

1 HONG KONG LEGISLATIVE COUNCIL -- 18 January 1989

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OFFICIAL REPORT OF PROCEEDINGS

Wednesday, 18 January 1989

The Council met at half-past Two o'clock

PRESENT

HIS EXCELLENCY THE GOVERNOR (PRESIDENT)

SIR DAVID CLIVE WILSON, K.C.M.G.

THE HONOURABLE THE CHIEF SECRETARY

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

THE HONOURABLE THE FINANCIAL SECRETARY

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

THE HONOURABLE THE ATTORNEY GENERAL

MR. JEREMY FELL MATHEWS, C.M.G., J.P.

THE HONOURABLE ALLEN LEE PENG-FEI, C.B.E., 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, C.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. RITA FAN HSU LAI-TAI, O.B.E., J.P.

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

THE HONOURABLE CHENG HON-KWAN, J.P.

THE HONOURABLE CHUNG PUI-LAM, J.P.

THE HONOURABLE HO SAI-CHU, M.B.E., J.P.

THE HONOURABLE HUI YIN-FAT, O.B.E., J.P.

THE HONOURABLE MARTIN LEE CHU-MING, Q.C., J.P.

THE HONOURABLE DAVID LI KWOK-PO, 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, J.P.

PROF. THE HONOURABLE POON CHUNG-KWONG, J.P.

THE HONOURABLE SZETO WAH

THE HONOURABLE TAI CHIN-WAH, J.P.

THE HONOURABLE MRS. ROSANNA TAM WONG YICK-MING, J.P.

THE HONOURABLE TAM YIU-CHUNG

DR. THE HONOURABLE DANIEL TSE, O.B.E., J.P.

THE HONOURABLE ANDREW WONG WANG-FAT, J.P.

THE HONOURABLE GRAHAM BARNES, C.B.E., 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 MICHAEL LEUNG MAN-KIN, J.P.
SECRETARY FOR TRANSPORT

THE HONOURABLE EDWARD HO SING-TIN, J.P.

THE HONOURABLE GEOFFREY THOMAS BARNES, J.P.
SECRETARY FOR SECURITY

THE HONOURABLE PETER TSAO KWANG-YUNG, C.P.M., J.P.
SECRETARY FOR ADMINISTRATIVE SERVICES AND INFORMATION

THE HONOURABLE CHAU TAK-HAY, J.P.
SECRETARY FOR HEALTH AND WELFARE

THE HONOURABLE RONALD JOSEPH ARCULLI, J.P.

THE HONOURABLE MARTIN GILBERT BARROW, O.B.E.

THE HONOURABLE PAUL CHENG MING-FUN

THE HONOURABLE MICHAEL CHENG TAK-KIN, J.P.

THE HONOURABLE DAVID CHEUNG CHI-KONG, J.P.
THE HONOURABLE RONALD CHOW MEI-TAK

THE HONOURABLE MRS. NELLIE FONG WONG KUT-MAN, J.P.

THE HONOURABLE MRS. PEGGY LAM, M.B.E., J.P.

THE HONOURABLE DANIEL LAM WAI-KEUNG, J.P.

THE HONOURABLE MRS. MIRIAM LAU KIN-YEE

THE HONOURABLE LAU WAH-SUM, J.P.

DR. THE HONOURABLE LEONG CHE-HUNG

THE HONOURABLE LEUNG WAI-TUNG, J.P.

THE HONOURABLE JAMES DAVID McGREGOR, O.B.E., I.S.O., J.P.

THE HONOURABLE KINGSLEY SIT HO-YIN

THE HONOURABLE MRS. SO CHAU YIM-PING, J.P.

THE HONOURABLE JAMES TIEN PEI-CHUN, J.P.

THE HONOURABLE MRS. ELSIE TU, C.B.E.

THE HONOURABLE PETER WONG HONG-YUEN, J.P.

THE HONOURABLE MICHAEL SUEN MING-YEUNG, J.P.
SECRETARY FOR DISTRICT ADMINISTRATION

ABSENT

THE HONOURABLE LAU WONG-FAT, M.B.E., J.P.

IN ATTENDANCE

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

Papers

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

Subject L.N. No.

Subsidiary Legislation:

Electoral Provisions Ordinance
Electoral Provisions (Procedure)
(Amendment) Regulations 1989..... 2/89

Arbitration Ordinance
Arbitration (Parties to New York Convention)
Order
1989..... 3/89

Mental Health Ordinance
Mental Health Review Tribunal
(Amendment) Rules 1989..... 4/89

Banking Ordinance
Banking Ordinance (Amendment of Fifth Schedule)
Notice
1989..... 5/89

Road Traffic (Public Service Vehicles)
(Amendment) (No.2) Regulations 1988
Road Traffic (Public Service Vehicles)
(Amendment) (No.2) Regulations 1988
(Commencement) Notice 1989..... 6/89

Consular Conventions (Arab Republic of Egypt)
Order 1987
Consular Conventions (Arab Republic of Egypt)

Order 1987 (Commencement) Notice 1989..... 7/89

Consular Relations (Privileges and Immunities)

(Arab Republic of Egypt) Order 1987

Consular Relations (Privileges and Immunities)

(Arab Republic of Egypt) Order 1987

(Commencement) Notice 1989..... 8/89

Consular Relations (Merchant Shipping and Civil Aviation)

(Arab Republic of Egypt) Order 1987

Consular Relations (Merchant Shipping and Civil Aviation)

(Arab Republic of Egypt) Order 1987

(Commencement) Notice 1989..... 9/89

Oral answers to questions

Equal pay for equal work

1. MR. TAM asked (in Cantonese): Article 7(a)(i) of the International Covenant on Economic, Social and Cultural Rights provides that men and women shall be entitled to equal pay for equal work. The United Kingdom Government, on ratifying this covenant in 1976, reserved the right to postpone application of article 7(a)(i) in so far as it concerns the private sector in Hong Kong. Will the Government inform this Council why the application of article 7(a)(i) has been postponed in relation to Hong Kong since 1976 and what steps will now be taken to improve this situation of inequality?

SECRETARY FOR EDUCATION AND MANPOWER: Sir, I understand that when the Hong Kong Government considered this issue in 1976 it accepted the principle of equal pay for equal work, but felt that to apply Article 7 of the Economic Covenant without reservation would cause practical problems.

At that time the Government felt that any differences in conditions of work between men and women were mainly due to the differences in the positions they held, rather than to discrimination. However, in order to be sure of full compliance in the private sector the Government would have had to legislate. The Government was not convinced that this was necessary and therefore asked the United Kingdom

Government to make the appropriate reservation.

Since then the question of equal pay for equal work for men and women has been reviewed twice, in the context of reviewing ILO Conventions, in 1978 and 1986. These reviews were conducted by the Labour Advisory Board's tri-partite Committee on the Implementation of International Labour Standards. On each occasion the committee found that there was generally no discrimination in the labour market against either sex. Wage rates in industry and salaries in commerce were determined by market forces with reference to such factors as job nature, level of responsibility, qualifications and so on. It did not therefore seem necessary for the Government to intervene. However, I will ask the Labour Department to keep the position under regular review.

MR. TAM (in Cantonese): Sir, according to the answer from the Secretary, in our labour market we do not generally have sexual discrimination. Such being the case, even if legislation is enacted in this regard it should not really create a problem; while on the other hand it will enhance the image of Hong Kong. Could the Administration respond to this point?

SECRETARY FOR EDUCATION AND MANPOWER: Sir, the view we have reached so far, and this has also been supported by the Committee of the Labour Advisory Board, is that we do not really need legislation.

Qualifications of doctors for Vietnamese centres

2. MR. BARROW asked: Sir, since non-commonwealth volunteer doctors are presently not permitted to work in Vietnamese refugee centres or Vietnamese boat people detention centres despite there being a vital need for increased medical services in these centres, will Government inform this Council whether a special dispensation could be granted so that volunteer doctors with non-commonwealth qualifications can be given a conditional practising licence to work in the centres?

SECRETARY FOR SECURITY: Sir, I apologize for the length of the reply that I am about to give but I thought it would be best to describe the background fully. Apart from Sham Shui Po refugee camp, the medical services in the Vietnamese refugee closed centres and the Vietnamese boat people detention centres are provided by government

doctors assisted by other staff from the Medical and Health Department, Auxiliary Medical Services and Correctional Services Department. This is obviously not an ideal situation since it puts an additional strain on the Government's medical services and diverts government doctors from serving the local community.

Under the Statement of Understanding signed between Government and the United Nations High Commissioner for Refugees on 20 September 1988, the latter agreed to provide medical services at all refugee centres. The Government will continue to provide medical services at Vietnamese detention centres.

The UNHCR has therefore arranged for a Belgian Medical Charity, Medecins Sans Frontieres (MSF), to take over the medical services in the existing closed centres for refugees. However, although there is a pool of volunteer doctors with qualifications obtained in Belgium, the UNHCR have been informed that these doctors cannot at present practise in Hong Kong since they are not locally registrable under the Medical Registration Ordinance.

Under section 7 of the Medical Registration Ordinance, only persons who hold a Hong Kong, United Kingdom, Irish or recognized Commonwealth diploma are entitled to be registered as medical practitioners in Hong Kong.

The Ordinance provides for certain persons to be exempted from registration: medical practitioners serving in Her Majesty's Forces, ships surgeons, persons in the full-time service of the Government or the universities and persons in teaching or research institutions. Unfortunately, these exemptions do not extend to doctors serving in refugee centres.

Under the Ordinance, the Medical Council of Hong Kong has the power to grant a person a licence to practise medicine. The conditions for granting such a licence normally include a Licentiate Examination and a subsequent period of assessment, but the Ordinance provides that the Medical Council may, subject to such conditions as it thinks fit, exempt any person wishing to become a licentiate from any requirements imposed under the Ordinance. We have therefore approached the Medical Council and asked whether they would consider a licence or exemption for MSF doctors to enable them to work in refugee centres. The initial reaction of the Medical Council was that they saw difficulty in this, but we are in touch with the council with a view to further examining this problem.

We understand that the MSF have already recruited two volunteer doctors from the Commonwealth countries to serve the refugees at Sham Shui Po and Tuen Mun (Bowring). They are also recruiting a third doctor for the centre at Pillar Point. If they are successful, the minimum requirement of one doctor per refugee centre will have been met, but the problem will still remain of recruiting doctors from the international community as replacements in future, or to provide improved medical services. We shall need to address the general principle of whether in these unusual circumstances there should be special provision for non-Commonwealth doctors to practise strictly within the confines of Vietnamese centres. Clearly it is desirable that Government's medical resources should not be diverted from serving the people of Hong Kong and that the UNHCR and the MSF should be helped in every way possible to assume full operational and financial responsibility for providing medical services in Vietnamese centres. This point will be considered further, and as urgently as possible, since the likely need for additional medical services is already apparent.

MR. BARROW: Sir, it would be a pity if the dedicated and magnificent efforts of so many members of both the Hong Kong Administration and volunteer agencies were spoiled by bureaucratic or other delays resulting in a failure to overcome this problem. Does the Administration not accept that only a very minor change in the Medical Registration Ordinance would allow for the special dispensation suggested?

SECRETARY FOR SECURITY: Sir, it is perfectly true that the dispensation desired could be achieved by a minor amendment to the Medical Registration Ordinance. This is a matter which the Administration will need to consider with the Medical and Health Department and the Medical Council, and this will be done.

DR. IP: Sir, in the granting of licence to practise medicine in Hong Kong, has the Medical Council the power to impose restrictions, namely, confining the practice to specific geographical area in Hong Kong?

SECRETARY FOR SECURITY: I am not aware of the restrictions to a single geographical area. It may be that this is possible under the Ordinance. I suspect, however, that a separate amendment to the Ordinance would remove this particular responsibility from the Medical Council, if that is the course of action which is decided upon.

MR. CHEONG: Sir, were the difficulties as stated by the Medical Council made known to the Administration? If so, could this Council be apprised of these difficulties?

SECRETARY FOR SECURITY: Sir, we were informed in December that, after full consideration of our request, the Council had difficulty in acceding to it. We were not given any detailed explanations.

DR. LEONG: Sir, has the Administration considered advising the UNHCR of recruiting part-timers with registrable medical qualifications in Hong Kong -- I understand there are quite a few amongst the expatriate community -- to work in these Vietnamese detention centres instead of disturbing the existing system of a single approved medical standard for our local community?

