

1 HONG KONG LEGISLATIVE COUNCIL -- 25 October 1989

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OFFICIAL REPORT OF PROCEEDINGS

Wednesday, 25 October 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 CHIEF SECRETARY

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

THE FINANCIAL SECRETARY

THE HONOURABLE SIR PIERS JACOBS, K.B.E., J.P.

THE ATTORNEY GENERAL

THE HONOURABLE JEREMY FELL MATHEWS, C.M.G., J.P.

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

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

SECRETARY FOR HOME AFFAIRS

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

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

THE HONOURABLE MRS. RITA FAN HSU LAI-TAI, 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 POON CHI-FAI, 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 LAU WONG-FAT, M.B.E., J.P.

THE HONOURABLE MICHAEL LEUNG MAN-KIN, J.P.
SECRETARY FOR TRANSPORT

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

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

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 YEUNG KAI-YIN, J.P.
SECRETARY FOR EDUCATION AND MANPOWER

THE HONOURABLE KENNETH KWOK WAI-KAI, O.B.E., J.P.
SECRETARY FOR PLANNING, ENVIRONMENT AND LANDS

THE HONOURABLE RAFAEL HUI SI-YAN, J.P.
SECRETARY FOR ECONOMIC SERVICES

ABSENT

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

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

THE HONOURABLE PANG CHUN-HOI, M.B.E.

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

IN ATTENDANCE

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

Mr. Rafael HUI Si-yan took the Oath of Allegiance.

Papers

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

Subject

Subsidiary Legislation

L.N. No.

Civil Aviation (Aircraft Noise) Ordinance
Civil Aviation (Aircraft Noise)
(Limitation on Operation of Engines and
Auxiliary Power Units) Regulations 1989..... 339/89

Land Registration Ordinance
Land Registration Fees (Amendment)
Regulations 1989.....
340/89

Land Registration Ordinance
Land Registration (New Territories) Fees
(Amendment) Regulations 1989.....
341/89

Registration of Persons Ordinance
Registration of Persons (Application for
New Identity Cards) (No. 14) Order 1989..... 342/89

Supreme Court Ordinance
Rules of the Supreme Court (Amendment)
(No. 3) Rules 1989.....
343/89

Legal Practitioners Ordinance
Solicitors (Trade Marks and Patents)
Costs (Amendment) Rules 1989.....
344/89

Supreme Court Ordinance	
Supreme Court Fees (Amendment) Rules 1989.....	345/89

Public Health and Municipal Services
Ordinance

Hawker (Urban Council) (Amendment) (No.2) By-Laws 1989.....	
	346/89

Public Health and Municipal Services Ordinance

Milk (Urban Council) (Amendment) By-Laws 1989.....	
	347/89

Sessional Papers 1989-90

No. 14 -- Hong Kong Tourist Association
Annual Report 1988/89

No. 15 -- The Jubilee Sports Centre, Hong Kong
Annual Report 1988/89

Addresses by Members

Hong Kong Tourist Association Annual Report 1988/89

MR. BARROW: Sir, I am pleased to table the annual report of the Hong Kong Tourist Association for the financial year 1988-89, which was a record one for the tourism industry both in terms of the number of visitors who came to Hong Kong and the amount of money they spent. Visitor arrivals rose 24% over 1987 to 5.6 million, and tourism receipts grew by 31% to HK\$33 billion, which was equivalent to 7.8% of Hong Kong's gross domestic product.

During 1988, Sir, hotels achieved a record average occupancy rate of 92%, and by the end of the year there were 23 000 rooms in Hong Kong's hotels and another 4 800 are being added this year. A further 4 000 are scheduled to open in 1990.

The recent events in China have, however, demonstrated that there is no room for complacency in the tourism industry. Visitor arrivals in June and July in Hong Kong were down by just over 20% over the same months last year. While there has been some modest improvement for August and September, it is clearly going to take some time for visitor arrivals from major long-haul markets to return to previous levels. As of now, we are forecasting a drop of 5% in visitor arrivals this year, compared with 1988. This will be the first time that we have experienced a drop since 1971.

The Hong Kong Tourist Association, backed by the industry, has embarked on an extensive marketing programme to maintain our success as Asia's most popular travel destination. Some 20 large-scale promotions have been organized for major markets in the coming year to project Hong Kong as an exciting and vibrant travel destination, offering more hotel rooms, increased airline capacity and new visitor attractions. The emphasis will be on attracting more high-yield visitors and extending their length of stay. The association will continue to explore co-operative marketing opportunities with airlines, hotels and tour wholesalers to stretch the marketing dollar and maximize the impact of the "Hong Kong Travel Message Overseas". Increased numbers of the travel trade and influential consumer media have been invited to come and experience Hong Kong first-hand and report on the many new attractions, tourist facilities and hotel developments to generate more interest in travelling to Hong Kong. With a slow-down in visitor arrivals and stiffer competition from neighbouring countries who are investing heavily in their tourism promotions, the industry is acutely aware that it needs the support of the Government, Members of this Council, as well as the community as a whole to ensure that tourism continues to be Hong Kong's third largest foreign exchange earner.

I invite Members to study the annual report, which outlines comprehensively the range of activities the association undertook on behalf of the industry in the past financial year.

The Jubilee Sports Centre, Hong Kong
Annual Report 1988/89

MR. PAUL CHENG: Sir, tabled this afternoon is the annual report of the Jubilee Sports Centre for the period 1 April 1988 -- 31 March 1989.

This impressive report reflects the outstanding work that continues to be done

at the centre. The Jubilee Sports Centre (JSC) is an environment where athletic excellence can be nurtured and developed. To do so requires the ongoing co-operation of national sporting associations with whom the centre has continued to work closely. What the JSC is endeavouring to do is to cultivate an environment which will increase opportunities for Hong Kong athletes to achieve success. In so doing, the JSC is firmly of the view that the nurturing of athletic talent must be associated with the all-round development of the individual. It is possible to achieve success in sport and other fields of endeavour at the same time. The JSC will continue to encourage better educational and career opportunities for athletes in Hong Kong.

The environment at the JSC is akin to institutes of sport in other countries where the emphasis is on service to athletes. The JSC provides access to world class facilities, offers sports science and medicine services, provides coaching of the highest calibre, and provides counselling advice to scholarship athletes in a wide variety of areas.

The scholarship programme continued to expand during the year and now covers athletes in nine full-time sports as well as cycling and triathlon. In addition, a number of other sports are focusing high level training at the JSC and the centre will continue to expand its services to more sports and more talented athletes.

The JSC, as it moves to become a fully fledged institute of sport, will strive to become a Hong Kong institution of international standing and acceptability. There have been some outstanding results during the past year, the highlights of which were the outstanding successes at the Commonwealth Table Tennis Championships and the bronze-medal by the ladies table tennis team in the World Championships. In addition, Amy CHAN and CHAN Chi-choi continue to be great representatives for Hong Kong, winning the bronze-medal in the Exhibition Event at the Seoul Olympics. We have also successes in triathlon and in cycling, as well as excellent progress being made in gymnastics, fencing, rowing, youth soccer, swimming and tennis.

Some people in Hong Kong have often questioned whether Hong Kong athletes can succeed overseas and of course these results show that they can. But much more help, support and encouragement is required in the future as developments in sport around the world continue at a fast pace. The task, whilst daunting at times, is not impossible.

In addition to the pursuit of excellence, the centre encourages maximum use of

its facilities by the community. It will continue to expand its marketing programme and welcome many new sponsors and expand its links with many countries. Visits by overseas athletes to the centre are a regular occurrence and formal links have been developed in many sports.

Sport has an increasingly important role to play in Hong Kong society and the JSC looks forward eagerly to the future. The JSC welcomes the establishment of the Provisional Sports Development Board and will co-operate fully to ensure sports and athletes are well served.

In conclusion, I wish to place on the official record the thanks of the JSC to the outgoing Chairman Mr. Denis BRAY and long serving members Mr. F. K. HU and Mr. Gerry FORSGATE. Their contributions to the centre have been outstanding. Thank you.

Oral answers to questions

Privatization of public services

1. MR. BARROW asked: Will Government inform this Council whether it has any plans progressively to privatize, corporatize or contract out public services and, if so :

- (a) which particular services are being considered for inclusion in these plans;
- (b) the timetable for implementing such plans; and
- (c) the steps which are being taken to speed up the implementation of such plans?

