

OFFICIAL REPORT OF PROCEEDINGS**Wednesday, 18 July 1984****The Council met at half past two o'clock****PRESENT**

HIS EXCELLENCY THE GOVERNOR (*PRESIDENT*)
SIR EDWARD YOUDE, G.C.M.G., M.B.E.

THE HONOURABLE THE CHIEF SECRETARY (*Acting*)
MR. DENIS CAMPBELL BRAY, C.M.G., C.V.O., J.P.

THE HONOURABLE THE FINANCIAL SECRETARY (*Acting*)
MR. DOUGLAS WILLIAM ALFRED BLYE, C.M.G., O.B.E., J.P.

THE HONOURABLE THE ATTORNEY GENERAL
MR. MICHAEL DAVID THOMAS, Q.C.

THE HONOURABLE ROGERIO HYNDMAN LOBO, C.B.E., J.P.

THE HONOURABLE DAVID AKERS-JONES, C.M.G., J.P.
SECRETARY FOR DISTRICT ADMINISTRATION

DR. THE HONOURABLE HARRY FANG SIN-YANG, C.B.E., J.P.

THE HONOURABLE LO TAK-SHING, C.B.E., J.P.

THE REVD. THE HONOURABLE PATRICK TERENCE MCGOVERN, O.B.E., S.J., J.P.

THE HONOURABLE ALAN JAMES SCOTT, C.B.E., J.P.
SECRETARY FOR TRANSPORT

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

THE HONOURABLE WONG LAM, O.B.E., J.P.

THE HONOURABLE ERIC PETER HO, C.B.E., J.P.
SECRETARY FOR TRADE AND INDUSTRY

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

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

THE HONOURABLE ANDREW SO KWOK-WING, O.B.E., J.P.

THE HONOURABLE HU FA-KUANG, J.P.

THE HONOURABLE WONG PO-YAN, O.B.E., J.P.

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

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

THE HONOURABLE STEPHEN CHEONG KAM-CHUEN, J.P.

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

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

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

DR. THE HONOURABLE HENRIETTA IP MAN-HING

THE HONOURABLE PIERS JACOBS, O.B.E., J.P.
SECRETARY FOR ECONOMIC SERVICES

THE HONOURABLE HENRY CHING, C.B.E., J.P.
SECRETARY FOR HEALTH AND WELFARE

THE HONOURABLE CHAN YING-LUN

THE HONOURABLE MRS. RITA FAN HSU LAI-TAI

THE HONOURABLE MRS. PAULINE NG CHOW MAY-LIN

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

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

THE HONOURABLE JAMES NEIL HENDERSON, O.B.E., J.P.
SECRETARY FOR EDUCATION AND MANPOWER

DR. THE HONOURABLE JAMES WILLIAM HAYES, J.P.
COMMISSIONER FOR LABOUR (*Acting*)

THE HONOURABLE IAN FRANCIS CLUNY MACPHERSON, O.B.E., J.P.
SECRETARY FOR HOME AFFAIRS (*Acting*)

MR. JAMES JOHN O'GRADY
LAW DRAFTSMAN (*Acting*)

DR. THE HONOURABLE RUDY KIAN KANG KHOO, J.P.
DIRECTOR OF MEDICAL AND HEALTH SERVICES (*Acting*)

THE HONOURABLE FRANK EDMUND SHORT, O.B.E., J.P.
SECRETARY FOR LANDS AND WORKS (*Acting*)

THE HONOURABLE GORDON LOUIS MORTIMER, J.P.
SECRETARY FOR SECURITY (*Acting*)

THE HONOURABLE MICHAEL LEUNG MAN KIN, J.P.
DIRECTOR OF EDUCATION (*Acting*)

ABSENT

THE HONOURABLE FRANCIS YUAN-HAO TIEN, O.B.E., J.P.

THE HONOURABLE ALEX WU SHU-CHIH, C.B.E., J.P.

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

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

THE HONOURABLE CHARLES YEUNG SIU-CHO, O.B.E., J.P.

THE HONOURABLE JOHN MARTIN ROWLANDS, C.B.E., J.P.
SECRETARY FOR THE CIVIL SERVICE

THE HONOURABLE WILLIAM CHARLES LANGDON BROWN, O.B.E., J.P.

THE HONOURABLE JOHN JOSEPH SWAINE, O.B.E., Q.C., J.P.

IN ATTENDANCE

THE CLERK TO THE LEGISLATIVE COUNCIL
MRS. JENNIE CHOK PANG YUEN-YEE

Papers

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

Subject *L.N. No.*

Subsidiary Legislation:

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Road Tunnels (Government) (Amendment) (No. 2) Regulations 1984.....	196
Maintenance Orders (Reciprocal Enforcement) Ordinance.	
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Pensions Ordinance.	
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Public Health and Urban Services (Public Pleasure Grounds) (Amendment of Fourth Schedule) Order 1984	207
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Tax Reserve Certificates (Fourth Series) Rules.	
Tax Reserve Certificates (Rate of Interest) (No. 5) Notice 1984	211

Green Paper:

The Further Development of Representative Government in Hong Kong.

GREEN PAPER:**THE FURTHER DEVELOPMENT OF REPRESENTATIVE GOVERNMENT IN HONG KONG**

HIS EXCELLENCY THE PRESIDENT:—

Introduction

Honourable Members of the Legislative Council, I have called this special meeting of the Council this afternoon in order to address you on a subject which is of crucial importance to the future of this community. That subject is the further development of representative government in Hong Kong. A Green Paper, published today, sets out our proposals and invites public discussion of them.

