

**OFFICIAL REPORT OF PROCEEDINGS****Wednesday, 8 April 1987****The Council met at half-past Two o'clock****PRESENT**HIS EXCELLENCY THE ACTING GOVERNOR (*PRESIDENT*)

SIR DAVID AKERS-JONES, K.B.E., C.M.G., J.P.

THE HONOURABLE THE CHIEF SECRETARY

MR. DAVID ROBERT FORD, L.V.O., O.B.E., J.P.

THE HONOURABLE THE FINANCIAL SECRETARY

MR. PIERS JACOBS, O.B.E., J.P.

THE HONOURABLE THE ATTORNEY GENERAL

MR. MICHAEL DAVID THOMAS, C.M.G., Q.C.

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

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

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

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

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

THE HONOURABLE 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 DISTRICT ADMINISTRATION

THE HONOURABLE CHAN KAM-CHUEN, O.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 CHEUNG YAN-LUNG, O.B.E., J.P.

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

THE HONOURABLE MARIA TAM WAI-CHU, O.B.E., J.P.

DR. THE HONOURABLE HENRIETTA IP MAN-HING, O.B.E., J.P.

THE HONOURABLE CHAN YING-LUN, J.P.

THE HONOURABLE MRS. PAULINE NG CHOW MAY-LIN, J.P.

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

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

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

THE HONOURABLE JOHN WALTER CHAMBERS, O.B.E., J.P.

SECRETARY FOR HEALTH AND WELFARE

THE HONOURABLE JACKIE CHAN CHAI-KEUNG

THE HONOURABLE CHENG HON-KWAN

THE HONOURABLE HILTON CHEONG-LEEN, C.B.E., J.P.

DR. THE HONOURABLE CHIU HIN-KWONG

THE HONOURABLE CHUNG PUI-LAM  
THE HONOURABLE THOMAS CLYDESDALE  
THE HONOURABLE HUI YIN-FAT  
THE HONOURABLE RICHARD LAI SUNG-LUNG  
DR. THE HONOURABLE CONRAD LAM KUI-SHING  
THE HONOURABLE MARTIN LEE CHU-MING, Q.C., J.P.  
THE HONOURABLE LEE YU-TAI  
THE HONOURABLE DAVID LI KWOK-PO, J.P.  
THE HONOURABLE LIU LIT-FOR, J.P.  
THE HONOURABLE NGAI SHIU-KIT, O.B.E., J.P.  
THE HONOURABLE PANG CHUN-HOI, M.B.E.  
THE HONOURABLE POON CHI-FAI  
PROF. THE HONOURABLE POON CHUNG-KWONG  
THE HONOURABLE HELMUT SOHMEN  
THE HONOURABLE SZETO WAH  
THE HONOURABLE TAI CHIN-WAH  
THE HONOURABLE MRS. ROSANNA TAM WONG YICK-MING  
THE HONOURABLE TAM YIU-CHUNG  
DR. THE HONOURABLE DANIEL TSE, O.B.E., J.P.  
THE HONOURABLE ANDREW WONG WANG-FAT  
THE HONOURABLE LAU WONG-FAT, M.B.E., J.P.  
THE HONOURABLE GRAHAM BARNES, J.P.  
SECRETARY FOR LANDS AND WORKS  
THE HONOURABLE RONALD GEORGE BLACKER BRIDGE, O.B.E., J.P.  
SECRETARY FOR EDUCATION AND MANPOWER  
THE HONOURABLE DAVID GREGORY JEAFFRESON, C.B.E., J.P.  
SECRETARY FOR SECURITY  
THE HONOURABLE MICHAEL LEUNG MAN-KIN, J.P.  
SECRETARY FOR TRANSPORT  
THE HONOURABLE NATHANIEL WILLIAM HAMISH MACLEOD, J.P.  
SECRETARY FOR TRADE AND INDUSTRY

**ABSENT**

THE HONOURABLE MRS. RITA FAN HSU LAI-TAI, J.P.  
THE HONOURABLE HO SAI-CHU, M.B.E., J.P.

**IN ATTENDANCE**

THE CLERK TO THE LEGISLATIVE COUNCIL  
MR. LAW KAM-SANG

**Affirmation**

MR. N.W.H. MACLEOD made the Affirmation of Allegiance.

**Papers**

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

<i>Subject</i>	<i>L.N. No.</i>
Subsidiary Legislation:	
Antibiotics Ordinance Antibiotics (Amendment) Regulations 1987 .....	91/87
Marine Fish Culture Ordinance Fish Culture Zone (Designation) (Amendment) Order 1987.....	92/87
Public Revenue Protection Ordinance Public Revenue Protection (Business Registration) Order 1987 .....	93/87
Public Health and Municipal Services Ordinance Public Health and Municipal Services (Public Markets) (Designa- tion and Amendment of Tenth Schedule) Order 1987.....	94/87
Partition Ordinance Partition Rules 1987 .....	95/87
Kowloon-Canton Railway Corporation By-Laws Kowloon-Canton Railway (Restricted Area) (No.2) Notice 1987.....	96/87
Shipping and Port Control Regulations Shipping and Port Control Regulations (Amendment of Seventh Schedule) Notice 1987.....	97/87
Shipping and Port Control Ordinance Shipping and Port Control (Specification of Areas) (Amendment) Notice 1987.....	98/87
Public Health and Municipal Services Ordinance Declaration of Markets in the Regional Council Area 1987 .....	99/87
Penalties for Practice of Medicine and Dentistry by Unregistered Persons (Miscellaneous Amendments) Ordinance 1986 Penalties for Practice of Medicine and Dentistry by Unregistered Persons (Miscellaneous Amendments) Ordinance 1986 (Com- mencement) Notice 1987 .....	100/87

<i>Subject</i>	<i>L.N. No.</i>
Inland Revenue Ordinance	
Inland Revenue (Interest Tax) (Exemption) (Amendment) (No.3)	
Notice 1987.....	101/87
Tax Reserve Certificates (Fourth Series) Rules	
Tax Reserve Certificates (Rate of Interest) (No.3) Notice 1987 .....	102/87

Others:

Long-Term Housing Strategy—A Policy Statement April 1987.

### **Address by Members on subsidiary legislation laid on 25 March 1987**

#### **Building (Administration) (Amendment) Regulations 1987**

MR. CHENG: Sir, I am delighted to note that the recognition of local professional qualifications by Government is further reflected in the Building (Administration) (Amendment) Regulations 1987. The inclusion of the corporate membership of the Hong Kong Institute of Architects and of the Hong Kong Institution of Engineers into these Regulations was initiated by the local professional institutions although such local qualifications have long been recognised by the Building Authority as alternative prerequisites for registration of authorised persons and structural engineers.

The proposed amendments will also enable any academic qualifications equivalent to recognised university degrees to be accepted for the purpose of registration. This proposal acknowledges the fact that many reputable institutions of higher education may award qualifications in architecture and engineering in lieu of degrees, which are acceptable to the Building Authority.

Recognition of other academic or professional qualifications is currently made by the Registration Committee alone. I agree that this should be a decision made by the Building Authority on the recommendation of the Registration Committee to be consistent with the provision of section 3(5) of the Buildings Ordinance that the registration committee is appointed to assist the Building Authority in matters concerning registration.

I fully support the proposed requirement for one year's continuous practical experience to be gained in Hong Kong before registration. This will certainly facilitate competent execution of statutory functions under the Buildings Ordinance which is highly essential.

To tidy up the existing regulations it is also desirable to make the amendments, as before us, to abolish the requirement for a full examination intended for applicants without formal qualification, in view of the absence of any

applicants for many years, and to make the professional interviews discretionary as such interviews may not be necessary in some instances, such as on re-registration.

The proposed amendments have been endorsed by the Land and Building Advisory Committee which includes representatives of the relevant professional bodies as well as Members of this Council.

Sir, with these remarks, I support the amended regulations.

### **Address by Member presenting paper**

#### **Long-Term Housing Strategy—A Policy Statement April 1987**

CHIEF SECRETARY: Sir, in his speech at the opening of this session, the Governor said that a review of housing policy was being undertaken and a Government Statement on the Future Housing Strategy is tabled before this Council today. This long-term strategy provides a basis on which future housing programmes can be drawn up.

Much has been achieved in the housing field since the Shek Kip Mei Fire at Christmas 1953. During the 1950s and 1960s and in the early 1970s, the concentration was on providing rental housing. In the late 1970s the Home Ownership and Private Sector Participation Schemes were introduced, and public housing production now stands at 30 000 rental units and 10 000 home purchase units each year.

Hong Kong can be proud of its housing record which has provided housing for over 2.5 million people, but Government must ensure that its programmes not only continue but that where necessary they are adjusted to meet the changing needs to meet the economic and social progress which is being made in Hong Kong.

In the recent Budget debate, several Members who spoke on housing emphasised the need to take account of the rising demand for home purchase, and this is one of the main aspects considered in the paper tabled today. The other is the adequacy of existing public rental housing estates.

A programme for the replacement of the old non-self-contained blocks is already underway and will provide new homes for 125 000 families. The new strategy extends this development programme to the other group B estates. Flats in these estates are overcrowded and under current standards, big enough only for one-and-two-person households. The blocks are ageing and becoming progressively more expensive to maintain. The estates are densely populated and clustered in areas with insufficient support facilities. By the 1990s, Sir, they will be socially unacceptable compared with newer estates. In accepting this, the Government accepts a commitment to re-house 135 000 families more than under its present policy.

The review looks at the period up to 2001 and identifies the need for 1 085 000 new flats during this period. This is the demand in all sectors—public rental, private housing and assisted home purchase through schemes such as Home Ownership and Private Sector Participation Schemes. To meet this demand means maintaining overall housing production at its present high level of more than 70 000 flats a year. Sir, this is unlikely to be achieved if present policies remain unchanged. The present policies for private sector flats are likely to fall below the capacity of the sector resulting in the under-utilisation of private capital and land resources and in only limited re-development of older private buildings in run-down urban areas where there is a great need to encourage re-development.

Public sector production will also be out of step with people's preferences if the present programmes are maintained. Although rental needs will be met there will be an outstanding demand from an estimated 100 000 families who wish to purchase their own homes. There is therefore a need for a modest change in direction.

Much of the increasing demand for home purchase comes from existing and prospective public rental housing tenants and from those affected by re-development. Many of these could afford to purchase their own homes but successive over-subscriptions for HOS and PSPS flats have prevented them from doing so. The home purchase aspirations of such families will, in future, be encouraged. The preference of prospective public rental housing tenants and families in estates to be re-developed will be gauged, and from within the public housing quota a sufficient balance of home ownership and rental flats will be built to meet the demand for each. In this way the number of people re-housed will not be reduced and the chance of success of applicants under the present Home Ownership Schemes will be improved.

Sir, in addition, Government will introduce a Home Purchase Loan Scheme, which will offer eligible applicants the option of an interest-free down payment loan to help them buy a new flat in the private sector. It will complement the existing assisted home purchase schemes and will increase the options open to those wishing to purchase their own homes. By stimulating re-development of older and under-developed private sites, it should also increase the choice of location for prospective purchasers. These increased opportunities for home purchase should increase the upward mobility of sitting tenants and in so doing release rental flats for the more needy and increase the speed at which they can be rehoused. Each loan represents one rental flat made available for allocation. As such it is a replacement for Government's building subsidy rather than a double subsidy to the recipient as has been suggested by some who have commented on the scheme.

The new strategy does not envisage any reduction in Government's commitment to public housing but provides for an overall increase in the total number of housing units subsidised by the Government. Nor does it, in any way, detract

from the priority given to housing those most in need. The new strategy will not adversely affect those eligible for public housing under present policies. Instead, they stand to benefit by being given a greater choice between rental and purchase.

The increased emphasis on home ownership will improve the overall cash flow of the housing programme and should enable the enhanced programmes to be met with no major increase in the share of social programme funds which have been allocated to housing.

To implement the new strategy successfully, flexibility between all types of housing production will be required and care will have to be taken to ensure that the new policies do not have an inflationary effect on private sector prices. This will mean careful co-ordination between public and private housing activities with a readiness on Government's part to use the Home Ownership and Private Sector Participation Schemes to meet any failure by the private sector to provide the number of flats needed at affordable prices. The activities of the Housing Authority, the Housing Society, the future Land Development Corporation and the private sector will have to be closely co-ordinated.

Sir, the Government believes that the Housing Authority should play a central role in carrying out all aspects of the strategy into effect, including those proposals concerned with the Home Ownership Scheme, the Private Sector Participation Scheme and the Home Purchase Loan Scheme. Specific proposals relating to the detailed implementation of the strategy will be put to the Housing Authority for their consideration. Government is also examining the overall financing of the housing programme. Government is also considering appropriate arrangements for the future financing of the housing programme. This will include an examination of the role which the Development Loan Fund and the Home Ownership Fund might play in future.

In brief, the new housing strategy will be more demand-led. It will extend re-development to most of the older public rental housing estates and will promote home purchase by building more flats for sale and by introducing the Home Purchase Loan Scheme. In this way it will be able more closely to match the provision of housing to the aspirations of those to be housed. It is designed to make the best use of available resources from all housing sectors and introduces the degree of flexibility needed to allow changes when these are necessary to meet changing needs.

Sir, it is intended that the new strategy will be implemented from 1 April next year by which time the necessary administrative and financial arrangements will have to be made. It is necessary to start on this detailed work now if this timetable is to be met. Wide publicity is being given to the strategy and comments by the public and interested bodies will be carefully considered and taken into account when producing the initial programmes for the implementation of the strategy. Sir, on this basis I strongly commend it to this Council.

**Oral answers to questions****Equipment for Electronic Road Pricing Pilot Scheme**

1. MR. LEE YU-TAI asked: *As a decision has been made not to proceed with electronic road pricing, will Government inform this Council what use would be made of the equipment and manpower which were previously acquired for the scheme?*

SECRETARY FOR TRANSPORT: Sir, most of the manpower for the ERP Pilot Scheme was provided by the consultants. Government contributed only one traffic engineer to the study team. Since the end of the studies he has returned to the Transport Department. Transport Branch provided some administrative support.

The equipment acquired for the scheme falls into two broad categories: first, hardware for data capture, including electronic number plates and loop interrogators, video camera, and a computer base storage and retrieval system for photographs; and second, smaller items, mainly consumables, such as computer discs, tapes, cable and other display material.

Some equipment in the first category was custom designed for the study and could only be used for an ERP related application. Present intentions are that this equipment could be stored for a further few years until it is clear that the technology has been superseded. The only item in this category which cannot be salvaged is the detector loops buried in the road surface. These will be left until repair or construction works require their removal.

The rest of the equipment is of more general use. The roadside cabinets will be removed and used by the Transport Department to house automatic traffic counters. Other electronic equipment including video recorders, slide projectors and micro computers will also be put to good use by the department. Items for which the department has no relevant use will be returned to the Government Supplies Department either for reallocation or for disposal.

MR. LEE YU-TAI: *Sir, following the decision to scrap ERP does the Administration have any alternative plan to resolve the problem of traffic congestion?*

SECRETARY FOR TRANSPORT: Sir, we are looking into the possibility of auto-toll collection systems elsewhere and staff have been sent overseas now to do a study. We hope to see the results in about a few months' time.

MR. LI: *Sir, how much time and resource in money terms has been spent on this study and what proportion can be salvaged and what proportion has been wasted; and what lessons has Government learnt from this expensive exercise?*

SECRETARY FOR TRANSPORT: Sir, the pilot scheme was approved in March 1983. The total cost of the project was \$36.5 million. The cost of equipment was about \$6 million of which about half can be used for other purposes.

As regards the manpower spent on this, the consultants have done very comprehensive studies and these plans can be used by the second Comprehensive Transport Study Team which is now under way and we hope to see the results by the middle of next year. So in overall terms, the efforts are not entirely wasted and the results can be used for the second transport study next year.

### **Long-Term Housing Strategy Review**

2. MR. HUI asked: *Will Government inform this Council what criteria are used to determine whether public consultation should be conducted prior to the publication of a policy paper, and why no consultative document will be published on the proposals arising from the Government's Long-Term Housing Strategy Review even though it is obvious that such proposals will generate a great deal of public interest?*

SECRETARY FOR DISTRICT ADMINISTRATION: Sir, in determining whether public consultation should be conducted prior to the publication of a policy paper, the relevant policy secretary will usually take into account the nature of the subject, the degree of public interest in it, the availability of options for the consultation and whether the proposals would involve any significant changes to the existing policies.

The Long-Term Housing Strategy which the Chief Secretary has just outlined does not represent a change in housing policy, but proposes certain improvements to achieve the existing policy objectives. Its implementation will not adversely affect those who are eligible for public housing under present policies. It is for this reason that the Government has decided not to publish a consultative document as such. However, the strategy will be widely publicised. Views of the public and interested bodies will be welcomed and taken into careful consideration in working out the initial programmes for the implementation of the strategy.

MR. HUI YIN-FAT: *Sir, various government officials, especially those of the Housing Department, indicated earlier that the long-term housing strategy would be published as a consultation paper. Therefore, a few district boards have made available resources for this purpose. Could the Secretary inform this Council how further misunderstandings of this nature can be avoided?*

SECRETARY FOR DISTRICT ADMINISTRATION: Sir, it is a matter of presentation. As the Chief Secretary has already mentioned, wide publicity will be given on the new strategy. In addition to the briefing given to the Housing Panel of this

Council, and the press conference, both given by the Secretary for Housing, representatives of the Housing Branch and Housing Department would also welcome the opportunity to present and explain the new strategy to district boards and other interested bodies. Copies of the policy statement on the long-term housing strategy tabled this afternoon are also being distributed to district boards and members of the public may obtain copies at district offices, GIS offices and Housing Department offices. So there will be ample opportunity for consultation.

MR. LEE YU-TAI: *Sir, how does the review affect the interests of private developers? And, has there been any consultation with the property sector?*

SECRETARY FOR DISTRICT ADMINISTRATION: Sir, the consultation has just begun.

MR. CHEONG-LEEN: *Sir, could the Secretary for District Administration also send copies to the Regional Councils because no reference was made to them?*

SECRETARY FOR DISTRICT ADMINISTRATION: I am sure copies can be made available to members of the two councils.