SECRETARY FOR SECURITY: Yes, Sir, this has been considered but I understand from the UNHCR that there are problems about part-time doctors undertaking full-time work in these centres.

MR. EDWARD HO: Sir, would the Secretary inform this Council whether there is any practical difficulty encountered by the UNHCR in recruiting qualified doctors locally?

SECRETARY FOR SECURITY: Yes, Sir, the UNHCR has tried to do this but the salary offered, I am afraid, has not attracted local doctors to undertake this work.

MR. CHEONG: Sir, given the fact that the refugees problem is a problem of public concern, could the Administration seek advice from the Medical Council as to what really the difficulties are?

SECRETARY FOR SECURITY: Sir, I am sure that this will be done in the course of consultation with the Medical Council over what can be done to solve this problem.

MR. ARCULLI: Sir, has the Administration considered whether it is permissible for such doctors to work under the supervision of qualified Hong Kong doctors?

SECRETARY FOR SECURITY: Sir, I have no doubt that this has been considered. If it has not, I am sure it will be in the course of our further examination of this problem.

Police powers under the Public Order Ordinance

3. MR. LI asked: Sir, as considerable concern has been expressed both locally and internationally over the unlimited power to control public meetings, gatherings and processions given by the Public Order Ordinance to the Commissioner of Police, what legislative steps is the Government going to take to lay down acceptable criteria for the exercise of the commissioner's discretion?

SECRETARY FOR SECURITY: Sir, The short answer to this question is that at present the Government has no plans to amend Part III of the Public Order Ordinance, which is the part of the Ordinance concerning meetings, gatherings and processions. I have noted, however, that OMELCO has been in correspondence with the Commissioner of Police concerning the operation of this aspect of the Ordinance, and I understand that the OMELCO Security Panel is considering the matter. We shall be interested to hear their views.

The Commissioner of Police does not have unlimited powers under the Ordinance. The Ordinance places clear limits on his powers and provides a channel for appeal to the Governor. The commissioner is given wide discretion by the Ordinance as to the conditions that may be imposed on a gathering. This is essential because of the very wide range of gatherings that are possible and the wide variety of circumstances in which they can take place. Conditions need to be observed not simply in the interests of preserving public order but also for other purposes, such as avoiding nuisance to the general public and preventing obstructions to traffic. The intention underlying the Ordinance is to strike a reasonable balance between the public's right to assemble and express its views and the broader interests of the community at large.

Inevitably with any system where conditions are laid down there will be instances where applicants are dissatisfied, but these have been rare. The urban areas, public places and roads of Hong Kong are busy and crowded, yet the holding of gatherings, meetings and processions is not unduly restricted, and only a tiny proportion are disallowed or refused. If such events are to take place frequently, as they do, without causing disruption to the community, control is obviously essential, and recent performance suggests that the licensing authority exercises its discretion and judgment reasonably and efficiently.

MR. LI: Sir, under the Public Order Ordinance what rank of officer actually acts for the commissioner in licensing meetings and processions, what experience have such officers had beyond normal law enforcement, and what specialized training are such officers given to sensitize them to the civil liberty dimension of their work?

SECRETARY FOR SECURITY: Sir, I understand that the rank is about superintendent rank initially, but if there are any particular aspects of difficulty associated with the request, this is referred to a more senior officer. As far as experience is concerned, this is gained by the officer himself in the conduct of his work. In the last five years there have been over 1 100 applications for processions or meetings. And of course, as time goes by, the officers concerned will have gathered great experience. As to special training, I am not aware of any special training that officers have. That is not to say that this does not take place but on this particular point I shall consult the Commissioner of Police and let Mr. LI know. (Annex I)

MRS. FAN: Sir, for large gatherings it is sometimes necessary to use loudspeakers to ensure order. What reasons are there to ban the use of loudspeakers when a gathering is organized by a group which is known to be peaceful, while other groups have been allowed to use loudspeakers?

SECRETARY FOR SECURITY: Sir, the prohibition or the restriction on the use of loudspeakers must not be taken as interference with freedom of speech. The freedom of speech is the freedom to express one's views without fear of consequences. Stopping persons from using loudspeakers to spread their views in crowded and

congested areas, where the noise would cause a nuisance to other people not concerned with the meeting, does not inhibit freedom of speech. There are a number of places throughout Hong Kong, such as Victoria Park, Kowloon Park, and the Yuen Long Stadium, where no restrictions are imposed on the use of loudspeakers by persons wishing to convey their views to the public. But in other places a balance has to be struck between the right to express one's views and the right of others not to be disturbed by the manner in which those views are expressed.

MR. MARTIN LEE: Sir, when was the last time the Government conducted a review of the Public Order Ordinance apart from section 27 which was repealed last Wednesday, and when does the government intend to conduct another review in the light of recent complaints?

SECRETARY FOR SECURITY: Sir, I am not aware of the date when the last review of the Public Order Ordinance as a whole was conducted. As to the next review, if there has been in fact a previous review, this will depend very much on reasons being presented to the Government which makes it think that a review is necessary.

MR. ARCULLI: Sir, one delegate at the United Nations Human Rights Committee referred to the unfettered exercise of the commissioner's powers as being in itself a form of lawlessness. Does this not make it essential that specific criteria be established?

SECRETARY FOR SECURITY: Sir, if the commissioner's power were unfettered, then of course it would be a matter for concern. The commissioner's powers, as I have already made quite clear, are not unfettered and I think therefore the question does not arise.

MR. TAM (in Cantonese): Sir, according to my understanding, existing legislation requires an application for procession to be submitted with a minimum period of notice; but on the part of the Commissioner of Police, there is no requirement imposed on him for a reply to same to be given within a prescribed period. Hence applicants for the processions are obliged to act passively. Would that create an unfair situation?

SECRETARY FOR SECURITY: Sir, under the Ordinance, the commissioner has to be given seven working days' notice of the procession or the meeting. In many cases, in fact, much shorter notice is given to the commissioner and he does have the discretion to give approval within a much shorter period than seven days. I think in those circumstances it is beholden on members of the public and organizers not to presume upon this short period which the commissioner has available to him at his discretion because it makes it extremely difficult for requests to be considered and for the necessary consultation on routes, numbers and details of meetings and processions to take place.

MR. SZETO (in Cantonese): Sir, recent experience has told me that, after the Commissioner of Police has granted approval to a procession or gathering, he does not normally require the size of the procession or gathering to be reduced on account of the area of the place where gathering is to take place (such as reducing 500 to 300, or 200 to 100). Is this a fair practice?

SECRETARY FOR SECURITY: I would say that would be quite fair, Sir.

MR. LI: Sir, how can the Government complain of public apathy on civic issues when the Government is seen, through resort to the Public Order Ordinance, to be discouraging any attempt by the people of Hong Kong to express their opinion in any public forum?

SECRETARY FOR SECURITY: Sir, I think in this case the proof of the pudding is in the eating and I would like to give figures for the number of applications made and the number of applications rejected in recent years. In 1988 there were 176 notifications of public meetings and three were disallowed. There were 199 licences sought for public processions and five were disallowed. Over the last five years, the total number of notifications and licences sought which have been disallowed or rejected amounted only to 2.3%.

HIS EXCELLENCY THE PRESIDENT: I have names of two more Members who wish to ask supplementary questions. I will draw the line at that point.

PROF. POON: Sir, will the Secretary further elaborate on the method of appeal as mentioned in the second paragraph of his answer?

SECRETARY FOR SECURITY: Sir, the method of appeal is at present to the Governor. I understand that the OMELCO Security Panel, (it was on the radio this morning), would like to consider channels of redress and would like to look at the mechanics of these to see if improvements can be made. This, of course, is a matter for the Security Panel to consider and to let the Administration know its views in due course. I would like to say a word about appeals. They do take time if they are submitted to the Governor but the aim is that conditions imposed by the police should be accepted by the organizers. The police do not seek to prevent gatherings or to hinder their smooth functioning. Their object is simply to preserve the public peace. Consequently if it appears to the police that any aspect of a proposed gathering might cause disturbances to the peace, they will in the first instance try to make suggestions for alternative arrangements. The organizers themselves are free to make counter suggestions and the aim, before we get to the point where an appeal is necessary, is to find through discussion an acceptable compromise between the organizer's desires on the one hand, and the need to safeguard the community from annoyance, inconvenience or danger on the other. If all that fails, then of course the question of appeal to the Governor does arise and I understand, as I have just said, that this can be lengthy and I also understand that this matter is being looked at.

MR. MARTIN LEE: Sir, does the Government subscribe to the view that to hold a public meeting is a matter of civic right and therefore it would be wrong in principle for the Commissioner of Police to impose any conditions whatsoever unless it be felt absolutely essential for the protection of the common good?

SECRETARY FOR SECURITY: Sir, we have laws in Hong Kong and we have a police force in Hong Kong which is authorized by this particular law to be the authority. I think I made it quite clear this afternoon that this authority is not being abused. Civic

rights, naturally, have to fit into the laws. As I say, there is no evidence that this law is being abused and I think that answers Mr. LEE's question.

HIS EXCELLENCY THE PRESIDENT: Mr. LEE, would you wait for me to call you. I did say I would draw a line at this point because many Members have asked supplementary questions and we must move on. I will allow you, since you are so anxious, to ask one supplementary.

MR. MARTIN LEE: I am obliged, Sir. I am not asking a new one, but I do not believe my last one was answered. I asked the Secretary whether he subscribed to the view which I spelt out for him. The answer should be "yes" or "no", or "I do not know".

HIS EXCELLENCY THE PRESIDENT: Would you re-phrase that as a question, otherwise it would not be in order.

MR. MARTIN LEE: Does the Government subscribe to the view that to hold a public meeting is a matter of civic right, and therefore it would be totally wrong in principle to attach conditions unless it be thought absolutely essential for the protection of the common good?

SECRETARY FOR SECURITY: Sir, I thought I had answered this question. Civic rights must be exercised according to the law and we have a law and civic rights must be in accordance with that law.

Vacancies in the Civil Service

4. MRS. FONG asked: Sir, will the Administration inform this Council of the current establishment of the Civil Service and the number of vacant posts as at 1 January 1989, whether the existence of such vacant posts has affected the quality of service to the public and what measures are being taken to ensure that the quality of service is of an acceptable standard?

CHIEF SECRETARY: Sir, vacancies in the Civil Service arise as a result of the creation of new posts and wastage. On 1 January 1989 there were 194 612 civil service posts and 9 735, that is, 5%, vacancies. This compares with a vacancy rate of between 3 and 4% for the five years from 1983 to 1987 and between 8.5 and 9% during the five years of rapid Civil Service growth before, that is, 1978 to 1982.

The slight increase in vacancies reflects the small amount of additional growth which has followed the relaxation of the zero growth policy and higher wastage has also contributed.

Generally speaking, the existence of vacancies at the present level is not affecting the quality of service to the public to any significant extent. But, in a few areas, we are not able to introduce improvements to existing services or new services as quickly as we would wish. The grades where there are particular problems include Analyst Programmers, with a vacancy rate of 16.5%; Social Workers, with 13%; and Crown Counsel, with 13.5%. Steps are being taken to deal with situations like this, the recently introduced double-ladder promotion system for local Crown Counsel being one example.

I would like to stress, however, that, overall, the Civil Service continues to be able to fill its key positions with people of the calibre it needs. Our vacancy and turnover situation also compare very favourably with what we understand to be the position in the private sector.

I fully recognize that the resources of the Civil Service must be put to the best possible use to ensure that the services provided to the community are of a high quality so we are constantly looking at ways of improving the productivity and efficiency of individuals and departments through good manpower planning and training schemes and the introduction of computer systems and other office equipment.

MRS. FONG: Sir, I would consider that a vacancy rate of between 13 to 16% in some grades as severe shortages. In view of the fact that the Hong Kong economy has attained full employment status, can I ask what steps are being taken or being considered by the Administration other than the double-ladder promotion system for the local Crown Counsel?