The proposals in the Green Paper are the culmination at the central government level of a process which started some years ago as a tentative experiment in one of our new towns. From a single advisory board in Tsuen Wan there developed a system of District Boards for each district of Hong Kong. Following publication in 1980 of the Green Paper entitled 'A Pattern of District Administration in Hong Kong', direct elections to the Boards were introduced in 1982. There followed in 1983 the first constituency-based elections to the Urban Council, based on the same broad franchise; although the Urban Council had included members elected on a more restricted franchise for many years before that.

In continuation of this process of strengthening representative government at the local level, the number of elected members of District Boards will be doubled next year. At the same time a provisional Regional Council will be established for those areas of Hong Kong not already managed by the Urban Council. The year after, in 1986, elected members will constitute the majority of the Regional Council.

These changes between now and 1986 will complete the structure of Government at the local and regional level, and will put responsibility for the provision of services and the management of local affairs firmly within the control of local representative organisations.

The introduction of elections on a broad franchise has been a substantial step forward for Hong Kong. It has enabled elected representatives to voice their views on Government policies, programmes and performance at the district level, and, in the short period of their existence, the Boards have made a significant contribution to the life of Hong Kong. There is already a close link between the Boards and the Urban Council, and similar links will be established with the new Regional Council. At the higher level members of the Urban Council have been appointed to the Legislative Council for a number of years, and more recently members of District Boards have also been appointed to the Council. We now need to take the next step which is to consider not only the composition of the two central Councils, but the method of selecting their members.

This is the object of the Green Paper. The aims of the proposals contained in it are these—

- first*, to develop a system of government which is firmly rooted in our community; on which the views of the community are fully represented; and which is more directly accountable to the people of Hong Kong;
- second*, to develop this system progressively, building on our existing institutions, and on our well-established practice on government by consensus; and
- third*, to give an opportunity for our proposals to be tested against the experience we gain in implementing them: to this end it is proposed to

review the position in 1989 before deciding the direction and timing of any further development of the system.

The Development of the Present System of Government in Hong Kong

Our Present system of government operates on the basis of consultation and consensus. This unique system has developed around the representation of the views of the community in two ways: through the representation on the one hand of regional and district interests, based on institutions such as the Urban Council, the Heung Yee Kuk and District Boards; and on the other, the representation of occupational interests, such as commerce and industry, law, education, medicine and social services, all of which play an important role in our social and economic life.

These two parallel approaches to representation have had a strong influence on the development of our system of government, and also on the policies of the Government. Because it allows time and opportunity for debate and dissent, the process of synthesising the views of these geographical and functional constituencies is often difficult and prolonged: but in the end it almost always results in a policy acceptable to the community as a whole.

It is from these geographical and functional constituencies that the appointed Unofficial Members of the Legislative Council and the Executive Council have traditionally been drawn. It is now proposed to build on them in developing a system for the election of a substantial number of the Unofficial Members of the Councils. But it is also proposed to retain, at least for the time being, some appointed Unofficial Members: for we need continuity and experience on the Councils.

Direct Elections

Suggestions have been made that direct elections to the Legislative Council, based on a universal franchise, should be introduced as soon as possible. Such arrangements are a standard feature of many democratic systems of government, but they have not always succeeded in guaranteeing stable representative government.

In Hong Kong it is clearly essential that stability should be maintained. Moreover, our special political circumstances must be taken into account: and our system of representation must give full weight to those interests on which our present position as a leading international industrial, commercial and financial centre is based, and which are essential to our future prosperity. All this argues strongly that change should be progressive, that it should be tailored to Hong Kong's distinctive society and circumstances, and that it should be based on the well-tried systems which have served Hong Kong so well.

If we were to introduce direct elections to the Legislative Council now, we should run the risk of a swift introduction of adversarial politics, and an element of instability at a crucial time. The time for direct elections may come.

In due course, as the political and constitutional circumstances of Hong Kong evolve, and if popular support for the idea develops, further thought will be given to this possibility. But prudence and the over-riding need for stability at a crucial time in Hong Kong's history dictate the gradual approach which is proposed.

The Proposals

I do not intend to describe the proposals in the Green Paper in great detail. The paper should be studied in its entirety by all those concerned for the future of this community. But I shall summarise the main features of them.

They deal principally with the two main central Government institutions, the Legislative Council and the Executive Council.

The Legislative Council

As regards the Legislative Council, it is proposed that a substantial number of the Unofficial Members of the Council should be elected indirectly by an electoral college composed of all members of the Urban Council, the new Regional Council and the District Boards; that a similar number should be elected by specified functional constituencies: by which we mean organisations representing commerce, industry, the law and other important aspects of our economic and social life; that a number of appointed Unofficial Members should be retained on the Council, for the time being; and that there should be a gradual reduction in the number of Official Members of the Council. By 1988, the Legislative Council would be composed of 12 Unofficial Members elected by the electoral college, 12 Unofficial Members elected by the functional constituencies, 16 appointed Unofficial Members and ten Official Members. This compares with the present Council of 29 appointed Unofficial Members and 18 Officials.

It will take time for the people of Hong Kong to become familiar with the new system of indirect elections which is proposed in the Green Paper. For this reason it is our intention to introduce this new system step by step, and to review progress after the initial stages have been implemented, before deciding what further steps should be taken.