### **Old Age Allowance**

3. MR. CHEONG-LEEN asked: *Under existing rules, Old Age Allowance recipients, if away from Hong Kong for up to 90 days, are still eligible for the allowance in respect of the period of absence. Will Government inform this Council whether, to cater for those elderly residents who are away from Hong Kong and are under hospital or medical care for an extended period, it will consider relaxing the rules to allow for a longer period of absence, say from 90 days to 180 days, with provision for hardship cases beyond 180 days on production of suitable medical certificates?*

SECRETARY FOR HEALTH AND WELFARE: Sir, Old Age Allowance is a non-means-tested payment intended to encourage local residents to care for elderly members of their families, and to meet the extra expenses arising from old age. It is paid from general revenue and is not a contributory pension. Residence in Hong Kong is a necessary qualification for receiving the allowance, but an absence of 90 days is allowed to permit recipients to visit relatives and to go on holiday trips outside Hong Kong.

If a recipient's absence from Hong Kong is prolonged beyond 90 days because of a need for medical treatment, the elderly person or his relatives should approach the Social Welfare Department which will consider the case sympathetically, taking into account the individual circumstances. In appropriate cases the department has discretion to continue payment of Old Age Allowance after an absence of more than 90 days.

MR. CHEONG-LEEN: *Sir, could the good offices of CNTA be sought to make the information available in this reply to all district boards, as I get the impression that a number of district board members feel, from their own feedback, that the Social Welfare Department is not adopting a sufficiently flexible attitude in this respect?*

SECRETARY FOR HEALTH AND WELFARE: Sir, I will ensure that this is done.

MR. TAM (in Cantonese): *Sir, to some elderly people who live in Hong Kong alone, Old Age Allowance is the only source of their income. Some of the dependants or relatives of these old people are in China so these elderly people sometimes have to go back to China in order to be better taken care of. In view of this, will the Government consider eliminating the restriction of 90 days so that these elderly people can be taken care of outside Hong Kong?*

SECRETARY FOR HEALTH AND WELFARE: Sir, as I explained in my main answer, the Old Age Allowance like all our social security schemes, is not funded on a contributory basis. The allowance is intended to help elderly people who are residents of Hong Kong and I do not think that we could, on the present basis, justify continued payment to people who have left Hong Kong more or less permanently.

The position would be very different if eligibility for the allowance were based on contributions over a long period as is the case with other countries' old age pension schemes.

### **Provision of public dumping sites**

4. MISS TAM asked: *Will Government inform this Council of its policy on the provision of public dumping sites for the disposal of materials generated from construction processes, and whether adequate dumping sites at strategic points in the territory are available?*

SECRETARY FOR LANDS AND WORKS: Sir, the Government policy on public dumping has never been formalised, so I can at best give only a description of what we seek to achieve. Government cannot bind itself to providing dumping sites which are convenient for all, particularly bearing in mind that the demand is not constant, and any way we do not want and can not have reclamations everywhere. But we try to have dumping capacity available in different places firstly because it is an economic way to do the reclamations we want to do and have completed legal formalities for, secondly because it reduces indiscriminate illegal dumping and thirdly because it helps the construction industry for both public and private sector projects. Our ability to provide public dumping in different areas clearly depends on there being a going reclamation or project which needs fill in the area. At present there is intermittent reclamation at Telegraph Bay going on, but there are public dumps open at Ma On Shan and

Tuen Mun. Later in the year we will be able to reopen Hung Hom Bay for a short period.

This is not an ideal situation for the construction industry particularly that on Hong Kong Island or working on Hong Kong Island which has, perhaps unfortunately from this point of view, had a bumper year for dumping, and we will try to improve it by the next dry season, but contractors will always have to accept that sometimes they have to dump on sites across the harbour or further afield.

MISS TAM: *Sir, considering that the building and construction industry is extremely active now and has always been important to the Hong Kong economy, efficient disposal of material generated from the industry is vital to its operation. And also, at the moment there are a large number of lorries carrying such materials from building sites on Hong Kong Island to remote areas in the New Territories thus creating traffic congestion and environmental pollution. Can the Secretary for Lands and Works say what justification is there now for the Government not to have a formalised policy on this issue and whether the Government will explore alternative methods of dumping?*

SECRETARY FOR LANDS AND WORKS: Government clearly needs, in the present circumstances, to get its programmes up to date but I may say that but for the problems of access to Telegraph Bay, there would be no problem on Hong Kong Island. It so happens that access to Telegraph Bay, which was the planned reclamation and public dumping area for this particular period, became impossible because of objections to the road passing by residential flats. As a result, a kind of dumping scheme on Western Reclamation—a stockpiling scheme—was instituted, and only limited barging is possible in the course of a day. That is the cause for the present situation which has, I think, brought this particular situation to attention.

We certainly will endeavour, as I said in my answer, to try and do something about it by the next dry season when the biggest quantities of fill are expected to come forward. But looking for suitable dumping sites is a rather protracted business in fact. So I would agree with Miss TAM's strictures and criticisms that there should have been a formalised government policy to the extent that Government requires a margin of capacity to meet emergencies. In effect, Government's practice has been to provide adequate dumping capacity but it has not met the particular crisis of the restricted access of Telegraph Bay.

MR. JACKIE CHAN: *Sir, in view of the apparent shortage of public dumps in the urban area, has the Government any immediate measures to alleviate the difficulties faced by the contractors, such as special arrangements made by the Territory Development Department, to facilitate drivers of construction site goods vehicles on Hong Kong Island to obtain New Territories dumping licence in the very near future?*

SECRETARY FOR LANDS AND WORKS: Sir, there is no need for special arrangements to be made. All contractors' vehicles have access to the site at Ma On Shan, I think all the way round-the-clock, whether they come from Hong Kong or the Mainland.

MR. TAM (in Cantonese): *Sir, given that there are inadequate dumping sites, would the Government consider employing barges to move these materials to the sea and dump them?*

SECRETARY FOR LANDS AND WORKS: Sir, we have three marine dumping sites in different places: one at Cheung Chau, one east of Nine Pin, and one at Mirs Bay; but suitable dumping sites are fairly rare commodities, and they are reserved for dredged sea mud. If we were to use these sites for general dumping, then they would be used up very much more quickly than would be desirable, so I do not think that that one is likely to be an answer.

I believe that the dumping sites at Ma On Shan—albeit not as convenient as it might be—are not causing a vast amount of environmental problems, or particularly, traffic problems, in view of the number of times per day and the direction in which the lorries go.

### **Provision of medical services in the Western District**

5. MR. LIU asked (in Cantonese): *In view of the Government's plan to set aside a piece of land in Tai Po for relocating the Nethersole Hospital, will Government inform this Council what impact will this plan have on the overall provision of medical services in the Western District on Hong Kong Island and what measures will be taken to prevent a deterioration in the standard of medical facilities in the district?*

SECRETARY FOR HEALTH AND WELFARE: Sir, the provision of hospital beds is planned on a regional rather than a district basis. The proposal recently endorsed by the Medical Development Advisory Committee to remove the Nethersole Hospital from Hong Kong Island to Tai Po was made against the background of the requirement for hospital beds on Hong Kong Island and in the Eastern New Territories.

With the completion of the expansion projects at the Queen Mary Hospital and the Ruttonjee Sanatorium, and the new Eastern District Hospital, Hong Kong Island will have 5 400 beds by 1991, while the projected requirement is estimated to be only 4 460 beds. In the Eastern New Territories, however, the requirement in 1991 is estimated at 3 300 beds while the provision by that year will only amount to 1 840 beds. It is clear which region has the greater need.

The present Nethersole Hospital is in a somewhat dilapidated condition and the nature of the site makes re-development there impracticable. Hence the proposal to build the new hospital at Tai Po.

Even though the planning of hospitals is not done on a district basis, Mr. LIU will be reassured to know that the Western District will in fact be much better off in terms of hospital beds because of the Queen Mary Hospital Extension which will provide an additional 700 beds by 1988. Despite the loss of 385 beds at the Nethersole Hospital in the year 1992-1993, this still means a net gain of about 315 beds in the Western District. In addition the provision of 614 new beds at the Ruttonjee Sanatorium by 1990 and 1 580 in the Eastern District Hospital by 1991 will further ease the pressure on the Queen Mary Hospital.

MR. LIU (in Cantonese): *Sir, will the Government inform this Council when the Nethersole Hospital has been re-located whether the maternity services provided by the hospital will be correspondingly recompensed in the area?*

SECRETARY FOR HEALTH AND WELFARE: Sir, the Tsan Yuk Maternity Hospital is very close to the Nethersole and this provides a very considerable number—a total of 246—maternity beds. The Queen Mary Hospital also has 64 obstetric beds, and between the two hospitals, they will very adequately cater for the requirement for maternity beds in the western part of Hong Kong Island.

MR. ANDREW WONG (in Cantonese): *Will the Secretary take a look at paragraph 2 of the answer which says, in 1991 there is a demand for 3 300 hospital beds in the New Territories and only 1 840 will be made available? When will the Taipo Nethersole Hospital be completed and how many extra beds will be provided then?*

SECRETARY FOR HEALTH AND WELFARE: Sir, the Taipo Nethersole Hospital is estimated to be completed by 1992 to 1993. In addition, the Medical Development Advisory Committee has recommended that a hospital should be planned in the North District, in the Fanling/Sheung Shiu area. This would provide another 1 200 beds by 1996-97. So by that time, the present shortfall in beds in the eastern part of the New Territories will be very largely catered for.

### **Utilisation of textile quotas for the European Economic Market**

6. MR. NGAI asked: *According to the 1987-88 Draft Estimates of Expenditure the utilisation rate of quotas made available under trade agreements with the European Economic Community in 1986-87 was 76.1 per cent, which was markedly lower than the utilisation rates of quotas made available by other trading partners, such as the USA, Canada, Sweden and Norway, whose quotas were utilised at rates ranging from 96 per cent to 100 per cent: what are the reasons for this and what plans does the Government have to promote a higher utilisation rate of EEC quotas in 1987-88?*

SECRETARY FOR TRADE AND INDUSTRY: Sir, clearly the main determinant of utilisation of textile quotas is demand for the products under restraint, hence

utilisation varies from year to year. However, it is true that utilisation of quotas for the European Economic Community (EEC) tends to be lower than for other markets, and an important reason for this is that it is a relatively inflexible agreement, with quotas divided up among the 12 member states as well as among some 35 different products. Thus whilst quotas for some products in some member states are fully utilised, in others the demand simply is not there, bringing the average utilisation down.

We expect utilisation of EEC quotas to increase somewhat in 1987-88, partly because recent trends in exchange rates are tending to make our exports more competitive in the EEC, and partly because the new HK/EEC textiles agreement, which took effect this year, for the first time allowed some modest transfer of quota between member states. We plan to continue to ensure that such flexibility as is available under the agreement is used to the full extent that demand permits, including this new provision for transfer between states.

MR. NGAI: *Sir, can the Government give us any idea about the effectiveness so far of the modified EEC Textiles Quota Transfer Rules which came into effect on 1 January this year, and does the Government anticipate that these new rules will result in the better utilisation of the EEC quotas?*

SECRETARY FOR TRADE AND INDUSTRY: *Sir, we do not anticipate that the new rules will have a discernible effect on utilisation, but it is worth noting that utilisation in the first three months of this year is up on the equivalent period last year—21.7 per cent as against 17.3 per cent.*

### **Robberies in jewellery shops**

7. MR. WONG PO-YAN asked: *In view of the recent incidents of robbery which have taken place at the Landmark in Central and the Regent Arcade in Kowloon and, as our Senior Member has rightly predicted that I may have some more cases to include, an additional case happened again in the jewellery department of a department store in Causeway Bay, will Government inform this Council whether adequate police presence has been provided in each vicinity and what measures have been, or will be, taken with a view to strengthening the security measures adopted by shopowners in these areas?*

SECRETARY FOR SECURITY: *Sir, I believe my hon. Friend is referring to five jewellery shop robberies which took place within the last six weeks, two in the Landmark, two in the Regent Arcade and one in the Hennessy Centre. The one in the Regent Arcade occurred simultaneously in adjacent premises as part of a single incident. In all cases, the robbers were masked and either armed or carrying pistol-like objects. In total, jewellery and watches worth almost \$12 million were stolen. So far, the police have made no arrests.*

Sir, in places where there is a strong possibility that serious crimes could be committed, the Commissioner of Police provides the best possible coverage with the men available. In all areas with a concentration of high-risk premises, policemen patrolling in uniform are supported by officers in plain clothes and by special high-risk area patrols. There are also frequent visits by mobile units. The commissioner is satisfied that where the robberies in question occurred, police coverage was at an appropriate level.

In addition, to strengthen security in high-risk premises, the Police Crime Prevention Bureau is always ready to give owners and occupiers advice on how security can be improved. Crime prevention officers visit the premises and advise on improvements. And they visit the premises again later to see whether or not their advice is being followed.

Sir, speaking more generally, the Fight Crime Committee has a Working Group on Security of Goldsmith and Jewellery Shops whose job it is to determine how security in high-risk premises can be improved. Assisted by the Police Crime Prevention Bureau, the working group meets representatives of trade associations to advise on up-to-date and effective security measures. It has also held seminars, published advisory booklets and visited jewellers and goldsmiths to give on-the-spot advice.

These efforts seem to be having some effect. Security measures installed on the recommendation of the Crime Prevention Bureau foiled five robberies in 1985 and four in the first nine months of 1986. Robberies in jewellery shops and similar premises declined from 92 in 1983 to 54 in 1986. Up to the end of March this year there have been 11.

MR. WONG PO-YAN: *Sir, does the Government have any statistics concerning the distribution of the locations of such cases? Are they more in the Central or busy areas?*

SECRETARY FOR SECURITY: Sir, I am sure the police do have statistics by district, and I can certainly let my hon. Friend have them if these are available. (See Annex I)

MR. CHEONG-LEEN: *Sir, are the Landmark and the Regent Arcade now considered as crime 'black spots' and what particular attention is now being given by the police to encourage shops in these two buildings to improve security arrangements?*

SECRETARY FOR SECURITY: Yes, Sir, these two premises are classified as high risk premises, and the police are taking the sort of steps that I have described in the answer to the first question.

### **Heat-stroke**

8. DR. IP asked: *In the light of the reported death of a 26 year-old police inspector from heat-stroke, will Government inform this Council how many*

*cases of heat-stroke had occurred and how many deaths were caused by it in the last five years in Hong Kong, what are the early symptoms of heat-stroke and whether it can be prevented or treated?*

SECRETARY FOR HEALTH AND WELFARE: Sir, from the statistics collected by the Medical and Health Department in the five year period from 1982 to 1986, 20 persons were diagnosed as having suffered diseases arising from the effects of heat, which of course, includes heat stroke. Three deaths were attributable to this cause.

I am advised that the early symptoms of heat stroke include: headache, vertigo, faintness, abdominal distress, confusion and rapid breathing. However, there may be no premonitory symptoms and loss of consciousness may be the first indication in some cases.

Treatment of heat stroke is by prompt and rapid cooling, either by immersion in cold water, or by evaporative cooling, that is, by the repeated wetting of the skin while it is fanned strongly.

According to my professional advisers, heat stroke can be prevented by avoiding prolonged strenuous physical exertion in conditions of high temperature or humidity. If such exertion cannot be avoided, gradual physical adjustment to high temperature conditions is advised. In addition adequate fluids should be taken before and during exertion and the body should be adequately exposed to permit sweating. Alcohol and drugs which decrease sweating or affect thermoregulation should, I am told, be avoided.

DR. IP: *Sir, is heat stroke a condition of high mortality in other parts of the world, and could the three deaths mentioned be avoided if treatment was given at the earliest opportunity?*

SECRETARY FOR HEALTH AND WELFARE: Sir, purely as a layman, I hesitate to advise my hon. Friend, who I am sure, knows far more about these things than I do. I am afraid I do not have the answers to her specific questions but I will consult the Director of Medical and Health Services and write to her. (See Annex II)

DR. IP: *Sir, has the Medical and Health Department analysed these 20 cases of heat stroke and if so, has it found any difference between the circumstances of those who survived and those who died, so as to alert the public—in particular, those organisations involved with vigorous exercise, how to prevent such deaths?*

SECRETARY FOR HEALTH AND WELFARE: Sir, I am not aware of any such analysis, but I will try to find out and let Dr. IP know. (See Annex III) As to the question of advice to the public, I understand that health education on the incidence of heat stroke and how to avoid it is given as part of the Young Health Leader Training Scheme organised by the Central Health Education Unit of the Medical and Health Department. This has been organised on an annual basis for the last five years and about 200 youth leaders attend the training scheme annually.

MISS DUNN: *What symptoms did the officer concerned develop in the early stages, and was he given rapid cooling when he developed these symptoms?*

SECRETARY FOR HEALTH AND WELFARE: Sir, I shall have to make enquiries about the detailed circumstances of this particular case, and let Miss DUNN know. (See Annex IV)

DR. IP: *Sir, could the Secretary for Health and Welfare also confirm whether it is true that in the case concerned the police inspector was transferred from one casualty to another, and temperature was not taken at either casualty so that the high temperature was not discovered until quite late in the process?*

SECRETARY FOR HEALTH AND WELFARE: Sir, a report on this will be included in the report I will give to Miss DUNN, which I will make available to Dr. IP.

### **Immigrants from Macau**

9. MR. SOHMEN asked: *The Government amended its policy on 1 August 1986 to admit Chinese people who have lived in Macau for seven years to Hong Kong. Will the Government inform this Council how many people have since been admitted to Hong Kong in this way?*

SECRETARY FOR SECURITY: Sir, wives from China who have lived in Macau for seven years after 14 January 1979 and their children are allowed to settle in Hong Kong with their Hong Kong resident husbands. Between 1 August 1986 and 31 March 1987, the Immigration Department has issued entry permits to 1 202 such wives and children from Macau to allow them to settle here.

Former residents of China who have also lived in Macau for seven years since 14 January 1979 are now allowed to visit Hong Kong. The Immigration Department has issued permits to 4 580 such visitors between 1 August 1986 and 31 March 1987.

