

1 HONG KONG LEGISLATIVE COUNCIL -- 17 October 1990

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OFFICIAL REPORT OF PROCEEDINGS

Wednesday, 17 October 1990

The Council met at half-past Two o'clock

PRESENT

HIS HONOUR THE DEPUTY TO THE GOVERNOR (PRESIDENT)

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

THE HONOURABLE CHENG HON-KWAN, O.B.E., J.P.

THE HONOURABLE CHUNG PUI-LAM, 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.

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, O.B.E., J.P.

THE HONOURABLE TAM YIU-CHUNG

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

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

THE HONOURABLE GRAHAM BARNES, C.B.E., J.P.  
SECRETARY FOR PLANNING, ENVIRONMENT AND LANDS

THE HONOURABLE EDWARD HO SING-TIN, 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 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 PETER TSAO KWANG-YUNG, C.B.E., C.P.M., J.P.  
SECRETARY FOR HOME AFFAIRS

THE HONOURABLE MRS ELIZABETH WONG CHIEN CHI-LIEN, I.S.O., J.P.  
SECRETARY FOR HEALTH AND WELFARE

THE HONOURABLE ALISTAIR PETER ASPREY, O.B.E., A.E., J.P.  
SECRETARY FOR SECURITY

ABSENT

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

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

THE HONOURABLE POON CHI-FAI, J.P.

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

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

THE HONOURABLE RONALD JOSEPH ARCULLI, J.P.

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

THE HONOURABLE MRS ANSON CHAN, J.P.  
SECRETARY FOR ECONOMIC SERVICES

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

Subsidiary Legislation L.N. No.

Lifts and Escalators (Safety) Ordinance (Safety) (Fees) (Amendment) Regulations 1990..... 310/90	Lifts and Escalators
Registration of Persons Ordinance (Application for New Identity Cards) (No. 16) Order 1990..... 311/90	Registration of Persons
Trade Descriptions Ordinance (Watches) Order 1990.....	Trade Descriptions (Country of Origin) 312/90
Legal Practitioners Ordinance (Solicitors) (Amendment) Rules 1990..... 313/90	Practising Certificate
Road Tunnels (Government) Ordinance (Amendment of Schedule) Notice 1990..... 314/90	Road Tunnels (Government)
Hong Kong 1990.....	The Hong Kong Letters Patent 315/90



Wages on Insolvency Fund Board for the year from 1 April 1989 to 31 March 1990. The annual statement of accounts and auditors' report are attached to the report as Appendix II.

During the year 1989-90, the Fund received 4 460 applications with claims amounting to \$60.6 million from employees of 318 insolvency cases. By 31 March 1990, a total of 2 763 applications were approved resulting in ex gratia payments of \$11.5 million. In most cases, the applicants were able to receive arrears of wages, wages in lieu of notice and severance payment in a much shorter span of time than was possible under the existing liquidation and bankruptcy proceedings.

As at 31 March 1990, the Fund had accumulated about \$219.3 million comprising \$16.5 million as income prior to 19 April 1985, and excess of income over expenditure of \$23 million in 1985-86, \$28.7 million in 1986-87, \$42.6 million in 1987-88 and \$48.9 million in 1988-89 and \$59.6 million in 1989-90. The accumulation of \$219.3 million has been possible mainly because of the rise in business registrations leading to an increased income from levy and a relatively low level of claims in a booming economy in the few years after the establishment of the Fund. However, the Fund has to prepare for the less favourable economic climate in the years ahead. The number of insolvency cases dealt with by the Fund Board in the first nine months of 1990 has risen to 332 which is 66% over the same period last year whilst the number of applicants has come to 4 808, an increase of 118% over the corresponding period of last year.

During the year under review, the Board met four times to examine, among other things, the charging of a supervision fee by the Government, a review to determine whether the rate of levy should be reduced in view of the large fund accumulated, and the investment of moneys not immediately required and as approved by the Financial Secretary.

The question of the Government charging the Fund a supervision fee for its administration remained unresolved in the year despite the Board's unrelenting efforts through different channels since 1986 in arguing for the fee to be waived because of its tripartite nature and its objective of providing quick relief to workers in need to reduce social problem and avoid social unrest. Taking into account the Administration's review of overall policy on administrative fees and the opinion expressed by the OMELCO Panel on Finance, Taxation and Monetary Affairs, the Board would come to a final decision soon.

On reviewing the levy charged on business registration certificates, the Board concluded that the rate should not be reduced because it was vital to build up a reserve to cater for an economic downturn and there was also consistent pressure for gradual improvement in the benefits payable by the Fund.

In the investment of moneys not immediately required, Board members continued to cautiously explore various possibilities such as investments in the stock and property markets in such proportion as approved by the Financial Secretary. Towards the end of the year a suitable property for investment was identified and purchase was actively pursued.

Sir, I would like to take this opportunity to acknowledge the valuable support received by the Board from various sources throughout the year without which the Fund would not have been so healthy. We would like to thank, in particular, the Inland Revenue Department for collecting the levy, the Labour Department for verifying applications and making payments, as well as the Education and Manpower Branch of the Government Secretariat, the Legal Aid Department and the Official Receiver's Office of the Registrar General's Department for providing assistance and advice. I look forward to their continued support.

#### Hong Kong Tourist Association Annual Report 1989-90

MR BARROW: Sir, I am pleased to table the annual report of the Hong Kong Tourist Association for the year 1989-90. The past year was a challenging period for the industry. Visitor arrivals were down in the months following the events in China in June 1989, due mainly to the cancellation of China-related tours and some misconceptions about the local situation here in Hong Kong.

It was, however, encouraging to see the Tourist Association and all sectors of the industry unite to explore every business opportunity for Hong Kong. I am pleased to report that arrivals improved to the point where they were only marginally down on the previous year -- by 4.1%, to total 5.4 million. More importantly, tourism receipts grew by 11% to HK\$37 billion -- reinforcing the tourism industry's role as the territory's third-largest earner of foreign exchange.

The upward trend has continued in 1990. Visitor arrivals for the first eight months increased by 7.1% and our forecast is that the total visitor arrivals will

be up some 8% for the whole year, giving us a new record year. This means that Hong Kong will retain its position as the leading travel destination in Asia. Tourism receipts are likely to grow to not less than HK\$42 billion, more than 13% up on 1989.

While we are optimistic about the future, I must stress that we are not complacent. Obstacles remain in the path of progress, and no doubt others will crop up. The crisis in the Gulf will probably have some negative effect on Hong Kong's tourism industry in the coming year. Moreover, other countries in the region are substantially stepping up their tourism promotional budgets, thus increasing the pressure of competition.

Over the past year, the Association has successfully played an active role in a number of ways to stimulate additional tourism business. Foremost among our activities was the creation and implementation of a new marketing campaign with the theme of "Hong Kong -- stay an extra day". Our research shows that, when surveyed on departure, visitors say they would recommend a much longer stay than that which they have just experienced. The Association, therefore, developed the campaign to highlight the variety of things to see and do here to promote a longer length of stay, which benefits all in the tourism industry as a result of the increase in visitor expenditure.

In promoting Hong Kong as a "destination" and not just as a brief stopover point, we must highlight the varied and growing number of attractions. For example among the new attractions which are proving popular are the Hong Kong Cultural Centre, for which the Association has developed a new "cultural diversions tour"; the "Middle Kingdom" at Ocean Park; and restored historical monuments in the New Territories, which are the basis for the new "heritage tour", also organized by the Association.

It is also important that any current restrictions on travel to the territory are reduced and we welcome the Government's decision to simplify entry procedures for visitors from Taiwan, and the relaxation of visa policy for Eastern Europeans.

Taiwan is now Hong Kong's largest visitor market and the introduction of the multi-visit permit in June will help to develop it further. The easing of restrictions on visits by travellers from Czechoslovakia, Hungary and Poland opens new avenues for business and we trust that the Government will now relax regulations for other countries in the eastern bloc. Such measures are particularly important for our lucrative meetings business. The new Hong Kong Convention and Exhibition

Centre has provided a much-needed boost to that business and we are working even harder to promote Hong Kong as a venue for international events.