FINANCIAL SECRETARY: Sir, services provided by the Government differ greatly in their nature and scope. Some that are most properly or conveniently delivered by agencies outside the Administration are already provided through subvented bodies, corporations and the like. One of our basic principles is that we should endeavour to provide each and every service through an appropriate organizational framework. Clearly, this means that we do not introduce privatization, corporatization or

contracting out for their own sake, but only where such an approach results in a more effective delivery of a particular service to the public.

In the context of public sector reform, we continue to examine whether there are further opportunities for change in the method of delivery of various services. In particular we are examining the scope for introducing a new concept, trading funds, about which I spoke in this Council last Session. Briefly this concept allows government departments to be run on a more commercial basis.

MR. BARROW: Sir, could the Financial Secretary inform this Council of the specific progress in privatization so far, and what the plans for the future in any particular branch or department are?

FINANCIAL SECRETARY: Yes, Sir, we have been making considerable progress. We are at the moment evaluating tenders in relation to the building and operation of a chemical waste treatment facility. We hope to award the contract in February 1990. Furthermore, we are calling for tenders in January 1990 in relation to the building and operation of the Island East Refuse Transfer Station. At the moment we are also considering the contracting out of the operation of the Urban Council abattoirs. Certain details have to be resolved between the Urban Council and the Administration. In addition to these items, Sir, we are considering the contracting out of the management of the airport car-parks. We are hoping to call for tenders in December this year. We have also prepared, within the Administration, a discussion paper on various reorganizational options in relation to the management of government tunnels. Furthermore, a paper has been prepared by the Transport Department for submission to the Executive Council on the feasibility of the further privatization of vehicle examination. Lastly, we have established a working group to study the feasibility of contracting out the management of parking-meters.

MR. TIEN: Sir, in the course of privatization or corporatization of more public services, will the Administration inform this Council what steps will be taken to ensure that the monitoring role of this Council will not be diminished, such as in the case of the Kowloon-Canton Railway (KCR)?

FINANCIAL SECRETARY: Sir, I will not comment on the KCR. But I have said earlier in this Council that we are very conscious of the need to ensure that the monitoring process should be adequate if we do privatize or establish publicly owned corporations. And obviously that monitoring process would involve this Council.

MR. PETER WONG: Sir, has there been a recent systematic examination of all government departments to ascertain which are ripe for this special treatment? And if so, which are those departments and what is their order of priority?

FINANCIAL SECRETARY: No, Sir, we do not carry out a systematic examination. In fact, all controlling officers and others involved are encouraged to consider the best method of delivering a particular service to the public. They are also encouraged not to overlook the possibility of privatization, corporatization or contracting out.

MR. CHOW (in Cantonese): Sir, will the Government inform this Council when it assesses the financial situation of the hived-off public services, how it judges whether the financial improvement of the services is a result of improved efficiency due to their hiving off, or a result of profits gained from monopolization?

FINANCIAL SECRETARY: Sir, it is largely a matter of judgement. When considering the prospect of privatization or corporatization, we study very carefully how it will be implemented, what the effects are likely to be, to what extent the public will be protected and so on. But at the end of the day it is a matter of judgement.

MR. TAM (in Cantonese): Sir, protection of government and public interests had not been well catered for in contracting out public services in the past. Could Government inform this Council how it will ensure public interests be protected and government policies implemented effectively when privatization programmes are introduced?

FINANCIAL SECRETARY: Sir, I think, in essence, I have already answered that question. It is a matter of putting together the appropriate arrangements. Certainly, we have to ensure that any body, be it a corporation or the private sector, does have a high degree of accountability to the public. Beyond that, I cannot really say much more.

DR. LEONG: Sir, could the Administration inform this Council whether the future Hospital Authority, when and if it is established, will be amongst one of these categories on the grounds that it is still Government's responsibility that the poor and the injured will still be under the care of the Government?

FINANCIAL SECRETARY: Sir, the whole idea underlying the establishment of the Hospital Authority was to ensure that medical services and hospital services should be delivered to the population of Hong Kong in a more effective, a more cost-efficient, and hopefully an even more humane way. We are looking for an improvement in hospital services in Hong Kong.

MR. CHEONG: Sir, can the Financial Secretary give an up-to-date estimate as to when the concept of trading funds is going to be implemented or discarded?

FINANCIAL SECRETARY: Yes, Sir. At the moment we are looking at one particular department, the Electrical and Mechanical Services Department. We are establishing a steering group which is being chaired by the Deputy Secretary for Works. It is going to take some time, I am afraid. I would expect it to take about two years, or even two and a half years before we see a trading fund in full operation in that department.

Accidents involving heavy vehicles on Tuen Mun Highway

2. MR. LAU WONG-FAT asked (in Cantonese): Sir, in view of the frequent occurrence of serious traffic accidents involving container trucks and other heavy vehicles on Tuen Mun Highway, will Government inform this Council of the annual accident and casualty figures concerning such vehicles on Tuen Mun Highway over the past five years, the major causes of these accidents and whether specific measures have been taken by the Administration to reduce the number of such traffic accidents?

SECRETARY FOR TRANSPORT (in Cantonese): Sir, the relevant figures for medium and heavy

goods vehicles are as follows:

to (Up
30.6.89)

Year	1984	1985	1986	1987	1988	1989
Accidents	25	10	13	24	48	24
Casualties	46	25	26	40	100	45

These figures must be viewed in the light of increasing volume of vehicular traffic on Tuen Mun Highway in recent years as a result of population build-up in Tuen Mun and the growing border traffic.

The two main causes of these accidents were improper driving behaviour, such as careless lane changing and overtaking, and driving at speeds which were too high with regard to the prevailing road and traffic conditions.

The users of Tuen Mun Highway could clearly do much themselves to reduce the accident rate. In addition, the Administration has already implemented a number of measures to help improve the situation--

(a) Existing traffic signs along Tuen Mun Highway direct all vehicles to keep to the left unless overtaking, and the police give priority to enforcing the speed limit and lane discipline. In addition, the proposed expressway legislation will specifically control the lane discipline of all motor vehicles on high-speed roads, with particular reference to heavy vehicles.

(b) Since 1984, there has been an important programme to resurface Tuen Mun Highway with a high-grade frictional course which will reduce vehicle braking distance and improve the skidding resistance of the road surface especially when wet. About 80% of the work has been completed and the remaining works will be completed by early 1991.

(c) Regulation 57 of the Road Traffic (Traffic Control) Regulations requires all drivers to ensure that the loads carried in their vehicles are properly secured. A code of practice on the proper loading of goods vehicles was distributed to all goods vehicle operators in November last year.

MR. LAU WONG-FAT (in Cantonese): Sir, although the Government has implemented some improvement measures, it is still worrying to see that the accident and casualty rates involving medium and heavy goods vehicles have risen in the past two years. Will the Government consider reviewing comprehensively the design of Tuen Mun Highway so as to assess its safety standard and the highway's capacity of accommodating the rapid increase of traffic throughput, especially when heavy vehicles are involved? Besides, what measures will be employed to improve the situation of those black spots on the highway, such as Siu Lam, Tsing Lung Tau, Sham Tseng and so on?

SECRETARY FOR TRANSPORT (in Cantonese): Sir, regarding the first point which concerns the design of Tuen Mun Highway, this has been studied in detail and the conclusion is that the design of the highway is up to international standard and therefore it is not a cause for accidents. Regarding the second point concerning black spots, the accidents occurred in the places Mr. LAU Wong-fat mentioned were, in fact, not many. The Transport Department has identified many more accident-prone spots, such as the junction of Tuen Mun Road and Tsuen Wan Road, the area near Sham Tseng and the spot near Fu Tei roundabout on Tuen Mun Road. The department has also taken a number of measures to improve the situation, including improvement of sight-line, increase of road markings, amelioration of street illumination, and construction of guard-rails and so on.

MISS TAM: Sir, as the main causes of the accidents were identified as improper driving behaviour and speeding, and the Secretary for Transport has said the police had given priority to enforcement actions, why is it that the accident rate still keeps rising for the last five years and are those enforcement actions really effective?