MR. SOHMEN: *Sir, could the Secretary for Security clarify whether his reference to the 1 202 entry permits for wives and children applies to persons who would be entitled to apply for British Dependent Territory citizenship under the British Nationality Act of 1981, or is it a separate category?*

SECRETARY FOR SECURITY: Sir, that would depend on the circumstances of each case.

PROF. POON: *Sir, I would like to ask the Secretary how many applications for visitor permits have been rejected in the same period?*

SECRETARY FOR SECURITY: Sir, the number of applications from wives and children so far is 1 875.

**Screening of new arrivals from Vietnam**

10. MRS. CHOW asked: *In view of the press statement issued by the Foreign and Commonwealth Office on 31 March 1987 contradicting certain statements made by the Secretary for Security on 30 March 1987 regarding the screening of new arrivals from Vietnam in preparation for possible repatriation, will Government clarify its position vis-a-vis HMG's latest position on the issue?*

SECRETARY FOR SECURITY Sir, the Hong Kong Government's position remains as stated in this Council on a number of occasions, most recently in my reply in the adjournment debate on 7 February. The Hong Kong Government's long-term aim is to repatriate to Vietnam all new arrivals, who after screening, cannot establish that they are refugees in terms of the internationally accepted definition. But we must and I repeat must, first be satisfied that they will not be treated inhumanely on their return to Vietnam. Her Majesty's Government's position is as stated by Mr. RENTON in the House of Commons on 21 January: and if I may quote what he said: 'We are consulting other major resettlement countries and the UNHCR to see what can further be done at present... repatriation from Hong Kong could take place only when we and other major resettlement countries are much more convinced than we are now about, for example, human rights in Vietnam, and how such migrants would be treated and looked after if they went back to Vietnam.'

MRS. CHOW: *Sir, Will Government inform this Council whether screening of new arrivals from Vietnam is conducted now, or will be conducted in the near future, in preparation for possible repatriation of economic migrants, in spite of the FCO's statement to the contrary?*

SECRETARY FOR SECURITY: No, Sir, our policy is that there should be no screening until we have full agreement with all concerned that those who are not refugees can be returned to Vietnam.

MRS. CHOW: *Sir, given the frustration expressed in this Council and the sentiment of Hong Kong towards the entire Vietnamese refugees problem, what has the Government done to secure HMG's agreement and action to achieve its aim to repatriate, and what further steps would it take to convince HMG, if efforts so far have been unsuccessful?*

SECRETARY FOR SECURITY: Sir, as I said here a few meetings ago, we have put the views of this Council as expressed in this Chamber to the British Government. We have put forward the views of the Executive Council and we are in constant touch with the British Government on this issue. But it is, I think for very obvious reasons, a very difficult one.

MISS DUNN: *Sir, my question has been more or less asked by Mrs. CHOW, but put simply, could the Secretary for Security say whether our long-term aim, which he just reaffirmed, is being assisted or frustrated by HMG?*

SECRETARY FOR SECURITY: No, Sir, the answer is that Her Majesty's Government's position is as I stated in the answer to the principal question. I think we can be assured that our aim is being pursued.

MR. MARTIN LEE: *Sir, who will make the final decision on this issue, the Hong Kong Government or Her Majesty's Government?*

SECRETARY FOR SECURITY: Sir, this issue involves Hong Kong's external relations, and Hong Kong's external relations are the responsibility of Her Majesty's Government.

MR. CHEONG-LEEN: *Sir, as you are probably aware, an OMELCO ad hoc group had a meeting yesterday with the Australian Ambassador to Vietnam and at that meeting, the Australian Consul-General to Hong Kong was present. As I recall it, the Consul-General did make it quite clear that apart from the fact that her Government was presently looking into repatriation prospects in association with other governments and presumably the United Kingdom Government, she did say quite clearly that the level of additional intake from Hong Kong into Australia would depend very much on the extent of the intake into the United Kingdom Government. Could I have an assurance that this point will be raised with the United Kingdom Government?*

SECRETARY FOR SECURITY: Yes, Sir, Again, we have already passed on the views of this Council on that particular point to Her Majesty's Government.

MR. LEE YU-TAI: *Sir, Hong Kong being an independent territory of Britain, is it not an obligation of Britain to negotiate with Vietnam about repatriation of refugees, and why have such negotiations not started?*

SECRETARY FOR SECURITY: Because, Sir, as I said when I answered the original question, the British Government feels that it must consult other major resettlement countries. And with the greatest respect, I think that is a thoroughly reasonable attitude.

MISS DUNN: *Can the Secretary for Security then say to his knowledge what HMG has done to consult these major countries, and what has been the outcome so far?*

SECRETARY FOR SECURITY: Yes, Sir, we do know that HMG definitely has consulted a number of other resettlement countries. There has as yet been no positive outcome.

MR. HUI: *Sir, since the latest attempt of this Council, in which Miss DUNN wrote on our behalf to HMG, no positive response has been received. Does the Hong Kong Government intend to do something extra to follow up on the actions taken by HMG?*

SECRETARY FOR SECURITY: Yes, Sir, in the sense that we are in constant touch with Her Majesty's Government on this issue.

## **Government Business**

### **Motions**

#### **MASS TRANSIT RAILWAY CORPORATION ORDINANCE**

THE FINANCIAL SECRETARY moved the following motion: That under section 12(1) of the Mass Transit Railway Corporation Ordinance, that the Financial Secretary on behalf of the Government may grant guarantees in respect of financing instruments issued by the Mass Transit Railway Corporation with terms of between two to nine years up to a total aggregate principal value not exceeding HK\$3,000 million (and such amount as may become payable in respect of interest or other charges) for the purposes of substituting for existing Government guaranteed export credit debt obligations which in turn will be cancelled.

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

Section 12 of the Mass Transit Railway Corporation Ordinance requires the authority of the Legislative Council for the Financial Secretary, on behalf of the Government, to grant guarantees in respect of the repayment of loans and other indebtedness incurred by the corporation.

Authority is now sought for government guarantees to be granted free of charge for financing instruments issued by the corporation, up to a total value of HK\$3 billion, to replace its longer-term government guaranteed export credit debt obligations, which in turn will be cancelled. The instruments will include floating or fixed-rate loans with terms of between two to nine years. This switch to market borrowings will benefit the corporation because the replacement instruments will carry lower interest rates and substantial interest cost savings are expected. The Government will also benefit because the MTRC will replace government guaranteed export credit debt obligations due to mature within two years with market borrowings without seeking government guarantees for such instruments. The amount involved will be about HK\$1.5 billion and the total value of government guarantees for MTRC loans will thus be reduced by the same amount. This will have a beneficial effect on the public purse in that we will not have to provide for these theoretical contingencies.

As at 31 December 1986, the Government's total guarantee commitment available to the Mass Transit Railway Corporation stood at HK\$6.1 billion. All such guarantees have been provided free of charge. If Members approve this motion, the total sums guaranteed will be reduced by about HK\$1.5 billion upon completion of the refinancing that I have described.

Sir, I beg to move.

*Question put and agreed to.*

## **BANKRUPTCY ORDINANCE**

THE ATTORNEY GENERAL moved the following first motion: That the Bankruptcy (Amendment) Rules 1987, made by the Chief Justice on 17 March 1987, be approved.

He said: Sir, I move the first motion standing in my name on the Order Paper. The purpose of this resolution is to approve the Bankruptcy (Amendment) Rules 1987 made by the Chief Justice under section 113 of the Bankruptcy Ordinance. The purpose of the next resolution is to approve the Companies (Winding-up) (Amendment) Rules 1987 made by the Chief Justice under section 296 of the Companies Ordinance.

Sir, the rules deal with the hearing of applications relating to individual bankruptcies and to company liquidations respectively. Such hearings are, according to the nature of the application, determined by a judge in open court or by a judge in chambers. There is some disparity however. While it is possible for hearings relating to company liquidations at the discretion of a judge to be adjourned for determination in chambers by the Registrar of the Supreme Court, that is not presently possible for hearings relating to individual bankruptcies. The anomaly here is that the judge dealing with bankruptcy is also the judge dealing with companies and the procedures under the two sets of rules are very much the same.

Sir, the majority of applications to court are formal in nature and uncontested, and generally are without the appearance of the applicant or the party with whom the application is concerned. In such circumstances, there is no need for a hearing by a judge whether in court or in chambers. Such applications can be dealt with adequately by the Registrar of the Supreme Court in chambers.

The new rules will enable applications relating to such proceedings to be adjourned at the discretion of a judge, for determination in chambers by the Registrar of the Supreme Court.

Provision is also made for these matters to be adjourned from chambers back to court at the discretion of the registrar or a judge, or if the contending parties so request it.

Sir, I beg to move.

*Question put and agreed to.*

**COMPANIES ORDINANCE**

THE ATTORNEY GENERAL moved the following second motion: That the Companies (Winding-up) (Amendment) Rules 1987, made by the Chief Justice on 17 March 1987, be approved.

He said: Sir, I move the second motion standing in my name on the Order Paper. I have already given this account for the benefit of my reasons for same as for the last note.

*Question put and agreed to.*

**ROAD TRAFFIC ORDINANCE**

THE SECRETARY FOR TRANSPORT moved the following motion: That the Road Users' Code prepared under section 109(1) of the Road Traffic Ordinance and approved on 17 March 1987 by the Governor-in-Council under section 109(2) thereof be approved.

He said: Sir, I move the resolution in my name under section 109(2) of the Road Traffic Ordinance (Chapter 374).

The Road Users' Code has been prepared under section 109(1) of the Road Traffic Ordinance and has been approved by the Governor-in-Council. It is designed to provide a comprehensive summary in lay terms of road traffic legislation requirements; to provide additional rules of conduct to complement the legislation; to give advice on the law and the rules of conduct; and to explain various road features and traffic signs.

The Road Users' Code will be published in colour with separate English and Chinese versions. About a million copies of the code will be distributed during the first three years of its publication. Copies will be given free of charge to learner drivers, driving instructors, schools and road safety organisations. All applicants upon first application for renewal of driving licences during the first three years of publication will be given free copies. Copies of the code will be available for sale at government publications centres.

Members will note the corrigendum. This arose from a desire to dispel any ambiguity as to the legal status of the code. Certain amendments were therefore proposed to and approved by the Governor-in-Council on 17 March.

Sir, I beg to move.

*Question put and agreed to.*

**First Reading of Bills****IMMIGRATION (AMENDMENT) (NO.2) BILL 1987**

**REGISTRATION OF PERSONS (AMENDMENT) BILL 1987**

*Bills read the First time and ordered to be set down for Second Reading pursuant to Standing Order 41(3).*

**Second Reading of Bills****IMMIGRATION (AMENDMENT) (NO.2) BILL 1987**

THE SECRETARY FOR SECURITY moved the Second Reading of 'A Bill to amend the Immigration Ordinance'.

He said: Sir, I move that the Immigration (Amendment) (No.2) Bill 1987 be read a Second time.

This Bill is complementary to the Registration of Persons (Amendment) Bill 1987.

These two Bills introduce important measures into Hong Kong legislation. For the first time, the term 'right of abode' will be applied in law to Hong Kong people. Some 5 million Hong Kong people will be accorded this right which will give them the right to land and remain in Hong Kong without any immigration restrictions. They will not be deportable or removable from Hong Kong. They will be described by a new term (香港永久居民) 'Hong Kong permanent resident'. This term, in both Chinese and English will be easily understood. 'Hong Kong permanent residents' will have permanent identity cards which will be evidence for all to see that they have the right of abode in Hong Kong. The arrangements to be introduced by the proposed legislation will help towards guaranteeing Hong Kong people's travelling convenience both before and after 1997.

To ensure that holders of British National (Overseas) passports and of Certificates of Identity will continue to travel with the same ease and convenience in the transition period and after 1997, Her Majesty's Government and the Government of the People's Republic of China have discussed arrangements for these documents and related matters in the Sino British Joint Liaison Group. The two Governments have agreed that British National (Overseas) passports may include an endorsement indicating the holder's right of abode in Hong Kong. The wording of this endorsement as agreed between the two Governments is:

'The holder of this passport has Hong Kong permanent identity card number (XYZ) which states that the holder has the right of abode in Hong Kong.'

The proposed legislative amendments are consistent with this agreement. They also result from the Hong Kong (British Nationality) Order 1986 which gave effect to the United Kingdom Memorandum associated with the Joint Declaration and which enabled passports in the new status of British National

(Overseas) to be issued as from 1 July 1987. The date of 1 July 1987 is equally significant in respect of Certificates of Identity now used by 'Chinese residents'. It has been agreed with the Government of the People's Republic of China that Certificates of Identity may continue to be issued from that date until 30 June 1997 with a full 10-year validity and may continue to be used until their due expiry date. These documents also will include a right of abode endorsement similar to that which I have just said will be included in British National (Overseas) passports.

The arrangement to include a right of abode endorsement in travel documents is based upon the relevant provisions in section XIV of Annex I to the Sino British Joint Declaration. Those provisions state that people who will have the right of abode in the Hong Kong Special Administrative Region will be issued with permanent identity cards stating their right of abode and that holders of permanent identity cards of the Hong Kong Special Administrative Region may have this fact stated in their travel documents as evidence of their right of abode in the Hong Kong Special Administrative Region. Such an endorsement which shows that the holder of the document will be able to return freely to Hong Kong is of vital importance to the acceptability of the British National (Overseas) passports and to the continued acceptability of Certificates of Identity for the purpose of international travel before and after 1997.

Before permanent identity cards stating the holders' right of abode in Hong Kong can be issued to support the right of abode endorsement in British National (Overseas) passports and Certificates of Identity, it is necessary to introduce the term 'right of abode in Hong Kong' into the Hong Kong legislation. As the legislative amendments are part of the package to implement the agreement of Her Majesty's Government and the Government of the People's Republic of China on arrangements for travel documents, the principles upon which they are based have been discussed between the two Governments in the Joint Liaison Group. At the Sixth Meeting of the Joint Liaison Group, both sides confirmed their common understanding on the specific principles relating to the proposals.

Sir, the Immigration (Amendment) (No.2) Bill now before this Council seeks to define the right of abode in Hong Kong as the right to land and remain in Hong Kong and the right not to be deported or removed from Hong Kong. This definition includes all the components of right of abode as this term is generally understood, including freedom from deportation. The Bill also seeks to create the new category of persons 'Hong Kong permanent residents' comprising all who are at present defined in the Immigration Ordinance as 'Hong Kong belongers' or 'Chinese residents'. Broadly speaking, the former, that is 'Hong Kong belongers', cover 3.25 million Hong Kong British Dependent Territories citizens and the latter, that is 'Chinese residents', another 1.74 million persons of Chinese race who have resided in Hong Kong for seven years or more. The right of abode as defined will be accorded to this new category of persons. Consequently, the right not to be deported from Hong Kong currently enjoyed by

'Hong Kong belongers' will be extended to 'Chinese residents'. The Bill amends the deportation provisions in the principal Ordinance to provide for the immunity from deportation of persons who are at present defined as 'Chinese residents'.

The replacement of the terms 'Hong Kong believer' and 'Chinese resident' by a new expression 'Hong Kong permanent resident' removes a distinction, which has been drawn on the basis of British nationality, between two major categories of Hong Kong residents. Subject to the enactment of this legislation, all Hong Kong people who have the right of abode in Hong Kong will be 'Hong Kong permanent residents' and will be entitled to a permanent identity card. This change in nomenclature entails certain consequential amendments to the principal Ordinance and other legislation which are contained in this Bill. But they will not involve any significant change in substance. They are explained in the Explanatory Memorandum to the Bill.

There is some way to go before provisions relating to right of abode in the Joint Declaration will be fully implemented. Her Majesty's Government and the Government of the People's Republic of China have agreed that the arrangements to be introduced by the proposed legislation are of a transitional nature and are intended to meet the immediate objective of including a right of abode endorsement in British National (Overseas) passports and Certificates of Identity to be issued from 1 July 1987. Further legislative proposals will be introduced before 1 July 1997 so that the categories of persons enjoying the right of abode in Hong Kong are on that date completely in line with those set out in section XIV of Annex I to the Joint Declaration. Both Governments have agreed that a step-by-step approach in bringing the provisions relating to the right of abode in Hong Kong completely into line with those in the Joint Declaration will be conducive to a smooth transition.

On 1 July 1997, people will acquire the right of abode in the Hong Kong Special Administrative Region in accordance with the relevant provisions in section XIV of Annex I to the Joint Declaration. Under that section, the following three categories of people will have the right of abode in the Hong Kong Special Administrative Region:

- (1) all Chinese nationals who were born or who have ordinarily resided in Hong Kong before or after the establishment of the Hong Kong Special Administrative Region for a continuous period of seven years or more, and persons of Chinese nationality born outside Hong Kong of such Chinese nationals;
- (2) all other persons who have ordinarily resided in Hong Kong before or after the establishment of the Hong Kong Special Administrative Region for a continuous period of seven years or more and who have taken Hong Kong as their place of permanent residence before or after the establishment of the Hong Kong Special Administrative Region, and persons under 21 years of age who were born of such persons in Hong Kong before or after the establishment of the Hong Kong Special Administrative Region;

- (3) any other persons who had the right of abode only in Hong Kong before the establishment of the Hong Kong Special Administrative Region.

The vast majority of 'Hong Kong permanent residents' to whom the right of abode in Hong Kong will be accorded by this Bill now before this Council will continue to enjoy the right of abode in the Hong Kong Special Administrative Region under the first of these categories, by virtue of being Chinese nationals who were born in Hong Kong, or who have ordinarily resided in Hong Kong for a continuous period of seven years or more. Other 'Hong Kong permanent residents' as now defined in our Bill who are not Chinese nationals will be able to retain their right of abode under the other categories.

But there may be a very small number of people among those to be accorded the right of abode in Hong Kong in the proposed legislation who will not continue to enjoy the right of abode in the Hong Kong Special Administrative Region on 1 July 1997 because they do not meet the relevant provisions in the Joint Declaration. They would be 'Hong Kong permanent residents' who are not Chinese nationals, hence do not fall into the first category, and who comply neither with the requirements of the second category nor with the requirement of the third category. In practical terms, they would be a very small number of non-Chinese nationals who on 1 July 1997 may not have ordinarily resided in Hong Kong for a continuous period of seven years or more, or who may have so resided but have not taken Hong Kong as their place of permanent residence; in either case they would have the right of abode elsewhere.