The specific arrangements I have just described would be introduced in two stages—in 1985 and 1988—following the District Board elections in each of those years.

In 1989, there would be a review of the position with a view to determining what further developments should be pursued. In particular, the review will assess whether by then it would be the wish of the community that all Unofficial Members should thereafter be elected, or whether there would still be a need for a number of directly appointed members. At this time too, it would also be possible to consider whether there was a wish to introduce direct elections based on geographical constituencies, or whether to continue and develop further the system of indirect elections.

The Executive Council

As regards the Executive Council, it is proposed that the majority of the appointed Unofficial Members of the Council should be replaced progressively by Members elected by the Unofficial Members of the Legislative Council from their own number; that a few Members should continue to be appointed by the Governor; and that *Ex-officio* Members should remain as Members of the Council. These proposed arrangements for the Executive Council would also be introduced in two stages—in 1988 and 1991—following the Legislative Council elections in each of those years.

The intention is that, by 1991, the Executive Council should be composed of at least eight Members elected by the Unofficial Members of the Legislative Council, two Members appointed by the Governor and four *Ex-officio* Members: however, these numbers might be modified in the light of the review in 1989 of the composition and method of selection of the Legislative Council.

A Ministerial System

Suggestions have been made from time to time that Unofficial Members of the Executive and Legislative Councils should play a greater part in the administration of Hong Kong by assuming some sort of executive role, similar to the ministerial functions performed by elected representatives in other countries. As I stressed earlier, it is essential to preserve the stability and harmony of the community at this critical time in our history. The system of the Executive Council giving its advice collectively has worked well. The proposals set out in the Green Paper, concerning the method of selection to the principal institutions of Government, themselves represent substantial change, and must be absorbed before any changes to the structure of Government itself are introduced. It is not, therefore, proposed to pursue the idea of a ministerial system at present: it may be considered at a later stage after the new system of selection has been implemented and given time to settle down.

The Governor

The proposals concerning the Legislative and Executive Councils which I have described will naturally raise questions in your minds about the future position of the Governor, particularly his relationship with the two Councils and the future method of his selection.

There will be some changes in the role of Governor: for example, the Governor's power to appoint Members of the Executive and Legislative Councils will be reduced: The Governor's presidency of the Legislative Council is a function unconnected with his other functions, and it is proposed that he should in due course be replaced as President of the Legislative Council by a Presiding Officer selected or elected from among the Members of the Council. But nothing beyond that is proposed at this stage. In the case of his relationship with the Executive Council, convention has already modified the Governor's exclusive right to refer matters to the Council and to reject the advice of the

Council: this right has not been exercised for many years. Formal changes in these powers might be considered at a future time.

The Green Paper makes no proposals in respect of the Governor's relationship with the Executive Council and the method of his appointment. These are matters requiring further reflection because the constitutional implications of any such changes will have to be considered very carefully. Whatever changes may be proposed in due course, the Governor will continue to be appointed formally by Her Majesty the Queen until the United Kingdom relinquishes responsibility for Hong Kong in 1997.

Conclusion

Honourable Members, the aim of the proposals in the Green Paper is to take a further step on the way to establishing a system which derives its authority from the Hong Kong community: and to this end to enable the people of Hong Kong to become more directly involved in selecting their Government. Our proposals recognise the complex balance of interests which lies at the foundation of Hong Kong's success. They recognise that this balance has been maintained through adherence to the principles of stability and consensus. They are progressive, but gradual: they seek to maintain the best features of the systems which have served Hong Kong well in the past. At the same time, the proposals recognise the political realities of Hong Kong. In drawing up our proposals we have had regard to the special circumstances of Hong Kong and the need to maintain our good relationship with our mainland neighbour. We have also done our utmost in framing these proposals to ensure that there need be no conflict with the principle of continuity between the systems in force both before and after 1997.

These proposals present the Hong Kong community with an opportunity and a challenge. The opportunity is to participate, and I urge all those entitled to vote to register in good time for next year's elections. The challenge is to ensure that the political process in Hong Kong should remain stable and concentrate on Hong Kong matters. The exercise of the opportunity will require a high sense of responsibility, and a careful concern for stability among both candidates and voters.

I have no doubt that the Government's proposals will be discussed with the care and wisdom always shown in Hong Kong on such matters. Your administration will welcome public discussion and constructive comment, and will give careful consideration to it. We intend to allow two months for such discussion. Having taken the views of the public into account, it is our intention later this year to publish a White Paper which will set down the conclusions reached, and to introduce the necessary legislation into this Council. Thank you, honourable Members.

Government business**Motions****HONG KONG ROYAL INSTRUCTIONS 1917 to 1983**

THE CHIEF SECRETARY moved the following motion:—That with effect from 20 July 1984 the Standing Orders of the Legislative Council of Hong Kong, made by the said Council on 9 October 1968. be amended—

(a) by adding after Standing Order No. 4 the following—

‘Counsel to
the
Legislature.

4A. (1) The Law Draftsman shall be the Counsel to the Legislature.

(2) The Counsel to the Legislature shall—

(a) be responsible for advising the President and the Clerk to the Council on all matters relating to the procedures of the Council;

(b) have the general duty of advising the President and the Clerk to the Council on legal questions arising in relation to the business or administration of the Council; and

(c) discharge such other duties as may be assigned to him by or under these Standing Orders.’;

(b) by adding after Standing Order No. 7 the following—

‘Special
Sittings
during
recess.

