

OFFICIAL REPORT OF PROCEEDINGS**Wednesday, 16th August 1972****The Council met at half-past Two o'clock**

[Mr PRESIDENT in the Chair]

PRESENT

HIS EXCELLENCY THE ACTING GOVERNOR (*PRESIDENT*)
SIR HUGH SELBY NORMAN-WALKER, KCMG, OBE, JP
THE HONOURABLE THE COLONIAL SECRETARY (*Acting*)
MR SAMUEL TEDFORD KIDD, JP
THE HONOURABLE THE ATTORNEY GENERAL (*Acting*)
MR GRAHAM RUPERT SNEATH, QC, JP
THE HONOURABLE THE SECRETARY FOR HOME AFFAIRS
MR DONALD COLLIN CUMYN LUDDINGTON, JP
THE HONOURABLE THE FINANCIAL SECRETARY
MR CHARLES PHILIP HADDON-CAVE, JP
DR THE HONOURABLE GERALD HUGH CHOA, CBE, JP
DIRECTOR OF MEDICAL AND HEALTH SERVICES
THE HONOURABLE JACK CATER, MBE, JP
DIRECTOR OF COMMERCE AND INDUSTRY
THE HONOURABLE DENIS CAMPBELL BRAY, JP
DISTRICT COMMISSIONER, NEW TERRITORIES
THE HONOURABLE PAUL TSUI KA-CHEUNG, OBE, JP
COMMISSIONER OF LABOUR
THE HONOURABLE GEORGE TIPPETT ROWE, CBE, JP
DIRECTOR OF SOCIAL WELFARE
THE HONOURABLE ARTHUR PATRICK RICHARDSON, JP
DIRECTOR OF URBAN SERVICES (*Acting*)
THE HONOURABLE CHARLES JOHN GRAFTON LOWE, JP
DIRECTOR OF EDUCATION (*Acting*)
THE HONOURABLE JOHN CHARLES CREASEY WALDEN, JP
COMMISSIONER FOR RESETTLEMENT (*Acting*)
THE HONOURABLE ALEXANDER STUART ROBERTSON, JP
DIRECTOR OF PUBLIC WORKS (*Acting*)
THE HONOURABLE WOO PAK-CHUEN, OBE, JP
THE HONOURABLE WILFRED WONG SIEN-BING, OBE, JP
THE HONOURABLE MRS ELLEN LI SHU-PUI, OBE, JP
THE HONOURABLE WILSON WANG TZE-SAM, OBE, JP
THE HONOURABLE HERBERT JOHN CHARLES BROWNE, OBE, JP
DR THE HONOURABLE CHUNG SZE-YUEN, OBE, JP
THE HONOURABLE LEE QUO-WEI, OBE, JP
THE HONOURABLE OSWALD VICTOR CHEUNG, OBE, QC, JP
THE HONOURABLE ANN TSE-KAI, OBE, JP
THE HONOURABLE ROGERIO HYNDMAN LOBO, OBE, JP
THE HONOURABLE MRS CATHERINE JOYCE SYMONS, ODE, JP
THE HONOURABLE JAMES WU MAN-HON, JP
THE HONOURABLE LI FOOK-WO, OBE, JP
THE HONOURABLE HUGH MOSS GERALD FORSGATE, JP

IN ATTENDANCE

THE CLERK TO THE LEGISLATIVE COUNCIL
MR RODERICK JOHN FRAMPTON

Papers

The following papers were laid pursuant to Standing Order No 14(2): —

<i>Subject</i>	<i>LN No</i>
Subsidiary Legislation: —	
Clean Air Ordinance.	
Notification of Approved Devices	149
Sessional Papers 1971-72: —	
No 59—Annual Departmental Report by the Government Printer for the year 1971-72 (published on 16.8.72).	
No 60—Report of the Hawker Control Force Welfare Fund for the year ending 31st March 1972 (published on 16.8.72).	
Agreement: —	
Loan agreement between Government of Hong Kong and Asian Development Bank dated 1st August 1972 with side letters.	

Oral answers to questions

Traffic congestion in Clear Water Bay Road

1. MR H. M. G. FORSGATE asked: —

In view of the considerable traffic delays experienced on the Clear Water Bay Road, particularly at weekends, will Government say:

- (a) whether any temporary palliatives can be adopted to relieve the situation; and
- (b) whether there is any long term plan to provide an alternative route to the Sai Kung peninsula?

