

1 HONG KONG LEGISLATIVE COUNCIL -- 14 November 1990

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OFFICIAL REPORT OF PROCEEDINGS

Wednesday, 14 November 1990

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

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

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

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

THE HONOURABLE CHAN YING-LUN, O.B.E., J.P.

THE HONOURABLE MRS RITA FAN HSU LAI-TAI, O.B.E., J.P.

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

THE HONOURABLE CHUNG PUI-LAM, J.P.

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

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

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

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

THE HONOURABLE NGAI SHIU-KIT, O.B.E., J.P.

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

THE HONOURABLE POON CHI-FAI, J.P.

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

THE HONOURABLE SZETO WAH

THE HONOURABLE TAI CHIN-WAH, J.P.

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

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

THE HONOURABLE MICHAEL LEUNG MAN-KIN, J.P.

SECRETARY FOR TRANSPORT

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

THE HONOURABLE RONALD JOSEPH ARCULLI, J.P.

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

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

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

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

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

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

IN ATTENDANCE

THE CLERK TO THE LEGISLATIVE COUNCIL
MR LAW KAM-SANG

Papers

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

Subject

Subsidiary Legislation

L.N. No.

Ferry Services Ordinance

Ferry Services (Hongkong and Yaumati
Ferry Company, Limited) (Determination of
Fares) (Amendment) Order 1990..... 347/90

Securities and Futures Commission Ordinance

Securities and Futures Appeals Panel
Proceedings Rules 1990..... 348/90

Interpretation and General Clauses Ordinance

Rectification of Errors (No. 3) Order 1990..... 350/90

Companies (Amendment) (No. 5) Ordinance 1990

Companies (Amendment) (No. 5) Ordinance

1990 (Commencement of Section 11)

Notice 1990.....

351/90

Sessional Papers 1990-91

No. 20 -- Annual Report of the Director of Accounting Services
and the Accounts of Hong Kong for the year ended 31 March
1990.

No. 21 -- Report of the Director of Audit on the Accounts of the
Hong Kong Government for the year ended 31 March 1990 and the
results of value for money audits

October 1990

Director of Audit's Report No. 16.

Oral answers to questions

Compensation in respect of redevelopment of post-war domestic premises

1. MRS SO asked (in Cantonese): Will Government inform this Council whether the existing level of compensation for post-war domestic premises under the Landlord and Tenant (Consolidation) Ordinance (that is an amount equal to two times the rateable value of the premises in 1983 plus removal cost) payable to tenants dispossessed by reasons of rebuilding will be reviewed so as to reduce the possible hardship caused to the affected tenants and to speed up the process of redevelopment in the older urban areas?

SECRETARY FOR HOME AFFAIRS: Sir, I am able to confirm that the Landlord and Tenant (Consolidation) Ordinance is in fact reviewed annually. The question of compensation payable to dispossessed domestic tenants in post-war premises by reason of redevelopment will be addressed in the context of the 1991 review.

I would point out, Sir, that the law provides for a minimum level of compensation and is designed to encourage landlords and tenants to agree compensation arrangements without recourse to litigation. The current provisions appear to be working satisfactorily in as much as in the year ending September 1990 over 90% of the compensation cases were resolved by agreement resulting in the payment of compensation at an average of seven times the 1983 rateable values. In respect of the balance of cases where compensation was awarded by the Lands Tribunal the average rate of payment was about three times the 1983 rateable values.

The 1991 review will examine whether the current level of compensation should be adjusted, bearing in mind the need to protect tenants from undue hardship on the one hand, and on the other hand, to facilitate desirable redevelopment.

MRS SO (in Cantonese): Sir, if tenants are dissatisfied with the amount of compensation and are opposed to repossession, those paying a monthly rental of \$500

or more will have to, under the existing regulations, file an appeal in English with the Lands Tribunal. Will the Government inform this Council what the underlying principles are behind this provision and why Chinese cannot be used in appealing against the repossession?

SECRETARY FOR HOME AFFAIRS: Sir, this matter really lies outside my purview because the question on the use of the Chinese language is a matter for the Chinese Language Officers. I think the difficulty lies in not having sufficient Chinese Language Officers in the Lands Tribunal to enable Chinese to be used concurrently with English. But I am told that, where an application is made in Chinese and provided an applicant is able to have the Chinese translated into English, the case will be dealt with in the normal course.

MR PETER WONG: Sir, instead of talking about compensation for dispossession of post-war domestic premises for redevelopment, would it not make more sense to permit the raising of controlled rents by a portion of, say, the cost of improvements made by the owners so that those premises can be properly maintained?

SECRETARY FOR HOME AFFAIRS: Sir, I do not think that we are talking about maintenance of buildings. We are talking about buildings which are to be redeveloped largely because of old age and the formula we have devised is one which we felt would be fair to the tenant on the one hand and would not discourage redevelopment on the other. This has nothing to do with maintenance of building quality.

Upgrading of roads in the New Territories

2. MR CHEUNG YAN-LUNG asked (in Cantonese): Will the Government inform this Council whether it has any plans to upgrade and widen Luk Keng Road, Route Twisk, Lam Kam Road and Kam Sheung Road to cope with the increase in traffic flow in those parts of the New Territories?

SECRETARY FOR TRANSPORT: Sir, a contract to improve Lam Kam Road between Tai Po Road and the Kadoorie Farm has recently been let, and work started last month. This

includes road widening and reconstruction, improvements to the alignment, and the construction of a climbing lane on the steep sections. Work is due for completion by early 1993.

There are also plans to improve certain sections of Luk Keng Road to smooth out the sharper bends, improve motorists' sight lines and provide additional footpaths. Work can start when funds are available.

Kam Sheung Road is only a local access road and can cope adequately with present traffic flow. There is therefore no plan at present to widen or upgrade it.

Finally, Route TWISK has enough capacity to cope with present and future traffic flows up till the late 1990s. In the longer term, additional capacity will be provided by the Route 3 Country Park Section between Tsing Yi and Yuen Long.

MR CHEUNG YAN-LUNG (in Cantonese): Sir, the Luk Keng Road improvement project was approved by the North District Office and the Transport Policy Co-ordinating Committee in 1986 and 1989 respectively to limit its scale for the purpose of enhancing the safety of pedestrians and drivers. But why has the Secretary for Transport not included this project in this year's five-year programme for transport infrastructure?

SECRETARY FOR TRANSPORT: Sir, there are three reasons why this is given a lower priority. The first is that Luk Keng Road is not a major route between the northern part of the New Territories and the Sha Tau Kok border. There is the Sha Tau Kok Road widening project which is now in progress and is due for completion by the end of 1991. It will provide major access between the northern part of the New Territories and Sha Tau Kok.

The second reason is that the Luk Keng Road area is an environmentally protected area with a bird sanctuary in its midst and it would be inappropriate to widen that road and to affect the environment of that particular area.

The third reason is obviously a question of priority. We do not build roads on the basis of regional needs, but on an overall basis. Compared with other priorities in this particular area, Luk Keng Road is, in fact, a lower priority.

Quality of oxygen produced by Hong Kong Oxygen Company

3. DR LEONG asked: Will Government inform this Council whether the oxygen produced at the plant of the Hong Kong Oxygen and Acetylene Company in Junk Bay is contaminated by the methane, more commonly known as marsh gas, generated by the decomposition of garbage buried under a nearby landfill, and what action it will take to ensure that gas manufacturing takes place in a clean environment so that the supply of gas particularly medicinal gases will not be contaminated?