7A. Notwithstanding that a session may have ended and the next following session has not yet begun, the Governor may, where he is satisfied that the public interest so requires, determine that a sitting of the Council shall be held on such day and shall begin at such hour as he may specify, and for this purpose these Standing Orders shall apply to that sitting as they apply to a sitting held during a session.’;

(c) in Standing Order No. 8(4)—

(i) by deleting ‘further’ and substituting the following—
‘new’;

(ii) by inserting after ‘order’ the following—
‘;but a motion to suspend this order shall not be new business’;

(d) in Standing Order No. 39(1) by inserting after ‘(Form of Bills)’ the following—

‘, and, where the Member is an Unofficial Member, also by a certificate signed by the Counsel to the Legislature stating that the Bill conforms to the requirements of that Standing Order and the general form of Hong Kong legislation’;

(e) in Standing Order No. 60(1) by deleting ‘committee of the Council’ and substituting the following—

‘standing committee.’;

(f) in Standing Order No. 60A—

(i) by inserting after paragraph (3) the following—

‘(3A) Unless the chairman otherwise directs, members of the public and of the press shall be admitted as spectators at meetings of the Committee attended by any person called by the Committee under paragraph (4).’;

(ii) in paragraph (4) by inserting after ‘duties’ the following—

‘; and the Committee may also call any other person to assist the Committee in relation to any such information, explanation, records or documents’;

(iii) by deleting paragraph (5) and substituting the following—

(Cap 122.) ‘(5) The Committee shall make their report upon the report of the Director of Audit on the accounts of the Government within three months (or such longer period as may be determined under section 12 of the Audit Ordinance) of the date on which the Director’s report is laid on the table of the Council.’

He said:—Sir, I move the resolution standing in my name for the amendment of the Standing Orders of this Council. Members have received advance copies of this resolution, and they will have noticed that the amendments include one or two new ideas designed to improve or facilitate the operation of the Council as a whole, as well as a significant change to the workings of the Public Accounts Committee.

Last year we revised a considerable number of Standing Orders as the result of the efforts of a working party set up to review their provisions. There has been no comparable conscious attempt at reform this year, but through diverse channels a number of desirable changes have emerged and are now placed before you for consideration.

First, we propose to introduce a new Standing Order 4A to establish the title of Counsel to the Legislature, to denote the special position which the Law Draftsman has in the workings of the Council. The title will bring out his

particular responsibilities as regards legislation, and his role in the scrutiny and reform of all aspects of the Council's procedure. Most important it will express his general responsibility to the Council more clearly than does his official designation within the Attorney General's Chambers.

In fact, Sir, I can illustrate this point by jumping forward to the fourth amendment proposed, that to Standing Order 39(1), which requires a Private Bill to have a certificate signed by the Counsel to the Legislature to indicate that it is all in order. This examination is part of our present practice, and is clearly a desirable safeguard against the introduction of private legislation which might in any way conflict with the form of laws of Hong Kong and the Standing Orders of this Council. The intention therefore is to formalise this practice by incorporating it in the Standing Orders, and the Law Draftsman, in his role as the Counsel to the Legislature, will continue to carry out the function of 'checks and balances' in relation to private legislation.

The second amendment proposed is the introduction of a new Standing Order 7A to provide for the holding of special sittings of the Legislative Council during a recess should the public interest so require. Members will recall, for example, the Hang Lung Bank incident last year which required the re-assembly of the Council on 27 September 1983 at a few hours' notice. During those few hours, because we had already closed the previous session and not yet opened the next one, we had to pull the Council out of recess by opening the next session and this involved not only changing the date and hour of the next sitting as you, Sir, are empowered to do under Standing Order 7(3), but the gazetting of the new date and hour under Standing Order 5(3). That was a clumsy procedure necessitated by the lack of suitable provisions in the Standing Orders to cover any special sittings held during the summer recess. New Standing Order 7A therefore aims at putting this right by providing that the Governor may, where he is satisfied that the public interest so requires, determine that a sitting of the Council shall be held on such day and shall begin at such hour as he may specify, and that the procedures for that sitting should follow those for any ordinary sitting held during a session. I should add that emergencies are by their nature unexpected. No extra meetings are anticipated at this moment.

The next amendment deals with the long-standing but rather confusing 'six o'clock rule', and I would urge honourable Members to pay particular attention as I speak slowly. Standing Order 8(2), as Members are well aware, provides that six o'clock shall be the hour of interruption of the proceedings of this Council. Standing Order 8(4) then goes on to say that 'there shall be no further business' after the hour of interruption. This would, strictly speaking, preclude any motion to suspend Standing Order 8 after the interruption has been made by the President. Hence the practice in this Chamber has been, at about six o'clock, for the Chief Secretary and the Attorney General to go into a worried huddle, trying to guess whether the President is going to use his discretion under Standing Order 8(2) to make 'a short deferment' of his

interruption to allow business to finish, always uncertain as to how long ‘a short deferment’ can be; so that in the end the Chief Secretary rises diffidently to his feet, and then asserts himself to shout down the Member speaking and startle the President with a pre-emptive strike against Standing Order 8(2). (*laughter*) In short, Sir, the present procedure is cumbersome and confusing.