Other government steps which will have a strong positive impact on the tourism industry include the decision to proceed with the new airport as quickly as possible; the introduction of tougher measures to protect the environment; and the easing of the labour shortage by permitting the importation of semi-skilled workers (which will be of considerable help to the growing hotel industry). In this last regard, it is imperative that we strive for even higher standards of service, and the Hong Kong Tourist Association's training programmes and continuing "Hong Kong Cares" courtesy programmes have helped to promote a higher degree of professionalism within the industry and a stronger awareness of the importance of courtesy.

The investment by the private sector in hotel development reflects its commitment to the tourism industry in the future. Some 6 000 new hotel rooms will have opened in 1989 and 1990; a further 5 000 are expected in the next two years, with another 2 000 in 1993 and 1994. Hotel occupancies were down in 1989, due to the large increase in the number of hotel rooms and the fall in visitor arrivals, but they are holding their own in 1990 and we will work hard to maintain healthy levels.

In looking to the future, there are a number of opportunities for Hong Kong to improve its tourism product. For example one such opportunity may exist in conjunction with the Government's reclamation plan for Central to Causeway Bay. We have proposed that the Metroplan incorporate an international-standard aquatic stadium capable of accommodating world-class water-sports activities, and recommendations for such a project have been forwarded to the relevant authorities for their consideration.

As I mentioned earlier, Hong Kong faces a number of challenges in the continuing success of its tourism industry -- but there are also many opportunities. The industry is well aware that it needs the support of the Government and Members of this Council as well as the community as a whole to ensure that Hong Kong continues to benefit from one of its most important industries.

Finally, the Association will continue to work closely with the Government, the Trade Development Council and other members of "Hong Kong Inc." overseas in promoting and strengthening Hong Kong as an international city.

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.

Oral answers to questions

Industrial pollution

1. MR MCGREGOR asked: Will the Government inform this Council whether it will consider banning all industrial undertakings except non-polluting cottage industries from operating within or in the immediate vicinity of designated country parks to protect the environment?

SECRETARY FOR PLANNING, ENVIRONMENT AND LANDS: Sir, the Administration is entirely with Mr MCGREGOR in spirit, that is if we understand "the immediate vicinity" rightly, but we do not think that we are able or need to impose a blanket ban, as he seemed to suggest. First of all we do not know of any polluting industries or rather industrial undertakings situated within country parks. This is probably because, although there is no formal ban, under section 10 of the Country Parks Ordinance, Cap. 208, no new development of any sort is permitted within country parks without the prior approval of the Country Parks Authority, and it has always been the Country Parks Authority's practice to refuse approval to any new development which would harm the environment. So then this system seems to work very well.

But when the country parks were established, most of the existing villages within the general area of the country parks were actually excluded from them. Now in Hong Kong Island and elsewhere, the borders of the country parks come right up to the urban areas including industrial areas. So a ban on industries just outside the country parks would be very much a case by case business, for which discretionary but enforceable planning powers would seem to be more appropriate than a total ban.

As, Sir, you are aware, proposals are being made to extend town planning controls to cover new developments in the rural areas, and policies on squatter control are under continual review. For these reasons a blanket ban under whatever powers purely on the grounds of vicinity to the country parks would not seem to be necessary.

MR MCGREGOR: Sir, in these circumstances would the Secretary give this Council an assurance that the Pollux Dyeing Factory and other industrial factories in that area will never again be allowed to pollute the Ho Chung River, which flows into one of Hong Kong's most beautiful scenic areas? Will the Secretary also acknowledge the very good and helpful work done by the Friends of the Earth in urging protection of our environment?

SECRETARY FOR PLANNING, ENVIRONMENT AND LANDS: Sir, I think I can give the assurance which Mr MCGREGOR seeks about the Ho Chung River. Actually, Pollux is over a mile from the boundary of any country park, but it is in a scenic area and that was the sense in which I took Mr MCGREGOR's question. The point about it is that there are not many Polluxes, and at this stage, with the recent amendment to the Water Pollution Control Ordinance, we are now in a position to look at existing factories with existing releases.

With regard to the second part of the question, I am very happy to acknowledge the Friends of the Earth's work, both here in this case and in others.

MR PETER WONG: Sir, will the Secretary please confirm that there will be no further fish farming concessions allowed in our country parks?

SECRETARY FOR PLANNING, ENVIRONMENT AND LANDS: Sir, I cannot so confirm. The fish farming policy is now under consideration and it has not yet been so decided.

MR ANDREW WONG: Sir, will the Secretary please confirm that country park areas do not cover the sea?

SECRETARY FOR PLANNING, ENVIRONMENT AND LANDS: Sir, Mr WONG has me there! I cannot remember my Ordinance well enough to be sure whether, in fact, we do take in the shoreline or not. We certainly do not go very far into the sea! (Laughter)

## Control of guesthouses

2. MR SIT asked (in Cantonese): In the light of the Administration's earlier intention to introduce legislation in the last Session to license the operation of guesthouses, will Government explain to this Council the delay in introducing the legislation so far?

SECRETARY FOR HOME AFFAIRS: Sir, the law to license guesthouses is an entirely new piece of legislation. The dedicated team approach is also a novelty in that staff from the Buildings and Lands Department and Fire Services Department are seconded to the City and New Territories Administration (CNTA) to carry out the licensing duties. Drafting of this legislation has not been an easy task and I must take this opportunity to compliment the Law Draftsman for his persistence and ingenuity. However, I am pleased to say that drafting has been completed and the Bill has now been finalized, after four working drafts. Subject to the Executive Council's approval, the Bill will be introduced into this Council shortly.

Sir, in setting up a licensing authority, I have also had other difficulties. Notably the CNTA is required to cut staff and expenditure as part of the Government's austerity programme. To meet the staffing and administrative costs of the licensing authority, I have had to identify savings within my own Administration to offset these costs. This again is not an easy task as it is never easy to reduce existing activities, but it is coming to an end, and I should be able to achieve the target savings.

Although we do not yet have the enabling legislation in place, the licensing office is already being set up. The first batch of staff from the Buildings and Lands Department and the Fire Services Department, six of them, were seconded to CNTA on 1 October 1990 to work out operational arrangements for issuing licences, to render safe those establishments which pose particular risks to life and limb. These interim measures will be incorporated into more permanent arrangements when the licensing scheme becomes fully operational. Neither have we been totally idle whilst funding and legislation issues were being resolved. Interim operational measures have been taken by departments concerned.

Sir, I can assure honourable Members that all staff will be in post, so that the licensing authority can swing into full action once the legislation is enacted and

brought into operation.

MR SIT (in Cantonese): Will the Secretary for Home Affairs inform this Council of the number of guesthouses that will be affected by the licensing scheme? Also the Secretary mentioned in paragraph 2 of his reply that the City and New Territories Administration was required to cut staff and expenditure. In this connexion, to what extent were the services affected in terms of quality and quantity and what was the amount of work that was delayed?

HIS HONOUR THE PRESIDENT: The Secretary for Home Affairs might like to take the first part of the question. The second part really opens up a whole new area which I think Mr SIT should put down for separate answer.

SECRETARY FOR HOME AFFAIRS: Very well, Sir. We have on record a total of about 2 500 establishments that will eventually come under licensing control. But the work will obviously have to be done in phases. The more vulnerable guesthouses, particularly those situated in highrise buildings, will be dealt with first and we estimate that we should be able to tackle about 1 000 in the first year or so of operation.

MR BARROW: Sir, could the Secretary inform this Council as to what steps are being taken to ensure that similar fire prevention regulations apply also to restaurants and entertainment establishments which are in the same highrise buildings as guesthouses?

SECRETARY FOR HOME AFFAIRS: Sir, I assume Mr BARROW is referring to those establishments which are described as clubs but run the businesses of restaurants, mahjong parlours, karaoke bars and so on. We have been working on this particular subject for about four weeks and in that period we have come to some preliminary conclusions. The first conclusion is that in principle we would like to certify these premises under our licensing system to ensure that they are safe. Work in this regard is proceeding and principles have been agreed on. Once the details are worked out, we shall be making a public announcement.