'Hong Kong permanent residents' who are non-Chinese nationals will want to know what they have to do in order to continue to enjoy the right of abode in Hong Kong after 1997. Those non-Chinese nationals who have ordinarily resided in Hong Kong for not less than seven years, may continue to enjoy the right of abode in the Hong Kong Special Administrative Region under the second category in section XIV of Annex I to the Joint Declaration once they have established that they have taken Hong Kong as their place of permanent residence. The British and Chinese Governments have through discussions in the Joint Liaison Group reached a common understanding that the way to establish that such a person has taken Hong Kong as his place of permanent residence will be the signing of a simple declaration by the person in question. This method will also apply to other non-Chinese nationals who will not enjoy the right of abode in Hong Kong now but who wish to acquire that right in the Hong Kong Special Administrative Region under the relevant provisions of the Joint Declaration. This is a practical arrangement which should reassure non-Chinese nationals of their continued ability to enjoy the right of abode in Hong Kong.

Provisions for the acquisition of the right of abode in Hong Kong by long-term Hong Kong residents (by which I mean those who have been here continuously for at least seven years) other than those who will fall within the category of 'Hong Kong permanent residents' as defined are not contained in

the present proposals. This is because those people will not be eligible to hold a British National (Overseas) passport or a Certificate of Identity. But they will continue to enjoy their present residential status in Hong Kong. When the legislation is eventually brought into complete conformity with the relevant provisions in the Joint Declaration, these long-term residents will be able to acquire the right of abode in Hong Kong if they so wish by the signing of the simple declaration to which I have just referred. Although this arrangement to acquire the right of abode will only be effected by future legislation, its benefits are both immediate and far-reaching. It should help to reassure other communities in Hong Kong that they have a long-term future here and will be able to acquire the right of abode if they so wish.

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.*

*Question put and agreed to.*

### **REGISTRATION OF PERSONS (AMENDMENT) BILL 1987**

THE SECRETARY FOR SECURITY moved the Second Reading of 'A Bill to amend the Registration of Persons Ordinance'.

He said: Sir, I move that the Registration of Persons (Amendment) Bill 1987 be read a Second time.

The main object of this Bill is to introduce a permanent identity card stating the holder's right of abode in Hong Kong. As I have just explained in moving the Second Reading of the Immigration (Amendment) (No.2) Bill, the permanent identity card is needed to enable a right of abode endorsement to be included in British National (Overseas) passports and Certificates of Identity.

At present, under the Registration of Persons Ordinance, a Hong Kong identity card is only a proof of identity. Subject to the enactment of this Bill, the new identity card to be issued from 1 July 1987 will in addition reflect the immigration status of the holder, that is whether or not he has the right of abode in Hong Kong. A permanent identity card stating the holder's right of abode in Hong Kong will be issued to persons who have that right under the Immigration Ordinance. Those who do not have that right will be issued with a different form of identity card which will not include a statement that the holder has the right of abode in Hong Kong.

To ensure a smooth transition, Her Majesty's Government and the Government of the People's Republic of China have agreed that the new forms of identity card issued by the Hong Kong Government will continue to be used after 30 June 1997 until such time as they are replaced by identity cards issued by the Hong Kong Special Administrative Region Government. In contrast to

the identity cards currently in use which have a fixed period of validity, the new cards to be issued from 1 July 1987 will not specify the dates on which they must be renewed.

The issue of new forms of identity card will take the form of a replacement exercise to be completed over a period of four and a half years. The Finance Committee of this Council accepted the financial implications in June last year. The Bill now before Members seeks to provide the statutory framework necessary for the replacement programme from 1 July 1987. It will involve arrangements similar to those adopted in the last re-issue exercise. Identity card holders will be asked to come forward in specified groups by age and sex to have their cards replaced and existing cards will be declared invalid progressively.

But there will have to be some exceptions to these arrangements. Those who are applying for a British National (Overseas) passport or for a Certificate of Identity but who have not yet obtained a permanent identity card will need one in order to support the right of abode endorsement in their travel documents. So the Bill specifically provides for the issue of permanent identity cards to applicants for these two travel documents. They will then in practice get their new identity cards ahead of their scheduled turn in the replacement programme. To minimise inconvenience to the public, the Immigration Department will make special arrangements to issue the permanent identity card at the same time as it issues the travel document.

The Bill also seeks to empower the Commissioner of Registration to issue permanent identity cards to children under 11 years of age and to Hong Kong residents living overseas who have the right of abode in Hong Kong. These two categories of people will not be required to register for an identity card. But they will need to be able to get a permanent one if they wish to be issued with a British National (Overseas) passport or a Certificate of Identity with a right of abode endorsement from July this year.

Sir, an important proposal in this Bill is the setting up of an appeals procedure. The Bill establishes a Registration of Persons Tribunal to determine appeals from persons who apply for permanent identity cards and who are then refused them. Those whose application for a permanent identity card are refused will be informed of their right of appeal. They may appeal only on the grounds that they have the right of abode in Hong Kong and the time limit for appealing will be 90 days. The Registration of Persons Tribunal will consist of a panel of adjudicators appointed by the Governor.

Subsidiary legislation will set out in detail the practice and procedure governing appeals to the tribunal. It will also stipulate the detailed requirements and procedures to be followed in the identity card replacement programme.

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.*

*Question put and agreed to.*

**IMMIGRATION (AMENDMENT) BILL 1987****Resumption of debate on Second Reading (25 March 1987)**

*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 Bill**

Council went into Committee.

**IMMIGRATION (AMENDMENT) BILL 1987**

Clauses 1 to 3 were agreed to.

Council then resumed.

**Third Reading of Bill**

The ATTORNEY GENERAL reported that the

IMMIGRATION (AMENDMENT) BILL 1987

had passed through Committee without amendment, and moved the Third Reading of the Bill.

*Question put on the Bill and agreed to.*

Bill read the Third time and passed.

**Adjournment**

4.05 pm

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

HIS EXCELLENCY THE PRESIDENT: As 19 Members have given notice of their intention to speak, 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.

### **Consultative Document: Redress of Grievances**

MRS. CHOW: Sir, since the Legislative Council ad hoc group was formed to examine the Consultative Document on the Redress of Grievances in November last year, our work progressed along the following routes.

Initially we monitored the views expressed in public by various concerned groups and individuals. When we discovered that public response was not as enthusiastic as we would have liked, we requested the Administration to extend the consultative period for another two months until 31 December 1986 so as to afford additional time and opportunity for the submission and expression of views on the document.

In the meantime, the group requested the Administration to meet with us to answer queries, and to elaborate on certain areas of the document which we felt to be too broad to enable meaningful debate.

Subsequent to the closing of the consultative period, we requested information on views expressed by the public. We were presented a full copy of all submissions in early March, and I am sure some of the contents and opinions contained will be reflected in today's debate.

During the five meetings of the group, there was active discussion on all aspects of the document. By the end of the last meeting, the group has come to the following conclusions:—

- Firstly, although the public response cannot be described in any way as overwhelming or enthusiastic, it is a fact that a clear majority of the 50 or so submissions are for the adoption of the third option in the consultative document—that is, the establishment of a Commissioner for Administration.
- Secondly, the group felt that option (a), that is, no change in the existing system, is neither realistic nor desirable. All agreed that option (b) which calls for the improvement of all existing channels should not only be accepted but positively supported. It was also agreed that option (c) deserves to be examined in much more detail, particularly regarding its terms of reference, position within the present government structure, and the question of finality. Members are prepared to accept in principle the formation of the institution of Commissioner for Administration, subject to the clarification, definition and acceptance of these refinements. We call on Government to proceed with the study expeditiously.

Sir, having summarised the group's views, I beg the meeting's indulgence in letting me put forward my personal views on the subject.

I am now convinced that in spite of all the existing channels for redress, such channels are by and large receptacles of grievances rather than investigative instruments of alleged maladministration. With the gradual politicising of our system, there is merit in having an institution to undertake that investigative function independent of our political system, while existing channels are improved upon to receive complaints as well as to resolve those grievances which have nothing to do with maladministration.

In order that the Commissioner for Administration is seen to be fair and independent of the executive, thought should go into his qualification and selection, as well as the key question of whether he is answerable to the Governor or the legislature.

On one point I am not prepared to compromise. I believe the Commissioner for Administration's findings and recommendations must be final. Experience shows that some complaint cases are passed around from one level to another, from one councillor to another, especially when complainants are not satisfied with the answer they receive. There will always be a certain percentage of dissatisfied clients, and if the Commissioner for Administration has to repeatedly look at cases, it will undermine the effectiveness and efficiency of the Commissioner for Administration, and create enormous and unnecessary wastage of public resources.

MR. HUI: Sir, in the past, independent inquiries have been set up to look into complaints lodged against the Government in view of the fact that official bias is sometimes inevitable. The consultative document on redress of grievances offers good evidence of such prejudice which tends to ignore the gross inadequacies of our existing channels of redress. It is for this reason, Sir, that I support the call for the introduction of an ombudsman for Hong Kong.

From the complaint letters and petitions that I regularly receive from members of the public, I have come to understand the frustration, anger and helplessness of the ordinary citizens who approach government departments, district boards, Urban Council and Regional Council wards to seek solutions to problems concerning government policies and malfeasance. Going through this labyrinth of redress mechanism manned largely by the Civil Service, and the invariably long time involved in the follow-up correspondence between government departments, they often come face to face with the original decision without being told the rationale behind. Petitions to the Governor, referred back to government departments in the first instance, usually meet with the same fate. Actions on the part of Legislative Council Members could at best help speed up the lengthy process.

Limitations of the OMELCO Complaints Division, which the document described as 'the most frequently used channel', are only too real to Members of this Council who are so overloaded with complaints and appeals that we simply cannot award enough attention to individual cases. When sorting out

complaints, Members often resort to meetings with the Administration where once again we are usually given one side of the story. The fact that we are neither accountable for our duty roster performance, nor delegated formally with authority to make in-depth investigations into classified documents cripples our function of redressing grievances. The crux of the matter is: all investigations are done by OMELCO staff, who for the lack of statutory authority, can only rely on official records, correspondence, telephone calls and meetings with government departments. It is difficult to believe that investigations carried out by the seconded officers into classified documents prepared by senior officials would be totally impartial.

Sir, with the existing venues of our remedial system being 'toothless tigers' lacking legal authority, the success rate of public complaints handled remains pitifully low. What we have in Hong Kong are duplicated efforts aimed at redressing public grievances on an ad hoc basis, with no follow-up measures taken to prevent the re-occurrence of complaints. However, out of this bureaucratic maze the ICAC emerges. The record of 2 911 non-corruption reports received by the commission in 1986 speaks for the success of an independent avenue of redress that has commanded the confidence and respect of people with grievances to pursue. Due to its terms of reference and jurisdiction restricted to corruption, referrals had to be made for 1 134 reports which concerned complaints against abuse of authority, inappropriate actions and actions not abiding with established legislation and procedures in the Civil Service. Thus, if public grievances are to be taken seriously and dealt with properly, then nothing short of an independent body invested with investigative powers as strong as those of the ICAC should be established. Indeed, we need a properly constituted Commission for Administration that would project an independent and impartial public image of the popular Judge BAO Ching-tin (包青天) of the Sung Dynasty.

Sir, in pledging my full support to the proposal of creating a Commissioner for Administration, I wish to emphasise that the status and power of the commissioner must be conferred by status to ensure his independent authority. The Commissioner for Administration should report directly to the Legislative Council and the Governor, instead of to the Chief Secretary, in order to reinforce his monitoring function. Apart from being directly accessible to local citizens who wish to file complaints against administrative or personal injustices, the Commissioner for Administration should adopt formal and systematic procedures that are opened to the public as situations require. He should be assisted by a team of qualified staff, including law enforcement and legal experts, to assess information, investigate cases, and take follow-up actions especially on cases referred by district boards, Urban Council, Regional Council and the OMELCO. It is also imperative that his subordinates are totally independent from the Civil Service establishment for them to function effectively. They work under the Legislative Council which serves as the final authority of appeal.

Sir, for the Commissioner for Administration to be impartial, he should not be a former civil servant, but should be someone with high community standing nominated by the Legislative Council and appointed by the Governor. On the one hand, he would serve as check and balance on the Administration; on the other, he would help to refute unwarranted complaints against the Civil Service. This impartiality however must be accompanied by pervading authority— powers to collect evidence, to gain access to documents and files and to require the disclosure of confidential information by senior civil servants to the best of their knowledge. The commissioner should be able to comment freely, not just on the defects of system, but on policies, procedures and related personnel. He should make recommendations on whether remedy or compensation is justified to the heads of departments and if necessary, to the Governor. Furthermore, the commissioner's authority should include recommending prosecutions by the Attorney General and disciplinary measures on civil servants. Only when such kind of statutory authority is provided can the commissioner live up to public expectations of an ombudsman.

There is slight possibility of duplication of work between the Commissioner for Administration and the OMELCO which can pass on some 40 per cent of its complaints concerning maladministration and concentrate on dealing with policy complaints. While cost and legislative time are two possible drawbacks, these technical difficulties should not deter the Government from providing an effective channel for monitoring government operations. For the Administration is entrusted with the inherent responsibility to prevent abuse of authority ubiquitous in governments everywhere; protect interests of the public and provide just and fair solutions to the problems of the citizens. Sir, people who come to me when all doors of our remedial system were closed to them, have demonstrated that people from all strata of the community are increasingly aware of their right in seeking redresses for grievances and getting a fair deal. A Commissioner for Administration is the only means through which justice for all is seen to be done by our Government, and which will definitely enhance public confidence in the run-up to 1997.

MR. CHEN: Sir, no system is perfect. Whereas the existing systems for the redress of grievances in Hong Kong provide a wide variety of channels to members of the public to seek redress in regard to maladministration by government departments, I am sure there could be improvements. Perhaps one of the ways to improve upon the existing systems is to add to them an authority of the Commissioner for Administration. Whilst accepting that the Commissioner for Administration could be a means to improve upon the existing machinery to deal with the complaints against maladministration, I wish to point out that it should not be seen as an end in itself. In other words, the Commissioner for Administration is definitely not going to be the panacea for our complainants and those who seek redress of their grievances.

Understandably, the consultative document does not describe precisely the sort of organisation that the Commissioner for Administration is likely to be in terms of its powers and terms of reference and so on. In the absence of a clear definition, I find it rather difficult to come to a conclusion whether to support or not support the idea of establishing a Commissioner for Administration. However, if I have to accept the idea of creating such an organisation, I would only go along under two conditions.

First, if the Commissioner for Administration is established, he must be given sufficient power which shall be no less than those presently entrusted to OMELCO Members to enable him to function effectively. In addition to the necessary powers of investigation, it must be clearly established, preferably by legislation, that his findings and recommendations are final. In other words, once a complainant has chosen to take his case to the Commissioner for Administration, he must accept and respect the commissioner's decision as final. No further appeals can be made unless the complaint becomes a matter for the judiciary. The reason is very simple. We must bear in mind that the purpose for the establishment of the Commissioner for Administration is to improve upon the existing systems. If his decisions can be challenged thus the complaint can be pursued elsewhere, the Commissioner for Administration would become just another addition to the many already existing channels of redress and the purpose of its establishment would be totally defeated.

Secondly, I am prepared to support the proposal for the establishment of the Commissioner for Administration on condition that he deals only with complaints referred to him by Legislative Council Members. This is a filtering or screening process necessary to ensure that the Commissioner for Administration is not to be over-burdened with indiscriminate complaints, which is essential for his effective operation. In fact, it is also in line with the practice adopted in the United Kingdom Parliamentary Commissioner for Administration. I would even propose that the terms of reference of the Hong Kong Commissioner be modelled on the United Kingdom's counterpart. That is to say, (a) that his authority is to be prescribed by law; (b) the complaint should be made to a Legislative Council Member who shall then refer it to the Commissioner for Administration and (c) the commissioner cannot act on his own initiative, nor can he receive submissions directly from members of the public.

Sir, although the complaint has to be referred by a Legislative Council Member, it does not mean that the Legislative Council could or should interfere with the work of the commissioner. On the contrary, as I pointed out earlier, the commissioner's findings shall be final.

In conclusion, Sir, I would like to stress that unless the conditions I have outlined above are satisfactorily met, I am not in favour of creating a Commissioner for Administration.

MR. CHEUNG (in Cantonese): Sir, I rise to speak in support of a new redress system headed by a Commissioner for Administration.

I am supporting the idea, not so much because I think the role and functions of the Commissioner for Administration, also known as ombudsman, may replace the work of OMELCO. Nor do I think that the existence of such an office would cause excessive constraint on the work of our major government departments. I do not see any conflicting roles between an ombudsman and OMELCO. On the contrary, its existence, in my view, will inevitably strengthen the aspect of OMELCO work as watchdog of Government performance, as well as strengthening the overall performance of the Civil Service. Such a particular role and contribution of the ombudsman system can be achieved, provided that its establishment is outlined in clear terms of reference concerning its powers and functions, and is subject to the ultimate supervision of the Legislative Council.

The function of the ombudsman should be strictly limited to one of investigating complaints of injustice to citizens resulting from faulty administration on the part of a government department, not amounting to illegality. This refers to the problem of 'maladministration' and the ombudsman is a channel whereby private citizens may lodge their complaints against a public authority, which has, though acting within the law, failed to observe the proper standards of administrative conduct.

The independent status of an ombudsman should not make his particular office a separate 'empire' of the Government; its appointment, functions and removal, must be held accountable to the Legislative Council. In addition, while there should be adequate powers for investigation, clear limits should be defined. The Commissioner for Administration may be empowered to investigate complaints in respect of all government departments and authorities. But they should not include local authorities such as district boards and regional councils; public corporations; police and so on. Matters that should be excluded from investigations include foreign relations; action taken outside Hong Kong; extradition; investigation of crime; military defence; civil or criminal proceedings in any court; medical matters; commercial contracts and personnel matters of the Civil Service, teachers or police.