CHIEF SECRETARY: Sir, in the grades that Mrs. FONG mentioned, firstly on the question of the analyst programmers, a comprehensive consultancy on the strategic role of computerisation in the Government was conducted in 1988. Part of that consultancy dealt with ways of staffing any future data processing organization. These recommendations are now being examined and we hope to come to conclusions very shortly. On social workers, Sir, which is the other grade I mentioned where there are shortages, we have two measures in mind. Firstly, we are continuing the recruitment and training of non-social work graduates; and secondly, we are increasing the number of social work places in tertiary institutions.

MR. BARROW: Sir, in view of the very high 16.5% vacancy amongst programmers, would the Administration advise this Council if the department concerned might consider applying to the Immigration Department to bring in skilled programmers from overseas in accordance with existing immigration policy?

CHIEF SECRETARY: Sir, as far as overseas recruitment is concerned, the Government has a policy that it will seek for local applicants in the first instance on a wide basis and, if they are not available locally, then we will go overseas for them. Clearly that would fit into existing immigration policy.

MR. MICHAEL CHENG (in Cantonese): Sir, the shortages of social workers and analyst programmers have become acute. Will the Administration inform this Council what kind of impact these will have on the operation of relevant government departments; and what kind of adverse effects they have on the services provided to the general public? Will the Administration inform us what specific measures for improvement will be taken?

CHIEF SECRETARY: Sir, I think I have given the ideas for dealing with the problem in an answer to a previous question. As to what the effect is on our current programme, as far as analyst programmers are concerned there is a backlog of projects awaiting implementation and the back-up service to computer users is not as responsive as we would like, Sir, and little time can be given to research and development.

Nevertheless, I think that the overall service has not been too badly affected. As far as social workers are concerned, the caseload volume per social worker clearly cannot be reduced as fast as we would like for family service workers, probation officers, and medical social workers, and staffing of some group work units is also insufficient. I might say, Sir, that as a result social workers are working overtime to try to fill the need there and we are looking at transferring other social workers from other parts of the department to make sure the services to the public do not suffer too much.

MR. PETER WONG: Sir, in the second paragraph of his reply the Chief Secretary talks about the small amount of additional growth. Can the Chief Secretary please tell us what the absolute growth in 1988 was and what he expects the growth to be in 1989?

CHIEF SECRETARY: Sir, I do not have the exact figures with me. My understanding is that it is likely to be around 2%. We have not yet got the final figures for 1988. I will provide the rest of the information to Mr. WONG separately, Sir. (Annex II)

MR. MARTIN LEE: Sir, what does the Government think are the reasons for such a high wastage rate in these particular areas, and how do they compare with the pattern in the last few years?

CHIEF SECRETARY: Sir, it is difficult to give the exact reasons for the high vacancy rate. It is a mixture of increasing the number of people within the Government, the posts, and the time it takes to recruit them. That is certainly the case in both the grades that I have mentioned. We are expanding both these services at quite a rate and it is quite difficult to recruit in the private sector in a buoyant private sector situation. As far as wastage is concerned, Sir, the figures show that the two major reasons for wastage are: move to the private sector, which clearly is a very strong factor in terms of the analyst programmers who are in very short supply in the private sector, and emigration. Those seem to be the two major factors in the equation.

MRS. FONG: On a more general basis, can I ask the Administration whether department

heads have the authority to authorize overtime on a pay basis in order to get the work done because of the shortage? This is because accrued leave are not very attractive when staff shortages make it impossible for individual officers to take leave.

CHIEF SECRETARY: Yes, Sir, there are extensive arrangements within the service for heads of departments to approve overtime within their own heads of expenditure and, of course, when they do so overtime is payable to a very wide range of people within the service below directorate level. We do not, however, Sir, like to rely upon the use of overtime as a way of alleviating staff shortages on a long-term basis. Long-term periods of overtime can result in strain which in turn will clearly affect the performance of the officers over the longer term. That said, Sir, we hope that we remain flexible and make the best use of the resources available to us, including the use of overtime.

MR. BARROW: Sir, the Chief Secretary has referred in his last sentence to the need to improve productivity and efficiency in all areas. Having been a Member of this Council for three months and having noticed the huge amounts of paper which circulate within Government, would the Administration advise this Council if they would consider organizing an in-house organization and methods study to improve efficiency through reducing the amount of paper in circulation and encouraging government officials to be more concise in their written work?

CHIEF SECRETARY: Sir, I would be delighted, in conjunction with my friend the Honourable Financial Secretary, to instigate a value for money study on the work of this Council! (laughter)

PROF. POON: Sir, has the Government considered inviting private agencies or academics in the university to sort out some of the backlog of projects that the Secretary has just mentioned?

CHIEF SECRETARY: We have not considered that. I will put it to the Secretary for the Civil Service.

MR. MARTIN LEE: Sir, I do not think the Chief Secretary answered my second question which I will repeat. Are these rates of wastage in keeping with the past pattern over the last few years?

CHIEF SECRETARY: Sir, I do not have the details for the particular grades that Mr. LEE mentioned, but, as I mentioned in my original answer, the wastage rate for 1988 is 5.4%; the figure for 1987 was 3.7%. What we are getting back to, Sir, is a wastage somewhat similar to the figures in the late '70s and early '80s.

MISS LEUNG (in Cantonese): Sir, will the Administration inform this Council, as far as non-directorate and directorate scale civil servants are concerned, what the wastage rates and vacancy rates are?

CHIEF SECRETARY: Sir, I have given the figure for the service as a whole. The directorate figure is about 1%.

Unification of pre-primary services

5. MR. HUI asked : Will the Government inform this Council what progress has been made by the Working Group on Pre-primary Services set up in 1986 to study the recommendation by the Education Commission in its Report No. 2 that specific plans should be developed to achieve unification of pre-primary services provided by kindergartens and child care centres?

SECRETARY FOR EDUCATION AND MANPOWER: Sir, the Education Commission, in its second report, recommended that the unification of pre-primary services should be the goal, but that the first task in the process was to bring together the standards of kindergartens and child care centres. The working group set up in 1986 has been focusing on ways to raise standards in kindergartens, and I hope to have proposals ready for Executive Council within the next few months.

Once a programme of improvements to kindergarten education has commenced, the

working group will be able to turn its attention to the longer-term question of whether all pre-primary services should be brought under the same regulatory framework.

MR. PAUL CHENG: Sir, in a reply to a related question I raised in this Chamber on 23 November last year, the Secretary for Education and Manpower told us that the 1984 Manual of Kindergarten Practice is being reviewed, and that measures will be recommended to improve the ratio of trained teachers and other issues. Will the Secretary inform this Council whether any progress has been made so far?

SECRETARY FOR EDUCATION AND MANPOWER: Sir, I think this point goes a bit outside this question. It is in fact only a month or so since I gave my previous reply. I would not expect there to be any progress to report within that short period.

MR. MICHAEL CHENG (in Cantonese): Sir, up until now the Government has not been able to unify the pre-primary services provided by the kindergartens and the child care centres. Therefore the services of certain child care centres would include kindergarten programmes, thereby reducing the number of students in certain kindergartens which are hard pressed in their operation finances. What measures will the Government take to address this problem?

SECRETARY FOR EDUCATION AND MANPOWER: Sir, it is not clear what the question is actually getting at. I cannot see the connection between unification and financial situation of kindergartens.

MR. DAVID CHEUNG: Sir, it takes almost three years to review the situation regarding kindergarten and child care centres. In his answer, the Secretary says once a programme of improvements to kindergarten education has commenced, then the working group will be able to turn its attention to the longer-term question. Will the Secretary please inform this Council within what time span he would expect the second long-term question to be tackled?

SECRETARY FOR EDUCATION AND MANPOWER: Sir, as I said in my original reply, we hope

to have proposals on improvements to kindergartens ready within the next few months and we will then turn to the other issue.

MR. HUI: Sir, we understand that all other chapters of the Education Commission's Report No. 2, except the one on pre-primary services, have already been endorsed by the Executive Council. The endorsement of the chapter on pre-primary services has been held in obedience awaiting the recommendation of this working group. Could the Secretary for Education and Manpower inform this Council why it took more than two years, or almost three years, for the working group to come to the present state of affairs and how many meetings this working group has actually convened during this period?

SECRETARY FOR EDUCATION AND MANPOWER: Sir, the commission proposed to encourage higher standards of staffing in kindergartens through a revision of the fee assistance scheme to needy parents. The proposal was that more assistance should be given to parents choosing kindergartens which spent more on staff. During the public consultation, this recommendation was seen by many respondents as complicated and difficult to implement. Also, since the report was published, the general increase in prosperity in Hong Kong has led to a considerable drop in the number of parents needing fee assistance, from 57% when Report No. 2 was drafted to about 40% now. We are therefore considering other ways to help kindergartens to improve their staffing.

MRS. CHOW: Would the Secretary inform this Council what the Administration's attitude is towards the proposal to unify the two services and whether he can confirm that there will be no backtracking of that intention to unify since he stated in his reply that the Government had yet to examine whether all pre-primary services should be brought under the same regulatory framework?

SECRETARY FOR EDUCATION AND MANPOWER: Sir, there can be no question of backtracking because Government has not yet taken a decision as to whether or not to unify. I explained my views on this in reply to a similar question in November. As I said in the Council on 23 November, the difference between kindergartens and child care centres has arisen for historical reasons. Child care centres basically look after children

whose parents are not able to look after them. They are welfare-directed institutions. Kindergartens are teaching institutions. In practice the two functions do overlap and this leads to public concern to have unity but it is not a straightforward or obvious question that there should be unity.

MR. MICHAEL CHENG (in Cantonese): Sir, the Secretary for Education and Manpower has not answered my question yet. The Secretary said that it had nothing to do with unification but in fact it is directly related to unification. Kindergartens come under the auspices of the Education Department while child care centres are under the Social Welfare Department. If there were no close link, the two would be competing for students, resulting in child care centres also offering education services. Thus I hope that the Secretary can answer my question promptly. My previous question was indeed related to unification; could the Secretary explain why he said it was not?

SECRETARY FOR EDUCATION AND MANPOWER: Sir, I only said that I could not see the connection. I am not doubting there is one, but I have not spotted it. The two systems are different. The original question, as I understood it, was concerned about the financial position of kindergartens. I am not sure whether the idea behind that is to ask whether we will increase subsidies. If that is the question, we have no immediate plans to increase the subsidies to kindergartens though if our proposals lead to additional costs and additional fees then automatically the number of parents qualifying for fee assistance would increase and the amount of fee assistance they receive would automatically increase.

MR. CHOW (in Cantonese): Sir, when the Government endorsed the report, had it estimated the staffing requirement and taken appropriate measures?

SECRETARY FOR EDUCATION AND MANPOWER: Sir, again I am not quite sure what the point of the question is. The commission, as I said, made proposals to encourage improvement of staff training through increased fee assistance to those kindergartens which use trained staff.

MR. SZETO (in Cantonese): Sir, Education Commission Report No. 2 proposes to unify

pre-primary services provided by kindergartens and child care centres. The Executive Council has accepted the proposal. But the Secretary in his reply said that once the proposals to improve the kindergartens are in place, the working party will study the long-term issue of whether pre-primary services should be incorporated into the same supervisory framework. I would like the Secretary to inform this Council whether this implies that the study by the working party could negate the recommendations raised by Education Commission Report No. 2 and the decision of the Executive Council?

SECRETARY FOR EDUCATION AND MANPOWER: Sir, I think there is a misunderstanding here. Mr. HUI asked in an earlier question why we had not yet gone to Executive Council on this proposal. That is in fact the case; we have not yet gone to Executive Council on this proposal.

MRS. FAN: Sir, the working party was set up two to three years ago in 1986. The proposals are still being awaited. Can the Secretary inform us why it is so difficult to draw up proposals to improve kindergarten standards? Has the working party consulted anybody in the kindergarten sector since then? And, could the Secretary answer part of the question that Mr. HUI put to him and that is, how many times have that working group met?

SECRETARY FOR EDUCATION AND MANPOWER: Sir, there was of course a lot of the normal consultation over a long period on the commission's original proposals. And, as I have said, the feedback was rather negative on this particular proposal. It has been difficult because we originally hoped we could develop or adapt the commission's original proposal so as to overcome the objections to them. However, we did find that difficult. We are therefore trying to develop new proposals now. On the question of the number of meetings, I am fairly sure the committee has met many times. But I do not have the figure immediately available. I will provide a reply in writing. (Annex III)

MRS. TAM: Sir, is the Administration, as a result of the unification of kindergarten and child care centres, likely to embark upon the setting up of a pre-school education training institute with standardized curriculum for training?