MISS LEUNG (in Cantonese): Has the Secretary considered charging the guesthouses a fee to cover the operation costs of the licensing office?

SECRETARY FOR HOME AFFAIRS: Sir, the licensing scheme will largely, if not totally, be a self-financing scheme in that the licence fees should cover a substantial part of operating costs.

Power failures in public housing estates

3. MR TAM asked (in Cantonese): Will Government inform this Council:

(1) of the number of cases concerning electricity blackout in public housing estates during this summer; how many blackout cases were the result of fire or explosion in meter rooms due to overloading; and how long generally it took to resume the electricity supply in an incident; and

(2) what long-term measures the departments concerned will take to solve the problem of under-supply of electricity in public housing estates before next summer?

SECRETARY FOR PLANNING, ENVIRONMENT AND LANDS: Sir, between June and August this year, there were a total of 1 287 incidents of power failures or interruptions in public housing estates. Of these, only one case of overloading resulted in a minor explosion in a meter room. I understand that it normally took about two hours to resume electricity supply, but of course the time in each case depended on its seriousness.

Since 1979, the Authority has been rewiring all its pre-1973 estates. This programme is nearing completion, covering 157 000 flats in 40 estates. There are nowadays more incidents in buildings completed since 1973, largely as a result of an increased use of high current electrical appliances, especially air-conditioners.

The Authority has short-term as well as long-term measures to remedy the problem. Under its current programme, a total of 120 buildings with inadequate power loading will be brought up to present-day standards over the next six years. But six years is a long time to wait, and an interim reinforcement scheme is also being implemented

in housing estates which suffer from more frequent power failures. This involves load sharing between rising mains and the installation of some additional risers, which should significantly reduce the number of incidents. These measures will be completed in about 90% of the 80 buildings most prone to power failures before next summer and I understand that the remaining 10% will be dealt with during the summer. The Authority has also strengthened its standby emergency repair service.

MR TAM (in Cantonese): Sir, the Secretary has said it needs six years to remedy the problem at source. How was this "six years" arrived at? Will the Government shorten this period, for example, by sub-contracting the improvement projects to different private companies so that they can be undertaken in different districts at the same time?

SECRETARY FOR PLANNING, ENVIRONMENT AND LANDS: Sir, I understand that the schedule, which is the Housing Authority's schedule, is a product of the two-year time span which it takes to actually change the wiring, having regard to the amount of work and the amount of supervisory capacity available. I will be happy to pass on Mr TAM's observations to the Authority.

MR MCGREGOR: Sir, the Secretary referred to one case of a minor explosion. Could he explain why there should be an explosion within a system which in terms of public safety would normally have an automatic trip, and if there was any case of overloading that trip should normally have activated before the point of a fire explosion was reached?

SECRETARY FOR PLANNING, ENVIRONMENT AND LANDS: Unfortunately, Sir, I do not have the advantage of Mr MCGREGOR's electrical training and so I will have to consult somebody of equal status with himself before I can give him an adequate reply. I understand, however, that this was in a very old block.

MR DAVID CHEUNG: The Secretary mentioned one case of overloading. Would he kindly inform this Council what the causes for the other incidents are?

SECRETARY FOR PLANNING, ENVIRONMENT AND LANDS: Sir, in my answer I said only one case of overloading resulted in a minor explosion in a meter room. What I meant by that was that only one of the cases of overloading actually led to an explosion. A great deal of other cases of overloading led to blackouts.

MR ANDREW WONG (in Cantonese): Can the Secretary confirm that there are regulations in force in the territory which require a change of wiring every 10 years or so? If this is the case, would it not then appear that the Housing Authority's rewiring scheme is in breach of those regulations?

SECRETARY FOR PLANNING, ENVIRONMENT AND LANDS: I am getting on to what, in my terms, is rather uncharted ground. There are certainly regulations concerning the safety of electrical wiring, but I am not in a position to say whether the Housing Authority is breaching any of them. I do not believe the Authority is.

MR TAM (in Cantonese): Sir, not only will blackouts in public housing estates significantly affect the lives of the residents, but it will also give rise to problems of law and order and security. Can the Government explain in detail how it will step up emergency repair service?

SECRETARY FOR PLANNING, ENVIRONMENT AND LANDS: Sir, I understand that the emergency repair service has been doubled within the last year and also arrangements have been made with a standby contractor to be on emergency call in outlying estates, thereby adding to the capacity of the Housing Authority's own teams. So, the emergency service has indeed been substantially improved.

Sale of Mark Six tickets in supermarkets and convenience stores

4. MR HUI asked: Will Government inform this Council of the rationale leading to its approval-in-principle given for the pilot scheme of the Royal Hong Kong Jockey Club to extend the sale of Mark Six tickets to supermarkets and convenience stores, and how it proposes to forestall the selling of tickets to people below 18 and how effective the measures will be?

SECRETARY FOR HOME AFFAIRS: Sir, I think the honourable Member is somewhat ahead of me on this issue.

On 16 July 1990 Government gave approval-in-principle for the Royal Hong Kong Jockey Club to develop the idea of a pilot scheme for the sale of Mark Six tickets in supermarkets and convenience stores. Any approval of the pilot scheme would be conditional on evidence being produced demonstrating that the pilot run would be acceptable to the district board in question. The Royal Hong Kong Jockey Club has yet to submit details of the proposed pilot scheme.

The public reaction and the worries and concerns about the possible availability of Mark Six tickets to young people under 18 will be taken into full account if and when a formal proposal is received and analysed.

MR HUI: Sir, allow me to thank the Secretary for trying to answer my question. Nevertheless, I have to point out that he has not given a reply to the first part of my question, which asks of the rationale leading to the Government's approval-in-principle being given for the pilot scheme of the Royal Hong Kong Jockey Club to extend the sale of Mark Six tickets to supermarkets and convenience stores. Could I ask the Secretary to inform this Council of the said rationale?

SECRETARY FOR HOME AFFAIRS: Sir, the Royal Hong Kong Jockey Club and the Lotteries Board are responsible bodies. When they make a proposal to us we have to consider this seriously and carefully. The so-called "approval-in-principle" was given conditional, as I said, upon the demonstration that it would be acceptable to the public. I cannot set out the rationale behind it other than the fact that when an application is made by such a responsible body we are duty-bound to consider it.

MR MARTIN LEE: Sir, will the Administration inform this Council whether the delay on the part of the Royal Hong Kong Jockey Club in coming up with a proposal for the pilot scheme is due to their change of mind over the whole idea as a result of objections from the community?

SECRETARY FOR HOME AFFAIRS: Sir, I have received no word whatsoever from the Royal

Hong Kong Jockey Club. I assume that the public opinion so far expressed, which is largely against the proposal, must be weighing heavily on their minds.

MRS TAM (in Cantonese): What criteria will the Government adopt to determine whether or not the pilot scheme is to be approved on receipt of a formal proposal from the Royal Hong Kong Jockey Club?

SECRETARY FOR HOME AFFAIRS (in Cantonese): We will first take into account the public opinion on this proposal. It could be said that the views currently being expressed by the public are no more than speculation, as we still have not received a formal detailed proposal yet. If the scheme is acceptable to the public, then we will look into matters relating to tax revenue and welfare benefit as well as whether the conditions or requirements for the Mark Six scheme are complied with.

MRS FAN: Sir, the Secretary in his answer indicated that the approval of the pilot scheme would be conditional upon its being acceptable to the district boards in question. To put things beyond doubt, does the Secretary mean that he will ensure that the relevant district boards will discuss this issue and implications in full and that, should the district boards object, the scheme will not be implemented?

SECRETARY FOR HOME AFFAIRS: Sir, I have no power to force the district boards to discuss any particular question, but I will encourage the district boards to consider the application if the application is made.

MR MARTIN LEE: Bearing in mind that a large number of government projects are now being funded by the Royal Hong Kong Jockey Club, does the Administration accept that the money raised through the sale of Mark Six tickets is tantamount to the imposition of a regressive tax and that it falls hardest on those least able to pay?