SECRETARY FOR PLANNING, ENVIRONMENT AND LANDS: Sir, a check by the Government Chemist on oxygen produced at the Junk Bay plant of the Hong Kong Oxygen and Acetylene Company has found methane contamination of 10 to 30 parts per million, a level which meets internationally accepted norms. Checks at other locations in Hong Kong have indicated that the levels of methane in the air at Junk Bay are slightly less than the average levels of methane found in the air at those other locations. There would not therefore appear to be any significant contamination of oxygen produced at Junk Bay by methane from the Junk Bay Landfill, and the Hospital Services Department are satisfied that the presence of methane in such small quantities is not a threat to human health. Moreover, the Managing Director of Hong Kong Oxygen has, in a letter to the Hong Kong Standard (1 November this year), said that "The oxygen produced from our Junk Bay plant is 99.6% oxygen, significantly better than that called for by the British Pharmacopoeia."

Checks on the standard of oxygen produced at the Junk Bay plant by Hong Kong Oxygen are carried out by the Fire Services Department and they confirm the company's statement.

DR LEONG: Sir, will the Administration assure this Council and the public that the presence of methane contamination in the said concentration is not harmful to health and can the Administration inform this Council what percentage of methane would be harmful to health?

SECRETARY FOR PLANNING, ENVIRONMENT AND LANDS: Sir, the level, as I have said, is 10 to 30 parts per million. I understand that a typical sample of oxygen sold in the United Kingdom may contain between 10 to 40 parts per million of methane. Perhaps

the Secretary for Health and Welfare could say what standard the Hospital Services Department would not accept. I have not the information myself.

HIS EXCELLENCY THE PRESIDENT: Secretary for Health and Welfare, can you add to that?

SECRETARY FOR HEALTH AND WELFARE: I can, perhaps, support the Secretary for Planning, Environment and Lands that much depends upon the level of concentration. Specifically, methane has no direct toxic effect, but mild doses of methane, of course, could displace the oxygen in our bodies and lead to hypoxia, which is a state of insufficient oxygen supplied to the brain. Small traces of methane in oxygen, as suggested by the Secretary for Planning, Environment and Lands, would have no effect at all on patients.

MR MCGREGOR: Sir, can the Government indicate whether it now believes that the two serious cases involving the use of improperly identified gases delivered by the Hong Kong Oxygen Company were the result of deliberate sabotage, possibly by an employee of the company?

SECRETARY FOR PLANNING, ENVIRONMENT AND LANDS: Sir, this seems to be totally outside the subject of this question.

MRS CHOW: Are there any plans on Government's part to persuade or obligate the medical staff of hospitals, especially government hospitals, to check oxygen immediately before its use to detect and prevent contaminated gas from being used, and if not, why not?

SECRETARY FOR PLANNING, ENVIRONMENT AND LANDS: Sir, I can only defer to the Secretary for Health and Welfare for a reply to that question.

SECRETARY FOR HEALTH AND WELFARE: Sir, the responsibility for ensuring the safety and purity of gases supplied for medical use rests primarily with the manufacturers.

All medical gases are, in fact, subject to full processes of quality control before they are delivered to hospitals. On that score, Sir, be rest assured that there is no cause for alarm or concern.

MR PETER WONG: Sir, can the Secretary for Planning, Environment and Lands please tell us what other contaminants have been found in these recent tests?

SECRETARY FOR PLANNING, ENVIRONMENT AND LANDS: Sir, these recent tests were aimed specifically at comparison of the methane level around the Hong Kong Oxygen Plant with other areas including Hebe Haven and Quarry Bay. And if there were other results from the tests, I am afraid I have not been informed of them. But that was not the purpose, in fact, of the tests.

MR ANDREW WONG: Sir, will the Secretary confirm that the Junk Bay referred to both in the question and in the answer is, in fact, and not a bay full of junk?

SECRETARY FOR PLANNING, ENVIRONMENT AND LANDS: I stand corrected, Sir, and I can so confirm.

MRS CHOW: Sir, in view of the reply given by the Secretary for Health and Welfare, does Government, in fact, hold the view that, despite the unfortunate cases that have happened, the medical staff should not do the best they can to prevent unfortunate cases from recurring in the name of protection of their patients?

SECRETARY FOR PLANNING, ENVIRONMENT AND LANDS: Sir, again I must defer to the Secretary for Health and Welfare as the question relates to the hospital area.

SECRETARY FOR HEALTH AND WELFARE: I think we must do all we can to make sure that everything that is delivered to the hospital is absolutely safe and, in respect of that, there have been recent reviews of both the procedure and the licensing arrangement with the Hong Kong Oxygen Company. The company, as far as I can recall,

has also stepped up controls in the manufacturing process and we are also, on the other hand, setting up a safety committee to make doubly sure that all of the gases supplied to the hospitals are, in fact, safe.

Primary One school place allocation

4. MR DAVID CHEUNG asked: Will Government explain to this Council why a group of Primary One students is allowed to be placed in an additional class within the Long Ping Estate instead of going to a school originally allocated to them? What effect this decision has on the allocation of other qualified Primary One students to the school and what will be done to encourage unwilling parents to send their children to the allocated schools?

SECRETARY FOR EDUCATION AND MANPOWER: Sir, before answering the question it might be helpful if I stated the Government's policy on the allocation of primary school places. This provides that primary school children should be allocated places within the school district in which they live. As a planning guideline, primary schools in the public sector should preferably be located within 400 m of residential areas. The aim is generally to ensure that young children do not have to travel excessive distances to get to school. I must emphasize, however, that this is a planning guideline, and not the policy itself. In practice it is not always possible to guarantee that no child will travel beyond 400 m to get to school.

Turning to the first part of the question, Sir, the residents of Long Ping Estate in Yuen Long are served by three primary schools situated within the estate, and by other primary schools located outside the estate but within the school district. During the summer, in spite of vacancies within the Long Ping Estate schools, the Education Department allocated to 110 children living in Long Ping Estate Primary One places in schools located in the adjacent Yuen Long Estate. The Education Department took this step partly because Long Ping Estate was expecting a further intake of 500 families at the end of 1991 and considered it prudent to set places aside for their children, and partly because the schools in the adjacent Yuen Long Estate were under-enrolled. However, ostensibly because this allocation would involve the 110 children of Long Ping Estate having to travel a distance of at least 700 m, the parents complained. I said ostensibly because it is also possible that the parents regard the two schools in the adjacent Yuen Long Estate to be somewhat

inferior. The parents made representations to the district board, OMELCO, the Education Department and to you, Sir. Following further discussions with the Education Department, however, the parents of 67 children accepted the Department's allocation. The parents of the remaining 43 children refused to send them to school.

Faced with these circumstances and the commencement of the school year, the Director of Education decided that, rather than prolong the confrontation and in order to avoid a situation in which the children are kept away from school, it would be desirable to ascertain whether the remaining children could be accommodated in the Long Ping Estate schools and, secondly, whether by converting certain general purpose rooms the children of the expected intake of families into the estate could also be accommodated. Unfortunately, because the school supervisors were away on vacation, it was not until the beginning of the current school year that a final decision could be taken to place the 43 children in one of the Long Ping Estate schools. Following this, a further 13 children accepted an offer by the Education Department to take up Primary One places in another school in Long Ping Estate.

Sir, if I have understood the second part of the question correctly, this incident has had no effect on existing policy on the allocation of Primary One school places in the public sector. While it may encourage other parents to apply pressure on the Education Department against any allocation they do not like, and while the Education Department will continue to deal with requests for change that are justified, it must be remembered that the Director of Education has two important tasks to perform. The first is to sort out and place upwards of 75 000 children into Primary One each year. The second is to enforce our system of free and compulsory education. Thus, in the final analysis, if parents refuse to send their children to school, the Director of Education will have no choice but to issue attendance orders to them under section 74 of the Education Ordinance.

Needless to say, the Education Department will in the meantime step up its publicity efforts, with a view to giving parents a better understanding of the Primary One Allocation System.