SECRETARY FOR EDUCATION AND MANPOWER: Sir, we do not have such a proposal in mind at the moment.

MR. HUI: Sir, could the Government inform this Council whether, in the process of studying the unification of kindergartens and child care centres, consultation has been made with concerned organizations and voluntary agencies operating these services? If the answer is positive, which are these agencies? If not, why not?

SECRETARY FOR EDUCATION AND MANPOWER: Sir, as I have already explained, most of our discussions have been in reaction to the consultation and feedback on the commission's own proposals. Our new alternative proposals have not yet reached the consultation stage but we certainly shall be consulting when we reach the appropriate stage.

MRS. CHOW: Sir, what is the point of putting an issue to the Education Commission, only to overrule it after it has come to certain conclusions and recommendations by withholding that part from Executive Council which the Administration happens not to agree with?

SECRETARY FOR EDUCATION AND MANPOWER: Sir, it is not so much our reaction which is important but the fact that the public consultation on the proposal showed that there was considerable doubt about this particular recommendation in the commission's report.

Funding of performing arts

6. MR. PAUL CHENG asked: Sir, in view of the recent public concern about the Government's policy in funding performing arts activities and the financial difficulties encountered by organizations concerned, will Government inform this Council whether a general review will be conducted on, inter alia, the funding and management arrangements of performing arts and related cultural organizations and

if so, when the results of the review are expected to be available?

SECRETARY FOR DISTRICT ADMINISTRATION: Sir, I am glad that Mr. CHENG has referred specifically to public concern about the Government's policy in funding performing arts activities and the financial difficulties encountered by organizations concerned since I believe that some of the problems have been overstated.

Through the Council for the Performing Arts, Government provides subvention for performing arts activities to ensure their continued development on a territory-wide basis. Such funds are disbursed to organizations and individuals to assist with running expenses and project costs.

Last year, two of these organizations encountered financial difficulties. The Council for the Performing Arts undertook a full examination of their requests for additional funds. During this process, the council carefully considered and acknowledged the need to monitor more closely the work of grant recipients and to ensure that they were cost-effective. The Council also came to the twin conclusions that a substantial increase in government funding for the performing arts was needed and that more commercial sponsorship should be encouraged.

On the basis of recommendations made by the council, the Finance Committee of this Council approved in October last year supplementary grants to the Hong Kong Ballet and the Hong Kong Arts Festival Society.

The Council for the Performing Arts is currently considering various proposals regarding the future level of subvention for the performing arts. These will be put to Members of this Council for approval in the draft estimates for the next financial year.

The Council for the Performing Arts is also looking into proposals to encourage the private sector to increase its sponsorship of the arts, drawing on experience elsewhere in the world where such endeavours have proved remarkably successful. Results should be available within about nine months.

As regards arrangements to ensure that performing arts and related cultural organizations are managed efficiently, the Council for the Performing Arts has recently approved a proposal for "Arts Audits". The idea is to set up a team of

experts, working in conjunction with the organization concerned to review all aspects of the latter's financial and administrative structure and control. It is intended that this system will eventually be extended to cover all Hong Kong's major performing arts groups.

Overall, Sir, I am reasonably confident that we already have, or are actively putting into place, a sound basis for funding the performing arts organizations and suitable structures to exercise the necessary degree of surveillance of their management.

MR. PAUL CHENG: Sir, in October last year the Finance Committee approved an additional \$4.23 million to help shore up one of the two ailing organizations mentioned. This represented almost double the amount of the original budget of \$2.8 million allocated for recurrent expenses for the year 1988-89. Will the Government advise this Council how an organization if properly managed could stray so far from its original plan?

SECRETARY FOR DISTRICT ADMINISTRATION: Sir, as I know, the deficit is made up of two parts. The first part is the deficit brought forward from the previous year and that amounted to \$0.5 million. As to the remaining \$3.73 million, it is mainly due to the company's over-optimism in the amount of money it would get from various sources. They have over-estimated the amount they would be getting from Government in the form of subvention in the first place. They have also over-estimated the amount of receipts they would be getting from private sponsors. And finally, when they negotiated with the two municipal councils for fees for joint presentations, they did not manage to get the fees they had hoped to obtain. So all this combined to make a deficit of \$3.7 million from their original estimate.

MRS. LAU: Sir, if government funding is made on the basis and in anticipation of increased commercial sponsorship, what does Government propose to do in the event that the private sector does not respond sufficiently to the plea for sponsorship of the arts?

SECRETARY FOR DISTRICT ADMINISTRATION: Sir, the Government's role in the promotion of the arts is to provide an infrastructure and also to provide money to

promote the performing arts. In case the private sector fails to come up with the goods, then I think the Government will have to be very careful in considering the amount of money sought by the various companies to ensure that the money sought will be used in a cost-effective manner.

MR. PETER WONG: Sir, would the Financial Secretary sympathetically consider in his forthcoming budget the giving of tax breaks to make it more attractive for sponsors of the performing arts and charities in Hong Kong?

FINANCIAL SECRETARY: Mr. WONG will have to wait until 1 March before I answer that question. (laughter)

MRS. TAM (in Cantonese): On the question of funding of the Council for Performing Arts, has the Administration considered whether public subsidies are bearing a fixed ratio to the private subsidies; and if so what ratio would that be?

SECRETARY FOR DISTRICT ADMINISTRATION: Sir, I am not aware that there is a fixed ratio being laid down, but obviously we would welcome the private sector to contribute as much as possible. At the moment I understand that the private sector is coughing up about 7 to 9% of the total cost required for the running of these companies.

MR. PAUL CHENG: Sir, it has been reported that the Urban Council will, with effect from 1 April, assume full funding responsibility for the Hong Kong Philharmonic Orchestra. Would the Government advise this Council whether this development will eventually spread to cover all other performing arts bodies?

SECRETARY FOR DISTRICT ADMINISTRATION: I do not think so, Sir. The Hong Kong Philharmonic is a special case because the Urban Council has always been very closely involved in the funding and management of the orchestra. It meets two-thirds of the

subvention made to the Philharmonic and the remaining one-third is met by Government because the Urban Council does not extend beyond the urban areas.

MISS LEUNG: Sir, will the Government please inform this Council whether public views have been sought with regards to Government's subvention of performing arts activities, if so, what are their views?

SECRETARY FOR DISTRICT ADMINISTRATION: Sir, I do not believe that the public's view has been solicited on this particular matter. I am not aware of that, but I will find out from the Secretary for Municipal Services and I will give a written reply. (Annex IV)

MRS. LAM (in Cantonese): Sir, will the Government inform this Council whether financial difficulties experienced by the performing companies could be attributed, apart from the enlarged budget, to the fact that their programmes are not highly welcomed by the public? If so, will the Government first seek to study the tastes of the public in order to provide more popular programmes thereby attracting more members of the public?

SECRETARY FOR DISTRICT ADMINISTRATION: Sir, as I have said, one of the responsibilities for the Council for the Performing Arts is to promote the arts in Hong Kong, and one of the ways to do it is to popularize the arts. In a choice of programme, I think they do run into difficulties. Obviously it pays them to stage the popular performances, (and I am sure they try their best to do it), but sometimes in order to enhance the level of appreciation of the arts they might choose to present some of the more artistic, but to the public -- obscure -- works. I think in those cases for the sake of enhancing the level of appreciation of the arts that is a small price we might have to pay.

Phasing out of bisessional primary schools and simplification of Codes of Aid

7. MR. DAVID CHEUNG asked: With reference to Government's stated aims to phase out bisessional primary schools and to simplify the Codes of Aid for aided schools, will

the Administration inform this Council what concrete steps have been taken towards the early attainment of these goals?

SECRETARY FOR EDUCATION AND MANPOWER: Sir, Mr. CHEUNG is asking about two issues. The first concerns half-day schools. Since I last spoke on this subject in this Chamber on 16 November 1988, the Director of Education has continued his detailed study of the number of new primary schools which will be needed to phase out half-day schools. As the study has progressed, we have found that the number of new schools needed is not as large as we originally thought. However, the study is not complete, and I am not yet in a position to announce a definite phasing-out programme.

Sir, Mr. CHEUNG's second question concerns progress on simplifying the Codes of Aid. In July 1988 Finance Committee approved significant changes to the pattern of grants payable to aided schools. These both simplified the system and gave greater recognition to the different requirements of schools of different sizes. The Director of Education has since then taken further action in three areas.

Firstly, the amounts which schools may spend on major repairs without first going through tendering exercises have been substantially increased. Previously any repairs costing more than \$2,000 in a primary school or \$8,000 in a secondary school required tenders. With effect from last September tenders may be waived for repairs costing up to \$30,000. With effect from next month ceilings for purchases of furniture and equipment without needing to tender will also be raised, from \$2,000 to \$5,000 for primary schools, and from \$8,000 to \$10,000 for secondary schools. This will relieve schools of a considerable amount of paperwork, and also enable them to carry out repairs, or buy equipment, rather more quickly. A circular on these new arrangements will be issued to all aided schools before the end of this month.

Secondly, agreement has been reached in principle that the Housing Department will from 1 April 1989, take over all internal maintenance of primary and secondary schools on its estates, in addition to its existing responsibility for external maintenance. This too will greatly reduce the administrative burden on such schools.

Thirdly, the director is considering what grants under the Codes of Aid could be amalgamated to give aided schools more flexibility in the use of their subsidy.

MR. DAVID CHEUNG: Sir, based on the Secretary's answer I have three supplementary questions, if you will allow.

HIS EXCELLENCY THE PRESIDENT: Not all at the same time please, one by one, and not in sequence because I must give other Members the chance to ask their supplementaries.

MR. DAVID CHEUNG: Sir, in view of the fact that there are primary schools now in which the number of classes involved, the am and pm sessions, do not exceed 24, will the Secretary inform this Council whether Government will consider declaring full-day primary school when and where possible so that such schools will have no excuse to remain half day?

SECRETARY FOR EDUCATION AND MANPOWER: Sir, I do not want to anticipate what our proposals will be. I would certainly hope that where there is no accommodation problem, we would be able to move quickly. But at this stage I would not wish to commit myself.

MR. SZETO (in Cantonese): Sir, in the first paragraph of the Secretary's reply it is said that after the study commenced it was found that the number of new schools needed was not as high as was originally envisaged. Could the Secretary inform this Council: (1) what number was originally envisaged, and what number was finally found to be necessary; and (2) whether this will facilitate and speed up the implementation of the full-day session or unisessionalism?

SECRETARY FOR EDUCATION AND MANPOWER: Sir, we have not yet got a final figure. We have been trying to make our figure more accurate and reliable. The figure we now have and I must stress that this is still very tentative, though I hope that we can finalize our proposals and our information within the next few months, is about 100 schools at a cost of about \$1.5 billion. Originally we feared the sum would be more than that. I do not think we had any specific sum in mind, but we thought it would be more than the 100 schools and \$1.5 billion which now looks like being necessary. As I said, this is still not a final figure. The fact that the figures are not as big as the department originally feared will certainly, I hope, make the problem less

difficult than it might have been.

MR. DAVID CHEUNG: Sir, I am pleased to hear from the Secretary that from 1 April 1989 the Housing Department will take over the internal as well as the external maintenance of primary and secondary schools in the estates. Will the Secretary kindly inform this Council what is going to happen to non-estate schools in terms of internal and external maintenance?

SECRETARY FOR EDUCATION AND MANPOWER: Sir, as far as I know, the department does not at this stage have any new proposals in this area.

MR. MICHAEL CHENG (in Cantonese): Sir, the Government plans to go ahead with whole-day primary school. Lunch at school would become a very pressing problem because at present in primary schools there are very severe shortages of canteens and staff. What specific measures will be taken by Government to enable the whole-day system to go ahead as planned?

SECRETARY FOR EDUCATION AND MANPOWER: Sir, I am sure that this is one of the problems that the director has in mind, but I do not at this stage know what his solution is.

MRS. CHOW: Sir, going back to the whole-day school, when is this study expected to be completed; and can the Secretary confirm, or inform us, how many per cent of our primary schools at present are whole-day, and with available figures to date, how long it will take for all primary schools to go whole-day?