SECRETARY FOR HOME AFFAIRS: Sir, Mark Six is a system we have devised to counter Tse Fa ( ) and other forms of illegal gambling. It is a voluntary purchase, not an enforced tax.

MR HUI: Sir, could the Administration inform this Council if the Government is actively considering the recent suggestion made by the Royal Hong Kong Jockey Club to give lottery funds more money by helping Government to cut back on the existing level of tax and the Jockey Club's administrative charges?

SECRETARY FOR HOME AFFAIRS: Sir, how much should be the duty charged on lottery tickets is a matter for the Financial Secretary in his budgetary consideration.

MRS FAN: Sir, the Secretary answered the first part of my supplementary question but he did not give an answer to the second part, which is: if the district boards discuss the matter and object to it, will it mean that the Administration will not approve the pilot scheme?

SECRETARY FOR HOME AFFAIRS: Yes, Sir.

Triad-related crimes

5. MRS LAM asked (in Cantonese): Will Government inform this Council what action it will take to combat the recent increase of triad-related crimes?

SECRETARY FOR SECURITY: Sir, because of the very nature of triad societies, it is difficult to quantify accurately the level of their activity in our society. Taken over the past five or 10 years, the number of reported crimes involving triads has decreased substantially. But in the past two years there has been a worrying increase in triad-related crime.

In 1989, cases involving triads accounted for about 3% of total crime. But we must not underestimate the threat which triads pose to law and order in our society, and the police are certainly not complacent about the present situation.

Action being taken to counter organized crime and triad activities includes both

operational and legislative measures.

As regards operational measures, the Organized and Serious Crime Group will continue to conduct long-term intelligence based operations, and to take offensive action against the hierarchies of triad societies throughout the territory. At the regional and district level, action has been stepped up against triad activities including extortion, loansharking, dangerous drugs, gambling and vice.

As regards legislative measures, this Council has in the past year enacted legislation which enables more effective law enforcement action to be taken against gambling, vice and drug trafficking which are major revenue-producing activities for triad societies. We are now preparing new draft legislation to attack organized crime, and we expect to publish this legislation early next year in the form of a White Bill for public consultation.

If these measures are to be successful the support of the community is vital. Everyone has a duty to assist the police by reporting all types of crime and, if necessary, by being prepared to give evidence as a witness. This will be one of the messages of the publicity campaign which will be launched shortly to call for public support in the fight against crime.

MRS LAM (in Cantonese): Sir, in paragraph 6 of his reply, the Secretary for Security mentioned that the public were encouraged to report crimes and give evidence as witnesses. For those people who really do so, what measures will be taken to ensure the safety of their life and property? Besides, it is generally assumed that the increase in triad-related crimes is attributable to the support of many influential celebrities behind the scenes; does the Secretary have any information in this respect?

SECRETARY FOR SECURITY: Sir, I think I can answer the first part of the question. Clearly, the police are prepared to give protection to people who report crime and to witnesses in individual cases depending upon the circumstances of that case. I think it must be left to the good judgment of the police to decide whether a person is at risk, and if so, what sort of assistance and protection is appropriate. But the police certainly are prepared to offer protection where they think that is necessary.

MR MARTIN LEE: Sir, does the Government accept that the 3% given to us as being the percentage of crimes involving triads in fact is grossly unreliable because most of these crimes are not reported to the police because the public are not sure that they will be protected by the police if they do so?

SECRETARY FOR SECURITY: Sir, I think that when we talk about the amount of unreported crime, we are inevitably engaging in speculation. By its very nature, nobody can gauge the amount of unreported crime. I do not doubt that there is unreported crime involving triads, as I do not doubt that there is other unreported crime not involving triads.

MRS LAU: Sir, I am sure the Secretary is aware of there being calls from the public to reinstate the Triad Societies Bureau which was disbanded a number of years ago, which clearly shows a lack of understanding, or insufficient understanding, of the true functions of the Organized and Serious Crime Group. What does the Secretary propose to do in regard to that?

SECRETARY FOR SECURITY: Sir, I think we must concentrate on the substance and not the shadow. The name of the organization within the police force is, I think, not the important issue. What is important is that the police are properly organized to combat triads. I believe that the present organization, both at territory, at regional and at district level, is appropriate for the fight against triad crime. Clearly, the police have to gauge their organization to changing conditions and they do regularly review their organization to ensure that it is appropriate to the changing nature of crime.

MR DAVID CHEUNG: Sir, the Secretary, in his reply, mentioned taking offensive action against the hierarchies of triad societies throughout the territory. Will the Secretary inform this Council whether the Government has information as to who they are and where they are? And if so, are there enough grounds to have them arrested and prosecuted, or must these people in the hierarchies commit a crime before they can be apprehended?

SECRETARY FOR SECURITY: Sir, clearly, people must commit crimes before they can be prosecuted. The police, obviously, do have good information on triad societies and I think that perhaps one statistic will illustrate that. Perhaps the largest component of what are termed "triad offences" are those specifically concerning unlawful society offences, which would include, for example, membership of a triad society or taking part in triad initiation ceremonies. There have in recent years been approximately 1 000 prosecutions for such offences each year.

MR MICHAEL CHENG (in Cantonese): Sir, will the Government inform this Council what implications the Bill of Rights, which overrides all other laws, will have upon police operations against triad offences?

SECRETARY FOR SECURITY: Sir, we have to review many pieces of legislation in the light of the Bill of Rights. We have not completed that review and I think it would be premature for me to try and predict now what precise changes will be necessary. I have no doubt that some amendments to our law will be necessary. I have no reason to believe that any changes relating specifically to triad societies will be necessary. I think I can assure the Honourable Member that we are very well aware and very concerned that the police should retain adequate powers to deal with crime, in particular organized crime, and indeed, as I said in my main reply, we shall be introducing legislation -- or rather we shall be publishing for public consultation draft legislation -- early next year, which is specifically targeted at organized crime.

MR MCGREGOR: Sir, in regard to the question of dealing with the triads, although a special unit is not to be setup to fight triads, it would seem likely that even at the regional or district level there will be police officers set aside specially in small groups with particular experience to fight triads, who will be given the job of doing that. Will the Secretary confirm that great care will be taken to ensure that these units, if they are set up, are not themselves infiltrated by the triads thus negating the whole purpose?

SECRETARY FOR SECURITY: Yes, Sir, I am sure that the police are well aware of that requirement.

MR MARTIN LEE: Sir, does the Administration accept that our public are more reluctant to report triad-related crimes than non-triad-related crimes?

SECRETARY FOR SECURITY: Sir, it is impossible to produce any objective evidence to substantiate such a claim. But purely on commonsense grounds, I would suspect that the public are particularly worried about intimidation and retaliation in crimes involving triads.

MRS FAN: Sir, there is the prevailing perception in this community that the protection offered to witnesses, particularly those for extortion cases, is insufficient to encourage them to come forward to testify. This prevailing perception is also reflected in the questions this afternoon. How does the Secretary intend to counteract such a perception apart from using one of the messages of the publicity campaign, and are any new measures to enhance protection for witnesses being considered?

SECRETARY FOR SECURITY: Sir, measures have been taken to afford witnesses some additional protection and I would certainly hope to see these extended. For example, the use of one-way mirrors in identification parades has been introduced in certain police stations and I would certainly like to see that extended, and I am sure the police would also like to see that extended. I think, in the final analysis, the way to ensure that people are not afraid to come forward and to report crime and to act as witnesses is part of the overall campaign to increase public confidence in the ability of the police to tackle crime, and that clearly will be one of the main points that we will be trying to concentrate on in our publicity.

MR PAUL CHENG: Sir, I understand some triad activities have gone international. Can the Secretary for Security advise this Council to what extent we co-ordinate with authorities in other countries to deal with the more internationally oriented triad organizations?