Although Standing Order 8 could be suspended well in advance of the hour of interruption, this makes the hour of interruption a very artificial provision, and rationalisation of this procedure seems to be called for.

The proposed amendment to Standing Order 8(4), therefore, prohibits any new business after the hour of interruption (other than adjournment debates) but explicitly provides that a motion to waive Standing Order 8 shall not count as new business. The effect of this would be to allow the hour of interruption to be used as a marker as to when the business of the legislature should conclude—the President will make a formal interruption at the moment he deems appropriate—but thereafter the Chief Secretary will be able to move the suspension of the other provisions of the Standing Order so that the Council can conclude the matter in hand, and the rest of the business scheduled for the day. This will mean that the interruption of the Council’s business is made by the President, as by right it should be, rather than by the Chief Secretary, as in practice it is at present.

The fifth amendment proposed is that to Standing Order 60(1), which simply makes it clear that the Finance Committee is a standing committee of the Legislative Council.

The sixth and last amendment covered by this resolution is that concerning the Public Accounts Committee. Sir, Members are already aware from the introduction of the Audit (Amendment) Bill 1984 by the Attorney General in this Council on Wednesday last that the Public Accounts Committee will ordinarily meet in public in future for its hearing of evidence. The main amendment to Standing Order 60A now proposed simply incorporates this in the Standing Orders, together with the necessary technical amendment to the timing of the laying of the Director of Audit’s report separate from the report of the Public Accounts Committee.

Sir, as the work of the Council develops in sophistication and complexity, the Standing Orders should keep up with the needs and changes of the Council. For this reason, we shall continue to review the Standing Orders to ensure that their provisions remain up-to-date and as rational as possible. The amendments proposed today aim to do just that I commend them to Members for their approval.

Sir, I beg to move.

Question put and agreed to.

INTERPRETATION AND GENERAL CLAUSES ORDINANCE

THE SECRETARY FOR TRADE AND INDUSTRY moved the following motion:—That—

1. The functions exercisable by the Director of Trade by virtue of section 10 of the Hong Kong Export Credit Insurance Corporation Ordinance (Chapter 1115) be transferred to the Registrar General.
2. Section 10 of the Hong Kong Export Credit Insurance Corporation Ordinance (Chapter 1115) be amended by deleting ‘Director of Trade’ wherever it occurs and substituting the following—
‘Registrar General’.

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

Section 10 of the Hong Kong Export Credit Insurance Corporation Ordinance (Cap. 1115) sets out the terms of reference and membership of the Corporation’s Advisory Board. Currently there are two *ex-officio* members, namely the Director of Trade, and the Executive Director of the Hong Kong Trade Development Council or their representatives. There is also provision for not more than ten other members, and currently one of these members is an official, namely myself, the Secretary for Trade and Industry.

A review of the membership has recently been concluded and it has been noted that, on the official side there is both duplication in the area of trade, since both the Director of Trade and I are members, and a gap in the area of insurance. This has arisen because prior to 1 August 1982 when my post was created, and took over responsibility for trade and industry policy, and the place on this Advisory Board, from the Secretary for Economic Services, the latter also had insurance policy within his schedule. The resolution before Council seeks to replace the Director of Trade with the Registrar General, as an *ex-officio* member, since the latter has statutory responsibility for and expertise in insurance.

Sir, I beg to move.

Question put and agreed to.

First reading of bills**CHINESE VISA OFFICE (PRIVILEGES AND IMMUNITIES) BILL 1984****CRIMINAL PROCEDURE (AMENDMENT) BILL 1984**

JURY (AMENDMENT) BILL 1984**FIXED PENALTY (CRIMINAL PROCEEDINGS) (AMENDMENT) (NO. 2) BILL 1984****LIMITATION (AMENDMENT) BILL 1984****BUILDINGS (AMENDMENT) (NO. 2) BILL 1984**

Bills read the first time and ordered to be set down for second reading pursuant to Standing Order 41(3).

Second reading of bills**CHINESE VISA OFFICE (PRIVILEGES AND IMMUNITIES) BILL 1984**

THE ATTORNEY GENERAL moved the second reading of:—‘A bill to grant privileges and immunities to the Visa Office in Hong Kong of the Ministry of Foreign Affairs of the People’s Republic of China, its officers and their dependants and diplomatic couriers, and for matters connected therewith and incidental thereto’.

He said:—Sir, I move that the Chinese Visa Office (Privileges and Immunities) Bill 1984 be read a second time.

The purpose of the Bill is to give effect to an exchange of notes in Peking on 14 April last between Her Majesty’s Embassy and the Ministry of Foreign Affairs of the People’s Republic of China. By this exchange of notes, Her Majesty’s Government agreed to confer certain privileges and immunities on the Chinese Visa Office in Hong Kong and its staff.

The Visa Office of the Ministry of Foreign Affairs of the People’s Republic of China opened in Hong Kong in November 1981. Its establishment has facilitated the process of obtaining visas for entry into China, thereby benefitting many thousands of travellers. A harmonious working relationship has been established between the staff of the Visa Office and relevant departments of the Hong Kong Government, notably the Immigration Department.

Because the Visa Office is a body subject of the Chinese Ministry of Foreign Affairs and its Director and staff are career members of the Chinese Diplomatic Service, it was considered appropriate that the Visa Office should enjoy certain diplomatic privileges and immunities.