SECRETARY FOR EDUCATION AND MANPOWER: Sir, at present only a small proportion of our primary schools are whole-day, I do not have the actual figure available, I can provide that in writing (Annex V). As I said, we have not yet finalized our proposals, so I think it would be rash of me to say how long it would take. But as I have indicated, even though the figures may not be as large as we had originally feared, they are still very substantial. We are still thinking in terms of possibly 100 schools - - \$1.5 billion -- so I would expect it would certainly take a number of years to

implement any proposals.

MRS. FAN: Sir, the Secretary indicated that the director is considering what grants under the Codes of Aid could be amalgamated to give more flexibility. Can the Secretary indicate a target date at which the director should have completed his consideration for implementation purposes?

SECRETARY FOR EDUCATION AND MANPOWER: Sir, it is very difficult to give firm figures on this because it is not entirely within the director's control. The director is therefore very reluctant to give a very firm date. He obviously needs to consult outside bodies and other bodies within the Government, but our aim, I think, would be to try to have the proposals ready in time for the new school year.

MRS. LAM (in Cantonese): Will Government inform this Council whether or not it will consider subsidizing the lunch fees of students in whole-day primary schools?

SECRETARY FOR EDUCATION AND MANPOWER: Sir, I will pass this suggestion on to the director for him to consider.

MRS. CHOW: Sir, I do not think the Secretary has answered the first part of my supplementary question, which was: "When is the study referred to on whole-day school expected to be completed"? If we are not careful we are going to be bogged down with studies with open-ended schedules.

SECRETARY FOR EDUCATION AND MANPOWER: Sir, I would hope that it could be completed within the next two or three months.

MR. MICHAEL CHENG (in Cantonese): Sir, whole-day primary schools require more teachers for counselling and extra-curricular activities. Will Government consider increasing the number of teachers in primary schools from 1.1 teacher per class to 1.3 for each class, to tie in with the ratio in secondary schools?

SECRETARY FOR EDUCATION AND MANPOWER: Sir, I will pass this suggestion on to the director for him to consider.

MRS. TU: Sir, in view of the many complaints made by estate residents about the slow speed of maintenance on their premises in the estates, would the Secretary for Education and Manpower give an assurance that the maintenance would be speeded up rather than slowed down by handing it over to the Housing Department?

SECRETARY FOR EDUCATION AND MANPOWER: Sir, I am afraid I was not aware that there were complaints about the speed of maintenance in housing estates. I will certainly mention Mrs. TU's enquiry to the director and ask him to consider the matter.

Criteria for entering a nolle prosequi

8. MR. TAI asked: Will the Administration inform this Council of the criteria adopted by the Attorney General in deciding whether or not to enter a nolle prosequi in a criminal prosecution; the reason for the delegation of this power within the Legal Department, bearing in mind that under English Law the power cannot be delegated; and the number of cases in which a nolle prosequi was entered in the past three years, together with the grounds on which the decisions were based?

ATTORNEY GENERAL: Sir, the power to enter a nolle prosequi is used by the Attorney General to terminate criminal proceedings. Its use does not operate as an acquittal of the accused, so that fresh proceedings may later be commenced against the accused for the same offence.

The facts of each case differ. It is therefore not possible to provide exhaustive criteria. In general the public interest in seeing that those suspected of criminal acts are brought to trial must be weighed against the interest of an accused to be tried without undue delay or prejudice to his defence.

By way of examples, nolle prosequi have been entered in the following

circumstances:

where because of his physical or mental infirmity, a trial would be unfair to the accused but at the same time an acquittal is not warranted;

where there is information that a key witness to a serious offence has been bribed or intimidated not to attend court to give evidence for the prosecution in circumstances where an acquittal as a result of such misconduct would not be in the public interest; and

when charges have been brought in the wrong court and where the entry of a nolle prosequi is the only means of effecting justice in the appropriate forum.

In Hong Kong, the Attorney General is permitted by law to delegate many of his functions including this one. The power to enter a nolle prosequi has been delegated to the Crown Prosecutor and to the three Deputy Crown Prosecutors. No doubt delegation has been considered to be a practicable and sensible measure and I would point out that these are very senior lawyers who are particularly well placed to consider such cases in depth and, where necessary, at short notice.

Nolles prosequi were entered 49 times in 1986, 23 times in 1987 and 23 times last year. I do not consider it proper to disclose reasons for the entry of nolles prosequi in individual cases, since cases can be resurrected, and such disclosure could well be prejudicial; however the grounds on these occasions have varied and have included cases of the kind to which I have already referred.

In December last year, and in consequence of a particular case, I directed a review of the use of nolles prosequi and that review has commenced. It will carefully examine fundamental principles, the approach used elsewhere, as well as considerations peculiar to Hong Kong. Included in the review is the question whether and, if so, to what extent, the power should be delegated. It is my intention to consult the Judiciary, the Bar Association and the Law Society in the process of that review.

MR. TAI: Sir, while the exercise of this prerogative power is an expedient to defeat a judicial decision to adjourn a particular case, may I ask whether the Attorney General is prepared to abide by the legal principle adopted by other Commonwealth

countries that this prerogative power is only exercised in the case of oppressive prosecution or in cases where there is technical imperfection in a particular criminal case?

ATTORNEY GENERAL: Sir, that will indeed be one of the matters to which the review will pay particular attention.

MR. MARTIN LEE: Sir, does the Administration accept that nolle prosequi are very rarely entered in the United Kingdom, and that they are entered much more readily here in Hong Kong, and secondly, is it necessary or indeed desirable to delegate such a very important power to no less than four persons in the Legal Department?

ATTORNEY GENERAL: I cannot of course comment on what happens in England. That is not a matter on which I have any knowledge. As to the question of delegation, as I have stated in my main answer, the power is delegated to the Crown Prosecutor and his three deputies. They are very senior lawyers. It has been delegated for practicable and sensible reasons, but, as I have also made clear in my main answer, I with the Crown Prosecutor will be looking at the power of delegation to examine the extent to which it should be delegated, if at all.

MR. CHUNG: Sir, could the Attorney General inform this Council who is responsible, after a nolle prosequi has been entered, to see whether a case can be resurrected -- whether it is the police in charge of the case, or the Crown Counsel prosecuting the case, or the one who has authorized the entry of the nolle prosequi, and whether there is any time limit within which such officers should review the case?

ATTORNEY GENERAL: Sir, much clearly depends on the circumstances which led to the entry of the nolle prosequi in the first place. For example, it is extremely unlikely that a case terminated on humanitarian grounds would be resurrected. In other instances, a decision whether to revive charges that have been the subject of a nolle prosequi could be made as part of the usual process of the investigation and prosecution of the crime, and that process involves both the police and members of my chambers. There is not a general time limit within which a case which has been

terminated by the entry of a nolle prosequi will be reviewed.

MR. MARTIN LEE: Sir, are there, or have there ever been, internal criteria laid down in the Legal Department as to when nolle prosequi may be entered and if so, what are they?

ATTORNEY GENERAL: Sir, administrative directions as to the procedures that should be followed in seeking the entry of a nolle prosequi exist. They do not set out the criteria applicable to the entry of nolle prosequi, nor the circumstances in which they should be entered.

MR. CHEONG: Sir, as someone who is not really familiar with law, I am puzzled by what the Attorney General has said -- that sometimes nolle prosequi is used in order to bring people to justice just in case charges are laid in the wrong court. Now could the Attorney General inform this Council that this particular criterion is very seldom used?

ATTORNEY GENERAL: I do not have the precise figures for the occasions on which a nolle prosequi has been entered because the wrong venue for the trial has been selected. Clearly the power is exercised only when there is no other alternative. As the law presently stands, the nolle prosequi is the only procedure available when charges have been brought in the wrong court. If I may add, Sir, once again this will be yet another aspect of this power which will be the subject of the review.

MR. TAI: Sir, will the Attorney General inform this Council whether he sees it fit to exercise this power to terminate a criminal proceeding in matters relating solely to evidence?

ATTORNEY GENERAL: I am not quite sure what the point is that Mr. TAI is getting at. All cases involve evidence. I have given a range of examples to illustrate the type of cases in which nolle prosequi are entered. The facts and evidence of each case must be considered before the decision is made.

MR. ARCULLI: Will the Attorney General inform this Council, in respect of the 49 occasions in 1986, the 23 in 1987 and the 23 last year, how many of those cases fall within the three circumstances that he described, and how many outside, and what are those other circumstances?

ATTORNEY GENERAL: I do not have the breakdown of these figures. I would have to consider to what extent consistent with the principle that I have mentioned earlier in my main reply I can supply a breakdown of this type as asked for by Mr. ARCULLI. (Annex VI)

MR. LI: Sir, can the Attorney General inform this Chamber how many times he was consulted by his colleagues before they granted this?

ATTORNEY GENERAL: It has not been the practice to require prior consultation on the entry of nolle prosequi, nor is there the requirement that they subsequently be reported to me. Of course, the Crown Prosecutor and his deputies are not precluded from consulting me on occasions, and have done so when necessary.

MR. MARTIN LEE: Sir, is the power to enter nolle prosequi a prerogative power or is it a statutory power, and likewise is the power to delegate a prerogative power or a statutory power?

ATTORNEY GENERAL: Sir, the power of the Attorney General to enter a nolle prosequi in cases in the High Court is a common law power, and therefore within the prerogative. In respect of cases in the District Court and the magistracies, there are specific statutory provisions in their respective Ordinances that confer the equivalent power. The power to delegate is contained within section 7 of the Legal Officers Ordinance, and is drawn in terms referable both to statutory and common law prerogative powers.

Written answers to questions

Crowd control at Lo Wu KCR Terminal

9. MR. POON CHI-FAI asked : As some trains arrive at Lo Wu well before the office hours of the Departure Hall at the Lo Wu KCR Terminal, crowds begin to build up outside the Departure Hall. People push their way in when the Departure Hall opens, resulting occasionally in elderly people and children being knocked down on the floor. In order to facilitate crowd control arrangements at the Lo Wu KCR Terminal, will Government inform this Council whether consideration will be given to the following suggestions for improvements:

(i) to advance the daily gate-opening and operating hours of the Departure Hall at the Lo Wu Terminal to tie in with the arrival time of the trains;

(ii) to allow passengers to line up at the lobby leading to the Departure Hall before its office hours when the trains arrive;

(iii) to make arrangement for the elderly, and those who bring along young children to line up at a special counter;

(iv) to make arrangement with the Chinese authority with a view to extending the border-crossing time; and

(v) to increase the frequency of the trains and extend the border-crossing time during major festive periods, for example, Christmas and New Year?

SECRETARY FOR SECURITY: Sir, I appreciate the concern in this matter. Lo Wu is our busiest land border crossing point and in 1988, 27 million persons travelled through it to and from China. Taking the five suggestions in turn, the answers are:

(1) Yes. Consideration will be given to advancing daily gate opening times. Consideration will also be given to arranging train arrival times more closely with gate opening and operating times.

(2) The feasibility of allowing passengers to line up in the lobby will be re-examined. The reason for not following this procedure hitherto was because of

poor ventilation in the lobby. The Kowloon-Canton Railway Corporation will be asked to consider ways of solving this problem.

(3) Due to the need to maximize the use of staff at this very busy crossing point, it would be difficult to reserve a special counter just for the elderly and for those with young children. However, Immigration Department staff have been instructed to keep a look-out for such people and the regulators will direct them to channels normally reserved for staff where they will receive help-through facilities.

(4) Border crossing times are subject to regular review between the Hong Kong and Chinese authorities. Border opening hours have been extended several times. The last extension was on 16 January 1987.

(5) The Hong Kong and Chinese authorities pay particular attention to the needs of travellers at major festive seasons. At Christmas and Chinese New Year, for example, the border crossing times are extended to cope with the heavy traffic demand. During the coming Chinese New Year period the border opening hours will be advanced from 0730 to 0430 on 3, 4, 5 and 6 February and the closing time will be extended beyond 2300 hours on 11, 12 and 13 February. Additional trains will be operated by the Kowloon Canton Railway Corporation and the Guangdong Railway Authority.