SECRETARY FOR SECURITY: Sir, there is a great deal of co-operation between police

forces internationally, and there is, in the case of drug trafficking, legislation which permits formal mutual legal assistance in the investigation of drug trafficking offences between different countries. Hong Kong has not yet concluded any agreement, but we have been in negotiation with a number of countries. We are also proposing in the future to introduce other legislation which would permit us to conclude mutual legal assistance in criminal matters agreements generally with other countries.

MRS LAM (in Cantonese): Sir, in view of the general fear of atrocious retaliation by triads, will the Secretary consider setting up a special unit or some telephone hotlines to deal specifically with triad-related crimes reported by the public?

SECRETARY FOR SECURITY: Sir, I think there are probably already ample avenues for reporting crime but I will certainly consider and seek the views of the police on whether anything additional is necessary.

Manpower economy within Government

6. MR PETER WONG asked: Will Government inform this Council of the criteria for deciding which services to the public can be reduced to economize on manpower?

FINANCIAL SECRETARY: Sir, we do not work against fixed criteria in deciding as to where economies can best be made. We rely on value for money studies and judgement in assessing relative priorities. Often cuts in expenditure do not result in any appreciable reduction in service to the public. Savings can be achieved through improved efficiency.

MR PETER WONG: Sir, I thank the Financial Secretary for his admirably economic answer to my question. But since we are in times of stringency and value for money studies take some time to complete and priorities allocated, does zero growth really mean that we cannot expect any immediate savings in manpower through efficiency measures?

FINANCIAL SECRETARY: No, Sir, it does not mean that. At all times, controlling officers, I hope, are doing their best to achieve improved efficiency and therefore additional savings.

MR MCGREGOR: Sir, will Government consider privatizing police driver training which apparently takes up quite a large budget and the valuable time of officers who could perhaps be better employed elsewhere?

HIS HONOUR THE PRESIDENT: I think that really goes outside the range of the original question, Mr MCGREGOR. You should put it down as a separate question.

Triad involvement in the purchase of uncompleted flats

7. MISS LEUNG asked: Will Government inform this Council whether it will introduce measures to curb triad involvement and speculation in the sale of pre-completed flats?

SECRETARY FOR PLANNING, ENVIRONMENT AND LANDS: Sir, following the recent incidents in queues for sale of uncompleted flats, we have discussed with the Real Estate Developers Association possible ways to protect genuine home buyers and to discourage the involvement of unruly people in the queues. As a first step, the Real Estate Developers Association has agreed to ask developers to adopt a number of measures in future sales of residential flats in large developments when queues begin to form. These are: the developers will register the names and identity cards of the people in the queue, giving each a priority number for return at a specified time later in the day to select flats. Only one registration should be allowed for each identity card, but no restriction would be made on the number of units a purchaser can buy.

These measures have now been tried out in a number of sales recently, and the results have so far been satisfactory in that they seem to have averted organized swamping of the queues by unruly people and the consequent quarrelling and fighting. The Government will continue to watch future sales to see if the above measures continue to work. In addition, the police will maintain close contact with the developers to give advice on necessary arrangements before a sale begins.

Sir, these are measures to maintain orderly queuing, not to curb speculation, but Members may wish to note that the Consumer Council is also discussing with the Real Estate Developers Association a package of measures to improve the sales

procedures of uncompleted residential flats and to reduce speculation. It is expected that the Consumer Council will submit its formal proposals to Government in about a month's time and these will be examined carefully on arrival.

MISS LEUNG (in Cantonese): Sir, why is there no restriction on the number of units a purchaser can buy? The current arrangement would probably benefit a handful of speculators only, and would diminish the chance of genuine buyers who purchase flats for their own occupation.

SECRETARY FOR PLANNING, ENVIRONMENT AND LANDS: Sir, as I said in my main answer, the measures which we have agreed with the Real Estate Developers Association are aimed at maintaining orderly queuing. They seem to be having that effect. We will certainly consider the possible restrictions in the context of the Consumer Council's report, which I may say is a magnum opus which has taken two years to produce and is very well worthy of serious study.

MR MCGREGOR: Sir, I am not quite sure whether this is a follow-up to the last question or the one before that, but perhaps I could ask it anyway. Is the Government aware of the high level of public disquiet over the impertinence of a triad leader in calling a press conference recently to complain that his triad had not been treated fairly? And if so, has the Government traced and charged the individual concerned?

HIS HONOUR THE PRESIDENT: I think that question really was exhausted in the previous question, Mr MCGREGOR. If you wish to ask it again, I think it should be by way of future reference, please.

MISS LEUNG: Sir, will the Secretary inform this Council whether the Government considers it necessary to adopt measures to reduce speculation, and if so, of the measures the Government has in mind?

SECRETARY FOR PLANNING, ENVIRONMENT AND LANDS: Sir, the Government has on previous occasions over the years considered measures for curbing what it considered to be

excessive speculation, excessive in the sense that the speculation has been massively affecting the ability of home buyers to purchase flats. I would not say that the present circumstances would be considered excessive in those terms. The Government has never considered actually taking measures to prevent all speculation, and I do not think it is likely to do so.

MR ANDREW WONG: Sir, in the same spirit as the series of questions raised by Miss LEUNG, will the Government consider adopting Mark Six or another lottery scheme for the sale of flats?

SECRETARY FOR PLANNING, ENVIRONMENT AND LANDS: I do not think that is necessary, Sir.

Energy conservation

8. MR CHENG HON-KWAN asked: In view of the recent substantial increase in oil prices resulting from the Gulf crisis, will Government inform this Council whether its energy conservation policy should now be reviewed with a view to coping with possible emergency situations and alerting the public to the need for energy saving in the longer term?

SECRETARY FOR PLANNING, ENVIRONMENT AND LANDS: Sir, the Administration has been in regular contact with the oil companies over the recent Gulf crisis and we have been assured by the companies that despite the political tensions in the Gulf region, the supply of oil products to Hong Kong has remained unaffected.

Following the two previous oil crises in 1973 and 1979, we have now become much less dependent upon oil for basic energy requirements. Nevertheless certain sectors of the economy still utilize oil as their source of energy. These include the bus services and taxis, certain industries such as the bleaching and dyeing industry, and town gas users. Therefore it is very important that supplies of oil products are maintained at adequate levels, and it is for this reason that the oil companies in Hong Kong are obliged to follow a Code of Practice which requires them to maintain a minimum reserve of 30 days supply of the essential fuels.

While the current situation in the Gulf does not call for emergency energy

conservation measures as such, we have nevertheless conducted a thorough review to ensure that we are fully prepared in the event that there is a deterioration of the situation leading to a severe shortage of oil products. At the same time, besides the Gulf situation, there are many very good reasons to encourage the conservation of energy and we are studying what further measures can be adopted. These measures include for example the examination of how energy can be saved through design in new buildings and through alterations of old ones, and the extent to which conservation should be achieved through education and legislation respectively.

MR CHENG HON-KWAN: Sir, the Secretary mentioned in his reply that besides the Gulf situation there are many very good reasons to encourage energy conservation. May this Council know what these reasons are?

SECRETARY FOR PLANNING, ENVIRONMENT AND LANDS: Sir, one of the more important reasons is that the burning of fossil fuels -- in the case of electricity generation it is coal, and in the case of motor vehicles it is various petroleum products -- is the major source of pollution in Hong Kong, and energy conservation equals some kind of control of pollution.

Another reason is more global in that the burning of fossil fuels produces carbon dioxide. The world is presently taking stock of the situation which is being produced through excessive burning of fossil fuels, and is considering the possibility of a convention on the lines of the Vienna Convention or the Montreal Protocol for the limitation of carbon dioxide emissions. So those are two very good reasons.

There is also a third, very good reason which one can consider, which is that fossil fuels are finite.

MR MARTIN LEE: Sir, bearing in mind that Hong Kong has already faced two previous oil crises in the last 17 years, will the Administration inform this Council why it has no concrete plans yet for conserving energy, but is still contemplating how energy can be saved through design in new buildings, education and legislation, when the third crisis is just around the corner?

