF SECRETARY moved the second reading of:—‘A bill to make special provision in relation to contributions paid by certain officers in the Customs and Excise Service in respect of pensions for their dependants under the Widows and Orphans Pension Ordinance and the Widows’ and Children’s Pensions Ordinance and for matters connected therewith’.

He Said:—Sir, I move that the Pensions (Special Provisions)(Customs Officers) Bill 1985, which is a curious piece of legislation, be read the second time.

Regulation 3 of the Widows and Orphans Pension (Application) Regulations exempts ‘rank and file’ officers in the basic recruitment ranks of the disciplined services from contributing to the Widows and Orphans Pension Scheme. When the former Preventive Service was re-structured in 1977, a number of officers who were contributors to the Widows and Orphans Pension Scheme were regraded into the new basic recruitment rank of Customs Officer. They should then have been given an option to cease contributing to the Scheme, but, due to an omission, this was not done. Some of these officers subsequently became contributors to the Widows and Children’s Pensions Scheme, which was introduced on 1 January 1978, to replace the Widows and Orphans Pension Scheme.

The purpose of this Bill is to redress the omission by offering to the staff affected a retrospective option of ceasing to contribute to the Widows and

Orphans Pension Scheme. For those officers who so elect, the Bill provides for refunds of their contributions made under the Widows and Orphans Pension Scheme and also, if they had transferred to the new Widows and Children's Pensions Scheme, their contributions made under the new scheme.

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

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

Question put and agreed to.

INLAND REVENUE (AMENDMENT) BILL 1985

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

He Said:—Sir, I move the second reading of the Inland Revenue (Amendment) Bill 1985. The main purpose of this Bill, the first of two amending the Inland Revenue Ordinance to be considered this afternoon, is to increase the effectiveness of the Board of Review of Inland Revenue.

The Bill provides for the Board's membership to be increased from 75 to 100 and also for the number of Deputy Chairmen to be increased from two to six. These measures will enable more sittings to be held and should result in a marked reduction in the number of outstanding cases presently awaiting decision. The Board of Review with its hardworking members performs a most valuable function and I feel sure that these changes will be welcomed.

The Bill also brings up to date the maximum costs that unsuccessful appellants may be ordered to pay and the fee payable for a case to be stated by the Board for the opinion of the High Court. These are increased from \$100 to \$1,000 and from \$50 to \$400 respectively. The present levels were set in 1947 and have long ago been overtaken by inflation. The \$1,000 that an unsuccessful appellant may now be required to pay should help deter frivolous appeals or those being used simply to defer payment of tax.

The Bill also provides for an increase in the maximum penalty for failing to comply with a notice to supply information called for by an assessor or inspector, or to attend for examination by an assistant commissioner. This is to be increased from the 1965 figure of \$2,000 to \$5,000.

Finally minor amendments are included to provisions in the Ordinance relating to insurance companies. This is to take into account amendments made

to other statutory provisions in both U.K. and Hong Kong, and in particular to our 1983 Insurance Companies Ordinance.

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

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

Question put and agreed to.

INLAND REVENUE (AMENDMENT) (NO.2) BILL 1984

Resumption of debate on second reading (27 June 1984)

Question proposed.

MR. BROWN:—Sir, last year two Bills were introduced into this Council to amend the Inland Revenue Ordinance.

The first Bill was aimed primarily at safeguarding the tax yield from profits tax from certain avoidance measures which became possible following on the removal of interest tax. That Bill was passed by this Council—with some amendments—in June 1984, although some of its side effects are still the subject of public debate and argument.

The second Bill, which we are considering this afternoon, has a quite different purpose. It tackles the problem caused by taxpayers delaying payment of tax by abuse of the practice whereby the Commissioner of Inland Revenue permits the payment of tax to be deferred pending objections raised by the taxpayer. This Bill was not passed last year; instead it was held over to enable a Legislative Council Ad Hoc Group to study the many representations received from the public in general and the business sector in particular. I speak as the Convener of that Ad Hoc Group.

The Group has met with the Commissioner of Inland Revenue and representatives of the Financial Secretary, and after many hours of deliberation agreement has been reached on a number of amendments which I will introduce at the committee stage.

Let me make it clear, Sir, that Unofficial Members have no quarrel with the object of this legislation. It is a fact that significant amounts of tax are held over. It is a fact that the vast majority of demands held over are eventually decided in favour of the Inland Revenue—Members will recall that the Public Accounts Committee of this Council raised this issue during its public hearings last year and was informed that of some 20000 objections lodged in any one year only 300 or 400 would eventually be dealt with by the Board of Review.

It is also a fact that under the present system those who gain by using deferral devices are merely passing part of their tax burden onto other taxpayers and in all equity this must be stopped.

At present the Commissioner has the power to permit holdovers without any conditions, and the statistics support his claim that he does so when it is immediately apparent that a taxpayer's objection has merit. Under the Administration's proposals he would continue to have that option or to permit holdovers backed by the purchase of Tax Reserve Certificates. This 'black' or 'white' choice was felt by the Ad Hoc Group to be too inflexible. The agreed amendments revise the options and add flexibility by *firstly* giving the Commissioner the option to allow holdover without the purchase of Tax Reserve Certificates with a proviso that in the event of an unsuccessful objection or appeal the taxpayer must pay interest on the amount involved. An amendment to clause 2 inserting an appropriately worded new paragraph (10) achieves this objective.

The agreed amendments *secondly* give the Commissioner the option to permit the taxpayer to provide a bank guarantee in lieu of Tax Reserve Certificates provided that the guarantee covers the amount of tax held over plus interest until payment is made in the event the objection or appeal is disallowed. The other amendments to clause 2 reflect this arrangement.

To avoid any confusion as to the circumstances in which the Commissioner will exercise his discretion to make an unconditional holdover order, with interest payable if the objection or appeal is ultimately unsuccessful, or an order conditional upon the purchase of Tax Reserve Certificates or the provision of a bank guarantee, the Commissioner has undertaken to issue an amended Departmental Practice Note laying down clear policy guidelines applicable to each case.

There are a few other amendments which are purely technical in nature, and the title of the Bill itself is being changed to recognise that our deliberations have taken us over the year end into 1985.

Although the arrangements as now agreed will not please everybody including some of my Unofficial colleagues, it is necessary to recognise that the Commissioner has the power to insist on the payment of tax without *any* holdover. In the absence of the provisions of this Bill the only alternative would be for the Commissioner to adopt a far tougher attitude towards the holdover system, which will be to the detriment of all taxpayers particularly those in the business sector. The compromise now agreed seems to strike a fair balance, and for this reason, Sir, I support the motion.

MRS. FAN:—Sir, Inland Revenue (Amendment)(No. 2) Bill 1984 is aimed at protecting revenue in the sense that there will be less opportunity for eventual default in payment of tax. I am in full agreement with this intention. The

Financial Secretary told this Council on 27 June 1984 that \$2,984 million in tax was held over as at 31 March 1984, and he stated. This unsatisfactory situation should not be allowed to continue'. Of this view. I am also in full support. I am, however, at variance with the proposed method of achieving the aim as outlined by the aforesaid Bill and the amendments that have been tabled.

Section 71 subsections (2) and (3) of our existing Inland Revenue Ordinance has clearly stated that tax shall be paid notwithstanding any objection or appeal, unless the Commissioner orders that payment of tax to be held over pending the result of an objection or appeal. The Commissioner can also cancel such order and demand for immediate payment if he is of the opinion that the tax in dispute is likely to become irrecoverable, or that the taxpayer is unreasonably delaying the process. It should be noted that under the present law, no interest is payable by the taxpayer on the tax in dispute while the case is under consideration, therefore it can be argued that there is some incentive for a taxpayer to use objection or appeal as a device for deferring payment of tax.