SECRETARY FOR TRANSPORT: Sir, the police have given particular attention to the control of speeding, in particular on highways such as the Tuen Mun Highway. But

if we look at the figures in their right context, accident figures on Tuen Mun Highway are in fact, on average, lower than those on other highways in the rest of the territory by about half. However, the police have given special emphasis to the control of speeding and poor driving on Tuen Mun Highway by dedicating a team of 17 officers led by one inspector to look after Tuen Mun Highway over the recent months, as well as deploying two extra patrol cars to examine the traffic conditions. The police have also installed special radars, which are mobile and can be installed in police cars, to detect speeding vehicles. This is in addition to the Radar Control Unit which has fixed points of installation along the highway. In addition, the Transport Department has stepped up vehicle inspections. We hope that by next year, when the Vehicle Inspection Centre is completed in Kowloon Bay, we can implement an annual inspection of all goods vehicles as a matter of policy.

MR. MICHAEL CHENG (in Cantonese): Sir, would the Government inform this Council whether there were accidents involving goods vehicles and buses on Tuen Mun Highway as a result of overloading? If so, what stringent measures will the Government employ to prevent the recurrence of such accidents?

SECRETARY FOR TRANSPORT (in Cantonese): Sir, according to the figures provided by the police and the Transport Department, accidents caused by overloading are few in number. But the Government is also very concerned about the problem as it may lead to accidents and adding stress to the road surface, and thereby further damaging it. The Government has already drafted legislation to control highway driving and to install vehicle weight stations at the end of this year and next year. These stations will first be installed on Tolo Highway, and later on Tuen Mun Highway and Island Eastern Corridor with the aim of checking whether the vehicles fulfil the loading standard.

MR. TAI: Can the Secretary comment on whether the increase in traffic accidents involving container vehicles may be partially due to the inexperience of the drivers and the conditions of the vehicles?

SECRETARY FOR TRANSPORT: Sir, the testing of container truck drivers is done separately under very stringent conditions. I can assure this Council that it is

not easy at all to pass these tests. In fact, the number of accidents involving container trucks is relatively small compared with those involving other vehicles, in particular light goods vehicles. However, the Government has taken special care to ensure that the standards of driving are maintained at all times, in particular those of drivers of articulated vehicles, such as container trucks. Special attention is given to them in campaigns on road safety through the Road Users Code -- which is given to all drivers -- and reminders through the annual road safety campaigns.

As regards the checking of vehicles, we have, for goods vehicles manufactured before 1978, an annual inspection programme. For those manufactured after 1978, we will be installing an inspection programme annually once we have the Kowloon Bay Centre in place. Meanwhile, both the Transport Department and police are doing inspections both annually and regularly. On-spot checks are also conducted to guard against vehicles which are not worthy on the road.

MR. TAM (in Cantonese): Sir, has the Government analysed whether container trucks that involved in accidents in the past were of a particular type or make?

SECRETARY FOR TRANSPORT (in Cantonese): As far as I know, there is not any specific make that does not live up to the safety standard, and if there is, I do hope Mr. TAM can bring it to our attention so that the problem can be improved.

MR. CHENG HON-KWAN: Sir, will the Secretary inform this Council when the proposed expressway legislation will be ready for introduction to this Council?

SECRETARY FOR TRANSPORT: Sir, I hope we can introduce this next year.

MR. BARROW: Sir, to spread the traffic load and reduce congestion at peak times, would the Administration consider extending the opening hours at the border, in agreement with the Chinese authorities?

SECRETARY FOR TRANSPORT: Sir, that seems to me perhaps a slightly different question. But in relation to cross-border traffic, it has no particular effect on Tuen Mun Highway in so far as traffic congestion and accidents are concerned. The spread of vehicles across the border is very much limited to the northern part of the New Territories. There is no spill over into the rest of the highways, and certainly not Tuen Mun Highway.

MR. MCGREGOR: Sir, could the Secretary say what the general results of the tests carried out on container vehicles by the police are?

SECRETARY FOR TRANSPORT: Sir, the results have shown that there are no badly designed container trucks and that standards are maintained at all times. And this must be kept up at all times.

MR. MICHAEL CHENG (in Cantonese): Sir, when accidents involving container trucks and other types of heavy vehicles occur on Tuen Mun Highway, it usually takes a longer time to clear the road, and thereby causing traffic congestion. What measures will the Government employ to improve the situation?

SECRETARY FOR TRANSPORT (in Cantonese): Sir, unless the accidents are particularly serious thereby causing congestion, the traffic situation is usually not too bad. The police has a regular arrangement: whenever accidents occur, heavy vehicles will be deployed to the sites of accident to tow away the vehicles involved so as to clear the road as soon as possible.

Handling of complaints from government officers

3. MISS TAM asked: Will Government inform this Council of the present arrangements for handling complaints from individual government officers on decisions of the management in relation to their career, for example, dismissal and disciplinary actions?

CHIEF SECRETARY: Sir, the Administration has well established procedures to deal with civil servants' complaints about career-related matters.

There is a "staff complaints officer" in every department designated to handle staff complaints. In doing so, he is required to follow procedures which provide for a thorough review of the case, consultation with all the parties concerned, seeking legal advice where appropriate and the referral of his eventual findings and recommendations to the senior management of the department for considerations. Decisions on cases are normally made at assistant director level.

Staff may also lodge their complaints with the policy Secretary or the Chief Secretary, as head of the Civil Service, directly. In either case, the policy branch will ensure a thorough review of the case is undertaken, again in full consultation with all parties concerned including, where appropriate, the Public Services Commission, before a decision is reached. The review of each case is supervised by the Principal Assistant Secretary responsible for the policy area. Depending on the nature of the complaint, the case may be referred to the policy Secretary or the Chief Secretary personally for a ruling.

Additionally, Colonial Regulation 68 confers on all public officers the right to make representations to the Governor on matters of a public or private nature. Where the subject of the petition is related to civil service personnel matters, the Secretary for the Civil Service has delegated authority from the Governor to investigate and decide upon the petition. In conducting the investigation, the Secretary for the Civil Service may call for reports from the department of the petitioner; if necessary, he will seek advice from the Attorney General's Chambers, and where appropriate, will consult the Public Services Commission.

In certain prescribed circumstances, for example, where the Secretary for the Civil Service disagrees with the views of the Public Services Commission or of the head of department, or where the Secretary for the Civil Service considers that the petition gives rise to an important point of policy, the petition will be referred to the Governor for a decision.

Finally, any public officer aggrieved by the Administration's decision may petition the Secretary of State under Colonial Regulation 69.

MISS TAM: Sir, is it a fact that the dismissal of a pensionable government servant will involve the scrutiny by the Public Services Commission (PSC) chaired by a

non-government member while the dismissal of a non-pensionable officer would be a matter for departmental decision? If yes, will the Chief Secretary inform this Council, considering that dismissal is a matter of vital concern to the individual government servant involved, what the rationale behind the difference in the treatment in the dismissal of pensionable and non-pensionable government staff is; and whether a non-government member can be appointed to serve on the hearing committee for the dismissal of a non-pensionable government servant?

CHIEF SECRETARY: Sir, Miss TAM has raised a rather complicated question. The split between the way in which officers are dealt with does not depend upon entirely whether they are pensionable or non-pensionable. The only officers who are not dealt with by the Public Services Commission are probationers on MPS 18 and Model Scale I staff. In those cases the heads of departments have authority to discipline or dismiss them. In the rank and file of the disciplined services, again, the heads of departments have power to take similar action. The rest of the staff in the Civil Service, whether pensionable or non-pensionable and that includes contract officers, are subject to the advice of the PSC on cases of dismissal. The rationale for this, Sir, is that as far as junior staff -- for the Model Scale I staff, they are industrial level junior staff -- are concerned, we feel that heads of departments should have the right to hire and fire on their own authority. Similar considerations apply to the disciplined services where we believe that heads of disciplined services should have the power over their junior officers to fire them in a disciplined service. But I would point out, Sir, that in all those cases, if the officer concerned feels aggrieved, he can resort to the second layer of appeal and can appeal to the Secretary for the Civil Service or to the Chief Secretary, or indeed to you, Sir.

MR. PETER WONG: Sir, are there any plans to change the name of the "Colonial Regulations" to something more appropriate to our times?

CHIEF SECRETARY: Sir, we are looking at the whole question of the future of "Colonial Regulations" at the moment and we will be coming forward with proposals in due course.

MR. MICHAEL CHENG (in Cantonese): Sir, the Chief Secretary has just clearly explained the government internal arrangements. Could Government consider

expanding the terms of reference of the Commissioner for Administrative Complaints to include appeals cases by civil servants against decisions made by their superiors affecting their career prospects?