SECRETARY FOR PLANNING, ENVIRONMENT AND LANDS: Sir, oil crises up till now have been

reasonably temporary and the world supply of oil is not seriously threatened. Even in the present situation of the Gulf crisis only a certain proportion of the world's supply is affected. The principal threat to Hong Kong at this stage would be if it was unable to maintain an adequate reserve to ensure supply. It was for this reason, of course, that after the other crises the oil companies were required to maintain a 30-day supply, and that provides a safety margin against the likely effect.

As I said, there are very good reasons for energy conservation in itself. Energy conservation would cut down actual consumption of oil supplies, perhaps, but then the reserves which would be involved of course would be correspondingly reduced. Reserves cost something, and the costs of those are balanced against the consumption. If the consumption is reduced the reserves would also be reduced; so the state of vulnerability would in fact be largely the same as it is at present.

That said, I heartily echo the sentiment that energy conservation measures might well have been taken earlier.

MR PETER WONG: Sir, will the Secretary please inform us how much money the Government is actually spending on education on conservation? And also, how much money, if any, the Government is subventing towards the Friends of the Earth who are arranging a multi-national conference on energy conservation in Hong Kong next Spring?

SECRETARY FOR PLANNING, ENVIRONMENT AND LANDS: At the present moment I think the score is: nil; nil.

MR TIEN: Sir, could the Secretary please inform this Council whether or not the 30-day oil supply by the oil companies has dwindled since the Middle East oil crisis?

SECRETARY FOR PLANNING, ENVIRONMENT AND LANDS: No, Sir, the oil companies are having no problem in maintaining the 30-day supply.

Written answers to questions

Use of loudhailers

9. MRS TU asked: Will Government inform this Council:

(a) how many prosecutions involving the use of loudhailers are known to have been instituted in the past three years and of these, how many were brought under section 4(29) of the Summary Offences Ordinance; and

(b) what progress has been made in examining the legal provisions relating to the use of loudhailers, and whether it has plans to introduce amending legislation as a result of the criticism of the restrictions placed upon freedom of expression and demonstration arising from the application of section 4(29) of the Summary Offences Ordinance?

SECRETARY FOR SECURITY: Sir, based on the records available (which are not complete), the number of prosecutions instituted under section 4(29) of the Summary Offences Ordinance in the past three calendar years and in 1990 to date is as follows:

Year	No. of Prosecutions
1987	40
1988	2
1989	2
1990	10

The existing controls on the use of loudhailers are designed to prevent nuisance, and do not infringe civil liberties. However, as I said in this Council on 18 July this year, we are examining whether there is any unnecessary duplication between the provisions relating to loudhailers in the Summary Offences Ordinance, the Public Order Ordinance and the Noise Control Ordinance. We have not yet reached any conclusions.

Hong Kong Trade Office in Singapore

10. MR MARTIN LEE asked: In light of the fact that Hong Kong's total trade with ASEAN nations has more than doubled in the past five years and that the permanent secretariat

of the Pacific Economic Co-operation Conference is based in Singapore, will the Government consider opening a Hong Kong Economic and Trade Office in Singapore in the near future?

FINANCIAL SECRETARY: It has been Government's policy to establish progressively economic and trade offices in overseas countries which have substantial economic ties with Hong Kong. The primary role of these offices is to facilitate the conduct of external commercial relations and to promote inward investment into Hong Kong. Inevitably these offices are also involved in promoting Hong Kong's image abroad. We currently maintain offices in London, Geneva, Brussels, Washington, New York, San Francisco and Tokyo, and we are planning to open another office in Toronto.

In view of the growing significance of Hong Kong's economic and trade links with the ASEAN nations, we have also been considering setting up an office in that region, and Singapore certainly must be considered a suitable location. We shall pursue this possibility after the establishment of the Toronto Office. The timing would be dependent on consultations with the host country and the availability of resources.

Use of firearms by off-duty police officers

11. MR TIEN asked: Will the Government inform this Council:

(a) of the circumstances under which a police officer can carry concealed firearms off duty?

(b) how many complaints against the use of firearms by police officers off duty have been received in the past two years?

(c) how many police officers have been prosecuted and convicted in the past two years on account of the use of firearms during off duty?

SECRETARY FOR SECURITY: Sir, some police officers, mainly those involved in criminal investigation and certain other specific operational tasks, are authorized to carry firearms when off duty, provided the security of the firearms is not compromised.

Over the last two years there have been two complaints about the use of revolvers

by officers while off duty. One of these occurred recently in Wan Chai and is currently under investigation. The other case occurred in December 1989 when a detective constable while off duty fired one shot at a metal gate. He was dismissed from the Force after being sentenced to nine months' imprisonment for the offence of recklessly discharging a firearm.

Statement

Exchanges (Special Levy) Ordinance

FINANCIAL SECRETARY: Sir, Members of this Council will have seen reports in the press regarding the reduction in the so-called "lifeboat levy" on trading in the Hang Seng Index futures contract. This special levy of \$30 per transaction, buying or selling, in respect of trading done in the stock index market of the Hong Kong Futures Exchange is provided for in the Exchanges (Special Levy) Ordinance enacted in October 1987. It provides a source of repayment for the credit facilities extended to the Hong Kong Futures Guarantee Corporation at that time.

Turnover in the stock index market has been low. The Futures Exchange has argued that this is attributable to high trading costs, and that if the market is to recover it is necessary for the special levy to be reduced. In evaluating the effect of a reduction, we have noted that relatively small sums are being received from this source. I should add that interest at Prime Lending Rate is being paid on the outstanding principal, and it seems unlikely that interest will not be adequately covered from sources other than the special levy on the futures contract. The view which I have taken is that the relatively small reduction in the rate of repayment of the government facility is a price worth paying for the potential increase in activity in the stock index market.

All the parties to the facilities have agreed to the reduction in levy, which took effect at the beginning of this week. The amended agreement gives the Futures Exchange an entitlement to receive \$25 out of each levy of \$30 paid, and requires the trustee of the special levy fund to pay that entitlement to the Futures Exchange forthwith upon the trustee receiving each payment of levy from the Futures Exchange. Adoption of this procedure has enabled the reduction to be effected quickly and without amending the legislation. The arrangements have been made in the hope that the reduction will accelerate the revival of the stock index market.

The rules of the Futures Exchange have been amended to provide that members of the Exchange only collect, by way of the special levy, \$5 per stock index contract. This amendment has been approved by the Securities and Futures Commission.

#### First Reading of Bills

INLAND REVENUE (AMENDMENT) (NO. 3) BILL 1990

CONTROL OF EXEMPTION CLAUSES (AMENDMENT) BILL 1990

IMMIGRATION (AMENDMENT) BILL 1990

PUBLIC ORDER (AMENDMENT) BILL 1990

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

#### Second Reading of Bills

INLAND REVENUE (AMENDMENT) (NO. 3) BILL 1990

THE FINANCIAL SECRETARY moved the Second Reading of: "A Bill to amend the Inland Revenue Ordinance."

He said: Sir, I move that the Inland Revenue (Amendment) (No. 3) Bill 1990 be read the Second time.

This Bill seeks to clarify the position in relation to the taxation of fringe benefits. It is of particular relevance to payments made by employers to their employees for the purpose of the education of the employees' children.

Members will recollect that in December 1988 the Court of Appeal handed down a decision on the interpretation of section 9 of the Inland Revenue Ordinance. The decision did not reflect the assessing practice in respect of fringe benefits followed by the Inland Revenue Department before the case arose.

Prior to the Appeal Court decision, the Inland Revenue Department had long accepted that principles derived from United Kingdom case law determined whether fringe benefits, or "perquisites", were chargeable to salaries tax. The Department's assessing practice was based on the understanding that these decisions had established that benefits received in a form other than money, except for those covered by specific provisions of the Inland Revenue Ordinance, could not be treated as chargeable income unless they took the form of "money's worth". A benefit was regarded as constituting money's worth if it was capable of being converted into money by the recipient, or involved the discharge by the employer of a personal liability of the employee. Accordingly, if an inconvertible benefit was provided to an employee and the Department recognized that the employer, rather than the employee, was the party liable for the relevant expense, the benefit was accepted as not being chargeable.