MR DAVID CHEUNG: Sir, the parents of children of Long Ping Estate due to enter Primary One in September 1991 came to the OMELCO Complaints Division some time ago to express concern over the plight of their own children from the Education Department's decision this year. Can the Secretary confirm that these children will not be unduly affected

in allocation come September 1991?

SECRETARY FOR EDUCATION AND MANPOWER: Sir, I can confirm that the Education Department will deal with their requests sympathetically and expeditiously. I cannot, however, confirm that the Director of Education can give them a cast iron guarantee. Nevertheless, on the basis of present estimates and working on certain assumptions, it should be possible to accommodate most, if not all, of the needs of the children living in Long Ping Estate. The estimated gross demand for Primary One places by September 1991 is about 29 classes, and the current supply by the beginning of the next school year is estimated to be about 20 classes, but every year about 300 to 400 children obtain discretionary places in schools situated outside the estate. Based on these assumptions, it should be possible, as I said earlier, to accommodate most, if not all, of their needs.

MRS FAN: Sir, we started off with 110 children whose parents objected to going to their allocated schools. When 67 children accepted the Education Department's allocation after discussion, 43 remained adamant that they would not go to the school allocated to them. In order to avoid confrontation, the Director of Education then made arrangements for these 43 children to be allocated to a school of their preference. May I ask the Secretary whether he is concerned about the message that is being sent out through this course of action on the part of the Director of Education, the message being that those who persist in confrontation will get what they want at the end of the day?

SECRETARY FOR EDUCATION AND MANPOWER: Sir, of course I am concerned about the seriousness of that message; hence the length of my original reply. I think it should be remembered that the Director of Education also circulated an offer to the parents of the remaining children, who had opted to go to the two schools in the Yuen Long Estate. Now, only 13 of the children took up this second offer; so there is no question of unfairness to those parents and children who decided to go to the Yuen Long Estate schools. That is the first point I would like to make.

I hope I have also made it clear, Sir, that in the ultimate analysis the Director of Education has an awesome job to do; whilst he will deal sympathetically and expeditiously with requests for change every summer, in the final analysis he has

got to place all children in schools in Primary One under the Primary One Allocation System or it will fail. In future, in the final analysis, the Director will have no choice but to slap on attendance orders.

MR EDWARD HO: Sir, will the Secretary inform this Council why the parents of the 110 children might have considered the two schools in Yuen Long Estate to be somewhat inferior, and whether they were under-enrolled because they were inferior, and if so, what is the Administration doing about it?

SECRETARY FOR EDUCATION AND MANPOWER: Sir, the two schools in the Yuen Long Estate are not inferior. They happen to have been built 20 years ago, at a time when the design for estate schools lacked certain modern amenities -- compared with the modern design they are lacking in one hall and one general purpose room. And, of course, buildings, like people, tend to age and when they age their appearance looks a little decrepit. It was on the basis of perceptions like these, I believe, that the parents of the Long Ping Estate children decided that their children were being sent to inferior schools. In fact, they are by no means inferior. The two schools have long established reputations. I have checked with the Director of Education about their academic performance, standards and records; those two schools are good. They just happen to be a little old.

MR TAI: Sir, may I ask whether the additional intake will upset the future class structure in the two estate primary schools, thus hindering proper school administration and whether the intended function of the general purpose rooms of the two estate schools will be lost because of the increase in demand for primary school places in the years to come?

SECRETARY FOR EDUCATION AND MANPOWER: Sir, that is a double-barrelled question. In answer to the first part, I can confirm, because I have checked with the Director of Education, that it will not affect the class structure of the schools in Long Ping Estate. Every step that is needed to ensure a smooth progression in promotion from one form to another has been taken. Insofar as the loss of the general purpose rooms is concerned, that loss, Sir, is temporary, and I understand from the Director of Education that he has plans to reinstate them subject to the availability of

resources.

MR ANDREW WONG: Sir, will the Secretary inform this Council of the costs involved in implementing the Primary One School Places Allocation Scheme and why it is necessary for the Education Department to implement that scheme at all?

HIS EXCELLENCY THE PRESIDENT: That goes considerably beyond the original question. I will ask the Secretary whether he has any information at hand.

SECRETARY FOR EDUCATION AND MANPOWER: Sir, I have no figures at present; I have no information on the costs of implementing the Primary One Allocation System. I believe that because it is operated on a computerized basis, the cost is not high.

As far as the second part of the question is concerned, the aim of the Primary One Allocation System is to control admission into Primary One on a uniform basis without tests and examinations and to encourage parents to send their children to school in their immediate neighbourhood. This policy decision stemmed from a recommendation made in the 1981 White Paper on Primary Education.

MR DAVID CHEUNG: Sir, will the Secretary inform this Council what action Government will take if, in future, parents refuse to send their children to the schools allocated and start teaching their own children themselves, and if the total number exceeds 20, according to the present Ordinance, this would constitute an illegal school?

SECRETARY FOR EDUCATION AND MANPOWER: Sir, the answer to the first part of the question is: if parents refuse for no good reason to send their children to school, they will, as I mentioned in my main reply, be issued with attendance orders under section 74 of the Education Ordinance. If they then start teaching unlawfully and in contravention of the provisions of the Education Ordinance, the Director of Education will have no hesitation about seeking legal advice and, if legal advice is that we should prosecute, the Government will prosecute.

MRS CHOW: Sir, may I ask the Secretary whether the Director of Education did seek

legal advice in this particular case, and whether he considered issuing attendance orders to the 43 parents which it seemed a reasonable thing to do at the time?

SECRETARY FOR EDUCATION AND MANPOWER: Sir, I believe that the Director of Education had considered issuing attendance orders, but decided against doing so on this occasion, because he wanted to exhaust all avenues towards a peaceful resolution of the problem.

MR ANDREW WONG: Sir, could I have the cost, in writing, please?

SECRETARY FOR EDUCATION AND MANPOWER: I shall attempt to supply the answer in writing. I am not sure, however, that it could be costed accurately. (Annex I)

Magistrates' tenure

5. MR MCGREGOR asked: Will Government inform this Council of the procedures and criteria adopted in determining the fitness for renewal of contract of serving magistrates and whether it has any plans to make changes to the existing arrangements with a view to providing the magistrates with greater security of tenure?

CHIEF SECRETARY: An application by a magistrate for renewal of contract is considered by the Judicial Service Commission, which advises the Chief Justice on this matter. The Commission is an independent body the deliberations of which are, by their very nature, confidential. The Commission does not disclose the criteria it adopts in making its recommendations.

All magistrates are initially employed on a three-year contract, which may be regarded as a probationary period. If, at the end of that contract, the magistrate wishes to continue his employment, and the Judicial Service Commission supports his application, then the magistrate, whether expatriate or local, may apply to join the permanent and pensionable establishment. This will give him security of tenure to the age of 60, which is the normal retirement age for magistrates. If a magistrate chooses to remain on contract terms, then he can still apply at any time to join the permanent and pensionable establishment. Sir, given these options, it is not considered that any greater security of tenure for magistrates is required.

MR MCGREGOR: Sir, could the Chief Secretary advise this Council whether a magistrate, whose contract of service has not been renewed and whose appeal against that decision has been rejected, may be entitled to be given a full and frank explanation of the reasons for non-renewal of contract; and would the Chief Secretary agree that dismissal or non-renewal of contract without specific reasons being given is not only unfair to the magistrate concerned but could also seriously reduce the impartiality of other magistrates required to make decisions with which the Government may not agree or accept?

CHIEF SECRETARY: Sir, I think this concerns the actual working of the Judicial Service Commission. As I have indicated in my principal answer, the deliberations of that Commission are, by their nature, confidential and I do not think in those circumstances the Commission is obliged to give detailed reasons as to why a particular magistrate has not had his contract renewed.