CHIEF SECRETARY: Sir, we are anxious to maintain the relationship between the Government and civil servants as employees of the Government. We do not, therefore, believe it is appropriate that the Commissioner for Administrative Complaints should intervene in the relationship between the Government as an employer and its employees.

Repatriation of Vietnamese boat people

4. MR. HUI asked: In the light of the continuous influx of Vietnamese boat people into Hong Kong and in view of our financial and physical constraints, will the Government inform this Council whether it would set a target date for implementing mandatory repatriation of these boat people, and whether other measures, such as the scrapping of the port of first asylum policy, will be adopted to stop the influx of Vietnamese boat people?

SECRETARY FOR SECURITY: Sir, we have stated on a number of occasions that we hope to be able to start repatriating non-refugees as soon as arrangements have been concluded. These depend on progress in our bilateral and multilateral discussions. However, it is clearly important for us to have the deterrent value of this measure in place before the start of the next sailing season. I hope Members will understand that I cannot be more specific at this stage, but I can say that the early implementation of repatriation remains our firm objective.

The Government believes that the Comprehensive Plan of Action (CPA) approved by the international community in June of this year offers the best prospect of an overall solution to the Vietnamese boat people problem. We also believe that it is essential that all elements of the CPA should be implemented. The most important of these for Hong Kong are:

--first asylum;

--screening;

--resettlement of refugees; and

--repatriation of non-refugees.

The first three elements are now firmly in place, but progress on the fourth has been disappointing. If the CPA is to be effective it must become in practice what it was meant to be, a plan of action which is implemented fairly, firmly and fully.

The Government will therefore continue with its efforts to establish an early repatriation programme for non-refugees, as well as fully supporting voluntary returns. We see these two modes of return to Vietnam as being complementary and perfectly capable of operating alongside each other in future.

The Government believes that the CPA offers the best chance of humane and durable solutions to this problem. There are therefore no plans at this stage to consider the adoption of other measures or to review the policy of granting first asylum to Vietnamese boat people.

MR. HUI: Sir, could the Secretary inform this Council what Government intends to do if repatriation of non-refugees cannot be implemented before the start of the next sailing season?

SECRETARY FOR SECURITY: Sir, we aim to implement the policy of repatriation. So I hope that this eventuality will not arise. If, for any reason, repatriation was impossible before the start of the next sailing season, we would clearly have to reconsider our position very carefully.

MR. MCGREGOR: Sir, will the Government note that not every Member of this Council will accept any proposal to bring to an end the policy of the port of first asylum?

SECRETARY FOR SECURITY: Yes, Sir.

MR. SIT: Sir, in connection with a document issued by the UNHCR Headquarters in Geneva titling: "Concept of Asylum and the Obligation of the Hong Kong Authorities", would the Secretary for Security advise this Council under what circumstances or conditions Hong Kong can relieve or excuse itself from such obligation as a first asylum port?

SECRETARY FOR SECURITY: Sir, it is not our intention to excuse ourselves from our obligations under the CPA. I therefore would prefer not to answer what I regard as a hypothetical question.

MRS. FAN: Sir, has the Administration made the point to those who oppose mandatory repatriation that, faced with the prospect of having to be mandatorily repatriated, non-refugees are more likely to avail themselves of the opportunity offered by the voluntary repatriation scheme and thereby making the voluntary repatriation scheme more effective?

SECRETARY FOR SECURITY: Yes, Sir, this point has been made frequently.

MR. TAM (in Cantonese): Sir, when Members of this Council met with the Tuen Mun District Board Members this afternoon, the district board members asked why the Government had hastily started implementing a screening policy while the problem of mandatory repatriation was not yet resolved?

SECRETARY FOR SECURITY: Sir, I do not quite understand the question. But the screening process is an essential precursor to two things. One is resettlement, for persons who are screened in as refugees. And the other is repatriation, for those screened out as non-refugees.

MR. POON CHI-FAI (in Cantonese): Sir, in the last paragraph of his reply, the Secretary for Security mentioned that the Government had no plans to consider the adoption of other measures or to review the policy of granting first asylum to Vietnamese boat people. Will the Government inform this Council under what

circumstances the Government would consider the scrapping of the first asylum policy? Meanwhile, does the Government have an in-depth understanding of the public views concerning the scrapping or the retaining of the first asylum policy? And which one do the majority of the public support, the scrapping or the retaining of the first asylum policy?

SECRETARY FOR SECURITY: Sir, if it proves impossible to implement the CPA to which we fully subscribe and which we have endorsed only this year, then clearly the whole package of the CPA will be in jeopardy. We believe that the CPA is the best chance of a solution to this problem. If it fails, then clearly we have to review our options. This should not be taken to mean that we will change the policy of offering first asylum. But clearly a policy review would be necessary in such circumstances. I must make it clear, Sir, that a decision to adopt a policy which involves the pushing-off or the re-direction of Vietnamese boat people would be hard to make and difficult to implement. Anyone advocating such a policy should bear in mind the full implications of asking police officers to carry out a policy which might result in the loss of life. I would also refer Members, Sir, to your remarks on this point in paragraph 23 of your policy address of 11 October. As regards the second part of the question, Sir, on whether public views would be taken into account, the answer is of course "yes". Public views will always be taken into account in considering a major question of this sort. And I have no doubt that this Council would also take the opportunity to make its views known.

MR. MARTIN LEE: Sir, will the Administration inform this Council whether it is aware of the very bad press that Hong Kong is getting overseas, particularly in the United Kingdom and the United States, over the way we are handling the Vietnamese boat people problem? And does the Administration accept that even if Hong Kong were to scrap the port of first asylum policy, we would still be bound by International Law: first, to give temporary refuge to new arrivals from Vietnam claiming political asylum so as to ascertain whether they are genuine refugees; and secondly, not to forcibly return the non-refugees to Vietnam unless they are in no danger of persecution there?

SECRETARY FOR SECURITY: Yes, Sir. In answer to the first part of the question, the Administration is aware and has been made frequently aware, almost on a daily basis, of the very bad press in some newspapers in the United Kingdom and the United States.

Much of this is, regrettably, ill informed and often irrational. As regards the second part of the question, I am not aware of the precise international legal obligations, or legal implications perhaps, or of the extent to which Hong Kong would be bound in this way. But abandoning the first asylum policy would certainly be in breach of the CPA which, as I have just said, we have endorsed this year.

MR. TIEN: Sir, would the Administration inform this Council whether Washington is the main obstacle to mandatory repatriation and whether Washington has threatened economic sanctions against Hong Kong if we are to implement mandatory repatriation?

SECRETARY FOR SECURITY: Sir, the answer to both parts of the question is "no".

MR. ARCULLI: Sir, will the Secretary for Security confirm that any change in the granting of first asylum in Hong Kong is a matter solely within the responsibility of the British Government?

SECRETARY FOR SECURITY: Sir, decisions concerning Vietnamese refugees and boat people in Hong Kong are made by the Hong Kong Government. The policies formulated by the Hong Kong Government which involve external relations require the approval of the British Government. Accordingly, any decision made by the Hong Kong Government to modify or abolish the existing first asylum policy would require the approval of the British Government.

MR. CHOW: Sir, if no significant improvement is made to the existing policy, Hong Kong people will have no alternative but to demand the implementation of mandatory repatriation and abandonment of the first asylum policy. What will the Government do to make the British Government instead of the Hong Kong people bear the consequences of these two policies?

SECRETARY FOR SECURITY: Sir, the manner in which the Vietnamese boat people problem is handled in Hong Kong is something for both the Hong Kong Government and the British Government. Both governments have their particular parts to play in reaching a solution. I think I cannot say more than that, Sir.

MR. SIT asked (in Cantonese): Sir, will the Secretary for Security inform this Council of the rationale or legal basis, if any, for Hong Kong to carry out the obligations and responsibilities as a first asylum port and what is the scope of such obligations?

SECRETARY FOR SECURITY: Sir, I am not aware of any legal rationale behind the adoption of the first asylum policy. It was something which the Hong Kong Government adopted on its own in 1975 at the time the "Clara Maersk" came into Hong Kong with the first load of refugees from Vietnam. It was subsequently confirmed, at the 1979 Geneva Conference, as part of a formula which enabled re-settlement to take place on the one hand, provided that first asylum countries accepted refugees from Vietnam on the other. This formula broke down during 1980s but has been reaffirmed this year at Geneva as part of the new package contained in the Comprehensive Plan of Action. We believe we have to, as I have already said this afternoon, continue with the CPA until we are quite sure that it does not represent the solution to our problems.