Smoke emission test of diesel engined vehicles

10. MR. MCGREGOR asked: Since smoke emission from diesel engined vehicles is one of the major sources of air pollution, and over one-third of the vehicles in Hong Kong are diesel engined, will the Government inform this Council:

(a) of the total number of vehicles, in particular diesel engined vehicles, which have been called in by the Environmental Protection Department (EPD) to undergo the smoke emission test since the establishment of the EPD test centre in January 1988 and of the diesel engined vehicles tested how many required repeated testings before they could meet the emission standard of 60 Hartridge Smoke Units;

(b) whether it will consider the imposition of a fine and penalty points on owners of diesel engined vehicles which fail the smoke test more than once within a given period; and taking the vehicles off the road when a certain number of penalty points have accrued, having regard to the similar system which applies to

driving offences; and

(c) whether it will consider tightening control over the emission of diesel engined vehicles by increasing the number of checks against emission standards and extending the checks to cover other air pollutants?

SECRETARY FOR LANDS AND WORKS: Sir, I will answer Mr. MCGREGOR's question seriatim:

(a) In 1988 the Environmental Protection Department (EPD) carried out 8 256 tests on smoky vehicles of which nearly all had diesel engines. Of these, 646 vehicles required a second test before they were able to meet the emission standard of 60 Hartridge Smoke Units; 74 required a third test; of these 74, seven required a fourth test; and of these seven, one required a fifth test, before they met the emission standard.

(b) We will consider whether to impose a fine and penalty points on repeated offenders, and also the possibility of taking vehicles off the roads. However the current demerit system is specifically designed to improve road safety, so the introduction of penalty points would have considerable policy implications. Nevertheless the EPD is currently conducting a review on smoky vehicles, and will examine these suggestions. The review should be completed by April 1989.

(c) We aim to double the number of tests on smoky vehicles in 1989. We will also, in the context of the review, consider the introduction of an inspection and maintenance programme which will entail regular checks of other air pollutant emissions.

Height of railings in public housing estates

11. Mr. POON CHI-FAI asked: In view of a recent incident involving a child who was killed after falling over from the railings of a public housing estate, will Government inform this Council:

(i) whether consideration will be given to increasing the height of railings and their design requirements presently stipulated under the Building Ordinance; and

(ii) what remedial measures will be taken by the Hong Kong Housing Authority and the Hong Kong Housing Society to improve the design of existing railings in public housing estates?

SECRETARY FOR LANDS AND WORKS: Sir, the height of railings and their design requirements are stipulated in the Building (Construction) Regulations and Building (Planning) Regulations.

For accessible roofs, regulation 83 of the Building (Construction) Regulations provides that:

"Every part of a roof, to which access is provided, shall be protected by parapet walls or railings not less than 1 100 mm in height from finished roof level and so constructed as to inhibit climbing and the passage of articles more than 100 mm in their smallest dimension. The lowermost 150 mm of such parapet walls or railings shall be built solid."

For protection where there is a difference in ground levels, regulation 25(5) of the Building (Planning) Regulations requires that:

"Where any open space or area is at a level more than 600 mm below an adjoining open space, safe parapet walls, railings or fences shall be provided by the person creating the difference in levels."

For protection of openings on an external wall, regulation 3A of the Building (Planning) Regulations provides that:

"(1) Every opening placed on an external wall above the ground floor of any building shall be protected by a barrier which shall be not less than 1 100 mm high and the lowermost 150 mm of such barrier shall be built solid; and

(2) A barrier provided under paragraph (1) shall be so designed as to minimize the risk of persons or objects falling, rolling, sliding or skipping through gaps in the barrier, or persons climbing over the barrier."

Regulation 3 of the same regulations provide similar requirements for protective barriers in respect of balconies and verandahs.

The above current provisions are considered adequate in ensuring safety relating to railings from the design point of view.

With regard to the Hong Kong Housing Authority's estates, the railings and parapets are already of a height in excess of that stipulated under the Building Regulations, that is, 1.2 m as against 1.1 m. The height and design of the same for the Hong Kong Housing Society's estates also comply with existing regulations, and where appropriate, planters on top of parapets are provided to prevent against climbing over.

It should perhaps be pointed out that incidents such as that referred to do not necessarily occur as the result of the height of a parapet or balcony. Better supervision of small children, for example, is probably more effective in preventing incidents of this kind. Notwithstanding this, both the Housing Authority and the Housing Society are fully aware of the need to make their properties as safe as reasonably possible. Feedback from incidents of this nature is taken account of in the design of new blocks and the maintenance and improvement of existing buildings.

Congestion of vehicles at border crossing

12. MR. BARROW asked: Given that the number of vehicles crossing at the border has increased to 11 000 a day compared with only 500 a day in 1980, with resulting long delays at the border and additional congestion throughout Hong Kong during the day, will Government consider entering into discussion with the Chinese authorities to examine the feasibility of opening the border for a longer period to reduce delays and congestion on the main roads during peak hours?

SECRETARY FOR SECURITY: Sir, while it is true that there has been serious congestion at the Man Kam To border crossing point in the past, particularly in the second half of 1987, the problem has been less serious during 1988. Much has been done to reduce congestion by both the Hong Kong and Shenzhen authorities, including the provision of more Customs and Immigration staff, opening more processing lanes and the provision of an extra lane on the Man Kam To road.

Extending the existing hours of 7.30 am to 8.00 pm during which the crossing point

is open has been carefully considered, but for two reasons it has been decided not to seek for any extension with the Chinese authorities.

First, the new Lok Ma Chau border crossing point is scheduled to open in the middle of this year. With a twelve-and-a-half hour working day, the new facility will have a daily processing capacity of 15 750 vehicles, bringing the total capacity of the crossing points, Lok Ma Chau, Man Kam To and Sha Tau Kok to around 28 000 vehicles per day. This should prevent congestion problems until at least 1995. Thereafter, Phase II of Lok Ma Chau will provide capacity for a further 11 250 vehicles per day.

Second, an analysis of traffic at Man Kam To shows that there is a north-bound peak in the morning extending into the early afternoon and a south-bound peak in the late afternoon and early evening. While there might be additional demand for crossings after 8.00 pm, it seems unlikely that there would be significant demand during the night. Extending the opening hours also presents practical difficulties. Customs and Immigration currently work a two-shift system at Man Kam To and Sha Tau Kok. To extend the opening hours would require additional staff and split shifts.

For the time being extended opening hours at the border crossing points are not considered to be essential. The situation will, however, be monitored and it may be that this solution will need to be considered before Phase II of Lok Ma Chau reaches capacity. On current projections this will be in the year 2000, if no further expansion of the facilities is undertaken.

Oral answer to question

Administering of the wrong gas to a patient

HIS EXCELLENCY THE PRESIDENT: Dr. LEONG, you have submitted a late question which I have allowed because it concerns an urgent matter of public importance.

13. DR. LEONG asked: I am most grateful to you, Sir, for allowing me to slot in a question at the eleventh hour, the topic of which is obviously of great concern to this Council and to the public. The question is: In the light of the recent tragedy involving a patient believed to have been supplied with a wrong gas during an operation, will the Administration inform this Council of the existing administrative and

legislative controls over the supply of medicine, gas and gaseous products for use in public, subvented and private hospitals?

SECRETARY FOR HEALTH AND WELFARE: Sir, before I answer Dr. LEONG's question, I would like to express the Government's deepest sympathy, which I am sure all Members of this Council also feel, to the family of the deceased. I would also like to point out, and I am sure Members will understand, that it would not be appropriate for me to comment on the particular facts of the tragic case to which the question refers. The circumstances are being investigated by the police and a report will be submitted to the Coroner for him to consider whether an inquest should be held.

There are legislative controls under the Pharmacy and Poisons Ordinance governing the manufacture, distribution and sale of medicine and pharmaceutical products. In order to ensure the safety, quality and efficacy of such products, there are legal requirements covering the registration of products and the licensing of imports, importers, retailers, wholesalers and local manufacturers. Inspections of suppliers' premises and sampling of their products for analysis are carried out on a regular basis. These controls are considered adequate for the purposes of monitoring the quality of medicine supplied to the community.

In respect of gases such as oxygen and nitrogen which are covered by the Dangerous Goods Ordinance, a licence is required under section 6 from the Director of Fire Services for their manufacture, storage, conveyance or use. Such licences need to be renewed annually. Before licences are issued or renewed, the premises and equipment for manufacture and storage and the vehicles for conveyance are inspected to ensure safety precautions against fire or explosion.

There are at present no legislative controls over the administration of gases such as oxygen or nitrogen to patients in hospitals or clinics. Neither gas is dangerous in itself and suppliers and hospitals are already under a common law duty of care to patients to ensure that the correct gas is supplied and administered.

In the five major government hospitals, regular checks are carried out to ensure the integrity of the piping system for the supply of oxygen to operating theatres and wards. As a part of this procedure, the identity and quality of the oxygen is also checked.

Subvented and private hospitals operate their own systems and procedures. Enquiries made after the tragic incident last Saturday, 14 January, revealed that not all subvented or private hospitals carried out similar checks on a regular basis.

In order to ensure the safety of patients, the Medical and Health Department has, since last Saturday, carried out tests on all oxygen tanks and cylinders in every government hospital and clinic. As a result, I can confirm that all these tanks and cylinders contain oxygen of the specified quality. I can also confirm that all operating theatres are designed in such a way as to guard against connections to the wrong gas source.

In addition, the department has advised all subvented and private hospitals to take appropriate measures to ensure that the oxygen stored in those institutions is in fact oxygen and that there is no possibility of the wrong gas being administered to patients. Checks carried out by those hospitals since last Saturday confirm that their oxygen supply is in good order.

The Medical and Health Department will continue the emergency measures in government hospitals until the reason for the mistake in question has been identified and permanent steps have been worked out to prevent the occurrence of a similar incident in the future. The department has advised all subvented and private hospitals to do likewise.

Sir, I have described the emergency action that has been taken to ensure there will be no repetition of this tragic accident in the immediate future.

As soon as we have the full report of what occurred in this case we shall work out urgently what long-term arrangements are necessary to ensure that there cannot again be a case where the wrong gas is used in an operation.

DR. LEONG: Sir, I have two supplementary questions if I may, but I suppose you would like me not to take them in sequence.

HIS EXCELLENCY THE PRESIDENT: Yes, would you please separate them.

DR. LEONG: The Secretary has just informed us that the control of oxygen and nitrogen currently is done through annual checks to ensure safety precautions against fire and explosion. Would the Administration consider legislative measures for more frequent regular checks to ensure the safety of the public in other directions?

SECRETARY FOR HEALTH AND WELFARE: Sir, the Director of Fire Services at present does not check the manufacturing process or the quality of the gas being produced. I suppose there is now a need to look at whether that loophole can be covered, Sir.

MR. LI: Sir, the investigator of this tragedy is saying in effect that such a mistake could not have happened. Mrs. BOYDE's untimely death apparently indicates otherwise. What steps will the Government take to determine in the public interest and beyond a shadow of doubt who was responsible for the murder of Mrs. BOYDE, and to ensure that such a devastating tragedy can be prevented from happening again?

SECRETARY FOR HEALTH AND WELFARE: Sir, as I said in my main answer, the case is under investigation by the police, and I do not think it would be appropriate for me to comment on the steps the police may be taking to carry out a full investigation, but I am sure that the police will explore all the possibilities and come to a conclusion and make a report to the coroner so that he may determine whether an inquest should be carried out. As regards measures to prevent the recurrence of such a tragic incident, Sir, I have already outlined in my main answer the immediate steps which the Director of Medical and Health Services, together with the subvented and private hospitals, have undertaken, and as I also indicated in my main answer, when we have found out the real reason for the tragedy we will immediately consider long-term steps which might or should be taken to prevent the recurrence of such a tragedy.

HIS EXCELLENCY THE PRESIDENT: Attorney General, do you wish to add to that reply?

ATTORNEY GENERAL: Sir, I wish to make a point of order in the terms of Mr. LI's question. I wish to draw your attention, Sir, to the impropriety of that question, the gross allegation contained in it, and ask for your ruling that that question was out of order. With the greatest respect, Sir, I am sure that this Council would not wish

to associate itself with the remark that imputes such motives as implicit in the question.

4.07 pm

HIS EXCELLENCY THE PRESIDENT: I would wish to take advice before making a ruling on that matter. I propose to suspend the sitting in order to do so. The sitting will be suspended.