MR TIEN: Sir, will the Administration inform this Council whether a serving magistrate can be dismissed by the Judicial Service Commission before his contract expires if he has committed any act of misconduct or is found to be unfit to perform his duties?

CHIEF SECRETARY: Sir, if the magistrate is serving under contract, a lot would depend upon the actual terms of the contract. A normal government contract would contain a provision for determination of that contract by notice on either side. Now whether or not magistrates' contracts contain that specific provision is something I do not know, but I shall certainly check it and give Mr TIEN an answer in writing. (Annex II)

MRS TU: Sir, presuming that my colleague's question indicates concern for the independence of the Judiciary, may I ask the Acting Chief Secretary whether this independence has been compromised as a result of the Immigration Department's action in the recent case of 111 Vietnamese boat people?

HIS EXCELLENCY THE PRESIDENT: I suggest that that should be the subject of a separate question; it strays well beyond the original question and answer.

MR PAUL CHENG: Sir, while I appreciate the need to keep the criteria used by the Judicial Service Commission in making its recommendations confidential, will the Government at least confirm that some form of regularly implemented performance appraisal system is in place to assist the Commission in deciding whether contracts should be renewed or not?

CHIEF SECRETARY: Yes, Sir, there is certainly an annual confidential report which contains an appraisal of the magistrate's performance and that is indeed one of the documents that the Commission would take into account in making its decisions.

MR MCGREGOR: Sir, would the Chief Secretary note, please, my personal concern about the method by which Mr PATERSON-TODD was dismissed or his contract was not renewed, and that he was not given any detailed explanation or the opportunity to appeal and be given an explanation of the reasons for the non-renewal?

CHIEF SECRETARY: Sir, I note Mr MCGREGOR's concern but I cannot comment on it.

MR TAI: Sir, may I ask if the Attorney General or a representative from his Chambers is a permanent member of the Judicial Service Commission, and, if so, how can it be ensured that the magistrate being appointed is not subject to undue influence for his contract renewal?

CHIEF SECRETARY: Sir, in fact it is the Attorney General himself who is a member of the Judicial Service Commission. Of course, he does not sit on the Commission alone. Members of this Council will recollect that we have the Chief Justice as the chairman, we have two judges, the Attorney General, three lay members and two members from the legal profession. I think in those circumstances it is extremely unlikely that the Commission would be placed under any pressure whatsoever.

MR MARTIN LEE: Sir, how many serving magistrates did not have their contracts renewed in each of the last five years, and how many of these had served for at least two contracts?

CHIEF SECRETARY: Sir, I think I will have to give a full answer to that question in writing. I have some figures for the last three years. In the three years to 31 March 1990 there were 25 applications for renewal of contract, 18 were approved and seven were rejected. Of those rejected, two were applications made at the end of an initial contract and five were applications made after normal retirement age. I will give a further answer in writing, if I may. (Annex III)

Ozone layer depleting substances

6. MR PETER WONG asked: In view of the rapidly worsening state of the ozone layer as noted at the second meeting of the parties to the Montreal Protocol on Substances that Deplete the Ozone Layer in June 1990, will the Administration inform this Council whether it has plans to accelerate the phasing out of the use of chlorofluorocarbons (CFCs) and halons as well as carbon tetrachloride and methyl chloroform?

SECRETARY FOR PLANNING, ENVIRONMENT AND LANDS: Sir, the conclusions of the second meeting of the parties to the Montreal Protocol on Substances that Deplete the Ozone Layer reflect and codify a consensus of some years that the phasing out of CFCs should be accelerated and that halons and carbon tetrachloride and methyl chloroform should be brought into the net. So the Administration was already exploring these and other ways to strengthen our local efforts to reduce ozone depletion.

At the second meeting of the parties, the timetable for control of consumption of CFCs was altered. Previously, consumption at 100% of 1986 levels was permitted until 1 July 1993, and then a decrease until 50% of that level was reached on and after 1 July 1988 was required. The new timetable allows 100% of 1986 levels until 1 January 1995, and then a progressive decrease to zero on and after 1 January 2000. Previously halons were not permitted to increase above 1986 levels: now, usage of non-essential halons is required to decrease progressively from 1 July 1995 to zero on and after 1 January 2000. These decisions are binding on the parties with immediate effect. Sir, the Administration is considering the effect of these changes. Legislation to comply with these changes or, if possible, improve on them will be prepared shortly for discussion.

The second meeting also recommended certain amendments to the Montreal Protocol. These will not come into effect until 20 or more parties have ratified them; the 1 January 1992 being the earliest possible date. These amendments would require other CFCs, carbon tetrachloride, and methyl chloroform to be controlled, under systems which call for progressive decreases in usage to zero on 1 July 2000 (for other CFCs and carbon tetrachloride), and on 1 January 2005 (for methyl chloroform). The Administration is assuming that these recommended amendments will be adopted, and is preparing the necessary legislation.

MR PETER WONG: Sir, can the Secretary for Planning, Environment and Lands be more specific about when the legislation is to be introduced and when the new restrictions will come into force?

SECRETARY FOR PLANNING, ENVIRONMENT AND LANDS: Sir, the form of the legislation of the Ozone Layer Protection Ordinance is in fact a form of licensing control and so the legislation could be amended quite quickly because the main control is through licensing control rather than through the legislation itself. Although I have seen no specific timetable, I hope that we will be able to produce legislation and have it in place within this legislative Session, and I hope, in fact, a good deal sooner.

MR TIEN: Sir, can the Secretary inform this Council what progress has been made to find substitutes for CFCs and halons?

SECRETARY FOR PLANNING, ENVIRONMENT AND LANDS: Sir, generally speaking, progress, I understand, has been quite satisfactory in certain fields. For instance, one of the fields where we have used CFCs before in Hong Kong is for the cleansing of chips in the electronic industries. Now I understand that nowadays our usage is diminishing very considerably because of the use of alternative substances. Generally speaking, the area in which world progress has not been so good is in the use of freons for refrigeration and air-conditioning. There, as yet, the progress has not been so good, though several companies have reported some kinds of breakthrough in the research stages. So as far as Hong Kong is concerned, the action which must be initiated and which I am looking into at present is how we can conserve freons used in refrigeration and air-conditioning. And I am rather happy to say that in fact

one company has already started a scheme for conserving such freons and another is looking seriously into it.

MR MARTIN LEE: Sir, since the timetables would bring us beyond 1 July 1997, is this something on which the agreement of the People's Republic of China has to be secured or can we do it on our own?

SECRETARY FOR PLANNING, ENVIRONMENT AND LANDS: Sir, as far as I am aware, there is no reason why the legislation should not carry through across the transition.

Unauthorized building works

7. DR TSE asked (in Cantonese): In the light of the collapse of a section of the concrete canopy of an industrial building in Tokwawan Road on 26 October 1990 resulting in several deaths and casualties, will the Administration inform this Council whether there are adequate measures to prevent the recurrence of similar incidents and to ensure that the injured parties are properly compensated?

SECRETARY FOR PLANNING, ENVIRONMENT AND LANDS: Sir, I have already been put on notice that I will have to answer a question about dangerous buildings in general next week, and so, because the Tokwawan collapse was in fact the collapse of unauthorized building work, my answer is confined to or rather centred on the dangers arising from that kind of works and what Government does about them.