It was possible for the Hong Kong Government to confer certain privileges and immunities on the Visa Office from the date of its opening by administrative

arrangements. However, some other privileges and immunities appropriate to an office with the standing and functions of the Chinese Visa Office require Legislation. Because the Chinese Visa Office is not a Consulate-General or Commonwealth Commission, it is not covered by the provisions of the Consular Relations Ordinance.

In summer 1982, the British Embassy in Peking opened negotiations with the Consular Department of the Chinese Ministry of Foreign Affairs with a view to re-establishing a British Consulate-General in Shanghai. This led to an agreement in principle between the two Governments that a British Consulate-General should be opened in Shanghai and that a Chinese Consulate-General should be opened in Manchester in England. Before opening these consulates, HMG considered it desirable to reach an agreement with the Chinese Government defining the privileges and immunities to be enjoyed by the officers of the two Consulate-Generals. These negotiations proved to be rather timeconsuming and in the course of them the Chinese side proposed that the matter of privileges and immunities for the Chinese Visa Office in Hong Kong should be settled at the same time. After consultation between HMG and the Hong Kong Government, it was agreed that it would be appropriate for the Visa Office in Hong Kong to enjoy the same privileges and immunities as those two Consulates-General in Shanghai and Manchester. The outcome of these negotiations was the exchange of notes on 14 April and the signing of the U.K./China Consular Agreement by the Secretary of State and Chinese Foreign Minister in Peking on 17 April.

The contents of this Bill are straightforward. It spells out those privileges and those immunities using wherever possible the language of the relevant parts of the Vienna Convention on Consular Relations. The Bill also provides for necessary amendments to certain Hong Kong Ordinances to exempt the Visa Office and its officers from various taxes and duties. This will put them on the same footing as the various Consulates-General and Commonwealth Commissions already established in Hong Kong.

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

Motion made. That the debate on the second reading of the Bill be adjourned—THE ATTORNEY GENERAL.

Question put and agreed to.

CRIMINAL PROCEDURE (AMENDMENT) BILL 1984

THE ATTORNEY GENERAL moved the second reading of:—‘A bill to amend the Criminal Procedure Ordinance’.

He said:—Sir, I beg to move that the Criminal Procedure (Amendment) Bill 1984 be read a second time.

The willingness of members of the public to do jury service is vital to our criminal procedure. But anyone visiting the High Court would be surprised to find that in many cases, members of the jury are no sooner brought together and sworn and charged to try the issues between the prisoner at the Bar and the Queen, than they are sent away, often for some weeks, while the judge decides a matter of law in their absence. This time of standing by is likely to cause HAVOC with their business and social arrangements. They may fall sick, or for some other reason find themselves unable to come back later for the trial. This rule of procedure often causes inconvenience and will result in waste of time if a new jury has to be empanelled.

The reason for this hiatus is that the judge is hearing evidence on a *voirdire*, which in Hong Kong generally means that the judge by himself is deciding whether statements of the accused person can be admitted in evidence when the trial itself gets under way.

Under the present state of the law, the jury must be empanelled immediately after the accused has pleaded 'not guilty' for by these words he is deemed to put himself in the hands of a jury of his fellow men and women. In the old days, the admissibility of evidence was usually canvassed in the middle of the trial when the prosecution was about to adduce the statements. It was not until this century that it became established that the jury should be sent away while the judge decided questions of admissibility.

Sir, the object of this Bill is to remove the old rule which prevents the judge considering these matters before the jury is empanelled.

This simple reform does not interfere with any other established rule of law or procedure. It remains for the prosecution to choose the evidence it will call and the order to call it although in many cases the Crown will see the advantage of treating the *voirdire* as a preliminary question to be resolved before the trial begins in the presence of the jury.

But the essence of the reform is to save the time of members of the jury and avoid the inconvenience to them of having their arrangements dislocated in those cases when their presence is not required at the outset of a criminal trial.

Sir, this Bill is complementary to the objects of those amendments to the Jury Ordinance which I shall be addressing in my next speech. I move that the debate on this Bill be now adjourned.

Motion made. That the debate on the second reading of the Bill be adjourned—THE ATTORNEY GENERAL.

Question put and agreed to.

JURY (AMENDMENT) BILL 1984

THE ATTORNEY GENERAL moved the second reading of:—‘A bill to amend the Jury Ordinance’.

He said:—Sir, I beg to move that the Jury (Amendment) Bill 1984 be read the second time. This Bill like the last one, affects the calls which the community makes upon its members to participate in the administration of justice.

The significant increase in jury trials in recent times, has placed a heavy burden on the comparatively few members of our community who are presently eligible for jury service.

The number of persons actually available at any time for jury service in practice is only some 25 000. As many as half of these may be called in any one year.

This unsatisfactory state of affairs prompted the Chief Justice to call for some expansion and improvement of the jury panel.

A working party was set up to consider how the number of prospective jurors might be increased and to consider the efficiency of the current method of selection of jurors.

It quickly became apparent that there is in Hong Kong a large number of potential jurors whose ability to speak and understand English is simply not discovered under the existing procedures.

This seems obvious when you realise that the three English newspapers in Hong Kong claim, a readership of more than 300 000 and that each year some 28 000 local residents pass the ‘Use of English’ Examination at Grade E or above. So to reach out and find more of those whose abilities in the English language make them suitable to sit on a jury, the Jury (Amendment) Bill gives the Registrar and the Commissioner of Registration statutory powers to obtain the information they need to compile full jury lists, for example, by obtaining names from examination boards.