The proposed Bill gives the Commissioner three additional options which are not mentioned in the present Ordinance, namely:

- (1) requiring the appellant taxpayer to purchase Tax Reserve Certificates;
- (2) requiring the appellant taxpayer to furnish an irrevocable bank guarantee for the tax in dispute and interest;
- (3) requiring the unsuccessful appellant taxpayer to pay interest at a rate fixed by the Chief Justice.

I can appreciate and accept the rationale behind the third option because it removes the incentive for taxpayers to use objection or appeal as a device for defer payment of tax, and therefore has the effect of discouraging frivolous cases. However, a number of questions regarding the first two options and the Commissioner's discretion immediately come to mind:

- (1) If the intention of the proposed Bill is to reduce default in payment of tax, then the purchase of Tax Reserve Certificates *vis-a-vis* an irrevocable bank guarantee should be equally effective and acceptable. What are the rationale for the option to be the privilege of the Commissioner and the taxpayer has no right to choose?
- (2) If the discretion is with the Commissioner, is it not likely that during a year of financial stringency for the Government's budget, the Commissioner will exercise his discretion in favour of requiring Tax Reserve Certificates?
- (3) what criteria will the Commissioner adopt in exercising his discretion? Would the taxpayer be required to prove that the purchase of Tax Reserve Certificates would cause the taxpayer serious financial hardship before consideration can be given to the use of a bank guarantee?

The proposed Bill is mainly dealing with tax assessments under objection. In objecting to the assessment raised by the Commissioner, the taxpayer has to

state precisely the grounds of objection as required by section 64 subsection 1 of the Inland Revenue Ordinance. If the Commissioner considers the objection to be based on insufficient grounds, no holdover will be granted and the tax as assessed has to be paid immediately. On the other hand, if the Commissioner considers that the objection as presented contains sufficient grounds and has substantial merits, but the full facts and judgements have to be carefully reviewed, then the Commissioner will grant an holdover order on the payment of tax. In these cases, it can be said that the Commissioner's view point differs from that of the taxpayer. In view of this, I submit, Sir, that the holdover on tax is allowed not out of generosity but based on merit and a desire to play safe. I fully appreciate that due to the wide ranging power given to the Commissioner of Inland Revenue under the existing law, the Commissioner has to exercise his power with care, so as not to be draconian. The proposed Bill, however, enables the Commissioner to require the taxpayer to purchase Tax Reserve Certificates, irrespective of the merit of the taxpayer's objection or appeal.

Another point which is of great concern to the taxpayer is the time taken to finalise an objection. Many public organisations have drawn the UMELCO's attention to this fact. The Administration admits that the Board of Review currently has over 300 cases pending decision, and the Administration has proposed to strengthen the Board of Review's membership in the Inland Revenue (Amendment) Bill 1985 which hopefully will help to reduce the present backlog of cases. However, I understand that these 300 cases involve some \$500 million tax held over, as compared with the total tax held over of \$2,984 million at 31 March 1984. I assume that some \$2,500 million tax under objection have not yet been transmitted to the Board of Review but pending determination by the tax authority. There may be valid reasons for the long period needed to settle a case. I suppose the considerable time taken is not due to unnecessary delay caused by the taxpayers, because in such events, the Commissioner of Inland Revenue can exercise his power prescribed by section 71 subsection (3) and demand immediate payment from the taxpayers. What recourse is there for the taxpayer to speed up the process of reaching a decision, especially when the taxpayer's fund are tied up in the Tax Reserve Certificates, or the taxpayer is paying the bank charges for the bank guarantee?

I take this opportunity to quote some of the representations which reflect the public's views on this matter.

'Even now, when the incentive is with the department to settle a case, it often takes several years before a Board of Review decision is reached.'

'It is significant that the Bill contains no proposals under which a taxpayer who suffers damage from unjustified acts or delay by the Revenue can seek redress from the Commissioner, from the Assessor responsible, or from Government.'

'If a taxpayer delays the process of an objection unduly the department can uplift the hold over. There is, however, no protection available to the taxpayer if the department is slow in processing a refund.'

In all fairness, there should be a channel for appeal by the taxpayer when the latter has good reasons to believe that there have been unnecessary delay on the part of the tax authority. I sincerely hope that the Administration can respond speedily and establish a system to deal with such appeals. Only with such arrangement can the Government inspire confidence in the minds of the taxpayers.

To conclude, Sir, I shall reiterate my main objections to the proposed Bill as it now stands.

Firstly, I feel the taxpayer should always be given the option of choosing between offering a bank guarantee or purchasing Tax Reserve Certificates to cover his payment of tax when the Commissioner considers that the taxpayer's objection against a tax assessment has sufficient merit. Even with this option, this may not be of help to small organisations or individuals who may have difficulties in arranging for a bank guarantee.

Secondly, the proposed Bill should cater for an appeal procedure for the taxpayer against delay in finalising an objection by the tax authority, which at present is not included.

Thirdly, the existing Ordinance already gives the necessary powers to the Commissioner to exercise his discretion. The additional measure contained in this Bill serve little purpose.

Sir, Hong Kong is regarded as an international financial centre. To maintain this position, our tax structure must be simple and reasonable. It is therefore important that our tax laws must be fair and equitable. I have reservations on whether the proposed Bill can meet these criteria. In view of this, I object to the motion.

MR. POON:—Sir, from the large amount of tax held over in respect of cases under objection and the results of the decisions, it is evident that there have been many cases of abuse of the holdover practice under section 71(2) of the Inland Revenue Ordinance. The introduction of the Inland Revenue (Amendment) (No. 2) Bill 1984 with the proposed amendments is therefore both necessary and timely. Under the new Bill, the Commissioner, in objection cases, has the discretion of requiring the taxpayer to purchase Tax Reserve Certificates or to provide an acceptable bank guarantee. If the taxpayer buys the Tax Reserve Certificates and wins the objection, he will get his money back together with the interest on the Tax Reserve Certificates, presently at 5.52 per cent. On the other hand, if he loses, the Tax Reserve Certificates he bought will be used to pay for his tax liability and no interest will be paid to him. However, if he is required to lodge an appropriate bank guarantee and is unsuccessful in his objection, he will have to pay his tax plus interest under section 50 of the District Court Ordinance, i.e. at the rate applicable to judgement debt, presently at 13 per cent. In the event that the Commissioner grants an unconditional holdover, interest

at the same rate, i.e. 13 per cent, shall be required to be paid together with the tax due by a taxpayer whose objection is unsuccessful.

The provisions just mentioned will greatly strengthen the collection of tax by the Commissioner in practice, though in law he already has absolute discretion not to grant any hold over. At present, if there is a holdover, no interest is charged even if the taxpayer is finally unsuccessful in his objection. On the other hand, where the Commissioner requires the tax to be paid despite the lodging of an objection, no provision is made for interest on tax paid on account by the taxpayer should he succeed in his objection.

There has, however, been some concern expressed that in some cases where the taxpayer wins the objection, he may only get compensation from the interest on the Tax Reserve Certificate, presently at 5.52 per cent, but his cost of raising funds to purchase such Tax Reserve Certificate will probably be double that rate. Further, at such low interest, there is no incentive for the Inland Revenue Department to expedite the finalisation of objections which may drag on for a long time to the disadvantage of the taxpayer, in not getting his money back earlier and only being compensated by low interest. Therefore, it is hoped that the Commissioner will continue to exercise his discretion to holdover tax under dispute if a taxpayer's case has sufficient merit and proper guidelines be given to Inland Revenue Department's staff in this respect.