MR. TAI: Sir, may I ask what the impeding factors that hinder the progress of our bilateral discussions with the Government of Vietnam over the question of repatriation are?

SECRETARY FOR SECURITY: Sir, I do not think it would be right for me to go into these factors this afternoon. There are certain points which prevent mandatory repatriation from starting immediately. Her Majesty's Government and the Hong Kong Government are working on these points. They are in contact with the Vietnamese authorities and we hope to resolve them in the near future.

Departmental directives on litigation

5. MR. PETER WONG asked: Will the Government inform this Council whether there are departmental practices, directives and/or policies in respect of cases involving revenue, securities and criminal law or other matters, and if so, whether such cases are conducted by the Legal Department within the framework of such directives and/or policies and what steps are taken to ensure that such cases are so conducted?

ATTORNEY GENERAL: Sir, as this question is couched in very broad terms I can only give a general reply. My answer is in two parts since the question touches upon the conduct of both criminal and civil litigation.

The Attorney General, as the prosecuting authority, does, from time to time, issue directives regarding prosecution policy and practice. The Attorney General may, by general or special direction, authorize public servants and others to prosecute cases in magistrates courts. As a result, a wide range of regulatory offences are prosecuted by government departments such as the Labour, Urban Services and Building and Lands Departments, and by other agencies such as the Securities and Futures Commission and the Kowloon-Canton Railway Corporation. All of these departments and agencies may conduct their own prosecutions but will seek advice from the Director of Public Prosecutions when in doubt or in difficulty. But the ultimate responsibility for prosecutions and any prosecution policy to be adopted remain mine.

The position is however quite different in civil litigation cases. In such cases, irrespective of whether they involve revenue, securities or other matters, lawyers within my Chambers represent the Government. They act and conduct civil litigation in much the same way as would lawyers in the private sector representing their clients. They act upon the instructions of client departments which they are representing. Government's lawyers do not formulate policy for client departments. They advise on the law and on the legal position. But ultimately it is for client departments to instruct the Government's lawyers on the course of any litigation and those lawyers will only argue in accordance with those instructions. The Government's lawyers are, of course, under a duty to ensure that the law is correctly applied; that only points arguable in law are taken, and that their client departments are made fully aware of the legal and practical implications of any argument or interpretation of the law which, if accepted by the court, might require a change in departmental policies or practices.

MR. PETER WONG: Sir, in the last paragraph of his reply, the Attorney General has said it is for client departments to instruct the Government's lawyers on the course of any litigation and those lawyers will only argue in accordance with those instructions. Can the Attorney General confirm that the Inland Revenue Department was fully cognizant and in control of the line of legal arguments advanced by its lawyers during the David Glynn case, which may upset the established practice on the taxability of perquisites, and the recent Hang Seng Bank and Exxon case on off-shore

profits, which produced contradictory results and could have the effect of driving away international businesses from Hong Kong? And also, more important, did the Administration appreciate the unplumbed depths to which these lines of legal argument may lead us?

HIS EXCELLENCY THE PRESIDENT: Could I ask Members to keep supplementary questions short. It is quite difficult for the person answering to grasp a very long and complex question.

ATTORNEY GENERAL: Sir, first of all could I, on a point of order, respectfully through you, Sir, remind Mr. WONG that, under Standing Order 18, questions that reflect upon the decisions of the courts and which may prejudice any case pending before the courts are not to be asked. One of the cases mentioned by Mr. WONG is subject to a current appeal to the Privy Council and others may, for all I know, well be the subject of further litigation. I am sure Mr. WONG will bear that point in mind if he has any further points to make. Sir, I repeat the point I made in my main answer, that in civil litigation the Government's lawyers act on instructions of client departments. It would be unthinkable for a lawyer to adopt a line of argument that was his own and that did not represent the views and instructions of his client -- whether that client is a government department or within the private sector.

MR. MARTIN LEE: If the counsel from the Attorney General's Chambers is instructed by a specific government department to argue a case in a certain way which, in the opinion of the counsel concerned, is wrong in law, is he nevertheless bound to do so?

ATTORNEY GENERAL: The lawyer is in the same position as any other lawyer. He must advise his client as to the law. He must, if he forms the view that the client's view of the law is incorrect, do all that he can to correctly advise the client as to the true position of the law. Beyond that, I think we are straying into the realms of the hypothetical. Government departments, of course, fully understand the relationship between them and their lawyers and understand completely the responsibilities that we have as their lawyers -- to give them the correct advice on the law.

Imitation firearms

6. MISS LEUNG asked: Will Government inform this Council whether existing legislation is effective in reducing the use of imitation firearms in crime, and, if not, what measures will be taken?

SECRETARY FOR SECURITY: There are no accurate or comprehensive statistics on the use of imitation firearms in crime, principally because of difficulties of definition. Sometimes converted or homemade firearms are used which are capable of being fired and are thus to all intents and purposes genuine firearms. At other times toy or replica guns, which cannot be fired, are used. Therefore, unless a firearm is actually discharged during the course of a crime it is not possible to say whether it is genuine or not.

For this reason the police classify objects which appear to be firearms and are used in crime, but are not discharged, as "pistol-like objects". The use of pistol-like objects in crime, as with the use of genuine firearms, has fluctuated over the past 10 years, but the average is 205 cases annually. For the first nine months of this year there have been 154 cases. This would give a projected figure for the whole year of 200 cases, which is about average. Under existing legislation, therefore, it would appear that the use of imitation firearms in crime is being contained at a steady level.

Nevertheless, it is felt that greater control might be possible, and a working group on the use of firearms in crime, under the auspices of the Fight Crime Committee, has considered possible amendments to the Firearms and Ammunition Ordinance. On the advice of the Executive Council the further processing of a draft Bill has been deferred pending suitable test cases under the existing law.

MISS LEUNG: Sir, the average annual figure of 200 cases involving the use of pistol-like objects in crime quoted by the Secretary is far from satisfactory. Would the Secretary inform this Council why the Government does not consider banning the possession of imitation firearms altogether without waiting for test cases -- as it

appears difficult under the existing law to bring about a successful prosecution unless an imitation firearm is used unquestionably for the purpose of committing a crime, and the existing law does nothing to reduce the availability of such imitations for criminals in Hong Kong?

SECRETARY FOR SECURITY: Sir, we are bound by the direction of the Executive Council in this matter, which advised that no further action should be taken until a test case under section 20 of the Firearms and Ammunition Ordinance could be brought and its outcome considered, and that further examinations of the Japanese system, whereby any imitation firearms must be of prescribed colours, could be made.

MRS. LAM asked (in Cantonese): Sir, in paragraph 1 of his reply, the Secretary for Security said that the criminals used converted or homemade firearms. Does the Government know about the source of such firearms? If so, what effective measures does the Government take to block the source?

SECRETARY FOR SECURITY: Sir, the Administration is aware of the source of some of the firearms, but there is little that can be done about this at the moment. The aim of the original submission to the Executive Council involving a change in the law was that amendments should be made to prohibit the possession of exact copies of firearms, except for the purpose of export from Hong Kong. We have had one test case already, Sir, but I believe the Attorney General feels that this is not in itself sufficiently strong. We are awaiting another test case. If that proves satisfactory, we would decide then what further steps we should take over our original submission to the Executive Council.

MR. MCGREGOR: Sir, can the Secretary for Security advise whether the courts take an equally serious view on the use of imitation and replica firearms and on the use of ordinary firearms -- discharging firearms -- in criminal cases?

SECRETARY FOR SECURITY: Sir, I think it would be difficult for me to give an answer on that unless my honourable friend the Attorney General could offer some advice. I would have to give an answer in writing after trying to find out what the position

was on that subject. (Annex I)

ATTORNEY GENERAL: I am afraid, Sir, I do not have judicial statistics at my fingertips.

MR. MARTIN LEE: Sir, will the Administration confirm that it has been waiting for a suitable test case for a long, long time? How much longer must we wait?

SECRETARY FOR SECURITY: I hope not very long, Sir.