Sir, with the improvement in the quality and expectation of life, I do not believe that there is any longer a justification for an age limit of 60. By raising the age for jury service to 65, more of those with ample experience of life, well suited for jury service, will become available.

I also believe that it is wholly unacceptable that the burden of jury service should continue to be placed entirely on the shoulders of the private sector. There is no longer any justification for the exemption of *all* public servants. Certain categories must, by virtue of the nature of their duties, continue to be exempt. These include judges, members of the Legal Department and the police. Under this proposal, as many as 40 000 civil servants will for the first time become eligible for jury service.

Similarly, teachers, professors, lecturers and other academic officers will become liable to serve on juries. But the present limited exemption in favour of full-time students at educational institutions of particular categories will now be extended to all students. They will all now be exempt.

In addition to increasing the number of prospective jurors the Bill bring us into the twentieth century by providing for random selection of jurors to be made by computer. In the event of selection of a person not qualified or exempt from service the Registrar is given power to amend the jury list accordingly. The Registrar must also avoid calling upon the same person for jury service more than once in any period of two years.

Sometimes cases come to light of employers discriminating against their employees because of their need to attend for jury service. There is in my view a case as proposed by the Bill for raising the existing penalty to a fine of \$25,000 and imprisonment for three months.

The essence of trial by jury is the right of an accused person to be judged by his peers. Increasing the number of potential jurors will not only spread the burden more fairly and equitably across the community but, just as important, this is another step to involve more of the people of Hong Kong in the Administration of the laws of Hong Kong.

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

*Motion made. That the debate on the second reading of the Bill be adjourned—*THE ATTORNEY GENERAL.

Question put and agreed to.

FIXED PENALTY (CRIMINAL PROCEEDINGS)(AMENDMENT) (NO.2) BILL 1984

THE LAW DRAFTSMAN moved the second reading of:—‘A bill to amend the Fixed Penalty (Criminal Proceedings) Ordinance’.

He said:—Sir, I move that the Fixed Penalty (Criminal Proceedings) (Amendment)(No. 2) Bill 1984 be read the second time.

The fixed penalty procedure is now well understood in Hong Kong even if it is perhaps not well liked, especially by those of us who may have felt its impact. A feature of the Fixed Penalty (Criminal Proceedings) Ordinance is that, if anyone who is issued with a notice under the Ordinance wishes to dispute his guilt, he is quite at liberty to do so.

This Bill deals with the situation where proceedings are actually instituted but the defendant subsequently undergoes a change of heart, and no longer wishes

to contest the charge. Clause 2 of the Bill provides that, in that event, the sum payable under section 9 of the principal Ordinance by way of court costs (not to be confused with the penalty) is to be increased from \$25 to \$70.

The reasons for the increase are purely economic, given that the figure of \$25 was first set ten years ago in 1974. In future, the problem will be left to this Council to deal with by resolution, and an amendment to that effect is also contained in the Bill.

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

Motion made. That the debate on the second reading of the Bill be adjourned—LAW DRAFTSMAN.

Question put and agreed to.

LIMITATION (AMENDMENT) BILL 1984

THE LAW DRAFTSMAN moved the second reading of:—‘A bill to amend the Limitation Ordinance’.

He said:—Sir, I move that the Limitation (Amendment) Bill 1984 be read the second time.

As the short title of this Bill indicates, it touches on a very important aspect of our legal system, namely, the period allowed for bringing civil claims to court. It is a subject which is highly technical, and very much in the nature of lawyer’s law. In the circumstances, I will confine my remarks to a broad outline of the problem and the solution proposed in the Bill.

In 1983, the Court of Appeal ruled that the period allowed by the Limitation Ordinance for bringing civil proceedings could not be circumvented by the Rules of the Supreme Court, because the Rules only apply to matters of practice and procedure. Accordingly the Court held that a rule was *ultra vires* which purported to enable existing proceedings to be amended by adding or substituting a new action, even though the time allowed for bringing the new action as an original action had expired.

A similar problem had already arisen in United Kingdom and the solution there was to enact an express statutory provision which meant that existing proceedings could properly be amended in the way I have just mentioned. This Bill, in clause 2, adopts the U.K. legislation, namely, section 35 of the Limitation Act 1980.

In effect clause 2 restores the position to what it was, or was understood to be, prior to the decision of the Court of Appeal, and brings the law in Hong Kong on this subject into line with U.K. law.

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

Motion made. That the debate on the second reading of the Bill be adjourned—LAW DRAFTSMAN.

Question put and agreed to.

BUILDINGS (AMENDMENT) (NO. 2) BILL 1984

THE SECRETARY FOR LANDS AND WORKS moved the second reading of:—‘A bill to amend the Buildings Ordinance’.

He said:—Sir, I move that the Buildings (Amendment) (No.2) Bill 1984 be read a second time.

This Bill, Sir, seeks first to amend sections 3(5)(b) and 5A(2) of the Buildings Ordinance, which relate respectively to the composition of the Authorised Persons and Structural Engineers Registration Committee and the Authorised Persons and Registered Structural Engineers Disciplinary Board Panel. As at present written, these sections refer to the Hong Kong Branch of the Institution of Structural Engineers as being the body responsible for nominating the registered structural engineer member of the Registration Committee and also as being the body from which registered structural engineer members of the Disciplinary Board Panel are selected. Since the Hong Kong Branch of the Institution of Structural Engineers no longer exists, having amalgamated itself with the Hong Kong Institution of Engineers, it is proposed simply to substitute the name of the latter for the name of the former in these two sections.