Finally I believe the proposed Bill will greatly reduce the number of frivolous objections, improve tax collection and go some way to alleviate the administrative strative burden and backlog of objection cases.

Sir, with these remarks, I support the Bill.

THE FINANCIAL SECRETARY:—Sir, I have followed with interest the debate on this amendment to the Inland Revenue Ordinance and I am pleased that we are now after eight months close to seeing it reach the statute book.

In the period since the debate on the second reading was adjourned, the Legislative Council Ad Hoc Group, under the chairmanship of Mr. BROWN, has closely scrutinised the Bill. The amendments which have resulted from their endeavours have, I believe, served to broaden and strengthen it.

Members will realise that this is an important piece of legislation. It is designed to discourage the growing practice of entering objections or appeals solely for the purpose of deferring payment of tax. There is at present nearly \$3 billion of tax held over much of which should never have been the subject of an appeal in the first place. Clearly it is time to bring to an end over-generous treatment accorded to appellants by the Inland Revenue Department. The new legislation will enable the Commissioner to apply a more realistic approach in deciding which cases merit hold over and which do not.

The new laws will not penalise the genuine appellant since, if he has a good case and is ultimately successful, he will receive interest on any Tax Reserve Certificates which the Commissioner may have required him to buy as security for the tax in dispute. But if the objection is unsuccessful, the Tax Reserve Certificates will be used to discharge the tax liability without payment of interest.

The two alternatives to the purchase to Tax Reserve Certificates proposed by the Ad Hoc Group will work rather differently. Where a bank guarantee has been provided to the Inland Revenue Department, this will cover not only the amount of tax in dispute but also interest on it (at the rate applicable to judgment debts) until the case is determined. In cases where the Commissioner of Inland Revenue makes an unconditional order, interest would again be payable if the appeal failed.

The discretionary exercise of the three options should go a long way towards discouraging misuse of the appeals system as a tax deferral device while leaving open an equitable route of appeal for genuine cases. The present \$3 billion of tax held over will gradually be reduced as the underlying appeals work through the system.

I congratulate Mr. BROWN, Mr. POON and his colleagues in the Ad Hoc Group on the open-minded and very knowledgeable way in which they approached their task and the satisfactory solution that has now been reached. I am sorry that Mrs. FAN is not in agreement, but unanimity in this complicated professional field is perhaps too much to expect. I do not believe that her concerns are well-founded.

Sir, I beg to move.

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).

INSURANCE COMPANIES (AMENDMENT) BILL 1985

Resumption of debate on second reading (23 January 1985)

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).

**MONEY CHANGERS (DISCLOSURE OF RATES, CHARGES AND COMMISSIONS)
BILL 1984****Resumption of debate on second reading (19 December 1984)**

Question proposed.

MR. ALLEN LEE:—Sir, the Money Changer (Disclosure of Rates, Charges and Commissions) Bill 1984, as explained by the Secretary for Economic Services when he moved the second reading of this Bill, is to provide consumer protection to persons who go to a money changer to exchange currencies. This I fully support. However, there are areas where refinements are needed.

Clause 2 exempts the money changing services provided by the hotels from the ambit of this Bill. While appreciating the good reasons behind this move, it was felt that a clearer definition to what constitutes a service provided by the hotel management should be given. The Administration has accepted this point of view and it is my pleasure to report that I shall shortly introduce amendments at the committee stage to achieve this effect.

In the course of our deliberation, I was also assured by the Secretary for Economic Services that if a hotel carries on a full-range money changing business in that it provides for the sale and purchase of foreign currencies to members of the public other than its guests, that hotel would be required to observe the provisions in the Bill. And the same shall apply to a money changer who hires a counter or shop space in hotel premises. I trust this should help to clear some of the doubts in some sectors.

Clause 5 stipulates that a money changer who fails to draw the attention of his clients to the contents of the statement specifying the nature of any charge or commission would give his clients ground to rescind the transactions.

After careful consideration, my Unofficial colleagues and I felt that it might give rise to enforcement difficulties and could open to abuse. I am happy to say that amendments to the original draft of this Bill to remedy this particular issue has also been agreed by the Administration.

Another amendment which I shall propose would require the statement to be printed prominently.

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

SECRETARY FOR ECONOMIC SERVICES:—Sir, I am grateful to Mr. LEE and his colleagues for their support and the careful consideration that they have given to this Bill. As I indicated when I moved the second reading, we are attempting to give some protection to customers of money changers without interfering unnecessarily with the normal business practices adopted in this particular trade. We hope that we have struck the right balance.

The amendments that Mr. LEE intends to introduce at committee stage will undoubtedly improve the Bill, and it is unnecessary for me to comment further on the proposed amendments except to say that I support them.

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

INLAND REVENUE (AMENDMENT)(NO.2) BILL 1984

Clauses 1 and 2

MR. BROWN:—I move that Clauses 1 and 2 be amended as set out in the paper circulated to Members for the reasons I stated in the earlier debate.

Proposed amendments

Clause 1

That clause 1 be amended by—

- (a) deleting ‘(No. 2)’;
- (b) deleting ‘1984’ and substituting the following—

‘1985’

Clause 2

- (a) That clause 2(a)(ii) be amended by deleting the words after ‘made’ and substituting the following—

‘providing security for the payment of the amount of tax or any part thereof the payment of which is held over either—

- (Cap. 289.) (a) by purchasing a certificate issued under the Tax Reserve Certificates Ordinance; or
- (b) by furnishing a banker’s undertaking.

as the Commissioner may require.’

(b) That clause 2(b) be amended—

(i) in the new subsection (7), by inserting, immediately after ‘subsection (2)’, the following—

‘and a person is required to purchase a certificate under paragraph (a) of that proviso’; and

(ii) by inserting, immediately after the new subsection (8), the following—

‘(9) Where the Commissioner exercises his powers under the proviso to subsection (2) and a person is required to furnish a banker’s undertaking under paragraph (b) of that proviso, the undertaking shall—

(a) be in a form acceptable to the Commissioner;

(b) be furnished to the Commissioner within a period of 14 days from the date of the order of the Commissioner, or on or before the date for the payment of the tax specified in the notice of assessment, whichever is the later;

(Cap. 155.) (c) be given by a bank (As defined in the Banking Ordinance);

(d) not be revocable without the consent of the commissioner;

(e) be expressed to be an undertaking to pay—

(i) an amount equal to the tax or any part thereof the payment of which is held over; and

(ii) interest on that amount, from the date for the payment of the tax specified in the notice of assessment to the date of withdrawal or final determination of the objection or appeal, at the rate specified in subsection (11); and

(f) provide for payment to the Commissioner upon written notification to the bank by the Commissioner that the objection or appeal has been withdrawn or finally determined and that the amount, and interest, stated by him is now due,

and if such person fails to supply such an undertaking in such manner the provisions of subsection (2) shall apply as they would if there had been no order.

(10) Where the Commissioner makes an order under subsection (2) but does not exercise his powers under the proviso thereto. interest shall be payable on so much of the amount of the tax or any part thereof the payment of which is held over as becomes payable

or is found to become payable upon the withdrawal or final determination of the objection or appeal, from the date for the payment of the tax specified in the notice of assessment or the date of the order, whichever is the later, to the date of withdrawal or final determination of the objection or appeal, at the rate specified in subsection (11).