The Court of Appeal ruled, however, that the word "perquisite" in the Ordinance should be given its ordinary meaning, rather than the restricted meaning recognized in the United Kingdom. In essence, the Court found that under the present law, all benefits derived by an employee from his employment were chargeable to salaries tax.

In view of the implications of the decision, particularly in relation to the identification and valuation of benefits, the Administration decided that the Ordinance should be amended to accord with the practice the Department had followed before the case arose. This decision was announced by the Commissioner in a public statement issued in March 1989. It was also announced at the same time that pending the introduction of the legislation the Department would continue to apply its previous practice.

In the meantime an appeal was made to the Privy Council. The decision of the Privy Council in January this year was not as wide in scope as that of the Court of Appeal. The Privy Council found that not all benefits derived by an employee from his employment were chargeable under the present legislation. Inconvertible benefits which did not involve the expenditure of money or which involved expenditure which could not be attributed wholly or proportionately to one employee would not be caught.

In contrast to the Department's previous practice, however, the Privy Council did not accept that an inconvertible benefit would escape the charge to salaries tax if the employer rather than the employee had the liability for the relevant payment.

The Privy Council considered that there was no difference between an employee's personal debt discharged by an employer pursuant to an employment contract and money paid for the benefit of the employee pursuant to the employment contract.

The Privy Council decision allows the taxation of fringe benefits on a wider scale than was the practice before the case arose. So, in order to bring the law into line with long accepted practice in Hong Kong, the Ordinance needs to be amended to reflect that practice. We do not wish to widen the extent to which perquisites have been taxed previously in Hong Kong.

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

Question on the adjournment proposed, put and agreed to.

#### CONTROL OF EXEMPTION CLAUSES (AMENDMENT) BILL 1990

THE ATTORNEY GENERAL moved the Second Reading of: "A Bill to amend the Control of Exemption Clauses Ordinance."

He said: Sir, I move that the Control of Exemption Clauses (Amendment) Bill 1990 be read the Second time.

The Bill amends the Control of Exemption Clauses Ordinance 1989 as a consequence of the enactment of the Arbitration (Amendment) (No. 2) Ordinance 1989.

By a cross-reference to the Arbitration Ordinance, section 15 of the Control of Exemption Clauses Ordinance 1989 served to provide controls over domestic arbitration agreements as against international arbitration agreements which are not so controlled.

The Arbitration (Amendment) (No. 2) Ordinance 1989 has since amended the Arbitration Ordinance by providing new definitions for domestic and international arbitration agreements. This Bill seeks to amend section 15 of the Control of Exemption Clauses Ordinance 1989 to reflect these changes.

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

Question on the adjournment proposed, put and agreed to.

## IMMIGRATION (AMENDMENT) BILL 1990

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

He said: Sir, I move that the Immigration (Amendment) Bill 1990 be read the Second time. The Bill seeks to reinforce our policy of deterrence of illegal immigration, by denying illegal immigrants the opportunity to obtain work in Hong Kong.

Illegal immigration has for many years been a serious problem. In November 1980 the "touch base" policy was ended, and since then illegal immigrants arrested in Hong Kong have been repatriated. The result was a very substantial drop in the number of illegal immigrants entering Hong Kong.

However, in the mid-1980s the numbers began to increase once again. In 1987, over 26 700 illegal immigrants were arrested. This caused us to review our policies once more. In May 1988 we started to prosecute illegal immigrants arrested in Hong Kong. If convicted, they have had to serve their sentence before repatriation. In July 1988 the Court of Appeal laid down a sentencing guideline of 15 months imprisonment for illegal immigrants convicted of remaining illegally in Hong Kong.

Prosecution had a marked and immediate deterrent effect. The numbers of illegal immigrants arrested dropped substantially. However, this deterrent effect has not lasted. In the first nine months of this year, nearly 21 500 illegal immigrants have been arrested. Clearly further measures are required.

The great majority of illegal immigrants come to Hong Kong to seek employment. We need therefore to tackle the problem at its source by making it clear to employers that it does not pay to employ illegal immigrants, and to prospective illegal immigrants that there is no point coming to Hong Kong because there will be no work available for them here.

Sir, this provides the underlying philosophy of the provisions in the Bill. The existing provisions of the Immigration Ordinance already provide for the prosecution of employers of illegal immigrants. They have proved effective in controlling the employment of illegal immigrants in restaurants, factories and other places of

employment where there is only one employer who can be easily identified. The existing provisions, however, suffer from two defects.

First, the penalties are inadequate, and there has in particular been criticism of the disparity in maximum penalties for illegal immigrants and for those who employ them. The present legislation sets a maximum of three years' imprisonment for entering and remaining in Hong Kong without permission, compared to a maximum of one year's imprisonment for the employer of an illegal immigrant. Clause 2 of the Bill seeks to remedy this by increasing the maximum term of imprisonment for an employer to three years, and at the same time, increasing the maximum fine from \$50,000 to \$250,000. This, we believe, will make it very clear to employers how seriously we view the offence of hiring illegal immigrants, and should, I hope, prove an adequate deterrent. The offence is at present one of strict liability; but clause 2 would also in future provide an employer with a defence against the charge if he can show that he had taken all practicable steps to determine whether the person was lawfully employable, and that it was reasonable to conclude that the person was lawfully employable.

Secondly, recent experience has shown that the present law is inadequate in cases where illegal immigrants are found on construction sites. It is difficult under existing legislation to bring a successful prosecution against employers of illegal immigrants on construction sites. This is because:

(a) the sub-contracting system which is usual in the construction industry means that there are generally several employers on a construction site. Since comprehensive records are seldom kept, it is frequently impossible to tell for which employer an illegal immigrant may be working;

(b) illegal immigrants often do not know who is employing them. Contact with the employer is often through a third party who has no apparent connection with the employer; and

(c) even if they do know their employer, illegal immigrants are unlikely to be willing to identify him either for fear of not being paid, or because of peer pressure not to inform on someone who is also providing employment for friends and relatives. Illegal immigrants are well briefed on what to say to the police when arrested.

Because of these difficulties of proving who is the employer of an illegal

immigrant found on a construction site, indeed the difficulty even of proving employment in such cases, clause 4 of the Bill provides that the construction site controller should be liable if an illegal immigrant is present on a construction site. There will, however, be a defence available to the construction site controller that he took all practicable steps to prevent illegal immigrants from being on the construction site. I believe the explicit recognition of this defence will help allay the fears which have been expressed concerning the vicarious liability nature of the offence.

I understand that the Hong Kong Construction Association is planning to introduce a self-regulatory code of practice covering the employment of workers. This is to be welcomed. Construction site controllers will have to ensure that both they and their sub-contractors employ persons who are legally employable.

Since the publication of the Bill, concern has been expressed whether domestic premises are included in the definition of a "construction site". At the Committee Stage of the Bill, I propose to move an amendment to section 38A of the Ordinance to exempt from the definition of "construction work" redecoration, renovation, alteration, maintenance or repair in individual domestic premises.

There is one additional measure proposed in the Bill: clause 3 increases the maximum fine for landing and remaining without permission from \$5,000 to \$10,000. The present level of fine was set in 1980 and it is now time to change it to be more in line with today's values.

I believe the measures I have outlined today should have a significant effect in reducing illegal immigration into Hong Kong. They provide for more effective prosecution of employers and for increased penalties, with the object of reducing the employment opportunities available to illegal immigrants and thus stemming the flow at source. I would finally reiterate that there will be no amnesty for illegal immigrants. Our policy remains that illegal immigrants will be repatriated.

Sir, I beg to move.

Question on Second Reading proposed.

ATTORNEY GENERAL: Sir, the measures proposed by the Secretary for Security will,

if enacted, constitute important changes to our laws concerning illegal immigration. He has explained to Members those facets in which our present laws have been found wanting, and the measures designed to close the gaps and to ensure that those involved in this illegal activity are suitably dealt with. I wish now to explain the prosecutions policy that will be adopted in implementing these measures. It is unusual for me to publicize prosecutions policy in any specific area. But I do so in this instance because there should be no doubt about our determination to deter illegal immigration, and because I wish there to be no misunderstanding or false sense of security by those against whom these laws are targeted.