The second object of the Bill, Sir, is further to amend the wording of section 5A(2) of the Ordinance, which at present states that the Disciplinary Board Panel shall consist of *not more than 20* members but which goes on to stipulate unequivocally that there shall be five members from each of four named professional bodies. To avoid any challenge which might arise if, through death, retirement, or other reason, there were at any time less than five members from each of the named bodies the amendment will make it clear that *not more than five* members are to be drawn from each body.

Finally, Sir, the Bill proposes a minor amendment to section 5A(3) of the Ordinance by removing the word ‘Society’, which was inadvertently not deleted when the former Engineering Society of Hong Kong ceased to be named in section 5A(2).

Sir, I move that the debate be now adjourned.

Motion made. That the debate on the second reading of the Bill be adjourned—SECRETARY FOR LANDS AND WORKS.

Question put and agreed to.

AUDIT (AMENDMENT) BILL 1984

Resumption of debate on second reading (11 July 1984)

Question proposed.

MR. LOBO:—Sir, in the absence of my colleague, Mr. S. L. CHEN, I wish to speak in support of the Audit (Amendment) Bill.

As the Attorney General said last week when moving the second reading of this Bill, although it is a government Bill, it has its origins in an initiative put forward by my colleagues on the Public Accounts Committee.

They believe that the interests of open government will be served by the move to the public hearing of the evidence which they take from Controlling Officers.

The public will have direct knowledge of the explanations which Controlling Officers give about the use of the taxpayers' money, and the measures which they have taken to ensure the best possible value for that money.

I should explain, however, that the Committee still intends to meet in camera to reach its conclusions, and that their views will therefore remain confidential until laid before this Council in the form of their completed report.

The Committee will certainly continue to deliberate carefully on the evidence presented to it before coming to any judgements: I can thus give my official colleagues the assurance, if they needed it, that open government is not to be equated with rough justice at their expense.

Sir, I am struck by the happy coincidence that this Bill should complete its final stages this afternoon.

It is, perhaps, only the latest of a long line of moves which the Administration has made towards open government.

It is quite overshadowed, by the proposal which you, Sir, have put before us, and the whole of Hong Kong—this afternoon—for the development of representative government.

But I believe that it has been the development of open government which has helped to make the idea of representative government a practical proposition, to encourage that lively and informed public interest which is, always and everywhere, the essential condition for successful representative government.

This Bill, in itself modest, is therefore part of the general development of good government in Hong Kong to which we are all committed, and for that reason as well as its own merits it must command our backing.

Sir, I support the motion that the Bill be read a second time.

Question put and agreed to.

Bill read the second time.

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

IMPORT AND EXPORT (AMENDMENT)(NO.2) BILL 1984

Resumption of debate on second reading (11 July 1984)

Question proposed.

Question put and agreed to.

Bill read the second time.

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

RESERVED COMMODITIES (AMENDMENT) BILL 1984

Resumption of debate on second reading (11 July 1984)

Question proposed.

Question put and agreed to.

Bill read the second time.

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

Committee stage of bills

Council went into Committee

AUDIT (AMENDMENT) BILL 1984

Clauses 1 to 4 were agreed to.

IMPORT AND EXPORT (AMENDMENT) (NO.2) BILL 1984

Clauses 1 and 2 were agreed to.

RESERVED COMMODITIES (AMENDMENT) BILL 1984

Clauses 1 to 3 were agreed to.

Council then resumed.

Third reading of bills

THE ATTORNEY GENERAL reported that the

AUDIT (AMENDMENT) BILL

IMPORT AND EXPORT (AMENDMENT) (NO. 2) BILL and the

RESERVED COMMODITIES (AMENDMENT) BILL

had passed through Committee without amendment, and moved the third reading of the Bills.

Question put on the Bills and agreed to.

Bills read the third time and passed.

Adjournment and next sitting

THE CHIEF SECRETARY:—Sir, with your consent I move that S.O. 8(5) be suspended to enable separate sittings to be held on Tuesday 24 July and Wednesday 25 July 1984.

Question put and agreed to.

MR. LOBO:—Sir, before we adjourn this afternoon I would like, on behalf of all Unofficial Members of this Council, to express our appreciation of the unfailingly courteous and efficient service which Mrs. Jennie CHOK has given to us during her appointment as Clerk to this Council.

She has probably spent more time in this Chamber than any her predecessors as Members have become more loquacious and the issues perhaps more controversial.

Despite our often lengthy sessions Mrs. CHOK's charm and sense of humour have never deserted her or indeed us.

I am sure we will not always have a chance to express our thanks for her calm competence during her three years in this hot seat which she is now occupying today for the last time.

We wish her every success in the future.

HIS EXCELLENCY THE PRESIDENT:—I am sure that all the Official Members will wish to join me, too, in associating myself with that tribute paid to Mrs. CHOK for her ever efficient, ever diligent and ever courteous attention to the business of the Council over a period of time. We, too, wish her every success.

In accordance with Standing Orders I now adjourn the Council until 2.30 p.m. on Tuesday 24 July 1984.

Adjourned accordingly at twenty-seven minutes past three o'clock.