(11) The rate of interest specified for the purposes of subsections (9)(e)(ii) and (10) shall be the rate fixed by the Chief Justice by notice in the *Gazette* under section 50 of the District Court Ordinance.’

The amendments were agreed to.

Clauses 1 and 2, as amended, were agreed to.

Clause 3 was agreed to.

New Clause 2A

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

MR. BROWN:—In accordance with Standing Order 46(6) I move that new clause 2A as set out in the paper circulated to Members be read a second time.

Question put and agreed to.

Clause read the second time.

MR. BROWN:—I now move that new clause 2A be added to the Bill.

Proposed Addition

New Clause 2A

That the Bill be amended by inserting the following clause after clause 2—

Amendment **2A.** Section 72 of the principal Ordinance is amended by inserting after of section 72. “costs incurred” the following—

“, and any interest payable under section 71(9)(e)(ii) or (10)”.

The addition of the new clause was agreed to.

INSURANCE COMPANIES (AMENDMENT) BILL 1985

Clauses 1 and 2 were agreed to.

**MONEY CHANGERS (DISCLOSURE OF RATES, CHARGES AND COMMISSIONS)
BILL 1984**

Clauses 1,3 and 6 were agreed to.

Clauses 2, 4 and 5.

MR. ALLEN LEE:—I move that clauses 2,4 and 5 be amended as set out in the paper circulated to Members.

*Proposed amendments***Clause 2**

That clause 2 be amended in the definition of ‘money changer’ by deleting paragraph (a) and substituting the following—

‘(a) is a service provided and operated by that person primarily for the convenience of guests of an hotel managed by him;’.

Clause 4

That clause 4(1)(a)(ii) be amended by inserting after ‘statement.’ the following—

‘printed prominently’.

Clause 5

That clause 5 be amended by deleting ‘(1)’ and substituting the following—

‘(1)(a)’.

The amendments were agreed to.

Clauses 2,4 and 5, as amended, were agreed to.

3.53 p.m.

HIS EXCELLENCY THE PRESIDENT:—At this stage, the Council might like to take a short break.

4.08 p.m.

HIS EXCELLENCY THE PRESIDENT:—Council will resume.

Third reading of bills

The Attorney General reported that the

INSURANCE COMPANIES (AMENDMENT) BILL

had passed through Committee without amendment and the

INLAND REVENUE (AMENDMENT) (NO.2) BILL and the

MONEY CHANGERS (DISCLOSURE OF RATES, CHARGES AND COMMISSIONS) BILL

had passed through Committee with amendments and move the third reading or each of these bills.

Question put on each Bill and agreed to.

Bills read the third time and passed.

Adjournment

Motion made. That this Council do now adjourn—THE ATTORNEY GENERAL.

4.10 p.m.

HIS EXCELLENCY THE PRESIDENT:—Four Members have given notice of their intention to speak. Although I am sure they will be concise, I do not think we can finish in a half-hour. So I propose to exercise my discretion under Standing Orders 9(7) and 9(8) to allow Members such time as is necessary to complete their speeches, and such time as is then necessary for the Official Member to reply to those speeches, before putting the question on the adjournment.

The Proposed Title of British National (Overseas)

MR. SO delivered his speech in Cantonese:—

督憲閣下：中英兩個國家就香港前途而簽署的協議整體來說是一個好協議，如今，香港人所關懷的是它如何着實執行，執行時亦要是為人所能見到的。我們極之珍惜選擇，旅行及遷徙的權利與自由。協議，其附件和與它有關的備忘錄賦予香港人這些權利和自由，說明香港特別行政區居民出入香港，可使用香港特別行政區政府或中國其他主管部門，或其他國家主管部門簽發的旅行證件。亦說明凡持有香港特別行政區永久性居民身份證者，其旅行證件可載明此項事實，以便證明其在香港有居留權。

中方備忘錄告訴我們，中國自一九九七年七月一日起，允許原被稱為「英國屬土公民」的香港中國公民使用由英國政府簽發的旅行證件去其他國家和地方旅行。

英方備忘錄則答應在一九九七年六月三十日由於同香港的關係為英國屬土公民者，從該年七月一日起，不再是英國屬土公民，但將有資格保留某種適當地位，使其可繼續使用英國政府簽發的護照。

不過，備忘錄畢竟祇是備忘錄。它雖與協議有關，但並非協議的一部份。人們會擔心，倘若政府轉變了，備忘錄所作出的承諾會不會隨之而逝呢？

英國在上下兩議院提出和辯論香港法案，是着實執行協議的表現，並履行英方備忘錄的承諾，使從一九九七年七月一日起，不再是英國屬土公民的香港人，能有資格保留適當地位。此舉非常重要，可算是協議內各項承諾的試金石，不應單受三百多萬在香港的英國屬土公民關注，而是全港五百多萬人共同矚目的事。

可惜對此事關注和表示意見的人不多，一般人大概認為塵埃落地，抱有「羅密歐與茱麗葉」的念頭：「名稱嘛？管它！若把別一個名字冠給玫瑰花，它何嘗不一樣香氣襲人？」他們樂天知命，認為應該遇之而不怨，居之而不疑，其身可抑，而道不可屈，其位可排，而名不可奪。亦相信運命論所說的：「譬如水也，通之斯為川焉，塞之斯為淵焉，升之於雲則雨施，沉之於地則土潤。」不過，名位事小，出入自由事大，名不正則「行」不順。香港人之所以馨香，其中一個原因是可以暢行無阻，到世界各地旅行、經商或求學。既可選擇，為川水總比做出於地而不流的淵水好。能升於雲又誰願永久沉於地呢？

亦有一些人抱有名劇亨利五世的看法：「若他沒有勇氣去打這場仗，讓他去吧！為他做個護照！」這個看法不對，就一般香港人而言，沒有有效實惠的護照，不論是香港特別行政區政府或中國其他主管部門發給的也好，其他如英國主管部門發給的也好，才真正不能應戰——面對協議帶來的挑戰，亦即是努力保持繁榮安定。邱吉爾爵士曾經說過：「英國人的格言是生意如常。」換上香港人，則應該是「生意興隆」。因為祇有興旺，香港才有價值，香港人所持的旅遊證件才有實際效用。

督憲閣下，本年一月廿一日賀維爵士在下議院公佈打算給予香港屬土公民的新地位，曾經費盡思量，並徵詢本港行政局。在當日兩局議員亦有由鍾士元爵士領導的代表團旁聽。該代表團亦曾要求押後香港法法案的委員會審議階段及三讀至一月廿八日之後，以供香港市民有足夠的時間對該新英籍名稱發表意見。本人很高興英國政府及國會結果亦給予香港人這一個機會。

可惜的是它祇有英文而沒有中文版本，這可真難倒我們以中文發言的同事。本人不打算轉彎抹角，引經據典和東拉西扯的結束這次休會辯論的發言，故大膽嘗試引用半首香港獨有的歌謠，並予狗尾續貂，希望這次辯論所談的事，婦孺皆曉：「英文程度不在高，識個 Yes，識個 No，嚟就 Come，去就 Go。公民稱做 Citizen，國民叫作 National，最大分別在 abode。BN(O)，邊樣好？方便旅遊好 Travel。」(laughter)

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

Sir, the Sino-British agreement on the future of Hong Kong is on the whole a good one. What the people of Hong Kong are now concerned about is how it will be implemented, and they certainly would like to see it being properly implemented. We treasure the rights and freedoms of choice, of travel and of movement. The agreement, its Annexes and the Exchange of Memoranda have assured the people of Hong Kong these rights and freedoms, stating that for the purpose of travelling to and from Hong Kong, residents of the Hong Kong Special Administrative Region may use travel documents issued by the Hong Kong Special Administrative Region Government, or by other competent

authorities of China, or of other states. It is also stated that holders of permanent identity cards of the Hong Kong Special Administrative Region may have this fact stated in their travel documents as evidence that the holders have the right of abode in Hong Kong.