Access to personal records kept by government departments

7. MR. EDWARD HO asked: In view of a recent court case which revealed that a man had been victimized due to an erroneous criminal record against him kept by the police, will Government inform this Council whether a person is permitted to have access to his personal records kept by various government departments, including the police and the ICAC; if not, will Government consider to review whether such access is necessary?

SECRETARY FOR HOME AFFAIRS: Sir, the case referred to by Mr. HO was an unusual and unique case caused by human error. At present, in the absence of a data protection legislation, as a general guideline, requests by members of the public for access to personal information pertaining to them kept by government departments may be entertained if disclosure of the information is not prejudicial to the public interest, or will not constitute a breach of good faith on the part of the Government or on the part of the person who provided the information to the Government. Such requests will also be considered individually by the departments concerned having regard to their legal obligations and operational circumstances.

MR. EDWARD HO: Sir, in order to obtain a clearer reply to my question, I wish to take two concrete examples. First, in the case of the issuance of the Certificate of No Criminal Conviction by the police, would the Secretary please inform this

Council why it is only restricted to those who have obtained a letter from a consulate or to a person seeking employment as a security guard? And second, in the case of personal data kept in the computer by the Immigration Department which are accessible to an ordinary government clerk handling identity card applications, is such information accessible to the person concerned?

SECRETARY FOR HOME AFFAIRS: Sir, may I ask the Secretary for Security to comment on the first point. As for the second part, in the absence of legislation, the question of access is something which we are still considering. A working group, which is at the moment studying the legislation in other countries, is considering this very subject.

HIS EXCELLENCY THE PRESIDENT: Secretary for Security, can you add on the first point?

SECRETARY FOR SECURITY: Sir, it is possible to obtain information on criminal records from the police on a slightly broader range than has been suggested. Certificate of No Criminal Conviction is one which has been mentioned. Application for access to such information is also possible by persons wishing to adopt children -- they are required to show evidence of good character -- and by persons involved in divorce proceedings. For the latter, application is possible only after a petition has been lodged and only when conviction is relevant to the grounds cited. Apart from those cases, including the consular and security guards cases which have been cited, confirmation that a member of the public does not have a criminal record is not generally given by the police. The point is that the police would try to provide confirmation when there is a genuine requirement. But more important, there are reasons -- good confidential and operational reasons -- why the police should generally not release criminal records to the public.

MR. PETER WONG: Would the right of access to and the correction of personal data on government and other files be included in the Bill of Rights?

SECRETARY FOR HOME AFFAIRS: May I ask the Attorney General to assist?

ATTORNEY GENERAL: Access to information is certainly one of the matters which is generally considered in a human rights context. I cannot say at the moment whether it is one of the matters specifically dealt with in the International Covenant on the Civil and Political Rights. I shall ascertain and let Mr. Peter WONG know in writing. (Annex II)

MR. ARCULLI: Sir, will the Administration inform this Council whether there is any arrangement or policy regarding the retention or destruction of such personal records? If so, could we have details of such arrangement or policy?

SECRETARY FOR HOME AFFAIRS: This is slightly outside the question. But if the question is about the destruction of any particular departmental files, I am sure this is within the jurisdiction of each department.

MRS. FAN: Sir, apart from the Certificate of No Criminal Conviction and information concerning security guards, can the Secretary inform this Council of the percentage of other requests for personal information being acceded to?

SECRETARY FOR HOME AFFAIRS: Sir, I have no statistics at the moment. I would be quite happy to provide that in writing. (Annex III)

MRS. LAU: Sir, can the Secretary inform this Council whether any measures are adopted to review personal records kept by government departments, in particular criminal records, to ensure their accuracy?

SECRETARY FOR HOME AFFAIRS: Sir, the Government has accepted in principle that Hong Kong should have a data protection legislation to regulate the handling of personal data, so that such information is collected, stored, used and disclosed only in the manner that is lawful, proper and fair to the individual concerned. There is, as I have mentioned, a working group studying this very subject, including legislation in other countries. In this examination, the right of individuals to have access

to personal information held about them will also be the subject for consideration.

MR. EDWARD HO: Sir, would the Secretary please inform this Council whether, as a matter of principle, if personal records of a person are known to him, there would be less likelihood of abuse on the part of those government officials responsible for inputting such data?

SECRETARY FOR HOME AFFAIRS: Sir, that is a rather hypothetical case. It concerns two things. One is the individual right which, as I have mentioned, will be part of the subject for consideration in connection with the data protection legislation. The other part is in connection with the carrying out of the duties of the government department concerned.

MR. MICHAEL CHENG (in Cantonese): Sir, part of my question has been asked by my colleague, Mrs. LAU. However, I would like to ask one more question. Did Government take any internal disciplinary action against the person(s) who made that specific erroneous record?

SECRETARY FOR HOME AFFAIRS: Sir, on the case mentioned, I am sure that the police are fully aware of the need to avoid the recurrence of such a case. I do not know whether the Secretary for Security would like to add anything.

SECRETARY FOR SECURITY: Sir, I would only add that every possible measure is taken to ensure the correctness of criminal records maintained by the police. It is impossible to remove completely the human element from the maintenance of such records and therefore impossible to remove completely the human error factor. But I believe that such errors are very rare and they seldom come to notice.

MR. MARTIN LEE: Sir, is the Administration prepared to let Members of this Council have sight of their own records, so that they could assist the Government to correct any inaccuracies that may be contained therein?

HIS EXCELLENCY THE PRESIDENT: That is rather beyond the original question, Mr. LEE. Perhaps you would like to put it separately.

Procedures to deal with births and deaths of Vietnamese boat people

8. MR. NGAI asked (in Cantonese): Will the Government inform this Council what procedures have been adopted to deal with those Vietnamese boat people who have been born or have passed away in Hong Kong, including victims of homicide cases and natural deaths? Is there a need to consult the British Government, the United Nations High Commissioner for Refugees or the Vietnamese Government on these procedures?

SECRETARY FOR SECURITY: Sir, the procedures for dealing with the births and deaths of Vietnamese boat people are conducted by the Immigration Department in accordance with the Immigration Ordinance and the Births and Deaths Registration Ordinance. Records of births and deaths of Vietnamese boat people are kept by the Births, Deaths and Marriages Registry Sub-Division of the Immigration Department.

The births normally take place in government hospitals. Children born to Vietnamese parents with refugee status are allowed to remain in Hong Kong, under section 13A(1) of the Immigration Ordinance, as refugees pending resettlement with their parents. The status of children born to Vietnamese parents who have yet to be screened depends upon the ultimate determination of their parents as refugees or non-refugees. Meanwhile they are covered by section 13D(1) of the Immigration Ordinance. Children born to Vietnamese boat people parents who have already been screened out as non-refugees do not have refugee status. Their parents may however apply on behalf of the child to the Refugee Status Review Board for a review of the decision within 28 days of receiving the notice of determination.

All deaths of Vietnamese boat people, including homicide and natural deaths, are referred to the coroner for a decision on the need for an inquest. Where necessary, the coroner will ask the police to investigate the causes of death. The remains of the deceased are first transferred to a public mortuary and are later disposed of either by cremation or burial. These matters are handled by the Urban Services and Regional Services Departments under the Public Health and Municipal Services Ordinance. If cremation takes place, the ashes are kept by the family of the deceased

or handled by voluntary agencies at the wish of the family. If the family of the deceased wishes to send the ashes back to Vietnam, it can be arranged through the United Nations High Commissioner for Refugees or the Red Cross.

There is no requirement to consult the British Government, the United Nations High Commissioner for Refugees or the Vietnamese Government on these procedures.

MR. NGAI (in Cantonese): Sir, apart from the deaths mentioned above, will the Government inform this Council of two related matters: first, how many boat people have been admitted to hospitals for treatment due to serious woundings or natural diseases in the past two years; second, whether the waiting time for the local population to receive treatment in hospitals has been seriously affected or lengthened as a result of employment of casualty ward service and occupation of hospital beds by Vietnamese boat people?

HIS EXCELLENCY THE PRESIDENT: I will ask the Secretary for Security if he has the statistics at his fingertips.

SECRETARY FOR SECURITY: Sir, I am afraid I do not have the statistics on woundings or diseases. In answer to the second part of the question I can only say that I imagine there must be, in the nature of things, a small element of increasing the waiting time of the local population. This is inevitable if you have an additional 56 000 people in the territory who are receiving from time to time treatment in hospitals.