For the smooth working of the checks and balances mechanism in public administration, considerations should be given for the setting up of a select committee of this Council to deal with complaints of the commissioner's failure to perform his defined duties. The committee must not act as a court of appeal from the commissioner's findings, but rather, as an authority to review his work so that remedial measures, such as redefining the jurisdiction of the commissioner, may be taken from time to time to improve the redress system.

Sir, the establishment of an 'ombudsman system' should be viewed as a measure to further improve the administrative law and system of Hong Kong. I have noted the diverse opinions on the matter. Those who are opposing the

system have expressed the fears that it may grow into a monster threatening the efficiency of Government. Speaking in support of such a system, I have countered these points by proposing measures to ensure that the abuse of power on the part of the Commissioner for Administration may be prevented, checked or remedied.

We all recognise that Hong Kong has entered a new era where it will face greater challenges in the aspect of administration. The system of government must evolve to meet with the rising aspirations of the public. The existence of an 'ombudsman system' ought to be seen as a strong professional arm of OMELCO or its supplement, rather than its replacement in the area of complaints against Administration. And any effort that would lead to better government in Hong Kong should be viewed positively and supported by us all.

MR. CHAN YING-LUN (in Cantonese): Sir, the special feature of the existing system by which the public can lodge their complaints against government maladministration and injustice is the active participation of Members of OMELCO and district boards as well as councillors of the Urban Council and Regional Council in upholding justice. Since neither Members nor councillors have the authority to call for relevant papers or direct government officials to take remedial actions, the outcomes of the complaint cases are usually not as satisfactory as one would hope. Furthermore, though the legislature has the responsibility to monitor Government's performance, it should not intervene directly in its administration or give directives to executive departments. Thus the public's request for an independent redress authority with adequate power is reasonable and necessary.

In principle, I also give my support to the appointment of a Commissioner for Administration who when making investigation, must adhere to certain statutory procedures in order to ensure that the complainants receive fair treatment. In the event of unreasonable complaints, the commissioner can, by virtue of his independent status, make fair decision without being affected by political elements. I also think that those public officers who have erred, deliberately wronged the innocent or done injustice should be held responsible for their misdeeds. I hope the Commissioner for Administration will point out those public officers who should be responsible for the maladministration so as to improve the working attitude and efficiency of civil servants.

The general public expect that the Commissioner for Administration can change the Government's incorrect decisions. Only then will the establishment of the Commissioner for Administration be meaningful and valuable. It is understood from the Green Paper that the establishment of the commissioner will result in an additional avenue of complaint and appeal. But I doubt very much whether it will be more effective. There is no way for us to know the exact power of the commissioner, especially when both the complainants and the Members involved in the case are not satisfied with the outcome of the

investigation. Does it mean that the injustice received by the complainants will never be redressed? Hence, although in principle I am all for the setting up of the Commissioner for Administration, nevertheless, before any decision is made, the Government should stipulate in detail the commissioner's power, the ambit of investigation, and the opportunities of re-examination of any cases. Only when the consensus of the public is reached can the schedule be finalised.

Finally, I must stress that it is a basic right of the public to lodge complaints to councillors and district board members who should also consider it their basic obligation to contact members of the public and listen to public opinions. The existing redress system should therefore be retained even after the Commissioner for Administration is appointed. The members on duty are obliged to cause thorough investigation to be made once a complaint is received. Thus, the commissioner and the Members should keep in close contact although the former is responsible for investigation. My idea is, if a complaint case is referred by a councillor, he should have the right to assist in investigation, and be kept informed of the progress made in due course. As to cases referred by OMELCO, the commissioner should maintain close liaison with the office so that the latter would be in full picture regarding the development of each case.

MRS. NG (in Cantonese): Sir, 'there are channels for complaints, but no means for the redress of grievances' (投訴有門, 解決無路). These two phrases perhaps can very ably describe the feelings of those members of the public who have to run everywhere to lodge their complaints. They go to district offices, district boards offices, the Urban Council, Regional Council, the Government Secretariat, the OMELCO and even appeal outside Government House in order to have their grievances redressed. This shows that they are greatly in need of an impartial BAO Ching-tin (包青天) who can redress their grievances. Sir, there is obviously a great need for the establishment of a Commissioner for Administration. I fully agree in principle that we should establish the Commissioner for Administration. However, I would like to point out one thing. What the public needs is not a commissioner who sits behind closed door in his own office. He has to be close in touch with the men in the street and to work actually in various districts. Therefore the spirit of the Commissioner for Administration should be extended to all government departments as well as the 19 districts.

I often work within the existing channels for the redress of grievances and handle numerous cases of complaints, for example, I am often on duty in the Complaints Division in OMELCO. I also participate in the 'Meet the Public' scheme of the district boards and also I have received many members of the public in my own personal office especially the men in the street. Thus, I have accumulated a lot of experience as far as receiving public complaints is concerned, and I am willing to share my experience with you. I have four suggestions to make in this regard.

First, we understand that many complaints are concerned with government policies and the way these policies are implemented. This shows that the heads

of many government departments can actually play the role of the Commissioner for Administration. These department heads have the responsibilities to make sure that their departments and their staff, when serving members of the public, should be discreet, impartial and efficient, especially those departments which have to be in close contact with members of the public and also those departments whose work have a direct bearing on public livelihood. In my own personal liaison office, I have handled 1 700 complaints and about 61 per cent of these complaints concerned the Housing Department. So, I would like to suggest that heads of all government departments, especially the Director of Housing, should play the role of a Commissioner for Administration.

Second, even though most of the complaints are concerned with government policies, those who lodge their complaints usually come from one particular area and, therefore, their complaints are rather local in nature. Since district offices and district boards have very close contact with members of the public, for example, district offices have consultation centres in various district offices and district boards have 'Meet the Public' scheme, they are the major avenues for lodging complaints. However, if we really have to provide effective channels for the redress of grievances, we have to strengthen these liaison channels at the district level.

I suggest that the 19 district officers should also play the role of the Commissioner for Administration. They should closely monitor the work of the consultation centres in various districts and be responsible to the district board members in their respective districts and see to it that the complaints are dealt with satisfactorily. In order to make sure that the 19 district officers can effectively handle complaints from citizens of those districts, I think that the Secretary for District Administration should closely monitor the work of the 19 district officers.

Third, with the development of representative government in Hong Kong, more and more district board members are opening their offices to receive public complaints. Right now, of the 396 district board members, about 193 members, roughly about half the total number, have already set up their own offices. We should make use of these district resources to help the public to solve the problems. So I recommend that the Government should deploy more manpower and resources to help district board members to handle and process the complaints they have received so that members of the public could have their grievances redressed. I hope that many grievances lodged at the district level will be solved at the district level immediately.

Fourth, OMELCO has a very good record in handling public complaints. This is very obvious. Right now the office has a very heavy workload mainly because local organisations and government departments have not deployed enough manpower to handle complaints. And as there is not enough publicity, OMELCO cannot effectively play the role of the Commissioner for Administration. Since members of the public have great confidence in OMELCO, and in

order to make sure that a large number of complaints could be speedily dealt with, there is indeed a need to expand the Complaints Division of OMELCO. Presently, there are only 14 people specifically employed to deal with complaints from members of the public and of the 14 staff members, six are directly employed by OMELCO whereas the remaining eight are seconded from the Government. I think that the Complaints Divisions should be expanded and its staff should be directly employed by OMELCO so that they can appear to be more independent in the eyes of the public and the public would also have a greater confidence in the Complaints Division.

Finally, I believe that many Members of this Council will express their views on the consultative paper, but I would like to bring out one more point, which is that the consultative paper has ignored one very important channel for the redress of grievances, namely, the mass media and the role it plays in the redress of grievances. We understand that many newspapers have special columns which publish complaints brought in by members of the public and many radio stations have special programmes to allow the public to ring in and lodge their complaints. These programmes are very popular because they allow members of the public a chance to air their grievances in the air. Television stations, during prime times, also have special programmes which receive complaints from members of the public. Therefore, I hope the Government will not ignore the role of the mass media in the redress of public grievances.

MR. YEUNG (in Cantonese): Sir, at present there are many different avenues of complaint and appeal for the citizens in Hong Kong. The one aspect that needs improvement is the maintaining and strengthening of the present grievance redress system, especially on the publicity side, so that every member of the public understands his rights as a citizen and can make appropriate use of the effective means to have his grievances redressed.

The Commissioner for Administration can act as a watchdog in the government mechanism and can certainly enhance efficiency in the Government. It is, therefore, a reform worthy of praise. The Government's voluntary proposal to subject itself to monitoring by citizens reflects the liberal attitude of a democratic political system. In this respect, being members of our society, we should exercise self-discipline, and should not abuse democracy because abuse of democracy can increase the Government's bewilderment or even affect the stability of our society.

Establishment of a Commissioner for Administration can relieve OMELCO Members of their workload in dealing with complaints. At present, the Complaints Division of OMELCO deals with 1 000 cases a years, of which 35-40 per cent concerned government maladministration/injustice. With the establishment of the office of the Commissioner for Administration, these cases can be dealt with by the commissioner. Therefore, establishment of a Commissioner for Administration means an additional independent statutory redress

system. His office would win greater trust of our citizens, thereby relieving part of the OMELCO Members' commitments in public affairs and allowing them more time for other important matters apart from handling complaints. There is, therefore, a need for a Commissioner for Administration but there should be some principles for such an establishment. At present, there are many channels for redressing grievances. I feel that the Government should allow district board members to concentrate on concerns of district interest, and let the public understand that not every issue has to be dealt with by OMELCO.

Furthermore, the set-up of the Office of the Commissioner for Administration and its terms of reference should be clearly defined and stipulated in legislation in order to avoid duplication of work. I suggest that the Commissioner for Administration should come under OMELCO so that he will be answerable to the legislature for investigating complaints of government malpractice and injustice, while OMELCO Members can concentrate on policy matters. The Government may also consider establishing a committee including OMELCO Members for monitoring the work of the Commissioner for Administration.

MR. CHAM: Sir, the present channel of complaints consists of OMELCO, Urban Council and district boards. The diversity of channels provides a natural system of checks and balances, when if any channel proves inadequate, the public seeking redress will have other channels open to them. Hence, there is no immediate need to change any of these existing channels, least of all, to eliminate anyone of them.

Amidst these channels of complaints, we must determine the right structure to achieve our purpose of enabling the public to seek redress within the present system. Hence, the creation of a body, regardless whether it is called the Commissioner for Administration or not, must be developed within the framework of our present structure. The public should have the chance to consider in detail how the proposed body will function as details will involve principles of significance.

It is important for the Administration now to identify the operating elements of the proposed Commissioner for Administration. Several elements are vital: finality, independence, checks and balances, method of referrals, its creation and the method of reporting. These are questions of fine details which the Government will need to address. Based on these elements, options and alternatives should be identified such that the implications of each option can be fully considered. While it is recognised that further examination of fine details of the proposed body is essential, one point needs to be addressed. It was argued that the need for a Commissioner for Administration arose from possible conflict of interest by involving Members of OMELCO in investigatory details. These fears can be alleviated with administrative measures such as diversified

membership in handling cases, declaration of interests and so on. With the development of the representative government, the three tiers of government will be under close and proper scrutiny by the public.

In the light of identified options, basic questions must be asked. Questions such as, 'What improvements could a new body bring to our existing structure? What is it that the new body can provide which our present structure cannot be modified to offer?' We must avoid the pitfall of setting up a new body for the sake of establishing it. With the evolution of a representative government, we must build on existing channels of OMELCO, Urban Council and the district boards which have a good history of service and public confidence. Thus, it is more prudent to develop our existing channels to meet inadequacies of the present system. In the event that a new body needs to be created, it must work in co-ordination and harmony with existing bodies, certainly not to disrupt them.

MR. CHEONG-LEEN: Sir, the Consultative Document on Redress of Grievances issued in August last year was a sketchy seven and a half page document which did not provide the public with sufficient background to study the subject in much depth. But from views expressed in public so far one would deduce that most people in Hong Kong would like to see continuous improvement in the channels of complaint and their efficiency, and if the setting up of a Commissioner for Administration will help to bring about more involvement and improvement, then it would be worth our doing so.

In the summary of the document, three proposals are offered: making no changes at present, improving existing channels, and creating an authority of the Commissioner for Administration type. An objective analysis at least on my part would indicate the need to retain and improve existing channels and that if a Commissioner for Administration system can be grafted on with constructive results, it should be considered.

I believe that in principle, a Commissioner for Administration along the lines stated in paragraphs 21-25 of the document could be good for Hong Kong, provided it is well thought out and properly structures.

Firstly, such a Commissioner would be in position to take over on present indications up to about half of the cases which are received by the OMELCO Complaints Division every year, and the Commissioner would be seen by the general public to be acting independently of OMELCO and of the Administration.

Secondly, the fact of having a separate Commissioner for Administration will have the salutary effect of putting the heads of government departments even more on their toes in processing complaints efficiently and expeditiously.

Thirdly, from time to time the commissioner's reports to the Governor would have to be tabled in the Legislative Council by the Chief Secretary, and at least once a year his annual report could be debated by this Council.

Fourthly, the setting up of a Commissioner for Administration would not in any way detract from the continued existence of present channels of complaint, such as the OMELCO which will consider matters with policy relevance, ward offices of councillors of Urban Council and Regional Council, and Meet the Public' sessions of district boards.

In the final analysis, Sir, much will depend upon how successfully a Hong Kong-style ombudsman or Commissioner for Administration system can be devised to meet the needs of Hong Kong people and the Hong Kong political system. In other words, the system cannot and should not be an identical model of the New Zealand, Canadian, Scandinavian or the British systems.

Therefore, while in principle, I support the concept of a Commissioner for Administration for Hong Kong, I believe that it is imperative for Government to prepare a detailed report on questions such as how such an institution would effectively operate within the present administrative structure, what would the additional operating costs be, whether complaints should be channelled through OMELCO Members, Urban Council and Regional Council councillors, and district boards members and what would the long-term political implications be within Hong Kong's evolving system of representative government. For example, Sir, we know that in the United Kingdom there are over 600 Members of parliament, but here in this Council, there are only 56 of us. Would 56 Legislative Council Members be able to keep the Commissioner for Administration sufficiently occupied if all complaints were referred to him through Legislative Council Members? In the United Kingdom's local authorities, they have their own system of Commissioner for Administration. What would we have to do in a place like Hong Kong which is a small territory and where we have a population of only 5.5 million? And this is the point I would like to make that we must devise our own system.

Therefore, I believe that it is necessary for a detailed report to be prepared for public information before a final decision should be taken on the setting up of a Commissioner for Administration. The important point, Sir, is that, if it is to set up, it has to work effectively and it must gain the support of the community.

I support the motion.

MR. CHUNG (in Cantonese): Sir, based on the contents of the Consultative Document: Redress of Grievances, I feel that the feasibility of the proposal to establish a Commissioner for Administration is open to question.

Firstly, we should consider the fact that in the eyes of the general public, a Commissioner for Administration must play a role similar to that of 'Justice BAO' who is a legendary figure for offering redress to people's grievances. This is in fact not the case. The consultative document states that the proposed Commissioner for Administration can only handle 'complaints against maladministration or dereliction of duty'; he is not empowered to deal with cases

concerning government policies and decisions, court judgment, personnel matters in the Civil Service, transactions between Government and the private sector as well as matters of public interest. How can such a Commissioner for Administration be cognitive and deal squarely with issues that people are most concerned with and for which people have a real need to seek redress?

We must bear in mind that in the course of development of representative government, if the Government is to establish a redress system which has an empty title but no real power, will it not in the long run let people down in their requests for redress and, as a result, make them even more discontented? Apparently, this is a possible consequence. The gravity of the problem will eventually create a great resistance to Government's plan for the development of representative government. Moreover, such resistance might also be detrimental to political stability during the transitional period. Therefore, if the proposed Commissioner for Administration is not vested with the necessary powers to cope with practical requirements, its establishment could be counterproductive.

I think that only when existing channels for redress are proved to be inadequate or ineffective should we need to contemplate establishing a Commissioner for Administration or indeed other forms of redress systems which are more in keeping with our practical needs.

We all know that there are already various redress avenues in Hong Kong which provide different kinds of services to the public. This simply amplifies the fact that Hong Kong is a society ruled by law. People can lodge their complaints in public through the mass media, petition the Government House directly, or even bring a case to court. There has never been any incident in which a complaint is unlawfully suppressed.

The areas of complaints covered by the consultative document mainly refer to those involving maladministration or dereliction of duty on the part of the Government. However, the proposal itself gives rise to two questions. Firstly, what is meant by 'maladministration or dereliction of duty'? How will the two be defined? It will always be a matter of subjective judgment and everyone will stick to his own argument. Secondly, even if the work carried out by an officer is in accordance with government policy or within his jurisdiction, could it still be regarded as maladministration or dereliction of duty? In such cases, the proposed Commissioner for Administration has no authority to interfere with the policy concerned. Obviously, it will be impossible for a Commissioner for Administration with limited powers to handle such complaints efficiently. As a larger number and a wider range of complaints can be handled under the existing redress system, the plan of setting up a Commissioner for Administration should be further considered.

I am sure that channels of redress are already available in Hong Kong. None the less, better handling of complaints could certainly be achieved by introducing legislation based on the existing systems or by enforcing the law properly

and paying more attention to public opinion. Judging from the main theme of the consultative document, I would prefer an appropriate expansion of the jurisdiction of the OMELCO redress system than the setting up of a Commissioner for Administration.

As far as the Legislative Council is concerned, we are responsible for introducing legislation, monitoring the Government's performance and serving the best interest of our people. The public have for long been welcome to lodge their complaints with OMELCO. Therefore, in an attempt to improve the existing redress system, it is only natural to expand the jurisdiction of OMELCO in respect of the handling of complaints.

The Commissioner for Administration should not be regarded as an adjunct to OMELCO, otherwise it will result in unnecessary duplication of work or a waste of resources.