The Chinese Memorandum tells us that with effect from 1 July 1997, China will permit Chinese nationals in Hong Kong who were previously called 'British Dependent Territories citizens' to use travel documents issued by the British Government for the purpose of travelling to other states and regions.

The UK Memorandum, on the other hand, confirms that all persons who on 30 June 1997 are, by virtue of a connection with Hong Kong, British Dependent Territories citizens will cease to be BDTCs with effect from 1 July 1997, but will be eligible to retain an appropriate status which will entitle them to continue to use passports issued by the British Government.

However, the memoranda though related to the agreement are not part of it. People may worry whether the commitments made in the Memoranda would be annulled with the change of government.

The introduction of the Hong Kong Bill and the debate in Parliament indicate that the UK is earnest in implementing the agreement and fulfilling her commitment in the Memorandum, so that all those people of Hong Kong who on 1 July 1997 will cease to be British Dependent Territories citizens will be eligible to retain an appropriate status. This is of utmost importance and can be regarded as the touchstone for all the commitments in the agreement. It is not only a matter of concern for over three million BDTCs in Hong Kong, but also something on which all the five million-odd people of Hong Kong should focus their attention.

Unfortunately, not too many people have expressed concern about the issue and put forward their views. They tend to think that the dust has settled and they may as well agree with 'Romeo and Juliet' that:

'What's in a name? that which we call a rose
By any other name would smell as sweet.'

W. Shakespeare

They are optimistic and contented, and think that they should bear no grudge for what they are given, have no doubt on what they get; their body may be repressed but their principles cannot be bent; their position can be changed, but their good name cannot be taken away. They also believe in the theory of fate:

'Take water as an example. If given free passage, it becomes a river. If obstructed, it becomes a pool. When it rises to the cloud, rain falls. When it sinks to the ground, the earth is moistened.'

Nevertheless, while position and fame may sound trivial, the freedom of movement is highly significant. When the 'name' is not right, 'movement' will not be smooth. One of the reasons why we treasure being Hong Kong people is that we can travel freely to other parts of the world on business or for study. Given the choice, one rather be a river than a stagnant pool. When one can rise up to the cloud, who is willing to remain forever in the ground?

Some may think like King Henry V in Shakespeare's famous play:

'That he which hath no stomach to this fight
Let him depart; his passport shall be made.

But this concept is wrong. For if the people of Hong Kong are not given an effective passport, be it issued by the Hong Kong SAR Government, the competent authorities of the People's Republic of China or the authorities in the United Kingdom, they will not be able to 'fight'. i.e. to face the challenge brought by the agreement, which is to maintain Hong Kong's prosperity and stability. Sir Winston Churchill once said. 'The maxim of the British people is "business as usual".' For the Hong Kong people, it should be 'prosperous business'. Only with prosperity can Hong Kong be valuable, and can the travel documents held by the Hong Kong people serve a practical purpose.

Sir, when Sir Geoffrey HOWE announced in the House of Commons on 21 January 1985 that a new status would be given to the British Dependent Territories citizens in Hong Kong, he had given the name much thought and consulted the Executive Council of Hong Kong. The UMELCO delegation led by Sir S.Y. CHUNG had attended the debate on that day. The delegation also requested an adjournment of the committee stage and third reading of the Hong Kong Bill until after January 28 to allow the Hong Kong people ample time to express their views on the new nationality title. I am glad that eventually the Hong Kong people were given such a chance by HMG and Parliament.

Unfortunately there is no official Chinese version and this poses a problem to our colleagues who speak in Chinese. I do not intend to beat around the bush or end my speech with quotations or irrelevant issues. but I would attempt to quote a few lines from a ballad unique to Hong Kong and humbly add my version to finish it off in the hope that the subject of this debate would be known to all in Hong Kong:

'It won't matter that your English standard is low,
If you know the words "yes" and "no", And that "lai" is come and "hui" is go. "Kung man" is citizen while "kwok man" is national. The greatest difference is in "abode".
BN(O), what's its virtue? It gives you convenience of travel!

MR. CHEUNG YAN-LUNG delivered his speech in Cantonese:

督憲閣下：蘇國榮議員剛才巧妙地引用莎士比亞名句，我想借這個機會補充說，莎翁若然不是要令玫瑰花的名字流芳百世，而是要令英國公民（海外）護照的名稱永垂不朽，他可能這樣寫：「名稱嘛？管它！若以另一個名稱替代英國公民（海外），它的作用仍是一樣。」

英國公民（海外）這個名稱並不重要，重要的是新護照的內容和效用，但這兩方面仍然未明朗。

我們只知道英國公民（海外）沒有權在英國居留。但這不是新規定。英國屬土公民(BDTC)早已受到這樣的限制，雖然香港目前仍然是英國屬土。

香港人希望知道的是，英國公民（海外）護照作為前往第三國家旅遊的證件，效用是怎樣？而英國又有什麼實際行動去確保該種護照獲得其他國家承認？我們是有充分理由懷疑的。因為即使現在，英國屬土公民護照的持有人，都被勸喻往英國前最好先申請入境證。既然英國對於那些被稱為英國屬土公民，而又居住在英國屬土香港的人士，也加以入境限制，我們又怎樣冀望第三國家承認英國公民（海外）的身份呢？

不過，英國屬土公民護照保證持有人在香港有居留權，現行護照上已註明這項權利。但我們得知英國公民（海外）護照可能不會註明居留權。這樣一來，護照持有人在理論上是否會變為無國籍呢？

此外，若不註明居留權，則護照持有人每次向移民官員，特別是第三國家的移民官員出示護照時，是否會出現不明朗的情況？持證人會否因為關於驅逐出境和遣返原地的問題沒有明確的答案而被拒入境？對於可能出現的關於驅逐出境和遣返原地的問題，事實上又是否有答案呢？

我要指出，中英聯合聲明附件一第十四段說明：「香港特別行政區居民出入當地，可使用香港特別行政區政府或中華人民共和國其他主管部門，或其他國家主管部門簽發的旅行證件。凡持有香港特別行政區永久性居民身份證者，其旅行證件可載明此項事實，以證明其在香港特別行政區有居留權。」

該段清楚顯示可在英國公民（海外）護照上說明，持有人擁有香港特別行政區的永久身份證，在香港有居留權。

我認為一個可行辦法，是由將來的香港特別行政區政府在英國公民（海外）或英國海外公民護照上註明持證人亦持有香港特別行政區永久身份證，在香港特別行政區有居留權。這樣便可以令第三國家安心，知道這些人有一個他們可以返回和肯定會返回的永久家鄉。

中英聯合聯絡小組的一項重要任務，便是研究這個特殊問題，在決定新的英國公民（海外）護照的形式前，擬訂一項恰當而又不可更改的安排。

這個入境難題會對香港一些既非華人亦非英國人的少數民族特別有影響，他們亦是英國屬土公民——英國公民（海外）這個問題的受害人。他們世代在香港居住，如果他們不算是香港本土人士，又算是那個地方的人呢？