MR. NGAI (in Cantonese): Perhaps I should put the question in written form. As there are so many boat people in the territory, the utilization of hospital beds and casualty ward service must be affected to a certain extent. I am very concerned about this and would like to ask the Secretary for Security on it in writing.

HIS EXCELLENCY THE PRESIDENT: Thank you, Mr. NGAI, you can put it in a separate written question. It is just that your other supplementary went in a different direction to the original question.

Written answer to question

Economic sanctions against China

9. MR. MCGREGOR asked: Having regard to the close links between the economies of Hong Kong and China, will the Government confirm that it is opposed to any form of trade or economic sanctions against China as a measure of international censure for the events in China in June and after, and that it is prepared to take any positive action open to it to discourage the application of trade sanctions against China?

FINANCIAL SECRETARY: Sir, it is not for the Hong Kong Government to comment on trade and economic relations between China and third countries. However, given the close economic links between Hong Kong and China, any major economic damage done to China resulting from economic or trade sanctions applied by third countries is likely to have adverse implications on Hong Kong. The Government has drawn the attention of some of our trading partners to Hong Kong's concerns in this regard, and will continue to do so as appropriate.

Motions

PENSIONS ORDINANCE

THE CHIEF SECRETARY moved the following motion:

"That the following modification by the Governor of the application of regulation 19(8) of the Pensions Regulations be approved --

'The application of regulation 19(8) of the Pensions Regulations (Cap. 89, sub. leg.) is modified in the case of Mrs. YAN LAM Pui-fong, Nursing Officer II, by substituting, in paragraph (c), "of 18 October 1989" for "of 17 November 1972.".'

"

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

This is a case concerning an application by Mrs. YAN LAM Pui-fong, a Nursing

Officer II who retired on 21 May 1989, to buy back her pre-marriage service as pensionable service.

Sir, on 27 May 1966, Government, in an enlightened move, accepted the policy that marriage should cease to be a bar to the appointment of women officers on pensionable terms. Prior to that, women officers were required to retire on marriage, and if they had not less than five years' service, could receive a marriage gratuity under the pensions legislation. Married women officers were appointed on temporary terms, and should they be widowed, were allowed to transfer to the permanent establishment.

The policy for the removal of the marriage bar was not implemented until 17 November 1972, although with retrospective effect to 27 May 1966. Women officers married after 27 May 1966 were allowed an option, to be exercised within six months from 17 November 1972, to transfer to permanent terms and to buy back their pre-marriage service by refunding their marriage gratuity.

Mrs. YAN was married in 1967. In accordance with the rules then prevailing she was required to retire on marriage and was re-appointed on temporary terms. However she was subsequently widowed and on 27 February 1972, she transferred to permanent terms. She was therefore not on temporary terms on 17 November 1972 and thus was unable to exercise an option to buy back her pre-marriage service.

It is almost certain that a situation such as Mrs. YAN's was not envisaged at the time the option arrangements were drawn up and it would be unfair to deprive her of the opportunity to buy back her pre-marriage service because of her widowhood. Had the removal of the marriage bar been implemented on 27 May 1966 when the policy was accepted, Mrs. YAN would not have had to retire from pensionable service on her marriage in 1967. Subsequently, had her husband been alive when the policy was implemented in 1972, she would have been able to buy back her pre-marriage service to augment her pension benefits.

Apart from Mrs. YAN, there is no known case of a woman officer who was married and widowed between 27 May 1966 and 17 November 1972.

Sir, to remedy the situation, the Governor has exercised his authority under section 20(A)(1) of the Pensions Ordinance (Cap. 89) to modify the application of regulation 19(8)(c) of the Pensions Regulations (Cap. 89) to enable Mrs. YAN to buy back her pre-marriage service within a period of six months from the date of approval

of the modification by this Council. This Council is now asked to signify by resolution its approval of the modification so that the modification may take effect pursuant to section 20A(2) of the Pensions Ordinance (Cap. 89).

Sir, I beg to move.

Question on the motion proposed, put and agreed to.

TELEPHONE ORDINANCE

THE SECRETARY FOR ECONOMIC SERVICES moved the following motion:

"That Part II of the Schedule to the Telephone Ordinance be amended --

(a) in item 1(a) and (b) by repealing "\$60" and substituting "\$69";

(b) in item 3(a) and (b) by repealing "7" and substituting "9"."

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

The Hong Kong Telephone Company provides interconnection services to the public telephone network for public mobile radiotelephone and value added services. Public mobile radiotelephone services rely on the interconnection service to connect mobile telephones customers with public telephone network subscribers. Value added service providers interconnect with the public telephone network in order to deliver their services to their customers.

The current charges for interconnection services have been in force since 1985. Two main elements are involved: first, there is a rental charge of \$60 per line per month; and second, there is a usage charge for each line of seven cents per minute. These charges were fixed on the basis that revenue from interconnection should cover the cost of providing the service.

A review has recently been completed of the costs involved in providing interconnection. As part of the review the Telephone Company conducted a six-month measuring exercise of the use of its network by interconnecting services. This exercise was monitored by the Postmaster General. The conclusion of the review is

that current costs justify an increase in the monthly rental charge per interconnection line from \$60 to \$69 and an increase in the per minute usage charge from seven cents to nine cents. In percentage terms, the increases are 15% and 28% respectively.

While such increases are higher than the current annual rate of inflation, it should be remembered that they are the first increases for over four and a half years. These increases in interconnection charges were not included in the overall telephone tariff adjustment implemented from 1 June, because the review had not been completed at that time. The next review of the interconnection charges will be in two years' time.

Under section 26(2) of the Telephone Ordinance, all amendments to the Schedule of charges of the Telephone Ordinance require a resolution of this Council. My motion before the Council seeks to amend the rental and usage charges for interconnection set out in Part II of the Schedule. As a result of the amendment, the maximum monthly rental charge for an interconnection line will be \$69 and the maximum usage charge will be nine cents a minute. The Administration is satisfied that these revised charges are fully justified by the current costs associated with providing interconnection services.

Sir, I beg to move.

At this point Mr. David LI declared his interest as deputy chairman of the Hong Kong Telecommunications Ltd.

Question on the motion proposed, put and agreed to.

First Reading of Bills

RECOGNITION OF TRUSTS BILL 1989

MERCHANT SHIPPING (AMENDMENT) BILL 1989

CRIMES (AMENDMENT) BILL 1989

HOSPITALS, NURSING HOMES AND MATERNITY HOMES REGISTRATION (AMENDMENT) BILL 1989

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

Second Reading of Bills

RECOGNITION OF TRUSTS BILL 1989

THE ATTORNEY GENERAL moved the Second Reading of: "A Bill to enable the Hague Convention on the law applicable to trusts and on their recognition to apply to Hong Kong."

He said: Sir, I move that the Recognition of Trusts Bill 1989 be read a Second time.

This Bill, if enacted, will enable the Hague Convention on the law applicable to trusts and on their recognition to apply to Hong Kong and will provide that those provisions of the Convention set out in the Schedule to the Bill shall have the force of law here.

In 1984 the Hague Conference on Private International Law adopted the Convention which, in January 1986, was signed, subject to ratification, by the United Kingdom. The United Kingdom now proposes to ratify the Convention and has asked whether Hong Kong wishes to be included in that ratification. Before Hong Kong can be included, provision must be made for the Convention to have the force of law in Hong Kong.

The purpose of the Convention is to establish common principles between states on the law of trusts and to deal with important issues concerning their recognition. The concept of a trust is not recognized in many countries, particularly those that have a civil law system, where it is not accepted that one individual may hold assets on behalf of another.

To avoid these difficulties, the Convention introduces the concept of a trust into jurisdictions where it has not previously been accepted and provides rules for determining the law which governs such a trust and the circumstances in which it should be recognized.

If the Convention is extended to Hong Kong, Hong Kong domestic law will be

unaffected but trusts established here and to which Hong Kong law applies will receive the benefit of recognition in Convention countries.

The Bill provides, in clause 2(1), that the provisions of the Convention set out in the Schedule shall have the force of law in Hong Kong. Although the Chinese text of the Bill includes a version of the Schedule in Chinese, the only authentic texts of the Convention are in French and in English. Since the extension of the Convention to Hong Kong will impose an obligation upon Hong Kong in international law to observe the terms of an authentic text, it has been necessary to provide in clause 2(2) that if there are inconsistencies between the English and Chinese texts of the Convention, the English text shall prevail.