MR A. S. ROBERTSON: —Sir, it is not easy to find temporary palliatives to assist in relieving the heavy congestion on the Clear Water Bay Road, which is especially bad at weekends in the summer months. However, last summer, from April until October, goods vehicles were barred from the uphill lanes at the critical section between Ping Shek Estate and Fei Ngo Shan Road junction between the hours of 9 *a.m.* and 12 noon on Sundays and public holidays. This arrangement was

successful in improving traffic flow, and the restriction has therefore been reimposed this year. Unfortunately, landslips in the June rainstorms negated the advantage gained, but the repair works will soon be completed, and conditions will then improve.

For this same uphill section, construction of a 4-lane road on a completely new alignment will begin soon and work should be completed by the end of 1975. An item for the improvement of a further section of the route, from Anderson Road to Hiram's Highway, has been recommended for inclusion in Category B of the Public Works Programme, and it is envisaged that construction should begin next year. These road improvement measures will be designed to give adequate capacity for weekend as well as weekday traffic.

On the question of an alternative route to the Sai Kung peninsula, there are plans under consideration for extension of the Siu Lek Yuen Road at Sha Tin to link up with the Ma On Shan Road, which is under construction, to provide a route to the Sai Kung peninsula on the south side of Tolo Channel. The timing of this route is, however, still indefinite.

Fees in English-speaking schools

2. MR P. C. WOO asked: —

In view of the Colonial Secretary's assurance given in the Legislative Council on 26th April 1972 that the most serious and urgent consideration would be given to the Report of the Select Committee of the Legislative Council on fees for English-speaking schools, is Government now in a position to make an announcement on this subject?

THE COLONIAL SECRETARY (ACTING) (MR S. T. KIDD): —Yes, Sir, when the Colonial Secretary gave this Council the assurance mentioned, he said that we were inviting certain interested organizations to give their comments and views. This was done; and I should like now to acknowledge the valuable assistance thus obtained from the English Schools Foundation, from the Joint Council of Parent-Teacher Associations of English-speaking Schools and from the Association of European Civil Servants. Their advice, and their understanding of the problems we faced, have enabled us to decide how to proceed.

In its report the Select Committee examined costs and made certain observations about how the principle of parity of subsidy should be implemented. It accordingly found that fees in the English-speaking schools should become

[THE COLONIAL SECRETARY (ACTING)] **Oral Answers**

\$1,000 per annum at Government, and
\$1,640 per annum at Foundation, Primary Schools-, and
\$1,500 per annum at Government, and
\$2,450 per annum at Foundation, Secondary Schools.

It nevertheless commented on the desirability of maintaining a reasonable degree of uniformity in fee levels at these schools, and suggested how this might be done.

Both the Foundation and the PTA Joint Council subsequently stressed the need for uniformity.

It is now proposed to work out suitable means of putting Foundation and Government Schools on to a common basis, with agreed staffing ratios, salary scales and so on. It is also proposed to examine the case for spreading some costs which now fall on the Foundation but which might more equitably be a charge on the whole English School system.

This will take time; though the intention is to complete the task during 1973.

Meanwhile it would, against the background I have explained, be undesirable for fees to diverge sharply. Moreover their temporary divergence could not easily be justified when (as the Select Committee itself recognized) the present costs of the two groups of schools are difficult, if not quite impossible, to compare with precision.

In the circumstances, the fairest interim arrangement possible is to calculate fees by taking the levels mentioned by the Select Committee and producing average figures, weighted to reflect the number of places at Government and Foundation Schools respectively. The fees introduced next January will thus be

\$1,150 per annum at Primary Schools; and
\$2,050 per annum at Secondary Schools.

Details of the grants then payable during 1973 to the Foundation have been agreed with all concerned and the necessary additional funds approved by the Finance Committee of this Council. These grants will enable it to operate viably.

With effect from next January Government will, as an employer, also introduce local education allowances for its own employees.

The report of the 1971 Salaries Commission pointed to the need for these, leaving details for later determination.