4.12 pm

HIS EXCELLENCY THE PRESIDENT: Council will now resume. Mr. LI, I wish to draw your attention to two Standing Orders. The first is 18(1)(c), which is that a question shall not contain imputations. The other is 18(1)(b) which is that a question shall not contain a statement which a Member is not prepared to substantiate. You used the term "murder". I would like to ask you, if you are not prepared to substantiate it, to withdraw that phrase. Mr. LI?

MR. LI: Sir, I withdraw the question.

HIS EXCELLENCY THE PRESIDENT: Thank you. We will now continue with supplementaries.

MR. MCGREGOR: Sir, can the Secretary advise whether there have been such incidents in the past, or cases where the gas supply in hospitals has failed during a surgical operation. If so, what action was taken at these times? Is the equipment used in hospitals for gas distribution required to be approved by any government authority?

SECRETARY FOR HEALTH AND WELFARE: Sir, on the first point, I believe that there have been no previous incidents of this nature. On the second point, Sir, I will have to seek the advice of the Director of Medical and Health Services, and provide a written reply (Annex VII). On the third point, I will also reply in writing. (Annex VIII)

MR. EDWARD HO: Sir, since it was revealed that not all subvented or private hospitals carried out checks on a regular basis on their medical gas supply systems, will the Government please inform this Council whether it considers that some form of legislative control should be introduced?

SECRETARY FOR HEALTH AND WELFARE: Sir, after the tragedy has occurred, with the benefit of hindsight, it is easy, and also entirely appropriate of course, for us to look back on existing procedures and regard them as inadequate. But as I said in reply to an earlier supplementary, there has been no incident of this nature in the past. So prior to this incident it was not considered that the procedures adopted by the subvented and private hospitals were inadequate. But having been asked by the Director of Medical and Health Services to adopt the emergency measures which I have just described in my main answer, they have acted urgently and expeditiously to carry out those measures, and as a result they have been able to confirm that the oxygen supply in their hospitals is in good order. But obviously in considering what long-term measures we should adopt after the cause for the accident has been established, one of the possibilities we would have to consider would be legislative controls.

DR. LEONG: Sir, in the light of the fact that the aforementioned tragedy occurred in a private hospital, will the Administration inform this Council of the responsibility it has towards non-government hospitals?

SECRETARY FOR HEALTH AND WELFARE: Sir, the control of private and subvented hospitals is exercised by the Director of Medical and Health Services through the registration requirements under the Hospitals, Nursing Homes and Maternity Homes Ordinance. Under this Ordinance, a registered hospital must be under the charge of a qualified medical practitioner, or a registered nurse. Registration is subject to any conditions relating to accommodation, staffing and equipment which the director may see fit to impose. Such registration has to be renewed on an annual basis, and registration may be cancelled by the director at any time in certain specified circumstances. Apart from this, there is at present no direct supervision by the Government of hospitals, other than government hospitals. But, Sir, this is not to say that they are entirely free in what they do. Private and subvented hospitals are regulated in respect of their operations by the Pharmacy and Poisons Ordinance,

Antibiotics Ordinance, Dangerous Drugs Ordinance and Radiation Ordinance. They are also regulated in respect of their staffing by the Medical Registration Ordinance, Nurses Registration Ordinance, and Midwives Registration Ordinance, and in due course the Supplementary Medical Professions Ordinance and Regulations. So, that is the existing system, Sir.

MR. ARCULLI: Sir, will the Secretary for Health and Welfare clarify, in answer to Mr. MCGREGOR's question, when he said that there was no similar incident in the past, whether he was referring to an incident resulting in death, or whether there was an incident resulting in injury as well?

SECRETARY FOR HEALTH AND WELFARE: Sir, as far as the Director of Medical and Health Services is aware, a similar incident of the wrong gas being administered to a patient undergoing an operation has not occurred previously in Hong Kong.

MR. POON CHI-FAI (in Cantonese): Sir, as far as I can recall this is not the first case of a medical mishap. It has happened in other respects such as in blood transfusions. To prevent the public from having the perception that the Government is only taking stop-gap measures could there be general guidelines set down on the overall provision of medical care and medicinal supplies; and in connection with the forthcoming full report mentioned in the main reply, will the details be made available to Members of this Council as well as to members of the public?

SECRETARY FOR HEALTH AND WELFARE: Sir, the control of the provision of medicines and pharmaceutical products to hospitals is, as I said in my main reply, already under adequate control. I do not think there is any need to review those controls and provide any new guidelines. As far as the other aspects of hospital operations are concerned, the government hospitals are under the control of the Director of Medical and Health Services, and the other hospitals are under the control of registered medical practitioners who are well-known to the Director of Medical and Health Services. According to the Director of Medical and Health Services, the managements of these hospitals have always been co-operative with the department and receptive to advice given by the department. So I do not think we should, this afternoon, Sir, stray outside the original question and talk about the setting of guidelines for other types of hospital operations. As far as the provision and administration of oxygen

to patients is concerned, I have said already in my main reply that once we have established the cause of the accident, we will immediately consider what long-term steps should be taken to prevent this from occurring again.

MR. PETER WONG: Sir, I hope my learned friends will excuse me if I misquote Murphy's Law, which is "If anything will go wrong, it will go wrong". In such circumstances, can the Secretary for Health and Welfare please confirm that all subvented hospitals are adequately insured against such mishaps, so that the unfortunate victims or their families will be adequately compensated?

SECRETARY FOR HEALTH AND WELFARE: Sir, I shall consult the Director of Medical and Health Services and provide a reply in writing. (Annex IX)

MRS. LAU: Sir, whatever may have been the cause of the present tragic accident, in the light of it having happened, would the Administration not consider it of first and foremost importance in the interest of public health to take immediate steps now, without awaiting the full report, to make it mandatory for all hospitals, whether government, private, or subvented, to follow a fixed set of safety regulations in all cases of administration of gases and medicines to patients?

SECRETARY FOR HEALTH AND WELFARE: Sir, since the immediate steps which have already been taken have eliminated the possibility of the accident, or a similar accident from occurring again in the immediate future, I think we should wait until the results of the investigation are available before considering, as a matter of urgency, what next steps to take.

DR. IP: Is it the responsibility of the Medical and Health Department to ensure that all hospitals, irrespective of the type, operate safely and to a certain standard? If so, can Government explain why in this case there had been a double standard in the monitoring of the use of oxygen between the major government hospitals and others?

SECRETARY FOR HEALTH AND WELFARE: Sir, I have already explained in reply to an earlier supplementary the type of control exercised by the Medical and Health Department over non-government hospitals. Since these hospitals have always operated their own systems and procedures, and their record so far has been very good, there was no reason for the Director of Medical and Health Services to interfere directly with the management or running of these hospitals, to impose standards of procedures which are in operation in the government hospitals. Conversely there are, I understand, certain types of treatment which are in place in these hospitals but are not used in government hospitals.

MR. CHOW (in Cantonese): Sir, at present in government hospitals are there sufficient numbers of experienced anaesthetists and nurses to provide surgical operations of good quality?

SECRETARY FOR HEALTH AND WELFARE: Sir, as in the case of all other grades of civil servants and doctors, there are at present some vacancies in the establishment of doctors in government hospitals who specialize in anaesthesia. But the Director of Medical and Health Services is satisfied that no patient would be allowed to be operated on under anaesthesia without the supervision of a qualified medical practitioner. I think the standards of care being accorded to patients undergoing operations can be regarded as satisfactory, and there is no cause for alarm.

MR. MCGREGOR: Sir, can the Secretary confirm that the containers used for the different types of gas themselves are totally different in character? In other words,

that the colour, shape, or dimensions of these containers are quite different, quite apart from the connecting threads being different; that there is a very clear identification of the different kinds of containers delivered to the same hospital.

SECRETARY FOR HEALTH AND WELFARE: Sir, I can confirm that the containers are quite differently labelled when they contain different gases.

MR. MCGREGOR: Sir, with respect, I do not mean the labelling. I mean the container

itself. Are the containers so similar, or identical that the misplacement of a label could cause a problem such as this, or are the containers themselves so different in character as to be easily identifiable as containing one gas or another?

SECRETARY FOR HEALTH AND WELFARE: Sir, I will have to provide a written reply. (Annex X)

MR. EDWARD HO: Sir, will the Secretary inform this Council how soon after occurrence of the problem, that is, oxygen tanks found to contain nitrogen during an operation, did the Medical and Health Department first hear of it and whether the department immediately notified all other public and private hospitals to prevent further mishaps? If yes, how long after the incident did it take to do so?

SECRETARY FOR HEALTH AND WELFARE: Sir, I believe that the Director of Medical and Health Services was notified some time on Saturday 14 January of the accident and that the department then took steps to telephone the subvented and private hospitals to ask them to take precautionary measures and of course at the same time the government hospitals were also alerted. But I do not know exactly how long this action took, Sir.

MISS LEUNG: Sir, as a follow-up to the Secretary's reply to an earlier supplementary, will the Secretary please inform this Council, first, how frequently the Medical and Health Department carries out checks in subvented and private hospitals to ensure that the registration requirements are fulfilled, and second, are these requirements under constant review?

SECRETARY FOR HEALTH AND WELFARE: Sir, the Medical and Health Department does not carry out, as far as I know, regular checks on subvented or private hospitals. As I said, Sir, these hospitals are run by fully qualified and highly respected medical practitioners, and the director has no reason to believe that they would be operating under unsatisfactory conditions.

DR. IP: Sir, I would like to reiterate the gist of Mrs. LAU's question, namely, would Government consider instituting a set of general rules and regulations, outside the various Ordinances the Secretary has quoted, to ensure that a certain minimum standard of operation is kept by all hospitals before a licence to operate is granted?

SECRETARY FOR HEALTH AND WELFARE: Sir, in the course of considering what further steps should be taken we will certainly look at that.

4.37 pm

HIS EXCELLENCY THE PRESIDENT: That concludes questions. Question time has taken considerably longer than it usually does owing to the number of supplementaries. I propose that we should now take a short break before we continue with ordinary business.

4.53 pm

HIS EXCELLENCY THE PRESIDENT: Council will now resume.

Government business

Motion

REGISTRATION OF PATENTS ORDINANCE

THE FINANCIAL SECRETARY moved the following motion: That the Registration of Patents (Fees) (Amendment) Rules 1989, made by the Registrar of Patents on 3 January 1989, be approved.

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

The fees payable to the Registrar of Patents in connection with the registration of patents were last revised in 1985. Following a costing exercise recently undertaken by the Treasury, it is proposed that certain fees be amended to take account of inflation and the cost of providing the services. This is in accordance with the

well established policy of users paying the full cost for the services rendered.

Sir, I beg to move.

Question proposed, put and agreed to.

First Reading of Bill

SECURITIES AND FUTURES COMMISSION BILL 1989

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

Second Reading of Bill

SECURITIES AND FUTURES COMMISSION BILL 1989

THE FINANCIAL SECRETARY moved the Second Reading of: "A Bill to establish the Securities and Futures Commission and to amend the law relating to dealing in securities and trading in commodity futures contracts; and to provide for connected or incidental matters."

He said: Sir, I move that the Securities and Futures Commission Bill 1989 be read the Second time.

Following the October market crash in 1987, you, Sir, appointed a Securities Review Committee, to examine the operation and regulation of the securities and futures industries in Hong Kong. The committee published its report last June. It was well received in Hong Kong and in other major financial centres. The Government accepted in general the recommendations of the report and since then, priority has been given to implementing these recommendations.

Within one year of the crash, the Stock Exchange had reconstituted its governing body and strengthened its management structure. The Futures Exchange has prepared and is seeking to introduce a revised constitution and new rules for strengthening

its risk management system. Work has also started on a central clearing and depository system with a view to bringing it into operation in 1990. I am most grateful to those who have been directly or indirectly responsible for the remarkable progress we have made.

As far as the Government is concerned, we have accepted the recommendation that a new regulatory body should be established outside the Civil Service. In this connection, we have been concentrating our efforts in bringing the new body, to be called the Securities and Futures Commission, into existence.

The Securities and Futures Commission Bill, now before this Council, represents a first but important step in the overhaul of securities legislation in Hong Kong. The new Securities and Futures Commission, which I shall refer to as the commission, will take the lead in continuing the review process once it is in place. To put the provisions of the Bill in context, I would like to begin, Sir, by referring briefly to some of the major findings and proposals of the Securities Review Committee.