Generally speaking, there are adequate powers in the present Building Ordinance to deal with known unauthorized building works, and the Buildings (Amendment) (No. 2) Bill, introduced into this Council last week, will speed up the exercise of these powers. There are moreover adequate staff resources to deal expeditiously with unauthorized building works, which are also known to be dangerous. Indeed danger -- known danger -- is the highest priority target of the Unauthorized Building Works Section of the Buildings Ordinance Office. Some such building works, such as some rusty projecting window cages, are obviously both illegal and dangerous and are acted upon either on the basis of public complaint or on the Buildings Ordinance Office's initiative. In other works, however, which may appear like legal building works, neither the danger nor the illegality may be apparent, and these may be an even greater

threat to life and limb.

Fortunately the evidence of our statistics is that collapses of the Tokwawan scale are and will continue to be rare, but this case -- the Tokwawan case -- the details of which are expected to be the subject of a coroner's inquest, which I clearly cannot anticipate here, and other less serious cases which have occurred recently have caused a high degree of public concern. Government inspections, enforcement of repairs and action against unauthorized building works on a day-to-day basis ensure that there are far less building collapses than these otherwise would be. Since the Tokwawan case the Buildings Ordinance Office has been giving special attention to canopies in its routine inspection. But as I stated two weeks ago in this Chamber the legal and moral responsibility for the safety of a private building is firmly in the hands of its owner, and there is no way in which the resources of the Buildings Ordinance Office could be brought up to the level required to relieve owners of this responsibility. Nor should they be. So I cannot offer Dr TSE the categorical assurance with regard to unknown unauthorized building works which he seeks. But as I stated two weeks ago the Director of Buildings and Lands will be reporting to me early next year on measures to strengthen building safety control and management. After discussion with the Director I am confident that the open consultation that the Department is presently conducting will result in positive recommendations as to how public and private resources can be pooled most effectively, for it is only with such a joint effort and mutual co-operation that this immense problem can be successfully tackled.

It follows from what I have said that the liability for compensation to injured persons must in most cases lie with the party responsible for the negligence, if any, which resulted in the injury and the establishment of negligence and liability must remain a judicial process.

DR TSE (in Cantonese): Sir, the Secretary has mentioned at the end of the second paragraph of his main reply that unauthorized building works whose illegality and danger are not so apparent may be a greater threat to life and limb though they may not be numerous. Could I ask the Government if there are ways to identify and make public the locations of these potential dangerous structures so that the public can be fully aware of the danger and recurrence of tragedies could thus be avoided before the structures are removed?

SECRETARY FOR PLANNING, ENVIRONMENT AND LANDS: Sir, in many cases, even with a trained professional eye such cases cannot be observed. Nevertheless, as I have said, they are being given priority in the general inspections by the Buildings Ordinance Office and obviously such as can be observed are being dealt with. But there will always remain a category of structures which are virtually undetectable except first by checking against the plans to see whether they were originally authorized, and secondly by making a thorough inspection of the actual construction.

MISS LEUNG (in Cantonese): Sir, will the Government consider conducting an immediate inspection of canopies on a territory-wide basis -- or requiring owners of buildings to do so -- to identify potentially dangerous canopies?

SECRETARY FOR PLANNING, ENVIRONMENT AND LANDS: Sir, on the Government going it alone, we have considered this possibility but we have realized that this would in fact divert very, very large numbers of officers from regular inspection work which is also concerned with dangerous buildings. In doing so, one would, in fact, be moving inspection staff from one form of inspection about dangerous buildings to another form, and we felt that that might not be too productive. As regards the question of giving orders to owners to look at their buildings, there is no question, of course, of legal powers to do that. But it would be worth considering whether more public exhortation could be given to owners to look at their responsibilities. I hope that a little publicity will be given to my answer to the question here, along with what I said two weeks ago in this Council which did emphasize the fact that the owners do have responsibility and should look to the safety of their buildings.

MR CHENG HON-KWAN: Sir, will the Government inform this Council whether there is a need to register all known cases of unauthorized building works with the Land Office or the Buildings Ordinance Office so that potential buyers of premises or tenants would be aware of such illegal structures being in existence, and the public's interests may be protected?

SECRETARY FOR PLANNING, ENVIRONMENT AND LANDS: Sir, I am not quite sure who is meant to do the registering in that procedure as suggested by Mr CHENG. It would be a

strange instruction which came out from the authority that owners should go now and register their unauthorized constructions because that would be tantamount to giving notice to the Building Authority to come and knock them down. But, nevertheless, the point which he raises is an important one, and the question of access of a buyer to information about what in the structure he is buying is legal and what is not is one which I have specifically asked the Director of Buildings and Lands to give some attention to in the report he is to make to me very shortly.

MR MICHAEL CHENG (in Cantonese): In order to cope with the inspection of over a million unauthorized structures in the territory, will the Government consider bringing in private specialists to help in the inspection of dangerous structures so as to relieve staff shortages on the part of the Government?

SECRETARY FOR PLANNING, ENVIRONMENT AND LANDS: Sir, the Principal Government Building Surveyor is at present approaching private building surveyors to see whether they are in fact interested in the work, with a view to devising some scheme by which the private sector could be brought in. At present the interest is fairly limited.

MR CHUNG: Sir, the Secretary has mentioned open consultation to be conducted. Could the Council know who are being consulted and whether the report of the Director of Buildings and Lands will be published for public consultation, including the district boards?

SECRETARY FOR PLANNING, ENVIRONMENT AND LANDS: Sir, the Director of Buildings and Lands will conduct consultation with the professions, with the Advisory Committee on Building Management, of which Mr CHUNG knows most, and with some selected district boards. But I want to get this report out quickly and I want to get it into use. And the point about it is that it is not really so much a report for general discussion and for consultation with the community as a new action plan for that which needs to be acted on soon.

MR EDWARD HO: Sir, will the Secretary inform this Council whether large air-conditioning condensers hanging outside industrial buildings are illegal or not? And how can it be ensured that they are safe?

SECRETARY FOR PLANNING, ENVIRONMENT AND LANDS: Sir, some are and some are not, I am informed. But I believe that the majority are not authorized. It does, I believe, depend to a certain extent on the size of the projections. As to how we can be assured of their safety, the same criteria really apply to them as to anything else, that is to say, the only way to be assured of safety is for any form of construction to be inspected by a professional and suitable advice given.

MR TIEN: Sir, would the Secretary please inform this Council whether Government would consider removing at public expense rusty and useless neon advertising sign structures that are left all over town after those businesses close down?

SECRETARY FOR PLANNING, ENVIRONMENT AND LANDS: Sir, the Government has made no undertaking to do so, but it in fact has done so on many occasions where it has considered that the danger justified the removal.

MRS CHOW: Sir, the Secretary claims that there are adequate staff resources to deal with unauthorized building works which are known to be dangerous. May I ask how many such cases of known unauthorized dangerous works there are, what staff resources are allocated now to deal with them, the number of cases, say, in the last three years, which have been acted on either on the basis of public complaints or on the Buildings Ordinance Office's own initiative, and the estimated size of the problem which is yet unknown?

HIS EXCELLENCY THE PRESIDENT: I made four questions out of that. Could I once more appeal to Members to keep their questions simple and single-barrelled, to use the phrase. Secretary for Planning, Environment and Lands, see if you can remember all four.

SECRETARY FOR PLANNING, ENVIRONMENT AND LANDS: The first one was numbers of known unauthorized works. I am not sure whether it will turn out to be the same but I think I have got some figures for the last three years and the number was about 1 540 in 1988, 2 236 in 1989 and 1 412 so far in 1990. As to staff resources to deal with this, we have got 80 professional and technical staff. Sir, I can make no estimate of the unknown numbers of unauthorized works. I will ask the Buildings Ordinance

Office whether they could make such an estimate but it would be a very difficult one to make. As to the number of cases acted on, the figures are very similar to the ones which I gave before.