對將來持有英國公民（海外）護照的人，有很多不明朗和令人憂慮的問題，有關當局必須明確地澄清：

- * 據說持有英國公民（海外）護照的人士，必須攜帶香港特別行政區身份證，以證明他們有權在香港居留。但由於英國公民（海外）護照是英國簽發的證件，而香港特別行政區身份證則不是，那麼，有什麼措施可確保第三國家會接納香港身份證為當然的確證？同時，由誰負責確保第三國家會接納英國公民（海外）護照和特別行政區身份證為相輔相成的證件？

- * 英國屬土公民護照的有效期是十年，除非另有聲明才屬例外。英國公民（海外）護照的有效期是多久呢？
- * 現時英國公民前往外國，必須向當地的英國領事館登記。這規例是否同樣適用於英國公民（海外）？
- * 現時英國屬土公民護照內關於「雙重國籍」的註七聲明：「英國公民若同時為另一個國家的公民，則在該國內，不能受女皇陛下的代表保護。」此外，又進一步說明「如果根據該國的法律他們須要履行任何義務（例如服兵役），雖然他們是英國公民，亦不能因而獲得豁免。」在這方面，除服兵役外，還會有什麼其他「義務」呢？這項註七是否亦適用於英國公民（海外）護照的持有人呢？

目前，有數萬名香港人，其中大多數是新界居民，已前往英國和歐洲居住及工作。他們辛勤地工作以賺取足夠的收入來養活自己和匯款返港。他們立志要取得美滿成果，而由於他們刻苦勤勞，業已達到目的。他們看不起福利制度，不屑接受別人的施與，認為只要努力，便會獲得報酬。因此，英國這個長期有失業、罷工和經濟不穩等問題的國家，根本無需擔心會有大批香港人湧入，因為香港人已擁有繁榮安定的生活方式。不過，我們應記得，很多現在被英國饗以閉門羹的人士，正是那些歸化英籍而宣誓效忠的人。

歸根究底，莎士比亞其實不應是那個使「英國公民（海外）」這名稱永垂不朽的人，因為他生於英國斯特拉福市，永遠不會有需要持有這種護照。

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

Sir, Mr. Andrew So has quoted William SHAKESPEARE most appropriately. I wish to take this opportunity to add that if William SHAKESPEARE had immortalised the British National (Overseas) passport instead of a rose, he might have written,

‘What’s in a name? that which we call a BNO
By any other name would be the same.’

It is not the name, BNO, which matters, but the content and effectiveness of the proposed passport, both of which are still unclear.

We are told that the BNO will have no right to live in the UK. But this is nothing new. The same ban already applies to BDTCs, even while Hong Kong is still a British territory.

What Hong Kong people want to know is how valid the BNO passport will be as a travel document to third countries and in concrete terms how Britain will ensure its recognition. We certainly have good reason to be skeptical. For even now BDTC passport holders are advised to apply for entry visas to the UK. How then can third countries possible be expected to honour the BNOs, when the UK herself imposes conditional terms of entry on those she chooses to name British Dependent Territories citizens who happen to live in the British territory of Hong Kong?

Nevertheless, BDTC passports do ensure their holders ‘the right of abode in Hong Kong’, and this endorsement appears in current passports. But we are given to understand that the right of abode may not be stated in BNO passports. In theory, would this not make the holders stateless?

Furthermore, would such an omission create a situation of uncertainty each time the holder presents his passport to immigration officers anywhere, and especially in third countries? Could the holder be denied entry because there are no apparent answers to the potential questions of repatriation and deportation? Are there in fact answers to the questions of potential repatriation and deportation?

I wish to point out that it is stated in section XIV of Annex I to the Joint Declaration that

‘For the purpose of travelling to and from the Hong Kong Special Administrative Region, residents of the Hong Kong Special Administrative Region may use travel documents issued by the Hong Kong Special Administrative Region Government, or by other competent authorities of the People’s Republic of China, or of other states. Holders of permanent identity cards of the Hong Kong Special Administrative Region may have this fact stated in their travel documents as evidence that the holders have the right of abode in the Hong Kong Special Administrative Region.’

This clearly shows that it can be stated in the BNO passport that the holder has a permanent identity card of the HKSAR which gives him the right of abode.

I think it should also be feasible for the future HKSAR Government to make an endorsement on the BNO or BOC passport to the effect that the holders are also holding permanent identity cards of the HKSAR and have a right of abode in the HKSAR. This will assure third countries that these people have a permanent home to which they can and they will return.

It would seem imperative that the Joint Liaison Group should address this particular problem and work out a suitable and irrevocable arrangement before the format of the new BN(O) passport is settled.

This immigration dilemma could affect in particular ethnic minorities in Hong Kong who are neither Chinese nor British, but victims still of the BDTC—BNO syndrome. If not to Hong Kong where will they belong after generations of living here?

For future BNO passport holders, there are many grey and worrying areas which the appropriate authorities must clarify in no uncertain terms:

—It is said that BNO passport holders will have to carry their Hong Kong SAR identity cards as proof of their right of abode in Hong Kong. But since the BNO passport will be a UK-issued document, and the Hong

Kong SAR identity card not so, what provisions will be made to ensure that third countries will accept the identity card in its own right as positive proof? And whose responsibility will it be to ensure that the BNO passport and the SAR identity card will be accepted in third countries as complementary documents?

—BDTC passports are valid for ten years unless otherwise stated. What will be the validity of the BNO passport?

Will the same rules that apply now to registration with British consulates overseas for British nationals apply also to BNOs?

—In current BDTC passports, note 7 on Dual Nationality states that ‘British nationals who are also nationals of another country cannot be protected by Her Majesty’s representatives against the authorities of that country.’ The note further specifies ‘If under the law of that country they are liable for any obligations (such as military service), the fact that they are British nationals does not exempt them from it.’ In addition to military service, to what other ‘obligations’ might this refer, and will note 7 apply to BNO passport holders?

Tens of thousands of Hong Kong people, most of them from the New Territories, are living and working in the UK and Europe. They labour so as to earn enough money to support themselves and for remittances home to Hong Kong. They aim to succeed, and they do succeed, by sheer hard work. They spurn the welfare state and look down on the idea of free handouts, believing only in reward for effort. Hence the UK, with its chronic unemployment, strikes and shaky economy, need never fear an influx of Hong Kong people, for whom prosperity and stability are a way of life. However, it is worth remembering that many of the people who now find the UK door unceremoniously slammed in their faces are the very same people who took pledges of loyalty on naturalisation.

In the final analysis, perhaps it is as well that William SHAKESPEARE should not be the one to immortalise the BNO, for born as he was in Stratford, he would never have been obliged to hold such a passport.

MRS. CHOW:—Sir, Annex I section XIV of the Sino-British Joint Declaration states:—

‘For the purpose of travelling to and from the Hong Kong Special Administrative Region, residents of the Hong Kong Special Administrative Region may use travel documents issued by the Hong Kong Special Administrative Region Government, or by other competent authorities of the People’s Republic of China, or of other states. Holders of permanent identity cards of the Hong Kong Special Administrative Region may have this fact stated in their travel documents as evidence that the holders have the right of abode in the Hong Kong Special Administrative Region.’

On the face of it, the above excerpt does provide some assurance to holders of travel documents issued by both the Hong Kong SAR Government as well as governments of other states. The latter category would of course include present BDTCs who will be known as British Nationals (Overseas).