Clause 2(3) broadens the application of the Convention in Hong Kong to include any trust of property arising under the law of Hong Kong or by virtue of a judicial decision here or elsewhere and gives effect to the declaration the United Kingdom proposes to make, on behalf of both itself and Hong Kong, under paragraph 1 of article 20 of the Convention.

Clause 2(4) provides that provisions of Hong Kong law, from which a person cannot voluntarily derogate or which must be applied even to international situations, will apply notwithstanding the provisions of the Convention and gives effect to the reservation the United Kingdom proposes to enter, on behalf of both itself and Hong Kong, under paragraph 3 of article 16 of the Convention.

Clause 2(5) provides that the provisions of the Convention shall not have retrospective effect.

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

Question on the adjournment proposed, put and agreed to.

MERCHANT SHIPPING (AMENDMENT) BILL 1989

THE SECRETARY FOR TRANSPORT moved the Second Reading of: "A Bill to amend the Merchant Shipping Ordinance."

He said: Sir, I move the Second Reading of the Merchant Shipping (Amendment) Bill

1989. The Bill makes the taking out of third party insurance a pre-licence condition for all main classes of passenger-carrying vessels except kaitos and sampans.

Up to now, only pleasure vessels are subject to compulsory third party insurance as a licensing requirement. Under this Bill, the same requirement shall apply to franchised ferries, licensed ferries, water-tour boats, launches and walla-wallas. The required insurance provides indemnity of a specified minimum amount in respect of liability for death or bodily injury to any person, arising out of the use of licensed vessels in Hong Kong waters.

About 670 vessels will fall within the ambit of this intended legislation.

Many local ferry operators, including the two franchised companies, already provide, on a voluntary basis, third party insurance protection for their passengers that complies with the minimum liability limit proposed. Such insurance cover is usually obtained from overseas protection and indemnity associations. This is because local insurers are reluctant to insure the larger vessels as their portfolio of marine liability insurance business is normally not large enough to spread the risks involved. The protection and indemnity associations are made up of shipowners who share each other's risks and pay annual subscription into a common fund which provides all forms and levels of specialist marine insurance cover worldwide.

At present, only a few protection and indemnity associations are represented locally and authorized under the Insurance Companies Ordinance to conduct insurance business in Hong Kong. To give local ferry operators and vessel owners a sufficiently large pool of such associations to choose from, clause 3 of the Bill proposes that the Director of Marine should be empowered to approve any suitable protection and indemnity association as an authorized insurer for the purpose of the compulsory insurance scheme.

We recognize that claims against overseas insurers not registered in Hong Kong may involve, for some claimants, greater delay, higher expenses and more difficulties. To meet these problems a number of safeguards are proposed, including provisions empowering the High Court to hear and determine claims in respect of insurance policies issued in an overseas country. These safeguards are incorporated in clauses 5(b), 5(d) and 6(b) of the Bill.

That takes me to the enforcement provisions. Clause 4(b) provides for a two-tier

penalty system under which owners of larger vessels who fail to take out the required third party insurance would be subject to heavier penalties, namely a maximum fine of \$100,000 and two years' imprisonment. For smaller vessels, the same offence attracts a maximum fine of \$15,000 and 12 months' imprisonment. Clause 9 requires owners to display certificates of insurance on their vessels for passengers' information. Clause 10 updates existing penalties in the Ordinance and provides for a maximum fine of \$5,000 against failure to give information or produce records of insurance on demand by public officers.

Clause 11 proposes empowering the Governor in Council to make necessary regulations, including the power to prescribe, for different classes of vessels, the minimum levels of liability to be covered by policies of insurance.

Clause 13 deals with transitional arrangements and allows appropriate policies of insurance in existence before commencement of the Ordinance to remain in force until renewal.

To allow sufficient time for vessel owners to seek suitable insurance cover, provisions in the Bill will come into force six months after enactment.

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

Question on the adjournment proposed, put and agreed to.

CRIMES (AMENDMENT) BILL 1989

THE SECRETARY FOR SECURITY moved the Second Reading of: "A Bill to amend the Crimes Ordinance."

He said: Sir, I move that the Crimes (Amendment) Bill 1989 be read a Second time.

The Bill aims to introduce measures for the better control of nuisances associated with vice establishments. They include provisions for the removal of signboards advertising the services of prostitutes and for a scheme to close premises or forfeit vessels where vice-related offences have repeatedly taken place.

In some districts in Hong Kong, nuisances associated with prostitution have given

rise to problems of security, embarrassment and disturbance to women and children, and inconvenience to local residents. These nuisances are actionable as civil wrongs. However very few actions have been brought because of the expenses involved and the time taken to go through the court procedures.

In response to the concern expressed by residents of these districts, the Fight Crime Committee set up a working group in 1983 to look into the problem. The working group recommended the creation of a new summary procedure which was essentially civil in nature. The Fight Crime Committee considered that the proposal would be ineffective as members of the public would be reluctant to complain for fear of retaliation from the organized crime syndicates running the vice establishments. The committee therefore advised that a scheme based on criminal law should be developed to deal with the problem.

Proposals based on criminal law, which included provisions for the removal of signboards advertising the services of prostitutes, and for a scheme to close premises or forfeit vessels where vice-related offences have repeatedly taken place, were published in July 1988 as a White Bill for public consultation. Comments received indicated support for the proposals, but some people were concerned that the Bill did not sufficiently protect "innocent" landlords. In view of this, the scheme to close premises or forfeit vessels has been revised to include a period of grace of four months following a first conviction. During the grace period, any further conviction relating to vice on the premises concerned would not activate the closure order. This would enable the landlord to take appropriate action to protect his premises, including evicting the offending tenants.

Turning to the legislative proposals themselves, clause 3 of the Bill amends section 147 of the Crimes Ordinance to increase the maximum fine for soliciting for any immoral purpose from \$1,000 to \$10,000.

Clause 4 introduces six new sections to the Crimes Ordinance. Section 147A of the Bill makes it an offence to display, or to permit the display of, a sign which may reasonably be understood to advertise the services of a prostitute. The maximum penalty for the offence is a fine of \$10,000 and six months' imprisonment. Sections 147B to 147F provide for the police to remove offending signs, whether or not the person committing the offence has been identified.

Clause 5 of the Bill introduces 12 new sections which set out the procedure for

the closure order scheme and for the forfeiture of vessels. Section 153A provides for premises to be closed by the courts for six months if --

- (a) a person is convicted of a specified offence in relation to the premises;
- (b) a notice relating to the conviction is affixed to the premises and published in one English and one Chinese newspaper within two weeks; and
- (c) a second specified offence is committed in relation to the premises by any person within a 12-month period after the grace period.

Section 153C gives the court the discretion to order the forfeiture of vessels in relation to which there are two convictions of specified offences. Sections 153D and 153E describe the forfeiture procedure. Section 153G provides for the court to suspend a closure order for two years.

Sir, we envisage that these proposals will be effective in dealing with nuisances associated with vice establishments and will improve the quality of life of residents in the districts concerned.

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

Question on the adjournment proposed, put and agreed to.

HOSPITALS, NURSING HOMES AND MATERNITY HOMES REGISTRATION (AMENDMENT) BILL 1989

THE SECRETARY FOR HEALTH AND WELFARE moved the Second Reading of: "A Bill to amend the Hospitals, Nursing Homes and Maternity Homes Registration Ordinance."

He said: Sir, I move that the Hospitals, Nursing Homes and Maternity Homes Registration (Amendment) Bill 1989 be read a Second time.

This Bill seeks to increase the fees for the registration of hospitals, nursing homes and maternity homes to achieve full-cost recovery.

To reflect different costs incurred in first registration and subsequent registration, the Bill proposes to replace the single existing fee of \$20 by a first

registration fee of \$1,350 and a subsequent registration fee of \$90. It is estimated that the proposed increases will generate additional revenue of \$4,100 per annum.

The opportunity is also taken to enable future changes in fees to be made by resolution of the Legislative Council. Given the small amount of revenue involved and the limited number of institutions that will be affected, it is proposed not to go through the full legislative process each time the fees are revised.

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

Question on the 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, 1 November 1989.

Adjourned accordingly at thirteen minutes past Four o'clock