The intention now is to grant suitable allowances covering part of the additional cost of schooling for those children whose parents have no choice but to pay more than basic charges.

Control of traffic in Cross Harbour Tunnel

3. MR T. K. ANN asked: —

In view of the blatant violation of traffic regulations by many in the Cross Harbour Tunnel in its first few days of operation in changing lanes and overtaking, will Government enforce strict observance of traffic regulations by the tunnel users by more vigilant surveillance with the view of ensuring public safety?

THE ATTORNEY GENERAL (ACTING) (MR G. R. SNEATH): —Sir, changing lanes and overtaking in the tunnel, to which my honourable Friend refers in his question, is a contravention of by-law 9 of the Cross Harbour Tunnel By-laws, which prohibits a person from crossing the double white lines in the tunnel. To do so constitutes an offence for which the by-laws provide a penalty of up to \$1,000. I am glad of this opportunity for emphasizing, again in public, that crossing the double white lines in the tunnel is an offence.

Under the Cross Harbour Tunnel Ordinance the Tunnel Company has the primary and immediate responsibility for the control and safety of vehicles and their occupants whilst they are in the tunnel. The tunnel officers have been given statutory powers to enable them to exercise the necessary control; and section 35 of the Ordinance requires the Tunnel Company to provide adequate personnel and facilities for carrying out their responsibility in this matter. The Commissioner for Transport is satisfied that the Company is providing adequate personnel and facilities and also is confident of their intention and ability to exercise full and proper control.

I should add, Sir, that under the Cross Harbour Tunnel Regulations any accident which may occur in the tunnel involving damage or injury to any person must be reported to the Police and dealt with in accordance with the provisions of the Road Traffic Ordinance.

Polysterene boom at Middle Bay

4. MR WILFRED S. B. WONG asked: —

Would the Director of Urban Services make a statement on the durability of the polysterene boom with plastic connections which was installed at Middle Bay a few weeks ago?

Oral Answers

MR A. P. RICHARDSON: —Sir, the beach marking boom to which my honourable Friend refers is a modified oil boom. It was modified by the supplier in an endeavour to protect the beaches from pollution by refuse as well as by oil. As a preventive measure the experiment has had only limited success, as the boom itself has not proved to float high enough above the water and the net has already been damaged on several occasions. It is as yet too soon to give an opinion on the durability of the boom itself under Hong Kong's conditions.

My department is at present seeking information about a variety of different booms from known suppliers and from beach authorities in other parts of the world in order to determine which type is best suited to the needs of Hong Kong. On the one hand we need fairly sturdy booms to prevent the flow of refuse, while on the other we need booms which can be readily removed with the approach of typhoons.

Oil pollution at Repulse Bay

5. MR WONG asked: —

Is the Director of Urban Services aware that oil saturated mud was floating on the morning of 6th August at Repulse Bay causing hundreds of people to suffer the inconvenience of having it removed from the hairs of their bodies? If so, what measures does he envisage taking to protect swimmers from this pollution?

MR RICHARDSON: —Sir, neither my staff nor I have any knowledge of "oil saturated mud" floating in Repulse Bay on 6th August 1972. There has, however, been a fair amount of phyto-plankton in the area over the past week or so and, swimming before breakfast on the morning of 7th August, I myself was covered with it. These brown-coloured floating plant organisms which contain natural oils are quite common in Hong Kong waters at this time of the year. The substance which may cling to one's body is quite harmless and is not too difficult to remove.

Traffic congestion at the junction of Repulse Bay Road/ Stubbs Road/Tai Hang Road

6. MRS ELLEN LI asked: —

In view of the many housing development projects in the Repulse Bay area, has Government any plans in hand to

improve the flow of traffic which is particularly congested around the roundabout at the junction of Repulse Bay Road, Stubbs Road and Tai Hang Road?

MR ROBERTSON: —Sir, plans are indeed in hand, and items are in the Public Works Programme to improve the flow of traffic on the route from Repulse Bay all the way to Queen's Road East.

Widening of Wongneichong Gap Road has been in progress for some time, although completion of this section of the route has been delayed by the very difficult nature of the ground near the Stubbs Road junction.