However as such travel documents are primarily for the consumption of immigration authorities of third countries into which their holders may wish to enter, it must be made absolutely clear and beyond doubt that these holders have the right of abode in Hong Kong. I am afraid a simple numerical reference to the I.D. card or an endorsement stating only that the holder also holds a permanent Hong Kong I.D. card in the BN(O) passport might fail to satisfy some immigration authorities as evidence that the holder has the right of abode in Hong Kong. The fact had better be stated categorically in the passports to avoid any misunderstanding and inconvenience. If this could be done, then I see no objection to either the title of British National (Overseas) or the use of the new passports bearing this new title even before 1997, although I still do not see the necessity for such a move.

The argument that lead time is required for administrative reasons may easily be countered, for early issuance of the passports can still take place while the valid date commences on 1 July 1997. The other rationale for advancing the valid date is that these new documents can be tested well before 1997. Attractive as this may sound, we must not overlook the fact that there will be a change over, however smooth it may be, from the existing Hong Kong Government to the future Hong Kong SAR Government. Hence the test before the change of government would only be meaningful if there can be a guarantee that the future SAR Government will honour the commitment made by the present Government to admit holders of the BN(O) passports if and when they are refused entry by a third country, and are consequently repatriated back to Hong Kong, and to bear full costs of such repatriation.

The last paragraph of Annex I section XIV states:—

‘The Central People’s Government shall assist or authorise the Hong Kong Special Administrative Region Government to conclude visa abolition agreements with states or regions.’

It is important that the holders of BN(O) passports are included in any reciprocal visa agreement that the Hong Kong SAR Government might choose to enter into with other states. Otherwise they might be left out of arrangements which should benefit all permanent residents of the Hong Kong SAR. I hope the Joint Liaison Group would help to resolve this possible anomaly.

May I, before I conclude, make use of this opportunity to voice a concern regarding the present British passport that we hold. Although we have been repeatedly told that we do not require a visa to enter the United Kingdom, the fact of the matter is that we are advised to obtain a certificate of entry, which to us layman, means the same procedural inconvenience. I therefore propose that

BDTCs and future BN(O)s should not be required to apply for a certificate of entry, and should automatically enjoy the right of entry into the United Kingdom. Their period of stay would of course be subject to endorsement by immigration authorities at their point of entry.

Finally, I would like to call on all Hong Kong travellers who encounter any problems with immigration authorities of any country to report their case to the Immigration Department or to UMELCO, so that the Hong Kong Government can make representation based on evidence to the relevant authorities to prevent recurrence of similar episodes.

MR. TONG:—Sir, in his speech at the House of Commons debate on 21 January 1985 at the second reading of the Hong Kong Bill, the Secretary of State, Sir Geoffrey HOWE said:

‘It has not been easy to devise a title which meets all the necessary requirements. On the one hand, it needs to make clear that we are dealing with a form of British nationality. Nothing less than that would be acceptable in Hong Kong. On the other hand, it is essential that the title we choose can continue to be used after 1997. For this to be possible, the title must clearly carry no implication of a continuing constitutional relationship between Britain and Hong Kong after 1997.’

In the same speech he informed us that the new status to be given to the BDTCs of Hong Kong under the provisions of the UK Memoranda with the PRC would be that of British National (Overseas), BN(O) for short. Up till today, no clear explanation has been given to the people of Hong Kong who queried the reason why the words ‘citizen’ and ‘Hong Kong’ do not appear in this new nomenclature. I believe that the people of Hong Kong deserves an explanation—one which should include a clear statement of the rationale behind the decision.

As you may recall, Sir, in my speech in this Council of 16 October 1984, I have already voiced my concern about the possibility of statelessness for ethnic minorities in our community and asked for assurances from the British Government.

On 5 December 1984, Sir Geoffrey HOWE told the U.K. House of Commons that legislation would be introduced (the Hong Kong Bill) which would include a specific provision to ensure that no British national or any child born after 1997 to a British national would be made stateless as a result of the arrangement to terminate British sovereignty in Hong Kong.

And on 21 January 1985, on moving the second reading of the Hong Kong Bill in the House of Commons, Sir Geoffrey HOWE made a historic announcement, which I will quote now in full: ‘It is the Government’s intention that the new form of British nationality (British National (Overseas) “BNO”) should carry broadly the same benefits as British Dependent Territories citizenship,

except that it will not be transmissible by descent. Holders of the new status will be able to use British passports. They will be eligible for British consular protection in third countries. They will have a right to registration as British citizens on the same term as BDTCs. In short, the Order (i.e. the Order in Council to be made on the subject) will in effect redefine the scope of the British Nationality Act 1981 to cover the new status where appropriate. In addition, the Order will also set out the circumstances in which persons who might become stateless as a result of these provisions, and the children born after 1 July 1997 to holders of the new status, if they would otherwise be stateless, may acquire a form of British nationality, which will be British Overseas citizenship (“BOC”).’ I understand that in effect the BOC status will only be given to persons born after 1 July 1997 who are non-ethnic Chinese.

There has been much concern in the U.K. as well as in Hong Kong about the British Government’s arrangements as I have described above to resolve ‘statelessness’. A number of Members of Parliament, including the Right Honourable John MORRIS, Mr. Andrew FAULDS and Mr. Ivor STANBROOK commented on this in the debate on the second reading of the Hong Kong Bill. Locally, the Council of Hong Kong Indian Associations, on behalf of its 6000 ethnic Indians who are BDTCs, has submitted a petition to you, Sir, on 17 January 1985, regarding their position.

I can well understand the ethnic minorities’ feelings, which I share, and believe that all that can be done, should be done to help them. In summary, the followings are their points of concern which they have raised:

- (1) BOC transmissibility—BOC is not transmissible by descent. There are no arrangements to prevent statelessness for children of BOCs.
- (2) BNO right of abode and BNO consular protection—Ethnic minorities who are BDTCs will continue to have a right of abode in Hong Kong after 1997 and are eligible to become BNOs, but will they enjoy British consular protection within the Hong Kong SAR as they are not Chinese nationals?
- (3) BOC consular protection—Assuming that a BOC has not acquired Chinese nationality, what consular protection, if any, is he entitled to in the Hong Kong SAR after 1997?

Nevertheless, it would appear that non-Chinese BNOs will have no real national status in Hong Kong, the only territory in which he has a right of abode. Also, in the event that a non-Chinese BNO travelling on the BNO travel document has to face repatriation, the question is which country will he be repatriated to? It will certainly not be to the U.K. as he has no right of abode there. However, the British consul who will be helping the BNO will apparently not be able to repatriate him to Hong Kong either—as the British consul will certainly have no jurisdiction over the Hong Kong SAR.

I believed that Hong Kong has been well served by its minorities, many of whom have been here for more than one generation already, and most that I have spoken to intend to stay for many more generations to come. For these people, whatever their number, there must be a satisfactory formula to resolve statelessness. I believe that transmissibility of BOC status should be extended and the question of consular responsibility must be resolved satisfactorily as soon as practicable.

THE CHIEF SECRETARY:—Sir, I have listened with great care and interest to this debate. I noted Mr. Andrew So's expression of support for the broad principles of the nationality provisions in the Hong Kong Bill which is under consideration in the British Parliament and indeed will be so this very day. I understand that this expression of support reflects the general support for the Bill of Unofficial Members both of the Executive and Legislative Councils.

I also sensed a general acceptance by Members of this Council of the title 'British National (Overseas)' proposed for the new status which is to be acquired by British Dependent Territories citizens connected with Hong Kong and then retained by them after 1997, in accordance with the United Kingdom Memorandum associated with the Sino-British Joint Declaration.

But this support and acceptance was not wholly unqualified. A central theme which has emerged from this debate is that everything possible should be done to ensure that the future British National (Overseas) passports are accepted by the immigration authorities of third countries, to an extent which would provide their holders with at least the same degree of freedom of entry as they enjoy at present. In this connection, Mrs. Selina CHOW has emphasised the need for it to be made absolutely clear in BN(O) passports that their holders have the right of abode in Hong Kong.