At present, under an agreement between OMELCO and the Government, the former can make direct contact with responsible officers and gain access to relevant papers in the course of handling complaints. On the basis of this arrangement, the Chief Assistant Secretary (Complaints) of OMELCO may be delegated an appropriate authority to function as a statutory 'Commissioner for Complaints'. The incumbent will be charged with the responsibility of handling public complaints against the Civil Service and will be directly responsible to OMELCO under the existing structure.

Upon the request of the 'Commissioner for Complaints', Duty Roster Members will examine a case to see if an ad hoc group should be set up to handle the case reports submitted by the Chief Assistant Secretary (Complaints) or the 'Commissioner for Complaints'.

The 'Commissioner for Complaints' may, either by himself or through the ad hoc group, seek to settle the complaint by referring it to the responsible government officials under an established procedure. As a further step, legislative amendments could be introduced to provide a solution for the problem concerned.

We believe that a strengthened OMELCO Complaints Division should be more effective than the proposed Commissioner for Administration in regard to the handling of complaints. None the less, it appears that the proposals contained in the consultative document are only preliminary. I hoped that the Government will make a wise decision in accordance with public interest and public opinion.

5.00 pm

HIS EXCELLENCY THE PRESIDENT: I think at this point Members might like a short break.

5.20 pm

HIS EXCELLENCY THE PRESIDENT: Council will resume.

MR. CLYDESDALE: Sir, yet again it falls to me to thank you for that short break. In commenting on the Government's Consultative Document on Redress of Grievances, I have taken into account the response from specialist committees in the organisation which I represent in this Council. These committees studied the issue at length and as a result a submission was made to the Government some time ago.

I have also read carefully the comments of a number of interested bodies, mostly in the form of submission to the Government. I have also considered the contents of the consultative document in the light of my personal experience of government complaints procedures over a number of years.

I do not believe that existing channels for the redress of grievances are adequate nor that they enjoy wide public confidence. Complaints about failures in government administration may begin at a very low level and by people who have no idea how to go about securing redress. Government officials have a vested interest in turning aside possibly legitimate complaints where the efficiency of their senior officers may be concerned or, more importantly, where the efficiency of their colleagues may be in question. Officers of one department may be reluctant to properly refer complaints about another department. Sometimes, weight of normal work may cause government officials to turn away, or inadequately deal with, complaints from the general public. Inherently, one does not like to receive complaints against oneself, one's colleagues or one's organisation.

I am sure we are all well aware of the prime example of failure of the complaints system. Documents which I have seen indicating that senior government officers were well aware of very substantial public distrust of the Government engendered through many years of public sector corruption, and in effect pleading for discussion and effective action to contain this menace were prepared as long ago as 1967. Others in the private sector at that time were also urging fundamental changes in the procedures for dealing with government corruption. ICAC however was not established until 1974 and only then after a public scandal.

We must never forget this lesson nor the very great improvement that has occurred through genuine and honest effort to set up an organisation which the general public, at all levels, can trust and to which complaints can be made with confidence. What would have been the position today if ICAC had not been set up? It is a sobering thought.

I therefore support the proposal to set up an office of a Commissioner for Administration to handle sufficiently serious complaints. This office should be independent of the Government and should report to and be answerable to

Legislative Council which should be given the responsibility of referring all cases to be considered by the commissioner. In cases where complaints are being made against Legislative Council itself or its individual Members, the President of the Council should have the power to consider sending them forward to the commissioner.

There should be an established right for Legislative Council to authorise the commissioner to make public such details of valid complaints as may seem necessary in the public interest. The more information that can be published, the better, since ignorance of the facts and lack of knowledge will encourage distrust of the system by the general public.

It is not necessary today to go into any detail since we are dealing with policy and principles rather than procedures. If it is agreed that an office of Commissioner for Administration should be set up, it goes without saying that such an office should be given the resources to do the job from the outset, not only in financial terms but also in regard to the quality of the commissioner and his staff and the legal and administrative powers given to him.

Whilst I support the establishment of the new office, I also believe that all existing channels of complaint should be most carefully considered with a view to improvement where possible. Many thousands of complaints are made each year which can be, and are, properly dealt with at departmental levels, or through OMELCO, or, if sufficiently serious, through the courts. These, of course, will continue and the system for dealing with them should continue to come under study.

Finally, it would be necessary to define carefully the boundaries of responsibility for the commissioner and his right to require information and assistance from government departments and officials. The Government itself will have to be defined since there are many organisations fully or largely supported by the Government.

The principal motive in setting up an office of Commissioner for Administration must be to provide an avenue of complaint for members of the public who are aggrieved and who have found no means of obtaining redress. Ours is an open society and such an office will help keep it so.

MR. LAI (in Cantonese): Sir, the concept of ombudsman, or the Commissioner for Administration, is not a new one, as we all know. Back in 1969, the idea was given a thorough examination, but nothing came of the exercise. The Administration once again published a consultative document last August called 'Redress of Grievances' through which the public's opinions on the present system for redress as well as the improvements thereon were sought. During the past few months, many divergent thoughts on the issue have been expressed. I, for one, am of the belief that the setting up of an office of the Commissioner for Administration will be a valuable addition to the existing channels. My reasons for this conclusion are as follows:

1. All existing channels for redress of grievances except those official bodies, are structures set up primarily for other purposes. The Office of the Members of the Executive and Legislative Councils, the Urban and Regional Councils, district boards were not set up to handle complaints. It is not their primary function. The Legislative Council is the organ whereby the operation of the Government is checked and monitored, and reasonable legislation get their legitimate and timely passage; the Executive Council is the government policy making mechanism; the Urban Council and Regional Council take care of municipal affairs and recreational matters; district boards are consultative bodies. While their roles in the political process and handling complaints are not mutually exclusive, they are first and foremost indispensable parts of the political structure and not specially established to handle complaints. I do not want to leave a misconception that I shun the responsibility of taking up people's complaints. On the contrary, I am willing to and have handled many cases. Nevertheless, I believe that the main function for a councillor to perform is not handling complaints. Moreover, it takes knowledge, experience and, to a certain extent, savvy, to adequately manage the redress process, which may not be accomplished by members of various political bodies that are set up for other purposes to an equal standard. Therefore, an independent and professional organ for the task has its attractions. In a way, it would release councillors and district board members from the chore of handling complaints and leave them with more time to concentrate themselves to their various political tasks which affect the community at large.
2. The present channels for redress leave people with an impression that they are scattered and confusing. Some of the channels are of course established to take care of certain specific matters, like the Police Complaints Committee, Independent Commission Against Corruption. However there are no hard and fast rules regarding the specific nature of complaints to be taken up by the other channels. People might feel at a loss as to where to go for their complaints. If there were a unified channel for people to approach, and from it the matter would be redirected to the appropriate departments for action or rectification, it would undoubtedly simplify the redress process and make it more accessible to the public.
3. The suspicion that government officials tend to favour their own still exists among a lot of people. They think this is a natural course of event. Since there are appointed councillors and district board members, all levels of the political structure are seen as indistinguishable and integral parts of the government machine, and therefore there is no check and balance anywhere. I do not necessarily endorse this line of thinking. However, the rise of this sentiment is not without reasons. Justice must not only be done, it must also seem to be done. So long as people believe that their grievances will not be redressed fairly and justly, they may

become complacent and defeatist, which do not further the cause of social justice. We must dispell any doubts and fears of the independence and justice of these channels for redress. If an independent office of the Commissioner for Administration, which like the ICAC would not be a part of the government mechanism, were set up, people would have more trust and confidence in the fairness with which it would handle complaints.

4. After the change of government in 1997, the number of available channels for redress of grievance will be cut down. Complainants cannot take their cases to the Secretary of State or the Queen. The possibility of going to the Central Government will be predicated upon the relationship between the Special Administrative Region Government and the Central Government stipulated in the Basic Law the drafting of which has not been completed yet. Even if the future mini-constitution of the SAR Government provides for such an avenue, if the system of redressing grievances is not adequate and comprehensive, people will bound to make frequent representations to bodies outside the SAR Government. The effectiveness and independence of the SAR Government will be put in doubt. And if the SAR Government is frequently interfered with by the Central Government, people will get a feeling that it is no more than just another lame duck without its autonomy and authority. The establishment of an office of the Commissioner for Administration would strengthen the redress process inside our own political system and the likelihood of making appeals to the Central Government would accordingly be reduced. In addition, the bureaucracy in China does not enjoy a particularly good reputation, the effectiveness and feasibility of going to the Central Government are very much a questionable proposition.
5. Looking from a wider perspective, our political structure is gradually being professionalised and rationalised. The political process is also progressively opened up for public participation and public scrutiny. The setting up of a Commissioner for Administration would demonstrate the determination of the Government to liberalise the political process, and would go a long way in enhancing the impartial, independent image of the Administration. This would be consistent with the overall development in the Territory and would not be contradictory to the philosophy of open government.

For these reasons, I believe that a Commissioner for Administration would make positive contributions to the process of government and the idea should be pursued through fruition.

Since the consultative document was not meant to be a detailed and exhaustive account of the office of the Commissioner for Administration, and there are many aspects of this concept still to be thoroughly thought out, I wish to make certain observations regarding the provision of the power of and the candidate for the post.

The first and most fundamental understanding is that the commissioner should not be involved in the process of policy making and should not even comment on the appropriateness of government policies. He would be concerned with the administrative proceedings in the implementation of established policies, and the possible misdeeds and abuse of power committed in the course thereof. The role of monitoring policy making is the domain of the Legislative Council.

Another important feature to be considered is the appointment of the candidate for the post. I am of the opinion that he should be appointed by and accountable to the President of the Legislative Council. Even though the Governor is currently the head of both the legislative and the executive, the Commissioner for Administration would continue his function even after 1977 when the head of the executive might not be the head of the legislative anymore. Legislative Council is the highest monitoring body of the operation of government, and it is only imperative that the Commissioner for Administration should report to the head of the legislative. While the Governor holds the dual role of the head of the executive and the legislature, the Commissioner for Administration would only be responsible for the investigation of possible maladministration of policies and would not infringe on the process of policy making. I feel quite confident that the Governor would not shield any official from his responsibility.

The power of the Commissioner for Administration are not spelt out clearly in the consultative document. It is stated that 'He would be able to call for oral or written evidence; and could compel the production of documents, although the release of highly classified material would be subject to the criterion of the public interest.' What worries me most is what is the criterion of the public interest and who decides it? If the officials involved could hide behind this loosely phrased provision, they could easily and effectively bog down the investigation by appealing to this rule and refuse to release relevant information that might be detrimental to them and not to the public interest. The question of his power is a key determination of the efficacy of the Commissioner for Administration. Of course, he should not possess the privilege of reviewing any and all documents and interviewing every personnel he wishes; nevertheless, the criterion of the public interest is too random a qualification for deciding the limits of his investigative power. Therefore, I urge the Government to state clearly the boundaries of his power if it decides to set up such an office; for instance only those involving military information and confidential documents of the Executive Council would be out of his reach, and he could compel all other evidence and documents. If the British system could be used as a yardstick, it would be noteworthy that only the Cabinet and military documents are not privy to the ombudsman.

Since one of the main purposes of establishing an office of the Commissioner for Administration is to enhance the impartial image of the redress system in the eyes of the public, I am of the conviction that he should be someone that enjoys

a reputation of trustworthiness and independence. Undoubtedly, it will be helpful if he could also be familiar with the intricate workings of the government machinery. But I consider it non-essential, for he would be supported by a team of people who would be experienced in handling complaints and knowledgeable of the network of government. To ensure that he could enjoy an independent reputation, he should be given a relatively long term of office, say five years. And his dismissal procedure should be comparable to those of High Court judges.

In conclusion, I believe that a Commissioner for Administration would provide a unified, comprehensive channel for redress that is not available today. He could also alleviate the work load of politicians at all levels. A professional and specially tasked mechanism for redress would affirm to the public the conviction of liberalising and rationalising the process of government which would in turn inspire public's confidence in the redress system and the Government's commitment to the development of an open accountable government.

The details of the post of the Commissioner for Administration require much more careful drafting, I hold that he should be appointed by and report to the President of the Legislative Council and must be a person of high personal integrity and impeccable reputation; a High Court judge might be an appropriate candidate in this regard.

Sir, I wish to place on record that I am in favour of the establishment of the Commissioner for Administration with full investigative power to address the needs of his job.

MR. MARTIN LEE (in Cantonese): Sir, when I stood for the Legislative Council Election in 1985, I had already proposed in my platform the establishment of a Commissioner for Administration. After one and a half years, I am still unwavering in my conviction, because I find that the public do not have any confidence at all in the existing redress system. When I was handling complaints of the public, some complainants made it clear that they did not want their complaints to be referred to the Complaints Division of OMELCO. I believe that my colleagues in this Council would have similar experience. It reflects the public's reservation about the present redress system.

During the consultation period, the Legislative Council ad hoc group received about 50 written representations from individuals and groups. Although the views received are limited in number, they are rich in content; just as Mr. SCOTT, the former Deputy Chief Secretary, said: 'The views expressed were useful and balanced.' These views clearly indicate that most of them support the establishment of a Commissioner for Administration. Moreover, during the consultation period, more than 200 members of 17 district boards have expressed their views on the existing redress system and the establishment of a Commissioner for Administration. The majority of them favour the creation of an independent authority with real power to supplement the

inadequacies of the existing system. Members of the Urban Council have also vigorously shown support for a Commissioner for Administration system.

From public opinion polls and experiences in foreign countries, it can be clearly seen that an effective redress system must possess a high degree of independence, an image of fairness, substantive powers and high efficiency in work before it can have the support of the general public. The work of the Commissioner for Administration as described in the consultative document definitely cannot meet the above requirements.

First, the consultative document does not indicate in what way the Commissioner for Administration will receive complaints. Can members of the public directly approach the Commissioner for Administration? Must the Commissioner for Administration take up complaints from the public through a referral system such as the referral procedure adopted by Legislative Councillors? Complicated procedures will only discourage the public, and the setting up of a referral system will likewise make the public doubt whether it is used to stop the Commissioner for Administration from handling complaints of a sensitive nature. If the sincerity of the Government in establishing the Commissioner for Administration is open to doubt, public confidence in it will be affected as a result.

Secondly, the terms of reference of the Commissioner for Administration had not been clearly defined in the consultative document. The main duty of the Commissioner for Administration is to investigate the faults in administration, but matters which involve 'dominant consideration of public interest' would be excluded from his power of investigation. But then who should be responsible for determining what are 'dominant considerations of public interest'? If it be determined by the government department under investigation, it would certainly erect a shield to protect itself. As remarked by Mr. W. M. SULKE, the Urban Councillor, 'I really cannot conceive of any situation in the Hong Kong context where consideration of the public interest might prevent a thorough going investigation of complaints of injustice'. Who should then be responsible for handling this type of complaints if the Commissioner for Administration is not empowered to do so? Moreover, as pointed out by the consultative document, the Commissioner for Administration would not be empowered to examine a decision in the exercise of discretionary powers, unless it appeared to him that the decision had been affected by a fault in administration. In other words, the Commissioner for Administration is not entitled to re-examine if a decision made is fair or equitable; he cannot do anything as long as there is no prima facie evidence to show that there are faults in administration despite the gross unfairness which resulted from the decision made. It is generally known that public grievances resulting from the implementation of government policies are not confined to maladministration. What the general public always complain about is the unfair treatment they have received in the course of the implementation of government policies. If the Commissioner for Administration is not empowered to handle these complaints, his role will be

greatly reduced. As a consequence, this restriction will run counter to the spirit behind the creation of a Commissioner for Administration.

Furthermore, the consultative document has also made reference to the powers of the Commissioner for Administration. To quote from paragraph 24: 'He would be able to call for oral or written evidence; and could compel the production of documents, although the release of highly classified material would be subject to the criterion of the public interest'. This raises the following questions:—

- (1) Who should determine under what circumstances certain highly classified documents should not be released to the Commissioner for Administration because of public interest?
- (2) If it is to be determined by government departments, is the decision final? Can the Commissioner for Administration raise objections against the Government's decision through other channels, for example, filing an application in the courts for a ruling?

Broadly speaking, the preliminary ideas for a Commissioner for Administration system contained in the consultative document are based on the United Kingdom model. 'Parliamentary Commissioner for Administration'. But that system is not functioning effectively there. When the ombudsman was first appointed, it was originally estimated that he would deal with six to seven thousand complaints a year. But in fact, the actual number of cases dealt with was far less than estimated. For instance, the number of complaints in 1984 was only 837. Hence, when the Government further examines the details for setting up a Commissioner for Administration, it should not confine its study to the British model. As far as possible it should study in depth similar systems in other countries, in particular, the ombudsman system in Sweden and Canada so as to identify a mode best suited to Hong Kong.

Sir, some may worry that the setting up of a Commissioner for Administration may affect the morale of the Civil Service. But all of us should realise that any investigation conducted by the Commissioner for Administration on the questionable conduct of individual government officials, leading to the appropriate penalties, would only in reality enhance the quality and reputation of the Civil Service as a whole. On the other hand, some government departments or officials may be frequently subjected to unreasonable complaints, as a result of which their public image will suffer. Under such circumstances, the Commissioner for Administration could point out to the public that such complaints are unreasonable and not supported by evidence, and the reputation of such government departments and officials will thus be safeguarded. Therefore, the setting up of a Commissioner for Administration would improve the quality, morale and conduct of the Civil Service as a whole.

Sir, if our Government is a far-sighted one, it should be able to see that the establishment of a Commissioner for Administration is conducive to the enhancement of its reputation. The logic is fairly simple. When the public

cannot find adequate channels which they have confidence in to lodge complaints, they would think the whole Government is conspiring to suppress them. On the contrary, if there exists a fair and independent framework with actual power to deal with complaints, the public would naturally feel that the Government is sincere in receiving complaints and giving remedies. This would not only enhance the public's faith in our Government, but also secure social stability and unity.

This system has worked successfully in other parts of the world. I believe Hong Kong is no exception. The Chief Secretary, Mr. David FORD, had pointed out in the Legislative Council sitting on 1 April, 'It is amply clear that the community has developed a greater awareness of its own rights on the one hand, and the obligations of the Government towards its people on the other. ...Greater accountability of government actions has become inevitable and this trend can only intensify in the years to come'. I entirely agree with these words, and earnestly believe that the setting up of a Commissioner for Administration is in keeping with this trend and is something which our Government must do.