The PWD has prepared preliminary plans for the construction of a flyover junction at the Tai Hang Road/Stubbs Road roundabout, and consultants have been appointed for its detailed design and construction. The consultants are also at present investigating the possibility of making some interim improvements to assist traffic flow, and I hope that these can be introduced before next summer.

Finally, there are plans for the widening of Stubbs Road from Queen's Road East to Tai Hang Road, and for the widening of the whole of Repulse Bay Road. These schemes are less urgent than the work at the roundabout but, nevertheless, I hope that work on them can begin in two to three years time.

MRS LI: —Sir, may I ask a supplementary question? Can my honourable Friend tell me what is the interim improvement he has in mind?

MR ROBERTSON: —Sir, there are possibilities of introducing traffic lights at the junction; there are possibilities that some widening works may be carried out in advance of the flyover works. These are the things which the consultants are considering at the present time to decide the feasibility of introducing them.

Urban Council

7. MR R. H. LOBO asked: —

When are consultations scheduled to take place between Government and the Urban Council to ensure a smooth handover of responsibilities on 1st April 1973?

THE COLONIAL SECRETARY (ACTING) (MR KIDD): —Sir, the first meeting between the Finance and General Purposes Select Committee of the Urban Council and the officials who have been working on the proposals in the White Paper will take place later this month.

Oral Answers

Parking income at Government multi-storey car parks

8. DR S. Y. CHUNG asked: —

Will Government give details of hourly parking receipts and monthly ticket parking receipts respectively for each of the six Government multi-storey car parks for the month of July this year after the increase of charges and compare them with those for June 1972 prior to the increase?

THE FINANCIAL SECRETARY (MR C. P. HADDON-CAVE): —Sir, the breakdowns of comparative costs for hourly parking receipts and monthly ticket parking receipts requested by my honourable Friend are given in the paper laid before honourable Members. These figures are for the months of June and July 1972.

GOVERNMENT MULTI-STOREY CAR PARKS STATISTICS FOR JUNE 1972 AND JULY 1972

Car Park	Hourly Parking			
	Tickets Issued		Parking Receipts	
	June 1972	July 1972	June 1972	July 1 972
			\$	\$
Garden Road	14,521	16,421	37,950.10	58,013.10
Rumsey Street	12,557	12,161	39,469.80	50,887.90
Star Ferry	14,232	15,755	33,276.90	52,489.00
Middle Road	8,593	10,008	20,958.70	30,877.80
Yau Ma Tei	10,683	13,895	22,334.70	36,165.90
City Hall	4,181	5,513	9,618.60	17,128.90
	64,767	73,753	\$163,608.80	\$245,562.60

Car Park	Monthly Ticket Parking				Total	
	Tickets Issued		Parking Receipts		Parking Receipts	
	June 1972	July 1972	June 1972	July 1972	June 1972	July 1972
			\$	\$	\$	\$
Garden Road	793	763	95,160.00	152,600.00	133,110.10	210,613.10
Rumsey Street	841	759	100,920.00	151,800.00	140,389.80	202,687.90
Star Ferry	745	652	89,400.00	130,400.00	122,676.90	182,889.00
Middle Road	836	730	100,320.00	146,000.00	121,278.70	176,877.80
Yau Ma Tei	360	377	43,200.00	75,400.00	65,534.70	111,565.90
City Hall	-	-	-	-	9,618.60	17,128.90
	3,575	3,281	\$429,000.00	\$656,200.00	\$592,608.80	\$901,762.60

Toll tariff for Cross Harbour Tunnel

9. DR CHUNG asked: —

Since the initial tolls of \$2.50 for a private car, \$5.00 for a double-decker bus and \$7.50 for a lorry were already fixed by a resolution in this Council in 1965, what justification does Government have in permitting the Tunnel Company to make huge increases of tolls at this stage amounting to 100% for a private car, 200% for a double-decker bus and more than 200% for a heavy lorry with three axles?