The committee found that one of the key factors hindering the growth of our securities industry was that it was not well regulated. While the entire system had originally been based on the concept of a high degree of self-regulation by the exchanges, in fact self-regulation and market self-discipline had failed to develop in Hong Kong. Furthermore, faced with a massive increase in the complexity of securities markets in recent years, the regulatory structure had become obsolete.

The committee believed that Hong Kong should aim to become the pre-eminent capital market in south-east Asia and, to that end, should promote the progressive internationalization of its securities markets. Hong Kong should seek to develop stable, orderly and fair financial markets which offered adequate protection to investors at a reasonable cost. The committee further recommended a practitioner-based regulatory system, but advocated the establishment of a single statutory body outside the Civil Service consolidating the functions of the Securities Commission, the Commodities Trading Commission and the Office of the Commissioner.

The new commission should be headed and staffed by full-time regulators and funded largely by the market. It should be charged with ensuring the integrity of markets and the protection of investors. In particular, the commission should ensure that the exchanges carried out effective self-regulation, and the commission should have extensive reserve powers to intervene if the exchanges fell down on the job.

In putting together the legislative proposals we have consulted thoroughly market organizations, professional bodies and advisory committees. As a result, we have introduced significant modifications into the Bill. I believe, Sir, that the Bill in its present form strikes the right balance between giving the new commission adequate powers to carry out its tasks and providing the markets with the freedom they need to thrive and adapt to changing circumstances. But as several issues have attracted particular attention during the consultation process, it may be helpful if I were to touch upon these matters this afternoon.

The first is the nature of the relationship between the Government and the new commission and the need for there to be adequate accountability. As to accountability, I can assure Members that, although the commission will be outside the Civil Service, it will still be part of the wider government machinery and accountable to the Administration and to this Council. While the commission will have a great deal of autonomy in its day-to-day operations, any major changes to and developments in policy will still be subject to the approval of the Governor in Council.

As to the relationship between the new commission and the two exchanges, we have had extensive discussions with both exchanges on their relationship with the commission. We are agreed that, within the proposed regulatory framework, first line responsibility for maintaining the integrity, efficiency and fairness of markets and for ensuring the financial soundness and correct business conduct of members should rest with the exchanges. The commission, for its part, should monitor closely performance by the exchanges of their self-regulatory functions, give guidance, co-ordinate regulation within Hong Kong and internationally, and only use its power to direct the exchanges if it believes that they are failing to fulfil their regulatory responsibilities effectively.

Sir, for the system to work, there must be close, frequent and regular two-way contact and co-operation between the commission and the exchanges. Without seeking to interfere in the day-to-day management of the exchanges, the commission must be able to keep itself informed of market activities and the conduct of members. In exercising their regulatory functions, as well as in promoting the development of our financial markets, the commission and the exchanges have similar interests and objectives and will need to work together in harmony, I stress the words "in harmony",

to ensure that their respective resources and powers are used in the most effective and efficient manner.

The provisions of the Bill regarding the powers of the commission over the exchanges and the respective roles of the commission and the exchanges follow very closely the recommendations of the Securities Review Committee, except that we have made provision in the Bill for the commission to be able to transfer to the exchanges certain functions additional to those envisaged in that report. It is our intention that, as and when the two exchanges develop their role as self-regulatory organizations, an increased part of the regulatory and supervisory functions should be devolved to them. I intend, Sir, at the Committee Stage of this Bill to move an amendment to clause 4 to add to the functions of the new commission, the promotion and development of self-regulation by market bodies.

Finally, there is the issue of funding. We shall be discussing this matter with the ad hoc group set up by this Council to study the Bill. Let me merely say at this stage that our objective has been to devise arrangements in line with the recommendation of the Securities Review Committee that the commission should be largely funded by the market but that the Government should also provide a contribution. The Bill provides for the market contribution to be in the form of fees and charges for specific services and activities performed by the commission on a broad cost recovery basis, and a statutory levy on transactions recorded on the exchanges. Subject to the approval of the Finance Committee, the government contribution will take the form of an initial start-up grant, an interest free advance and an annual contribution towards the commission's cost with provision for the commission to borrow from Government, as an emergency measure, if its reserves fall below a certain level.

Sir, may I now turn to the Bill itself. It provides a general regulatory framework, leaving the details to be provided by regulations, administrative procedures and guidelines to be developed by the commission in full consultation with the market. The Bill seeks to vest in the Securities and Futures Commission the functions, powers and duties of the existing regulatory bodies, that is, the Securities Commission, the Commodities Trading Commission and the Office of the Commissioner. Members should be aware that the Bill does not implement all the legislative proposals in the Securities Review Committee Report, but it does give the new commission those additional powers which are considered necessary for it to work effectively during the initial phase of its operation.

The detailed provisions are described in the Explanatory Memorandum to the Bill, but I shall highlight some of the major aspects.

Part II of the Bill establishes the Securities and Futures Commission and deals with its constitutional aspects. By clause 5, the commission will be governed by a board of 10 members, to be divided equally between executive and non-executive directors, the chairman having a casting vote. You, Sir, will appoint and have power to dismiss the chairman and directors, and will determine their remuneration, allowances or expenses. The non-executive directors will keep an independent eye on the commission's executive management, and be actively involved in policy formulation and the appeal mechanism.

Clause 9 of the Bill provides for the establishment of an advisory committee to advise the commission on policy matters related to markets. The advisory committee will be appointed by the Governor, and will comprise six to 10 members drawn from the various sectors of the securities, futures and investment management industries, together with other appropriately qualified persons. The chairman and deputy chairman of the commission will sit on the advisory committee as ex-officio members. The chairman will also chair the advisory committee.

The Governor will be able to give policy directions to the commission. Also, the Financial Secretary will be able to call for information from the commission on matters related to its policies. The commission will be required to present an annual report and audited statement of accounts, to be laid before this Council, and its budget will be subject to the Governor's approval. The Director of Audit will also be able to examine its books.

Part III of the Bill provides for the establishment of a Securities and Futures Board of Appeal. This board replaces the present Disciplinary and Appeals Committees of the Securities Commission and the Commodities Trading Commission.

The Board of Appeal will have 12 members, namely a standing chairman and deputy chairman, both qualified in law, the five non-executive directors of the Securities and Futures Commission, and five other persons appointed by the Governor and independent of the commission. Each case will be heard by a group of three, consisting the chairman (or deputy chairman), one independent member of the board and one non-executive director of the commission. It is intended that under the

administrative procedures of the commission, the non-executive directors will not be involved in executive decisions on individual cases. Most appeals will lie to the Board of Appeal directly from a decision of an executive director or committee of the commission. In the rare cases where the full commission is to sit, it is intended, wherever practicable, to omit one non-executive director from full hearing, in case an appeal to the Board of Appeal is taken.

Under the present Ordinances, suspension or revocation of registration takes immediate effect, even if an appeal is lodged. The new appeal provisions will allow persons concerned to remain in business while the appeal is being heard. The intervention powers are, however, immediately effective. Therefore, if a situation arises requiring swift action to protect investors from loss, this can be achieved.

By sub-clause 20(8), decisions of the Board of Appeal will be final and unappealable. The new provisions do not, however, attempt to preclude judicial review.

Part IV of the Bill deals with additional registration requirements for intermediaries. It is proposed that the existing requirement for annual renewal be removed and be replaced by a system of continuous registration. Clauses 21 and 22 make changes to the existing registration procedures to enable the commission to undertake a more thorough examination of applicants for registration and to require the applicant to satisfy the commission that he is a "fit and proper" person to conduct the relevant business.

By clause 23, any person registered by the Office of the Commissioner before the establishment of the commission will continue to be so registered, unless and until the registration is suspended or revoked by the new commission. It is however intended that, as recommended by the Securities Review Committee, the commission will institute a positive vetting policy to ensure that every person who is registered is fit and proper.

Clauses 28 to 34 in Part V of the Bill contain new provisions which permit the commission to conduct spot checks of registered persons' businesses in order to ensure compliance. There is also provision for investigations into possible breaches of the relevant Ordinances. Experience of the existing Office of the Commissioner in undertaking investigations has demonstrated that there are serious gaps in the existing statutory powers in the Securities Ordinance and Commodities Trading

Ordinance, specifically in the powers to obtain information and to inspect, preserve or remove books and other records. These provisions in the Bill will close such gaps.

Registered persons will be under obligation to give access to their records to officers of the commission. These officers will have the right to enter the business premises notified to the commission as places where records are to be kept. I must emphasize that this right of access will not extend to any premises other than those notified to the commission, and that there will be no powers of forcible entry or seizure of documents. If access is refused, and the circumstances appear to justify it, the commission could apply for a magistrate's warrant in the ordinary way.

The commission can appoint either its own officers or, with the Financial Secretary's consent, other competent persons to conduct an investigation, and to report. The expenses of the investigators, other than officers of the commission, will be paid for out of public funds.

During an investigation by the commission, a person who is being asked questions is not excused from answering on the ground that his answer may tend to incriminate him, but nevertheless that answer cannot be used in subsequent criminal proceedings.

Clauses 35 to 43 give powers to the commission to intervene in the business of an intermediary, either to require him to take, or to prevent him from taking, particular actions, if the commission believes such intervention is desirable in the interest of the investing public, or that a registered person is no longer fit to carry on his business, or he has failed to comply with his statutory obligations.

At present, the commissioner only has power to revoke or suspend registration, and such action can only be taken after an inquiry, which may take some time. The new intervention power is intended to enable the commission to take swift action if necessary to protect investors. Sub-clause 35(3) provides that the commission will be obliged to notify the Stock Exchange or the Futures Exchange before exercising any intervention power against one of its members.

The commission will also have to state its reasons for exercising a power of intervention in its notice to the registered person concerned. Notices will take effect at the time specified in them and there is no question of their having retroactive effect.

Sir, Part VI of the Bill contains special provisions relating to the exchanges

and clearing houses. Clause 44 empowers the Governor in Council to transfer some of the commission's regulatory functions to the exchanges in the future or to order the resumption of those functions. Clause 45 allows exchange of information between the commission, and the exchanges and clearing houses. Clauses 46 and 47 seek to vest in the commission powers, in line with the Securities Review Committee's recommendations, to issue restriction notices requiring the exchanges and clearing houses to amend their constitution or to make changes in their management and operations. They also empower the commission to issue orders suspending the functions of the governing bodies, committees or chief executives of the exchanges and clearing houses. But it should be noted that the commission may not exercise such powers without prior consultation with the Financial Secretary.

Part VII deals with the funding aspects. As I have said a moment ago, the commission will be funded largely by the markets through fees, charges and transaction levies.

The Schedule to the Bill contains the amendments and repeals made by clause 60. Members will wish to note that the Schedule transfers certain powers to make regulations from the Governor in Council to the Securities and Futures Commission concerning most of the matters stipulated in section 146 of the Securities Ordinance and section 109 of the Commodities Trading Ordinance. This is necessary if the commission is to have relative independence in formulating its own administrative rules.

Sir, in conclusion, the Bill before this Council seeks to establish a durable regulatory framework which is conducive to the further development of stable, fair and orderly markets. It does not seek to lay down all the regulations and rules. These will have to be worked out by the commission, after it has been established, in consultation with those in the marketplace. The Bill does, however, set out the parameters within which such rules and regulations should be formulated.

In putting together this Bill, we have been acutely conscious of the need to avoid over-regulation, which would stifle the vigour and innovation of our markets. At the same time, we must establish a regulatory body with sufficient authority and resources to maintain a level of investor protection which is broadly comparable to that in other international financial centres. While looking overseas for useful references, and indeed for internationally accepted regulatory standards, we must not overlook local circumstances. Our aim has been to put forward in this Bill a solution which is right for Hong Kong.

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

Question on adjournment proposed, put and agreed to.

Adjournment and next sitting

HIS EXCELLENCY THE PRESIDENT: In accordance with Standing Orders I now adjourn the Council until 2.30 pm on Wednesday, 25 January 1989.

Adjourned accordingly at sixteen minutes past Five o'clock.

Note: The short titles of the Bills/motions listed in the Hansard have been translated into Chinese for information and guidance only; they do not have authoritative effect in Chinese.