Sir, the foregoing are my remarks on the subject.

MR. LEE YU-TAI (in Cantonese): Sir, whether the Hong Kong Government is a 'lame duck' and how to maintain its determination to administer the territory in the coming ten years are matters of public concern as well as an essential task of the Government itself. To secure public confidence, the Government should, in the first place, be sincere in improving the efficiency of the Administration and to face realities by rectifying its mistakes. No matter how efficient a government may be, it will inevitably make mistakes at times. A properly-run government is not a government free from mistakes but one which receives complaints through adequate channels and one which is willing to rectify mistakes and make improvements. Therefore, it is only by reinforcing the existing channels of complaint and establishing a Commissioner for Administration before the confidence of the public could be enhanced and the Government's image of a 'lame duck' be eliminated.

Sir, in the Governor's policy address to this Council in October 1985, promises were made on the enhancement of the avenues of complaint. In December 1985, on behalf of the Administration, the Chief Secretary responded to my speech and said that a consultative document would be issued within a few weeks. However, the issue had been repeatedly delayed and the Green Paper on Redress of Grievances was not published until August 1986. The document is brief and non-committal. The information contained therein was found to be insufficient when the issue was raised for discussion at district board meetings. Many people have doubts on the sincerity of the original promise (as stated in the 1985 policy address). They also question whether the Government would maintain or loosen its determination to govern Hong Kong. These questions must be dealt with in a practical manner and concrete measures must be taken to relieve the public of their anxieties.

How should we tackle the issue of channelling complaints? There are three options, viz. 1. to maintain the existing channels without any alteration; 2. to strengthen and improve the existing channels; and 3. to establish additional new channels, including the creation of a Commissioner for Administration. The second and the third options can be implemented side by side because they are not mutually exclusive. Of the 17 district boards which have discussed this issue, 10 endorsed the addition of new channels, three wanted improvement to the existing system while the remaining four could not reach a majority view. Most (about 80 per cent) of the members of the public, community and local organisations which have expressed views on the issue indicate their preference for the third option, that is the creation of a Commissioner for Administration. The public have clearly and ardently indicated their wishes. The Government, therefore, must cater to public opinion and honour its words.

At present, a Complaints Unit manned by full-time staff is operating under the OMELCO. These staff rely on the power of the councillors to handle complaints. The proposed Commissioner for Administration, however, is vested with his own powers and is working full-time. Therefore, he can concentrate on handling complaints. But since the councillors have their own profession, the public may feel that there is a lack of objectivity in some of the cases being handled by them. For example, when councillors of the education field are handling complaints about corporal punishment by teachers, or when a councillor who is the director of a certain public utilities company is handling a complaint on fare increase. Thus, in terms of objectivity, it seems that the Commissioner for Administration would be in a better position to handle complaints. As for the division of responsibilities, it would be appropriate for the Commissioner for Administration to handle allegations concerning maladministration and OMELCO would be responsible for receiving and referring complaints, so as to facilitate co-ordination.

Sir, people would not listen to pleasant but empty words. Should the Government wish to rid itself of the 'lame-duck' image, it must rise to its feet and let action speak for itself.

Sir, I am in support of the setting up of a Commissioner for Administration.

MR. LIU (in Cantonese): Sir, last year the Government published a Consultative Document on 'Redress of Grievances' and invited public comments on the existing redress systems. Among the considerations is the appointment of a Commissioner for Administration who will handle complaints against the maladministration of government departments and dereliction of duty of government officers.

In fact, as early as 1965, the proposal to appoint an ombudsman or a Commissioner for Administration was put forth for the first time. Though the proposal was not accepted by the Government, our redress systems have, in the past 10 years, improved and expanded. Existing channels include the

OMELCO, the 'meeting-the-public' sessions of the Urban Council and district boards. On the other hand, the Police Complaints Committee is a recent accomplishment of the Administration in improving the existing redress system and the committee can now deal with complaints against the police more efficiently and expeditiously.

Sir, we are happy to see that the Government is trying hard to improve the redress systems of Hong Kong. Perhaps some people may think that there are already many avenues, but I would like to ask, does the large number of channels necessarily mean effectiveness? I think if members of the public are satisfied with the existing channels, they will not persistently insist on appointing a Commissioner for Administration. In fact, such a response clearly indicates that the present redress system has room for improvement.

Sir, the consultative document proposes three choices: (1) to keep the present redress system unchanged; (2) to improve existing channels; (3) to appoint a Commissioner for Administration.

As the public generally consider it necessary to strengthen our present redress systems, I personally think that apart from improving the present channels, the idea of creating a Commissioner for Administration should be considered.

Some people suggest that the Complaints Division of the OMELCO should be strengthened, without having to appoint a Commissioner for Administration. As we all know, the OMELCO has really achieved good results in handling public complaints. It is worth noting, however, that each year the OMELCO handles 1 000 cases about government maladministration and injustice which constitute around 40 per cent of the present workload of its Complaints Division. If a Commissioner for Administration is appointed, Members may devote more attention to social and policy affairs.

Moreover, in 1985, ICAC received 1 483 complaints concerning government departments and other public bodies which are unrelated to corruption. I think that if these cases are handled by the Commissioner for Administration, the results would be better.

Lastly, since the Commissioner for Administration is to be given independent powers and a unique position and his work will not be subject to pressure of any kind, he should be able to handle complaints against social injustice more effectively and build up the public's confidence.

Some people may perhaps worry that the attraction of other avenues of complaint may be reduced after the appointment of a Commissioner for Administration. In fact, if the Government defines clearly the jurisdiction of the commissioner and the particular cases to be specifically handled by him, then duplication of work between the commissioner and other channels may be avoided.

Based on the above reasons, I believe that the creation of a Commissioner for Administration will help to encourage the public to lodge complaints and confirm the Government's determination to further uphold social justice.

MR. SOHMEN: Sir, the 'Consultative Document: Redress of Grievances' of August 1986 has been much maligned as a shabby compromise, a document full of holes, a delaying tactic, and as the hypocritical attempt by Government to retain the existing channels for complaints against the Civil Service. It has not been the most popular of Green Papers issued by the Administration for public comment, as shown by the relative paucity of responses—only 50 written submissions were received and media reports were not extensive and mainly confined to criticism about the lack of guidance on details provided in the document.

Despite these shortcomings, a majority of those who did respond nevertheless expressed themselves to be in favour of the creation of a so-called 'Ombudsman', and many commentators produced useful suggestions on his role. The former Deputy Chief Secretary assured the ad hoc group that the Administration had a completely open mind on the question as to whether there ought to be no change, or whether there should be improvements and additions to the existing systems, or a replacement of them by something completely new. He said that reaction on the point of principle would determine whether studies into the detailed arrangements were to be further pursued. The document could have made this clearer, to avoid the general misjudgment of its objectives and contents. It is also difficult to assess as complex an issue as the introduction of an ombudsman without having more than the broadest statements on jurisdiction, functions, structure and responsibilities available. This debate should get us somewhat further away from the chicken-and-egg situation the public and the ad hoc group have been facing up to now.

Sir, I must confess that as someone who prefers efficiency and economy in both public and private affairs, my own first reaction to the proposals was a belief that the present channels could be strengthened, in preference to the setting up of a new bureaucracy additional to and possibly duplicating in part the existing facilities for redress. On further reflection, and after studying the public responses, I am now however also in favour of the creation of the office of an ombudsman in Hong Kong, and offer the following observations and suggestions for consideration:

- (1) The ombudsman might be called the 'Commissioner (or 'Independent' Commissioner) for Investigations', rather than 'for Administration'. He must be a person with an outstanding personal record of integrity, use of authority and leadership, without having been, or latterly having been a government servant. He or she ought to be appointed by the Governor on the recommendation of a committee of the Legislative Council of at least 10 members elected by the non-government Members from their midst ('The Legislative Council Committee'). The term of office of the ombudsman should be no less than five years and his removal from office ought to be clearly circumscribed.

- (2) The ombudsman must be independent, and accountable only to the Legislative Council, to which an annual report of his activities should be submitted (tabled by the Chief Secretary with the Chief Secretary's own observations). The office of the ombudsman should be funded from general revenue but be administered separately from other government departments. Staff should be selected and employed from outside the Civil Service. Remuneration and terms of employment should be subject to approval by the mentioned Legislative Council Committee.
- (3) The ombudsman would act under the powers conferred upon him by statute as the intermediary between the people and all executive branches of the Government. His office must have full investigatory powers, be able to compel the production of all documents from government departments, executive organs, and public bodies, and be able to call for oral and written evidence under subpoena powers. The ombudsman would be concerned principally with maladministration and the alleged misuse or abuse of governmental authority; but not with policy matters or those clearly falling within the ambit of the courts. He need not, however, reject per se the exercise of his powers in cases which could be the subject of judicial review. Exemptions from his investigatory powers must be carefully defined in the statute but not be drawn too widely, and only include matters such as of a defence or internal security nature, employer-employee relationships, or similar private contractual arrangements, or sub-judice matters.
- (4) Findings of the ombudsman would be considered final, including the findings as to his own jurisdiction, and not in themselves be subject to administrative or judicial review or appeal or petition procedures, except where the exercise of the powers of the office of the commissioner itself is being challenged in the courts.
- (5) Contrary to the views of some of my colleagues and the United Kingdom practice, I believe that access to the ombudsman from the public must be direct, that is, be open to every resident of Hong Kong without the need for approval by any authority, by Members of the Legislative Council, or by similar persons or bodies. The Urban and Regional Councils and the district boards, as well as individual members of these bodies, would have a similar right of direct access, and in turn through their executive organs be the addressees of investigations by the ombudsman as well.
- (6) The procedural systems applied in the office of the ombudsman should be designed on the principles of privacy, informality, and the speedy dispatch of business. Any preliminary or final findings of the ombudsman sustaining the complaint should be brought to the immediate attention of the concerned department or government officer with suggestions for remedial action, appropriately copied to the complainant. Remedial actions and their effects should be monitored by the ombudsman's office.
- (7) The existing complaints channels—such as the OMELCO Complaints Division, Urban Council Wards, the Police Complaints Committee, and

the complaints-handling functions of both district boards and district offices—could be abolished on the establishment of the ombudsman's office. The right of formal appeal to the Governor available under certain Ordinances should be reviewed, but they, together with petitions to the Governor and to the Secretary of State and Her Majesty The Queen ought generally to be retained. It must, however, remain possible for members of the public to bring complaints of a policy nature to the attention of Members of the Legislative Council via the avenues of OMELCO panels or Legislative Council ad hoc groups. The ICAC should be retained to deal with the offences for which it has jurisdiction; appropriate inter-agency referral procedures should be established with it and other institutions or organs as necessary to avoid jurisdictional disputes, or investigatory delays.

Sir, the foregoing comments only cover a few of the difficult matters which will have to be considered carefully if the office of an ombudsman is to be successfully established, and is to operate to the public's satisfaction. While only an adjunct to the overall efforts for constitutional reform, the establishment of an ombudsman's office will be seen as a significant strengthening of open government in Hong Kong. It could become more effective and efficient than our present redress system and reduce the danger of politicisation of the complaints machinery. Although we need to be conscious of the powers which one person or office—and indeed one somewhat outside the structure of government—will be able to wield, I believe these can be made acceptable and controllable. Constant public scrutiny, and comment on the activities of the office of the ombudsman, and the results achieved by him in the Legislative Council, will likely provide counterweights to any possible risk of excesses in the ombudsman's powers.

Confidence by the citizens in responsible and responsive authority must be a desirable objective for any government, and if an ombudsman is a possible method to achieve it, we must be willing to make the effort. To complain is part of the human condition: it is a wise government which can channel complaints into constructive achievement.

Sir, I support the motion.

MRS. TAM: Sir, Hong Kong is on the threshold of political changes. To ensure that we pass through the transitional period smoothly, it is imperative to maintain the confidence of our residents in the local Government. A sound redress system would not only safeguard the rights of the citizens, but also enhance public confidence and trust in the Government. To study how to further develop our redress system in this new era is an essential and urgent matter.

Sir, although there are quite a number of avenues of complaints now open to the public in Hong Kong, they are subject to certain limitations. Now, as far

as the formulation and implementation of general government policies are concerned, it is true that the district boards, the Urban Council, the Regional Council and the OMELCO can reflect views and grievances of the public to the authorities concerned. However, with regard to those concerning maladministration in government departments, the above organisations may not be able to deal effectively with them because they do not possess adequate investigatory power. Moreover, as Members of the Legislative Council have increasingly identified themselves with their functional constituencies and professional groups and are responsible to these bodies, conflict of interests may arise if they are involved in the investigation of maladministration of certain government departments. Hence, to further develop our complaint system, it is not good enough to merely improving the existing channels. We must create an independent and impartial redress authority invested with adequate power to handle public complaints about maladministration of government departments. The proposed 'Commissioner for Administration' Sir, is an acceptable solution.

Although the creation of a Commissioner for Administration has been listed as one of the options in the recently released Consultative Document on the Redress of Grievances, the document has made no detailed elaborations on the functions and power of the commissioner. Now, in my opinion, the Administration should consider the following when the Commissioner for Administration is to be created:—

- (1) With regard to the creation process, the Commissioner for Administration could be appointed by the Governor. The officer however, should maintain a high degree of independence and neutrality. The commissioner should operate independently from any government establishment. Also his tenure of office should be fixed for a relatively long period of time. Once appointed, he should not be dismissed at will. The officer should have full power to employ the staff he needs and all expenditure should be defrayed by a separate fund. The status and power of the commissioner of course must be conferred and safeguarded by status.
- (2) The main function of the Commissioner for Administration is to handle public complaints concerning maladministrations of government departments. He should not replace the existing redress avenues. On the contrary, the work of the new and old complaint channels should be complementary. After the authority of the Commissioner for Administration has been set up, the OMELCO should continue to handle public complaints concerning the formulation and implementation of general government policies.
- (3) There should be a good communication between the 'Commissioner for Administration' and the public, since the redress cases handled by the commissioner are of vital importance to the persons concerned, the public should be allowed to lodge complaint directly to the commissioner other than through the OMELCO in order to safeguard public interests and to encourage people to seek redress.

- (4) The Commissioner for Administration should be conferred with the following power in the execution of their duties. Firstly, on receiving a redress case, the commissioner should have the right to decide on the ways to handle it. Secondly, he should be given investigatory power to enable him to call for and have access to government information and document, summon government officials to make statements and to enter government departments for inspection. At the same time, the Commissioner for Administration should submit reports to the Governor to make recommendations on how to improve the work of the government departments concerned as well as to recommend disciplinary actions against the officers concerned. He should also submit working reports to the Legislative Council for scrutiny at regular intervals.

Sir, in conclusion, I give my support to the need for further developing the redress system in Hong Kong and I think the setting up of a 'Commissioner for Administration' is an essential and necessary measure which should be looked into as soon as possible.

MR. ANDREW WONG (in Cantonese): Sir, allow me, first of all, to say that I am in support of the setting up of the Commissioner for Administration. Actually at the debate earlier, I have already stated this fact and I am still persistent in this particular opinion. I do not intend to go into detail about this particular matter, but if you are interested, please refer to an article 'Does Hong Kong need an ombudsman?' in the Ming Pao Monthly by a colleague of mine, Dr. KWAN, in the November issue of 1980 on the same topic. My views are also similar to those expressed today by my other hon. Colleagues.

I do not intend to go into how the Commissioner for Administration should function. Perhaps the brief outline in the consultative paper is not detailed enough, but I can say that I am broadly in agreement with the proposals. Although there are colleagues who feel that the Commissioner for Administration has been given too small a portfolio and that his power is limited, and this leaves much to be desired, I still feel that we could perhaps implement the system first and we must not work for perfection from the very start. Let us try to have something started from the beginning. I would like to take this opportunity to set correct some of the records concerning public misimpressions about the functions of the Commissioner for Administration. I hope that I can set the record correct. In progressing towards democratisation, people might have a misunderstanding about the concept of the Commissioner for Administration. There are some people who are for the setting up of a Commissioner for Administration because they are of the opinion that the Commissioner for Administration could help Hong Kong political system become more democratic. There are others who oppose to the idea of the setting up of a Commissioner for Administration. They feel that if a political system is progressing towards democracy, there is no need for a Commissioner for Administration. But actually the setting up of a Commissioner for Adminis-

tration will not change the colonial status of Hong Kong, nor will it change the democratic or semi-democratic system. Whether we have a democratic or semi-democratic system, we still need to have a Commissioner for Administration. Democratic countries like Sweden and Britain also have a Commissioner for Administration.

There is also a misunderstanding about the setting up of the office of the Commissioner for Administration. There are people who feel that the Commissioner for Administration is a super-government or a super-body which is capable of over-ruling the work of the Government or the policy decision of the Government. So people are either for or against the Commissioner for Administration based on this misunderstanding. Actually the Commissioner for Administration cannot have any say about government policies nor can it monitor government policies. Government policies are matters of politics and monitoring such policies are also political matters. All these matters will have to be dealt with through the legislative body and the executive body which are responsible for political decisions. The Commissioner for Administration deals with justice. If, in the administration of justice or in the implementation of political measures, wrong decisions are made or if Government's maladministration has adverse effects on a member of the public, and if the member of the public is unwilling to make use of the courts to get redress, then he certainly can go to the Commissioner for Administration and try to get redress for what he had suffered.

The third misunderstanding is that, once there is a Commissioner for Administration, we can do away with all other channels of redress. Those who are for or against this office will be for or against this particular office because of this reason alone. Definitely the Commissioner for Administration cannot replace the courts and the Commissioner for Administration cannot replace administrative measures, say, the administrative review conducted by the various government departments, nor can the Commissioner for Administration replace the various types of councils that we have. The Commissioner for Administration will do some of the work of the OMELCO Complaints Division. But that would only mean that the Complaints Division will have to have its portfolio revised. The Commissioner for Administration will then in future be entrusted with matters of maladministration whereas OMELCO will be entrusted with monitoring the policies of the Government.