DR TSE (in Cantonese): Sir, the Secretary has mentioned in the last paragraph of his main reply that liability for compensation must lie with the party found to have been negligent. But if the owner of the building or the one liable for compensation cannot be identified, will the Government consider setting up a fund similar to the victims of violent crimes compensation fund so that adequate compensation can be given to the victims speedily?

SECRETARY FOR PLANNING, ENVIRONMENT AND LANDS: Sir, that matter could be considered by the Government if it was considered necessary.

MR MARTIN LEE: Sir, is the Administration not deliberately turning a blind eye to the obvious, and will this attitude not encourage even more illegal structures to be built?

SECRETARY FOR PLANNING, ENVIRONMENT AND LANDS: No, Sir.

Tax relief for home mortgage payers

8. MR LI asked: Will Government inform this Council whether there are plans to provide tax relief for interest payments on mortgage of owner-occupied premises?

FINANCIAL SECRETARY: The subject of tax relief for mortgage payers has figured frequently in past Budget debates. Members may wish to refer to the statements made by my predecessor and myself in this Council on 15 April 1982, 4 May 1988 and 10 May 1989.

I would not normally discuss this subject outside the context of the Budget. However, it does no harm to rehearse the arguments again, and I shall do so now without

prejudice to any measures that I may wish to introduce in next year's Budget.

Members will be aware of my disinclination to use fiscal means or rather specific tax measures for social ends. We have a simple taxation system with low rates. It would be necessary to demonstrate that some specific inequity or hardship had arisen before we would wish to contemplate compromising the simplicity principle.

As regards those repaying mortgages on private residential property, I see no inequity. Indeed, it is arguable that a degree of inequity would come about for those who rent their homes or those who have purchased without mortgage, if we were to introduce special measures to benefit mortgage-payers alone. We would also have to be aware of potential areas of abuse of any such concession.

In the past, I have pointed out that the potential cost to revenue would be high. Mortgages are long-term and the roll-over effect coupled with an upward movement in house prices could produce significant long-term revenue losses.

Sir, I am not insensitive to the hardship faced by middle income salary earners with debt repayments during a time of inflation, but I have no plans at present to provide tax relief for interest payments on mortgage of owner-occupied premises.

MR LI: Sir, at present the Government is providing 12 years interest-free loans of up to HK\$130,000 per household to public housing estate residents to buy property. This is a form of subsidy. Can Government inform this Council why there is a disparity in policy?

FINANCIAL SECRETARY: Sir, in putting together these various policies designed to help people acquire their own homes, we have to try and achieve some balance. The policies in relation to public housing were discussed over a period of time; it was felt that they would help people to buy their own homes. I think it is a rather different situation from that contemplated in the first question which would probably, as some have pointed out, be of most relevance to what I would describe as middle income earners.

MR PETER WONG: Sir, if such tax relief is given, how many taxpayers are expected to

benefit and what would be the cost to the revenue?

HIS EXCELLENCY THE PRESIDENT: That goes close to a hypothetical question.

FINANCIAL SECRETARY: Sir, I do not know how many taxpayers would be benefited but we have made a rough estimate of the cost of tax concessions to mortgage payers. The cost would be about \$60 million in the first year, and the roll-on effect by the sixth year would be about \$560 million.

MR ARCULLI: Sir, in order to help the Financial Secretary rehearse his arguments for next year's Budget debate -- I hope this is a dress rehearsal and that his answer to my question will in fact be with rather than without prejudice -- will he perhaps inform this Council whereabouts he sees fairness in the position of a property owner who has taken out a mortgage, who has rented out those premises and who is therefore allowed tax relief on the interest against the rental that he receives, as opposed to a property owner who has taken out a mortgage, who lives in the property and who is not allowed tax relief on the interest paid?

FINANCIAL SECRETARY: No, Sir, I do not think I would attempt to comment on the fairness of the two positions. Unfortunately, these sort of anomalies creep into any tax system.

MR MARTIN LEE: Sir, bearing in mind the Government's policy of encouraging more private home ownership, when will the Financial Secretary turn into action his sensitivity to the hardship faced by middle class prospective home owners by granting this tax relief, or is he deliberately postponing the inevitable until the wholesale tax is brought in?

FINANCIAL SECRETARY: Sir, I am almost tempted by Mr Martin LEE's reference to the wholesale tax to develop that theme further, but I will resist the temptation. The problem about granting tax relief on mortgage interest payments will not actually alleviate hardship. What will happen is that it will actually fuel demand for property. We would be assisting a larger number of people by giving them relief on

their mortgage payments that will actually put some additional pressure on the property market, and that actually would tend to be inflationary. And I know that all Members of this Council are against inflation.

MR HUI: Sir, the Financial Secretary in his answer mentioned that unless hardship could be demonstrated, he would not like to compromise the present simple taxation system. Could the Secretary inform this Council if the Government could consider tax relief for first home purchasers only for a hardship group, the so-called "sandwich class", whose number is not too large to cause undue loss to the general revenue?

FINANCIAL SECRETARY: I think the problem about giving tax relief to first home purchasers is the problem that I mentioned in answer to the last question. It would put further pressure on the property market and that could be inflationary. The correct method of giving some relief to any salary earners or members of the sandwich class is frankly by adjusting the tax bands. We have done that from time to time. I consider that in putting together Budget proposals each year.

MRS CHOW: Sir, I am rather surprised to hear the Financial Secretary say that encouraging home ownership is actually fuelling the property market. Would the Financial Secretary not admit that this is in fact contradictory to the Government's intention to encourage home ownership in the public sector and that the more homes that are owned the more sense of belonging we can in fact encourage? Would he not also admit that there is unfairness in terms of subsidy in assisting public housing occupants who already have been helped by the Government over long periods of time, thus resulting in unequal treatment to the sandwich class?

HIS EXCELLENCY THE PRESIDENT: Mrs CHOW, I have to ask you again, please, to keep the questions simple.

FINANCIAL SECRETARY: Sir, I totally agree with Mrs Selina CHOW that home ownership develops a sense of belonging in this community as indeed it does in any community. I was not suggesting that promoting home ownership itself was likely to be inflationary. My concern was specifically about giving tax relief on mortgages; one

would start to fuel demand in that way. We have a series of policies in the Government -- Members have touched upon a number of them -- all designed to promote home ownership; our various home purchase schemes were all designed for that purpose. My concern is with the particular measure proposed in this question, which I do not favour.

Written answers to questions

Sixth form places

9. MR DAVID CHEUNG asked: Will Government inform this Council whether (a) all sixth form places for this school year have been occupied and the comparison with that of last year; and (b) the increase of sixth form places in the next few years can catch up with the tertiary expansion programmes?

SECRETARY FOR EDUCATION AND MANPOWER: Sir, a head-count in all government and aided secondary schools conducted by the Education Department in the first week of September 1990 indicated that 87% of the Secondary VI places had been filled, compared with 79% last year. The percentage dropped to 81% in early October when the polytechnics, colleges of education and technical institutes announced their student intake. This wastage occurs annually and is caused by Secondary VI entrants simultaneously applying for courses at other institutions, and then dropping out of school when they receive notification of acceptance.

As to the second part of the question, the Government is confident that the planned increase in sixth form places and the pull-through into these places will meet the requirements of the tertiary education expansion programme in terms of student numbers. We plan to increase the provision of subsidized Secondary VI places from 18 270 places at the present time to 22 240 places in September 1992 and to 23 000 in September 1994. Funds will be sought in the 1991-92 Draft Estimates of Expenditure to start conversion works for additional classrooms to meet this target. This increase in provision is in line with the Government's policy, stated in the 1978 White Paper on the Development of Senior Secondary and Tertiary Education, to provide subsidized sixth form places for up to one-third of the students entering subsidized Secondary IV places two years previously. Together with non-subsidized places, the increase in the public sector will produce some 26 000 sixth form places in 1994. Set against the target of 15 000 first year, first degree places in the same year,

this provision of sixth form places would enable six out of 10 students leaving sixth form to have an opportunity to study for a degree course at the tertiary institutions.