I fully appreciate the importance which the people of Hong Kong attach to the freedom of travel, and of course we all know that it is an essential ingredient for Hong Kong's economic prosperity. I also understand that, for any travel document to be acceptable in third countries, it must state clearly where the holder has the right of abode, so that he or she can be returned there if necessary. Normally this would have been a very straightforward affair. But the future BN(O) passport will be a unique document. On the one hand, it will be a British passport issued by the British Government. On the other hand, because Hong Kong will cease to be a British dependent territory as from 1 July 1997, it will not be for the British Government to state who has the right of abode in Hong Kong after that date.

But a solution (or, at least, the framework for a solution) already exists in section XIV of Annex I to the Sino-British Joint Declaration. This clearly stipulates (and I quote)—

'Holders of permanent identity cards of the Hong Kong Special Administrative Region may have this fact stated in their travel documents as evidence

that the holders have the right of abode in the Hong Kong Special Administrative Region.’

The British Government will be discussing with the Chinese authorities the wording of the statement to be included in British National (Overseas) passports. In doing so, the British Government’s aim will be to ensure that an individual need make use only of his passport, without having to produce his identity card at the same time, to satisfy immigration officials of third countries that he has the right of abode in Hong Kong.

At the same time, the British Government have undertaken publicly and repeatedly that they will make every effort to explain the arrangements regarding the issue and use of BN(O) passports to third countries. This will be done after the Order in Council on nationality, which is foreshadowed in the Hong Kong Bill, has been made and before the first BN(O) passport is issued. And the aim will be to ensure that future BN(O) passports are taken to be the equivalent of existing BDTC passports for the purposes of visa abolition arrangements. Given that there will be a clear indication as regards right of abode, there ought to be no reason for third countries to treat BN(O) passport holders differently from existing BDTC passport holders (who are, of course, the same people).

Mrs. CHOW has commented on the timing of the introduction of the BN(O) passport. No decision has yet been taken on this. The only requirement is that, under the terms of the UK Memorandum associated with the Sino-British Joint Declaration, BN(O) passports must be issued by 30 June 1997 except for practical reasons, in respect of children born in the first half of 1997. But, so long as the BN(O) passport is understood and accepted in third countries—and I have referred to the British Government’s commitment to make every effort to secure this—there would seem to be advantage in introducing the new passport earlier rather than later for those who wish to use it. At the same time, given that BDTC status will be retained up to 30 June 1997, it will obviously be possible for those who wish to continue to travel on BDTC passports until that date to do so. Detailed arrangements have, however, yet to be worked out.

Mrs. CHOW has also commented, and so too has Mr. CHEUNG Yan-lung, on the system of entry certificates for the United Kingdom. I must emphasise that entry certificates are *not* visas for the simple reason that a holder of a British Dependent Territories Citizen passport does not require such an authority to enter the United Kingdom, even though he is subject to immigration control. Entry certificates for single or multiple entry are designed solely to facilitate immigration clearance at United Kingdom ports of entry, and BDTC passport holders who choose not to obtain such entry certificates are not thereby debarred from entry. In other words, their use is entirely *optional* and there is *no* question of BDTC passport holders travelling to the United Kingdom being required to apply for them.

While still on passports and associated issues, perhaps I could comment on several points of detail which Mr. CHEUNG has raised.

The first concerns the validity of BN(O) passports. British passports of all kinds are normally issued with a validity of ten years. I would expect the same to apply to future BN(O) passports.

The second point of detail concerns whether the rules regarding registration overseas of British nationals would also be applied to BN(O)s. I believe Mr. CHEUNG was referring to the advisory note which appears on the inside back cover of all British passports which reads (and I quote):

‘British nationals resident overseas who are entitled to the protection of the United Kingdom authorities should contact the nearest British High Commission, Embassy or Consulate to enquire about any arrangements for registration of their names and addresses. Failure to do so may in an emergency result in difficulty or delay in according them assistance and protection.’

This advice will apply to BN(O)s when they are in third countries and, except for those who are Chinese nationals, also in the future Hong Kong SAR.

Finally, Mr. CHEUNG asked whether Note 7 in current BDTC passports will apply to BN(O) passport holders. The note in question, which Mr. CHEUNG has quoted, states the British Government’s position in dealing with British nationals who are also nationals of another country. This position, which is consistent with accepted international practice, applies to all British nationals, including those who become BN(O)s in future. As regards the obligations which an individual owes to his country, this is a matter for each country to decide and stipulate. Such obligations would normally include respect for the country’s constitution or sovereign, adherence to its laws, payment of its taxes, and so on so forth.

I come now to the question of those whom Mr. CHEUNG and Mr. Carl TONG have described as the ethnic minorities in Hong Kong. I fully endorse Mr. TONG’s observation that Hong Kong has been well served by its minorities and, in so many ways, Hong Kong’s success has derived from its cosmopolitan dimension.

Of course, many of those who are living and working in Hong Kong and who are not Chinese by race already have the nationality of their country of origin and, in any case, the position of those who do not have British nationality is not for the British Government to determine. Some, however, are Hong Kong BDTCs, and Hong Kong BDTCs alone, and it is understood that they will not have Chinese nationality automatically when sovereignty over Hong Kong is returned to China. The position of these BDTCs is that, in the same way as all other BDTCs who have derived their status from their connection with Hong Kong, they will be eligible to acquire the status of British National (Overseas). Those of them who fail to do so, for example by mistake or accident, *and* who as

a result become stateless, will acquire British Overseas citizenship. The Secretary of State, Sir Geoffrey HOWE, has stated clearly in Parliament that the children born after 30 June 1997 to such non-Chinese BN(O)s or BOCs will acquire British Overseas citizenship automatically at birth if they would be otherwise stateless. There should, therefore, be no question of statelessness among those who are Hong Kong BDTCs on 30 June 1997, or among the children born to them after that date.

I appreciate, however, that whilst the first generation born after 30 June 1997 to former Hong Kong BDTCs of non-Chinese race would thus be taken care of, there is concern about potential statelessness amongst subsequent generations. It is a long standing view of the succession of the British Government that it is not appropriate, as a general principle, to grant British nationality indefinitely and without restrictions to the descendants of British nationals. However, I would not wish to give Members the impression that the concern expressed about this matter is not fully understood. It *is*. So the problems of subsequent generations and potential statelessness are being examined by the British Government in consultation with ourselves.

In conclusion, Sir, let me make one further point. The nationality provisions included in the Hong Kong Bill are in the form of enabling provisions. Detailed provisions will be included in an Order in Council to be made at a later stage. The Minister of State, Mr. Richard LUCE, has indicated that a draft of this Order in Council will be presented to parliament within a year of the passage of the Hong Kong Bill and that it will be fully debated in Parliament before it becomes law. I can assure honourable Members that the draft Order in Council will be publicised in Hong Kong once it is introduced into Parliament, so that the people of Hong Kong and the Members in this Council in particular can see for themselves the detailed arrangements that are to be made, and express their views on them should they wish to do so.

Question put and agreed to.

Adjournment and next sitting

HIS EXCELLENCY THE PRESIDENT:—Before I adjourn the Council may I wish all Members a very happy and healthy Chinese New Year. In accordance with Standing Orders I now adjourn the Council until 2.30 p.m. on Wednesday 27 February 1985.

Adjourned accordingly at three minutes to five o'clock.