Sir, the setting up of the Commissioner for Administration has been a matter for discussion for over 20 years and I think we should take the first step now.

MR. LAU (in Cantonese): Sir, I am in favour of the recommendation of establishing a 'Commissioner for Administration'. As Hong Kong is experiencing a period of changes and as civic education is becoming popular, more and more people will tend to 'air their grievances' on social issues. Although there are numerous channels for the public to lodge complaints relating to government administration, people may have the impression that

these channels are not exclusively responsible for handling complaints independently. I therefore maintain that an independent organisation outside of the government structure appointed specifically to handle complaints against government departments would provide an additional protection to the public. However, I must stress that the jurisdiction of the 'Commissioner for Administration' should be clearly defined and that he should be given adequate powers so that he can effectively perform his role.

Many people think that it is not necessary to establish the 'Commissioner for Administration' as it will play a role similar to that of the 'Office of the Members of the Executive and Legislative Councils' (OMELCO) in respect of the redress of grievances. Yet, I feel that such a view is too lopsided. As a matter of fact, the work of handling public complaints undertaken by the 'Commissioner for Administration' and the OMELCO can be complementary to each other. Complaints concerning government administration should be handled by the 'Commissioner for Administration' while those relating to policies should be taken up by the OMELCO. As such, the 'Commissioner for Administration' may relieve the heavy workload of Members of the Executive and Legislative Councils on the one hand, thus enabling them to concentrate on policy-related issues. On the other hand, the commissioner will not replace the OMELCO in handling public complaints.

Just as I have mentioned earlier, the scope of duties and powers of the Commissioner for Administration have to be clearly defined, so that his duty can be confined to the investigation of complaints against maladministration which causes inconvenience and injustice to the public. These complaints may include dereliction of duty, abuse of power, ultra vires acts and tardiness of the Civil Service. Cases involving breaches of criminal laws should be handled by the legal department and the judiciary. Whereas the main function of the ICAC is to eradicate corruption, the ultimate aim of establishing a Commissioner for Administration is to enhance the effectiveness of administration of the Government. The former deals with offences committed by individuals and their criminal liability, while the latter has nothing to do with 'judicial action' or 'anti-corruption'. Thus, any argument that 'the existence of the ICAC removes the need for a Commissioner for Administration' cannot hold water.

Adequate powers of investigation must be granted to the Commissioner for Administration if he is to function effectively. He must be given full authority to decide on the course of action to be taken when a complaint is received. Vested with such powers as calling in the officers concerned, or even having access to inspect confidential documents, the Commissioner for Administration will be able to investigate grievances thoroughly. Moreover, he may make recommendations on ways to improve the performance of government departments concerned, or rectify their mistakes so that those departments will not make the same mistakes again.

To ensure that the Commissioner for Administration will discharge his duties effectively and uphold justice, I suggest that he should submit working reports to this Council regularly. This will enable the Council to have a full picture of his work. If ever he practises favouritism, the Council may perform its monitoring function and keep maladministration under control by referring to his reports.

Sir, if public confidence is to be upheld and Hong Kong to remain stable and continue to prosper, we must have an impartial and efficient Government. The establishment of a Commissioner for Administration will help to achieve this goal. If appropriate status and powers are given to the suitable person, I am sure that the Commissioner for Administration will play an active role in the redress system of Hong Kong.

6.21 pm

CHIEF SECRETARY: Sir, I have listened with interest to the valuable opinions which Members have expressed today in this adjournment debate on the Consultative Document on 'Redress of Grievances'. I am particularly grateful, Sir, to the 19 Members who spoke for making their comments so succinctly. I will try to emulate their excellent example.

It is important in any society that, when a citizen has a complaint which alleges maladministration by the government, there should be channels through which complaints can be investigated and, where the complaint is justified, redress obtained. These channels must command public support and trust. Effective arrangements for the redress of grievances are necessary not only to maintain the public's confidence in the government which serves them, but also to ensure that the government remains fair and efficient.

Hong Kong has already developed over the years a wide variety of channels for the redress of grievances and their effectiveness has been steadily improved. By and large these channels have worked well, and it would seem that most complainants are satisfied with the action taken or the explanations given. But less Members should get the wrong impression, I am not at all complacent in this regard, and as society develops and the community's expectations of its government continue to increase, it is necessary to take stock from time to time and to consider whether and if so how, existing arrangements could be further developed and improved.

This was why the Consultative Document on 'Redress of Grievances' was issued in August last year. Its purpose, as Mr. SOHMEN has described, was to obtain the views of the community in principle as to whether the existing channels were adequate and whether, and in what direction, changes were thought to be needed.

As some Members have expressed in this debate, the public response to this consultative document was comparatively small—only 50 written submissions were received during the consultation period which lasted a little over four

months. But for the reasons given by some Members, I do not set too much store on the quantity of comments received. More importantly, about three quarters of the submissions which were received, favoured the introduction of an independent authority, who might be called the Commissioner for Administration, to consider complaints alleging maladministration. The consultative document was also discussed in 17 of the 19 district boards and in the Urban Council. A sizable proportion of the members of these bodies spoke in favour of the creation of a Commissioner for Administration. The response, Sir, combined with the views expressed in today's adjournment debate, indicate that there is scope for further development and improvement.

The Administration accepts the view put forward by Members today that there may be advantage in having an independent authority with powers of investigation to deal with complaints alleging maladministration, which should be distinguished from complaints concerning policy decisions. However, as Members have pointed out, there are a number of issues, which need to be resolved before a decision to establish a Commissioner for Administration can be taken.

One such concern is the relationship of the Commissioner for Administration with the Legislative Council and with the Governor. It was suggested in the consultative document that the Commissioner for Administration should be appointed by, and report to, the Governor. This position has been supported by some, whereas others have argued that he should be appointed by, and report to, this Council. There are arguments on both sides. A commissioner appointed by the Council could be seen as a logical extension of the existing complaints system operated by OMELCO, and as being consistent with this Council's role as a monitor of the work of the Administration. On the other hand, it could be argued that such an arrangement would alter materially the role of Members of this Council and its relationship with the Administration. This matter clearly needs to be given very careful consideration.

There have also been comments that the Commissioner for Administration should have wider powers than those suggested in the consultative document. It will obviously be necessary for the commissioner, if one were to be established, to have sufficient powers to discharge his functions effectively. But there will also have to be limits so that, for instance, the independence of the Judicial Authorities is not interfered with. It is necessary to bear in mind, as Mr. LAI has said, the purpose of the exercise, which is to develop and improve the channels for dealing with complaints about maladministration. It would not be appropriate or realistic to expect the Commissioner for Administration to head an all-powerful institution able to resolve every kind of problem and review all decisions, including those of a policy or a judicial nature.

Differing views have also been expressed concerning whether members of the public should have direct access to the commissioner or whether access should be through Members of OMELCO. There has been concern, expressed here

today, to ensure that there should be no overlapping of functions between the commissioner and other channels for the redress of grievances. These are complex areas to which thought must be given. Members have made a number of other thoughtful and detail points which the Administration will consider carefully and its further consideration of this matter.

In conclusion, Sir, the Administration accepts the majority view put forward by Members supporting the establishment of an independent authority for the redress of grievances. I note the plea of Mrs. CHOW that further study of this proposal should proceed expeditiously. This will be done. As I have indicated, however, it may take a little time to resolve all the issues involved, and to bring forward definitive proposals for further discussion. But against the background and the lengthy consideration in this matter, I will try to ensure that such proposals are not unduly delay.

*Question put on the adjournment and agreed to.*

### **Valedictory**

CHIEF SECRETARY: Sir, today's meeting of this Council is the last occasion in which you, Sir, will be present as a Member. I am sure that Members would wish to join me in paying tribute to the significant contribution you have made to Hong Kong, not only as a Member of this Council, but also in the course of the 30 years you have worked for our community.

Two years after your arrival in 1957, you began the close association with the New Territories which has continued through your service as you served in various capacities, until you became Chief Secretary in 1985. The phenomenal achievements of those years in building the new towns; in merging the indigenous populations with the intakes of new comers from the urban areas, the development of infrastructure and services and the successful moulding of political, social and recreational institutions are in no small measure due to your work and to your skillful and sympathetic handling of the many social, political and administrative problems involved.

Of no less significance, Sir, is your contribution to the development of representative government. As Secretary successively for the New Territories, for the City and New Territories Administration and then for District Administration, you played a leading role, taking Hong Kong from tentative beginnings with the establishment in 1977 of the Tsuen Wan District Advisory Board to the situation today where we have 19 district boards, two Municipal Councils and an enlarged and more representative Legislative Council.

In 1985, Sir, you were appointed to be Chief Secretary. In 18 momentous months in this role you have given effective and reassuring leadership not only

to the Civil Service but to the community at large. Hong Kong is indeed fortunate to have had as Chief Secretary at this time a person who so clearly identified with the aspirations of its people, who knew so well its anxieties, and in whom it could place its fullest trust.

These qualities were even more necessary on that sad day last December, when you were called without any warning to shoulder the heavy responsibilities of Governor, upon the untimely death of Sir Edward YOUDE.

Sir, your dignity, your steadfastness of purpose and your sensitivity to the needs of Hong Kong in the months that followed, have brought us all through a difficult period which might have seriously undermined a community under a lesser leader.

It was particularly important that the momentum of government was maintained during this time. The exceptionally large number of major policy decisions taken by the Executive Council, and the important legislation dealt with by this Council over the past four months, are clear evidence of your success in this regard. In the process, Sir, you have to deal with a number of sensitive issues and the fact that you tackle them with firm resolve and equanimity, has earned you the respect of colleagues and your many friends in the community.

In addition to making your contribution as a public servant, this Council will wish to acknowledge your work as a Legislative Councillor. Having first joined its ranks 14 years ago in 1973, your span of service exceeds that of any other Member of this Council.

Sir, we would also wish to pay tribute to you personally, as a man who has committed himself with total energy to the good of Hong Kong. The fact that you have decided, if I may borrow a phrase from Mr. JEAFFRESON, to make Hong Kong your permanent place of residence, and that you have chosen to return to what was Yuen Long District, is clear evidence as to where your roots lie. I am sure you will continue to make a substantial contribution to the community of Hong Kong. Hopefully however you will also have a little more time to devote to the encouragement of sport and culture in Hong Kong and to be able to explore again the beautiful countryside which you knew so well during your time in the New Territories. And last but not least, to spend more time on your garden. And if the photographs I have seen in the newspapers are any indication, your new house and garden will certainly keep you busy.

Sir, neither do we forget the tremendous contribution your wife Jane has made during her time here. Her involvement in so many community projects, particularly the devotion and energy she has given to the Girl Guides, has clearly demonstrated the concern she feels so strongly for Hong Kong and its people. Many of us have marvelled at the way she has been able to combine the almost full time job of wife of the Chief Secretary with all her other activities. It has involved no small sacrifice on her part, and we would like to say a heartfelt

thank you to her for all she has achieved. Together you have made an unbeatable team and our greatest consolation is that it is a team which will continue to play together on its home ground.

Sir, if there is sadness that your time as a Member of this Council is now coming to an end, we take comfort from the fact that your wisdom, knowledge and good counsel will continue to be available to Sir David WILSON, to your colleagues in this Council and to the many other people of Hong Kong who are proud to count you as their friend.

Sir, we wish you and Lady AKERS-JONES and your family the very best of good fortune in the years ahead.

MISS DUNN: Sir, it is an honour and privilege for me to speak on behalf of my colleagues in expressing our appreciation and gratitude for all that you have done for Hong Kong during your 30 years here.

It would take a whole adjournment debate to describe the progress that has been made in the Administration and daily life of our territory in the last 30 years. Your contribution, Sir, to this progress has been immense. It has earned you not only the admiration of your colleagues in Government, but also the respect and affection of the people of Hong Kong. You have guided the rapid development of the New Territories with imagination and sensitivity and this has enabled new towns, housing hundreds of thousands of people, and traditional village life to exist side by side. The system of district administration and the promotion of the arts and community life in the districts have owed much to your encouragement and have played no small part in bringing about the increasing richness and vitality that we see around us wherever we go in Hong Kong.

More recently, Sir, you have, as Chief Secretary, made use of your deep knowledge of the territory and its people, and your skills as an administrator to promote stable and effective government. And four months ago, with the sudden death of Sir Edward YOUDE, you took on the responsibilities of Governor at a time of great sadness. During these four months, Sir, there has been no slackening of the vigorous and progressive pace at which our Government works. When the new Governor arrives tomorrow he will see a thriving, energetic, and well-governed society, which is well prepared for the challenges that are to come.

Although you are retiring from this Council today, your valuable work in the Hong Kong Government is not yet finished. Your position as adviser to the Governor will, I am sure, keep you very busy in the next few months, and we can be confident that the Governor will benefit from your wise counsel.

Sir, no account of your work in Hong Kong would be complete without paying tribute to the contribution of Lady AKERS-JONES, who, in addition to supporting you so devotedly throughout your long career, has herself earned a

place in the hearts of the people. Her work among young people, and in particular her energetic and productive association with the Girl Guides, will long be remembered in Hong Kong. We wish you, Sir, and Lady AKERS-JONES a very happy and healthy retirement. [Applause]

HIS EXCELLENCY THE PRESIDENT: Hon. Members, I was not going to say anything but I should like to thank the Chief Secretary and the Senior Member for their very kind remarks. In view of the lateness of the hour and the hardness of this seat, I would not retain Members more than is necessary. But I have sat in the Legislative Council for 14 years! And when I joined as district commissioner, I never imagined that I would end up sitting in the President's chair. Nor did I imagine that I would preside over the longest debates in the history of this Council. These years have been rewarding years and in their course, the Council has nearly trebled in size and I think its work has also trebled in complexity.

I should like to thank Members for their friendship and support throughout these years, and when all is said and done, for their share of responsibility in caring for the public interest.

I would like to end these brief remarks to quote from Edmond BURKE who wrote and spoke 200 years ago about parliament, and this is what he said, 'Parliament is not a congress of ambassadors from different and hostile interests. It is a deliberative assembly of one nation, with one interest, that of the whole, where not local purposes, not local prejudices ought to guide, but the general good resulting from the general reason of the whole.'

May I wish you all success in your deliberations on behalf of the people of Hong Kong in the years to come.

### **Next sitting**

HIS EXCELLENCY THE PRESIDENT: In accordance with the Standing Orders I now adjourn the Council until 2.30 p.m. on Wednesday, 6 May 1987. Thank you. [Applause]

*Adjourned accordingly at twenty minutes to Seven o'clock.*

*Note:* The short title of the motions/bills listed in the Hansard Report has been translated into Chinese for information and guidance only, it does not have authoritative effect in Chinese.

## WRITTEN ANSWERS

## Annex I

**Written answer by the Secretary for Security to Mr. WONG Po-yan's supplementary question to Question 7.**

The statistics (Appendix) provided by the Commissioner of Police for the years 1983—86 and the first quarter of 1987. In the years 1983 to 1985 Central, Wanchai, Yaumatei (which includes Tsimshatsui Division) together accounted consistently for about 35 per cent of all goldsmith and watch shop robberies. In 1986 they accounted for 46 per cent. As you have suggested, the figures indicate that this type of robbery occurs more frequently in busy areas with a concentration of premises attractive to robbers.

The incidence of robberies in Mong Kok and Sham Shui Po has declined noticeably since 1983. The only explanation for this decline appears to be increased police presence in these districts.

## APPENDIX

**No. of Goldsmith/Watch Shop Robberies by Police District, 1983-March 1987**

<i>Police District</i>	<i>1983</i>	<i>1984</i>	<i>1985</i>	<i>1986</i>	<i>Jan-Mar 1987</i>
Central	7	8	3	5	6
Wan Chai	7	4	1	6	—
Western	4	3	2	3	—
Eastern	4	2	5	4	1
Yaumatei	19	10	10	14	1
Mong Kok	18	8	7	2	—
Sham Shui Po	11	7	3	4	1
Kowloon City	6	3	3	8	—
Wong Tai Sin	4	3	2	1	—
Kwun Tong	2	5	1	—	—
Sau Mau Ping	2	5	—	3	—
Tsuen Wan	1	2	—	—	—
Tuen Mun	1	—	—	—	1
Yuen Long	3	—	—	—	1
Frontier	1	1	1	1	—
Sha Tin	1	1	3	2	—
Kwai Chung	1	1	1	1	—
	—	—	—	—	—
Total:	92	63	42	54	11

**WRITTEN ANSWERS—Continued****Annex II****Written answer by the Secretary for Health and Welfare to Dr. IP's supplementary question to Question 8**

I am advised by the Director of Medical and Health Services that the reported mortality rate of heat stroke in other parts of the world varies widely between 17 per cent—70 per cent. It is impossible to say in retrospect whether the three heat-related deaths could have been avoided had treatment been given earlier. Even with optimal treatment, heat stroke can still cause death or irreversible damage. In two of the three fatal cases, cooling treatment was carried out at the earliest opportunity, one on-the-spot and the other on arrival at the Accident and Emergency Department. The third death was attributable to acute gastric aspiration, which was not caused by delayed emergency treatment.

**Annex III****Written answer by the Secretary for Health and Welfare to Dr. IP's supplementary question to Question 8**

Of the 20 cases of heat-related ailments, half were of heat stroke, and the other half were less severe cases. From the small number of cases of heat stroke, it is impossible to draw any conclusions on what were the differences between the circumstances of the survivors and those who died. Nevertheless, I take your point about the need to ensure that organisations known to be involved in vigorous exercise are advised of the precautionary measures which should be taken and the appropriate treatment, and the Medical and Health Department will be issuing a circular letter containing this advice.

**Annex IV****Written by the Secretary for Health and Welfare to Miss DUNN's supplementary question to Question 8**

A copy of the coroner's report was sent to the OMELCO Office at the request of the Standing Panel on Health Services. It appears from this report that the deceased police inspector was first observed to be staggering during the training exercise. He collapsed within a very short time after this observation and was subsequently found to be unconscious by the ambulancemen who took him to the Accident and Emergency Departments at both the Fanling Hospital and the Prince of Wales Hospital. The verdict of the coroner's inquest was death by misadventure, with acute gastric aspiration as the cause.