Given the trend of under-enrolment, our next task is to achieve the fullest possible utilization of Secondary VI places in the public sector. To this end we need to achieve a 33% pull-through into the sixth form.

The main reasons for the trend of under-enrolment can be traced to unnecessarily restrictive entry criteria for sitting A-levels, the highly selective admission policy adopted by many schools, and the practice of well qualified candidates applying successfully for admission to more than one school. To overcome these problems the Education Department has recently formulated a package of proposals. This includes lowering the entry requirements for sitting A-level examinations (which is justified now that the broadened sixth form curriculum is no longer intended only for matriculation); reducing the level of difficulty of A-level examinations, particularly in the Sciences and Mathematics (which are accepted as having a difficulty level two grades above equivalent A-levels in the United Kingdom); asking schools to fill all their Secondary VI places, by adopting a five-stage admission procedure; and encouraging schools in close proximity or which are under the same sponsor to specialize, and to co-operate with each other by exchanging students for various subjects. The Hong Kong Examinations Authority and various schools councils are being consulted on these measures, and it is hoped to introduce them starting from September 1991.

Securities and Futures Commission Ordinance

10. MR LI asked: Will Government inform this Council of the number, and of the particulars, of enforcement actions taken under the Securities and Futures Commission Ordinance since its enactment on 12 April 1989?

FINANCIAL SECRETARY: Since the establishment of the Securities and Futures Commission on 1 May 1989, it has taken enforcement action in 282 cases. This has resulted in the issue of 53 letters of warning or advice and 48 summonses. Currently, enquiries on 59 cases are continuing.

In terms of routine surveillance of market intermediaries and advertisements, the commission has handled 366 cases since its inception. This has resulted in the issue of 176 letters of warning or advice. Currently, enquiries on 63 cases are

continuing.

A table setting out the various types of enforcement action is attached for Members' easy reference.

Table of Enforcement and Compliance cases handled
by the Securities and Futures Commission
between 1 May 1989 and 31 October 1990

Resulting in

Letters of Summons

No of warning issued Other Enquiries
Enforcement cases or advice (Cases) action continuing

1. Misconduct by Registered Persons	60	30	--	10	8				
2. Unregistered Activity (1)	24	12		2	1	4			
3. Share Dealing Enquiries (2)	46	2	25	2	28				
4. Breach of Protection of Investors Ordinance (4)	38	9	21	--	9				
5. Alleged Fraud & Other Offences	20	--	--	6	3				
6. Enquiries from Overseas	28	--	--	--	--	2			

Resulting in

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Letters of Summons

No of warning issued Other Enquiries
Enforcement cases or advice (Cases) action continuing

7. Miscellaneous 66 -- -- 5 5

Total 282 53 48 24 59

(7)

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"Routine Compliance"
and Surveillance

1. Inspection of Intermediaries 186 63 -- 45 43

2. Matters relating to
Registered Persons 85 18 -- 24 20

3. Advertisement
Surveillance 95 95 -- -- --

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Total 366 176 0 69 63

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Official Secrets Act

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

(a) why section 2 of the Official Secrets Act 1911 which has been repealed in the United Kingdom since 1989 is still in force in Hong Kong; and

(b) what steps are being taken to introduce suitable legislation to replace the Official Secrets Act which will cease to apply in Hong Kong after 30 June 1997?

SECRETARY FOR SECURITY: Sir, section 2 of the Official Secrets Act 1911, which was repealed in the United Kingdom by the Official Secrets Act 1989, remains in force in Hong Kong because the 1989 United Kingdom Act has not been applied to the territory. The Act could be given effect in Hong Kong either by Order in Council or in the form of an Ordinance enacted by this Council. The Administration is now considering whether the 1989 United Kingdom Act should be applied to Hong Kong.

We intend to introduce before 1997 local legislation to replace the Official Secrets Acts.

Statement

Leveraged leasing transactions

FINANCIAL SECRETARY: Sir, I have become concerned at the increasing use being made in Hong Kong of leveraged leasing and similar arrangements as tax sheltering devices. The amount of tax revenue deferred as a result of these transactions is already threatening to reach \$1 billion this year, a level that cannot be tolerated. I therefore propose to seek an amendment to the Inland Revenue Ordinance to restrict the scope of the tax benefits available to persons entering into leveraged leasing arrangements.

A leveraged lease transaction is typically one in which a limited partnership of investors, usually corporations, acquires machinery or plant, commonly aircraft, which is then leased by that partnership for a term of 10 years or more to a lessee. By reason of the "leverage" obtained from borrowing a substantial non-recourse loan,

the partnership is effectively at risk for no more than a small part of the asset cost. On the other hand, for Hong Kong tax purposes the partnership is entitled to initial and annual depreciation allowances on the full cost of the asset, and the individual members of the partnership can set off their respective share of the resultant partnership loss against taxable profits that they may derive from other businesses.

In 1986 legislation was introduced with the intention of denying depreciation allowances where ships or aircraft had been acquired through leveraged lease transactions and the lessee, referred to as the end-user, was not a Hong Kong ship or aircraft operator. However, more and more examples of schemes are being encountered where the end-user of ships and aircraft acquired through a Hong Kong limited partnership is a foreign operator. Nonetheless, under the existing legislation depreciation allowances cannot be denied to these schemes.

Subject to the advice of the Executive Council, amendments will be introduced in the coming year to ensure that foreign operators do not get the benefit of such depreciation allowances. In addition, I propose to introduce further amendments to restrict the ability of the partners of a limited partnership to set off their share of the losses incurred by such a partnership. In future, the share of loss that can be set off against other income will be limited to the amount the limited partner actually has at risk in the partnership.

Subject to its being passed in this Council, the proposed legislation will apply to transactions entered into on or after tomorrow's date, that is 15 November 1990.

For the convenience of taxpayers, the Commissioner of Inland Revenue currently operates an administrative advance ruling procedure in respect of proposed leveraged lease transactions. Under this procedure the Commissioner, on application, gives a ruling as to whether he considers a proposed transaction is likely to be challenged under the general anti-avoidance provisions contained in section 61A of the Inland Revenue Ordinance. A number of applications for advance clearance are now being considered by the Commissioner, and these will be considered in accordance with the existing law and practice. However, in considering applications submitted after today, the Commissioner will have regard to the proposed legislation. As in the past, the issue of an adverse ruling will not in any way affect a taxpayer's right of objection and appeal against any subsequent assessment.

Sir, these measures will help stem a major haemorrhage affecting the public

revenue. I might add that similar measures have been used in other tax jurisdictions.

First Reading of Bill

CRIMINAL LAW (AMENDMENT) BILL 1990

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

Second Reading of Bills

CRIMINAL LAW (AMENDMENT) BILL 1990

THE ATTORNEY GENERAL moved the Second Reading of: "A Bill to amend the Criminal Law Ordinance."

He said: Sir, I move that the Criminal Law (Amendment) Bill 1990 be read a Second time.

This Bill seeks to localize the jurisdiction of Hong Kong courts in relation to crimes committed at sea. Currently, our courts derive their jurisdiction to deal with such crimes from United Kingdom enactments which apply to Hong Kong. These are enactments which, after June 1997, can no longer be part of our law. Therefore, our own legislation is required, and this Bill will meet that requirement.