From the date that this legislation is enacted, I propose to prosecute any illegal immigrant found at a place of employment, for such offences as possession of an identity card relating to another, and landing or remaining in Hong Kong without the authority of the Director of Immigration. Such an offender will be prosecuted whether or not other illegal immigrants are found at the place of employment, regardless of whether that person has been to Hong Kong as an illegal immigrant before, and whether or not he came as part of a group. Illegal immigrants who commit other offences will be prosecuted for such other offences in the normal way. Other illegal immigrants, that is those not within the category I have described, will generally be repatriated to China without prosecution. It should be clear, then, that this policy will be directed at those illegal immigrants who come to Hong Kong for economic reasons.

As far as employers are concerned, I will continue to prosecute under current provisions employers who are shown to have been employing illegal immigrants. It should be well understood that this applies to all employers, and not only to those in the construction industry.

The new provisions will penalize principal contractors in control of building sites upon which illegal immigrants are found. In this regard, I would like to make two points. First, where a number of illegal immigrants are found on such a site at one time, I intend that one charge will be laid against the principal contractor, rather than separate charges in respect of each illegal immigrant, since the latter course would expose a contractor to multiples of the maximum penalty. However such a contractor should realize that the courts are likely, following ordinary principles of sentencing, to impose a higher penalty if more than one illegal immigrant is found on the site. Secondly, the Director of Public Prosecutions will examine cases where charges might be laid under this new provision to ascertain whether the principal

contractor has done all that can be expected of him to prevent illegal immigrants from being on the site for which he is responsible. If the Director is satisfied that such preventive measures have been taken, a prosecution is unlikely to follow.

This then will be our prosecutions policy. But I must make it clear that I will not hesitate to alter that policy to cater for such change of circumstances as may arise, particularly should it prove necessary to provide additional deterrence against illegal immigration.

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

Question on the adjournment proposed, put and agreed to.

#### PUBLIC ORDER (AMENDMENT) BILL 1990

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

He said: Sir, I move that the Public Order (Amendment) Bill 1990 be read the Second time. The Bill seeks to repeal:

(a) first, those parts of section 33(2) of the Ordinance which provide for a mandatory minimum sentence of imprisonment or a sentence of caning for the offence of being in possession of an offensive weapon in a public place; and

(b) secondly, section 33(2A) which enables the courts to exercise the powers conferred by section 45 of the Mental Health Ordinance to issue detention orders in respect of persons convicted of a section 33 offence. This provision becomes redundant once mandatory sentences are removed for section 33 offences.

At present, section 33(2) of the Public Order Ordinance requires the courts to impose a mandatory sentence of caning or imprisonment for not less than six months on any person aged 14 years old or over convicted of being in possession of an offensive weapon in a public place. The only exceptions to this are that young persons under 17 years of age may be sentenced to detention in a training centre, and persons under 25 years of age may be sentenced to detention in a detention centre. On 11 July this year, the Corporal Punishment (Repeal) Bill 1990 was introduced into this Council

to remove from the courts the power to award sentences of corporal punishment. Retention of corporal punishment for offences under section 33 of the Public Order Ordinance would therefore be an anomaly, and the Bill provides that caning should no longer be a sentencing option.

If the power of the courts to award a sentence of corporal punishment alone were removed, the courts would in most cases be required to impose a mandatory minimum prison sentence on persons convicted of an offence under section 33 of the Ordinance. The retention of a mandatory prison sentence for this offence has, however, been widely criticized because it deprives the courts of the opportunity of tailoring sentences to the individual circumstances of offences and of offenders. The Bill therefore also removes from section 33 the provisions relating to a mandatory sentence of imprisonment.

The Administration has given careful consideration to the possibility of raising the maximum penalty for section 33 offences upon the removal of mandatory sentences. We have, however, decided against doing so at present because:

(a) the existing maximum penalty is not inadequate given that this offence is essentially a crime prevention measure. A section 33 offence carries a maximum penalty of three years' imprisonment when tried in the District Court or the High Court; and two years' imprisonment when tried in a magistrate's court; and

(b) if in any particular case, the Attorney General considers that the sentence awarded is manifestly inadequate, he may apply to the Court of Appeal for a review of that sentence to ensure that the offender is appropriately punished.

I can assure Members that this Bill does not represent a relaxation in our fight against crime. Future trends in section 33 offences, and the adequacy of the existing maximum penalties, will be carefully monitored. In particular, the possible need for higher maximum penalties for possession of an offensive weapon will be reconsidered when the Law Reform Commission has completed its review and submitted its recommendations on police powers of stop, search and seizure.

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

Question on the adjournment proposed, put and agreed to.

BRITISH NATIONALITY (MISCELLANEOUS PROVISIONS) (AMENDMENT) BILL 1990

Resumption of debate on Second Reading which was moved on 25 July 1990

Question on the Second Reading of the Bill proposed, put and agreed to.

Bill read the Second time.

Bill committed to a Committee of the whole Council pursuant to Standing Order 43(1).

Committee stage of Bill

Council went into Committee.

BRITISH NATIONALITY (MISCELLANEOUS PROVISIONS) (AMENDMENT) BILL 1990

Clauses 1 to 5 were agreed to.

Council then resumed.

Third Reading of Bill

THE ATTORNEY GENERAL reported that the

BRITISH NATIONALITY (MISCELLANEOUS PROVISIONS) (AMENDMENT) BILL 1990

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

Question on the Third Reading of the Bill proposed, put and agreed to.

Bill read the Third time and passed.

Member's Motion

## INTERPRETATION AND GENERAL CLAUSES ORDINANCE

PROF. POON moved the following motion:

"That the Electricity (Wiring) Regulations 1990, published as Legal Notice No. 214 of 1990 and laid on the table of the Legislative Council on 11 July 1990, be amended in regulation 10(4) by adding 'or without using a tool' at the end."

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

The Electricity (Wiring) Regulations 1990, made under section 59 of the Electricity Ordinance 1990, set out the general safety requirements for the wiring of fixed electrical installations which registered electrical workers and contractors have to follow in their work. The regulations also prescribe the requirement for periodic testing of installations located in some specified types of premises.

Regulation 10(4) specifies the technical safety requirement limiting the insertion of a solid link in a neutral conductor. Under the regulation, a solid link may only be inserted in a neutral conductor so long as it cannot be disconnected without first disconnecting the related phase conductors. Although this provision in theory would afford greater protection to the consumers, it is contrary to well-established international safety practice. It casts doubt on proven safe designs of switch gear without integral neutral switching. The replacement of all such equipment in use in Hong Kong to meet this regulation would be prohibiting without marked improvement in the safety standards.

The purpose of the motion is to amend regulation 10(4) by adding "or without using a tool" at the end. The proposed amendment is in line with good international safety practice in that while solid links can be used in the neutral conductor circuits, it minimizes the chance of accidental removal by unqualified workers causing a dangerous situation to the electrical installation. As the regulation stipulates, work on fixed electrical installations must be carried out by registered electrical workers who would have the basic knowledge in electrical safety requirements.

Sir, I wish to take this opportunity to express my thanks to the Hong Kong Association for the Advancement of Science and Technology, the Hong Kong Institution of Engineers and the Department of Electrical and Electronic Engineering of the

University of Hong Kong for their valuable advice on the technical aspects of the regulations made under the Electricity Ordinance.

Sir, I beg to move.

Question on the motion proposed, put and agreed to.

Adjournment and next sitting

HIS HONOUR THE PRESIDENT: In accordance with Standing Orders I now adjourn the Council until 2.30 pm on Wednesday, 24 October 1990.

Adjourned accordingly at five minutes past Four o'clock.

Note: The short titles of the Bills/motions listed in the Hansard, with the exception of the Control of Exemption Clauses (Amendment) Bill 1990, have been translated into Chinese for information and guidance only; they do not have authoritative effect in Chinese.