Generally speaking, the Bill will give Hong Kong courts jurisdiction over crimes at sea where there is a Hong Kong "connection" present. In particular, jurisdiction will be conferred over the following acts --

first, over any act which takes place on board a Hong Kong ship on the high seas and which would be an offence if it took place in Hong Kong;

second, over any act which takes place on board any ship in Hong Kong waters and which would amount to an indictable offence if it took place on board a Hong Kong ship (in such cases the Governor's consent is required to prosecute a person who is not a British national and where the act takes place on a ship that is neither a Hong Kong

ship nor a British ship);

third, over any act of a British national (including a Hong Kong British Dependent Territories Citizen) which takes place on board a Hong Kong ship in any port outside Hong Kong (or on board any other ship to which the person does not belong) and which would be an offence if it took place in Hong Kong;

fourth, over any act of a master, seaman or apprentice employed on a Hong Kong ship or who was so employed within the preceding three months, wherever the act takes place, if the act amounts to an offence against the person or against property; and

fifth and finally, over any act that takes place on the high seas or in any other place outside Hong Kong resulting in the death in Hong Kong of a person and where the act would amount to murder or manslaughter (or being accessory to those crimes) if it took place here.

Members will note that I have referred, as does the Bill, to "a Hong Kong ship". This of course is new, for the United Kingdom enactments refer to British ships. The change is in line with the proposed establishment of the new Hong Kong shipping register. For the purposes of the Bill, a Hong Kong ship will be one registered or licensed in Hong Kong. Until 30 June 1997, the Hong Kong courts will, in addition, retain jurisdiction over crimes committed on board British ships.

In so far as the Bill makes reference to British national, it will of course not be appropriate after 30 June 1997 for the courts to exercise jurisdiction based on British nationality. In due course we plan to look at such references in all our legislation and to make the necessary changes.

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

Resumption of debate on Second Reading which was moved on 17 October 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).

FACTORIES AND INDUSTRIAL UNDERTAKINGS (AMENDMENT) BILL 1990

Resumption of debate on Second Reading which was moved on 31 October 1990

Question on Second Reading proposed.

MR TAM (in Cantonese): Sir, I rise and speak in support of the Factories and Industrial Undertakings (Amendment) Bill 1990.

The number of industrial accidents in the catering trade is ever increasing over these years. In the past five years, it has increased by 34.5% from 11 006 cases in 1985 to 14 800 cases last year. Apart from the sharp increase in the number of industrial accidents, there is also an upward trend in the accident rate in the catering trade which has risen by 23.2% from 73.32 accidents per 1 000 workers in 1985 to 90.34 accidents per 1 000 workers in 1989. This is much higher than the accident rate in the manufacturing and other non-industrial sectors.

In the past, the catering trade was not covered by the Factories and Industrial Undertakings Ordinance. In the absence of regulatory provisions, the department concerned cannot effectively contain the problem even though the number of industrial accidents and accident rate have increased to an appalling extent. The Factories and Industrial Undertakings (Amendment) Bill 1990 introduced to this Council today is indeed a remedial measure overdue. Protection is finally provided for the safety of employees in the catering trade, whereby the number of casualties in this business sector may be reduced.

In my opinion, this amendment Bill is of great significance. From now on, just as employers in other industrial undertakings, employers in the catering trade will have the general responsibility of providing a safe working environment while employees in the trade are under the obligation to observe the relevant regulations to give effect to safe operation. However, even though this Bill is enacted, it does

not mean that the problem of dangerous operation in the catering trade can be improved immediately. We must make people in the trade, including employers, employees and managerial personnel, fully understand the significance and implications of the Bill. I urge the Government to give more extensive publicity and in-depth education on this amendment Bill to the people and the organizations concerned. As far as I know, a joint council formed by 14 trade unions in the catering trade has at the outset urged the Government to strengthen the protection for the industrial safety of employees in the catering trade. I believe that they will be most willing to assist the Government in publicizing the Bill among employees in the trade.

Furthermore, as a precautionary approach I think it will be most desirable for the Government to stipulate the setting up of safety committees in all industrial undertakings and representatives of employees should be given the right to participate in these committees, so as to ensure the effectiveness of the proposed preventive measures.

Sir, with these remarks, I support the motion.

SECRETARY FOR EDUCATION AND MANPOWER: Sir, I am glad this Bill has been well received, and I would like to thank Mr TAM Yiu-chung in particular for lending his support to it. I agree entirely with him that we should spare no effort in encouraging workers in the catering trade to adopt safe practices, and I am sure that the Labour Department will be very encouraged to know that they have the strong support of the trade unions behind their effort to promote safety at work.

Since 1987 the Labour Department has been encouraging and helping both employers and employees to form in-plant safety committees on a voluntary basis, and it will continue to do so. We would like to assess the effectiveness of these committees on the promotion of industrial safety before considering whether their formation should be made compulsory. But I would like to thank Mr TAM for his suggestion and to assure him that we will not lose sight of it.

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

Bill read the Second time.

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

MERCHANT SHIPPING (AMENDMENT) BILL 1990

Resumption of debate on Second Reading which was moved on 31 October 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).

AGRICULTURAL PESTICIDES (AMENDMENT) BILL 1990

Resumption of debate on Second Reading which was moved on 31 October 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).

EVIDENCE (AMENDMENT) BILL 1990

Resumption of debate on Second Reading which was moved on 31 October 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 Bills

Council went into Committee.

CONTROL OF EXEMPTION CLAUSES (AMENDMENT) BILL 1990

Clause 1 was agreed to.

Clause 2

ATTORNEY GENERAL: Sir, I move that clause 2 be amended as set out in the paper circulated to Members.

The Control of Exemption Clauses Ordinance has recently been given a Chapter number within the Revised Edition of the Laws. The Ordinance should, therefore, now be referred to by its Chapter number rather than by the year of its enactment. The proposed amendment would amend the reference accordingly.

Proposed amendment

Clause 2

That clause 2 be amended by deleting "1989 (59 of 1989)" and substituting "(Cap. 71)".

Question on the amendment proposed, put and agreed to.

Question on clause 2, as amended, proposed, put and agreed to.

Long title

ATTORNEY GENERAL: Sir, I move that the long title be amended as set out in the paper circulated to Members.

The reason for this amendment is the same as that for the amendment to clause 2 of the Bill.

Proposed amendment

Long title

That the long title be amended by deleting "1989".

Question on the amendment proposed, put and agreed to.

Question on long title, as amended, proposed, put and agreed to.
FACTORIES AND INDUSTRIAL UNDERTAKINGS (AMENDMENT) BILL 1990

Clauses 1 and 2 were agreed to.

MERCHANT SHIPPING (AMENDMENT) BILL 1990

Clauses 1 to 9 were agreed to.

AGRICULTURAL PESTICIDES (AMENDMENT) BILL 1990

Clauses 1 to 21 were agreed to.

Schedule was agreed to.

EVIDENCE (AMENDMENT) BILL 1990

Clauses 1 and 2 were agreed to.

Council then resumed.

Third Reading of Bills

THE ATTORNEY GENERAL reported that the

CONTROL OF EXEMPTION CLAUSES (AMENDMENT) BILL 1990

had passed through Committee with amendments and the

FACTORIES AND INDUSTRIAL UNDERTAKINGS (AMENDMENT) BILL 1990

MERCHANT SHIPPING (AMENDMENT) BILL 1990

AGRICULTURAL PESTICIDES (AMENDMENT) BILL 1990 and

EVIDENCE (AMENDMENT) BILL 1990

had passed through Committee without amendment. He moved the Third Reading of the Bills.

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

Bills read the Third time and passed.

Adjournment and next sitting

HIS EXCELLENCY THE PRESIDENT: In accordance with Standing Orders I now adjourn the Council until 2.30 pm on Wednesday, 21 November 1990.

Adjourned accordingly at two minutes past Four o'clock.

Note: The short titles of the Bills 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.