THE FINANCIAL SECRETARY (MR HADDON-CAVE): —Sir, before I proceed to give the justification sought by my honourable Friend, I should like, with your permission, to recall a debate in this Council on 4th June 1969 on the second reading of the bill which has now become the Cross Harbour Tunnel Ordinance. In moving the second reading of the bill, my predecessor stated, and I quote:

"A number of other points which are included in the Schedule to the original Resolution, in particular those relating to the grant of land, are also unsuitable for incorporation in the bill, and will be covered by a supplementary agreement to be entered into between Government and the Company. This supplementary agreement also sets out that the initial tolls, in line with paragraph 14 of the Schedule to the original Resolution, should not be less than \$2.50 for a private car, \$5 for a double-decker bus and \$7.50 for a lorry. The actual fixing of the tolls will be subject to compliance with the requirements of clause 40 of the bill which require that all tolls should be subject to agreement between Government and the Company."

Later in the same debate, in reply to a point raised by my honourable Friend Mr SZETO, my predecessor said, and again if I may quote:

"I think we are committed to what my honourable Friend called the arbitrary fixing by the Council in 1965 as a starting point. But how any variation in future may be determined will be a matter, I think, for the Governor in Council who must agree with the Company; or for an arbitrator in the event of disagreement."

Sir, in considering and recommending the present toll structure of the Cross Harbour Tunnel Company, the Government had in mind the initial basic fare structure included in the resolution quoted by my honourable Friend, but only had this initial basic fare structure in mind *as a starting point*. The situation in 1972 is very different from that in 1965. Since that time, for example, construction costs have

[THE FINANCIAL SECRETARY] **Oral Answers**

risen, public transport fares have increased, the number of vehicles on the roads has gone up by 135%, and incomes and prices generally have increased significantly. My honourable Friend will also wish to be aware that, before the Cross Harbour Tunnel Company determined its tolls, it sought the advice of traffic consultants on the expected numbers of daily trips through the tunnel by each category of vehicle. The present tolls take into account these traffic projections, as well as other economic factors such as the current level of public transport fares, especially ferry fares, the cost of the tunnel itself, and the extent to which the public might reasonably be expected to pay for the convenience and time saved by the use of the tunnel.

Finally, Sir, my honourable Friend may wish to know that the present tolls have been considered and supported by the Transport Advisory Committee, and this was done before they were approved by the Governor in Council under section 40 of the Cross Harbour Tunnel Ordinance. The Committee also advised, and the Governor in Council decided, that the Company should be asked to review these rates six months after the opening of the tunnel. This decision has been conveyed to the Company.

DR CHUNG: —Sir, will my honourable Friend explain why the standard criterion of return on net fixed assets as used for controlling profits and determining fares of many public utility companies is not used for the present case of the Tunnel Company, and will my honourable Friend indicate, if this criterion were used, the estimated return on net fixed assets for the Tunnel Company based on the increased toll charges?

THE FINANCIAL SECRETARY (MR HADDON-CAVE): —I personally, Sir, if I may say so, have doubts as to whether those two supplementary questions arise from the question that my honourable Friend originally asked. May I say, though, that it is an exaggeration to say that there is a standard criterion for controlling privately owned public utility companies. The situation of the Cross Harbour Tunnel Company is in marked contrast to the situation of, for instance, the bus companies and I would remind my honourable Friend that the assets created by the Company's investments will revert to public ownership in due course.

DR CHUNG: —Sir, in my question I asked originally what justification Government had in permitting the Tunnel Company to make huge increases of toll charges, and I was trying to ask a supplementary question as to why this criterion, which was used for the Kowloon

Motor Bus Company and the China Motor Bus Company in assessing their fare structures, was not used for the Tunnel Company which in my opinion is fairly comparable.

THE FINANCIAL SECRETARY (MR HADDON-CAVE): —I have explained, Sir, the historical circumstances leading to the fixing of the present tariff of tolls. I have also explained that the Company is obliged to consult the Government again about this tariff. If in all the circumstances it is thought that the tariff should be amended in any way then this will be done.

Box junctions for busy road intersections

10. MR FORSGATE asked: —

In order to obviate traffic jams at busy road junctions will Government introduce legislation to provide for box junctions at important intersections controlled by traffic lights?

MR ROBERTSON: —Sir, the Transport Department, the Police and the Public Works Department have already decided to pursue the possibility of assisting the free flow of traffic at busy light-controlled intersections by the use of “box junctions”. However, before box junctions can be introduced, it will be necessary to pass legislation which will make it an offence to enter such junctions—which would be well-defined—until the exit route was clear. This should ensure that through traffic will not be blocked by stationary cross-traffic. I hope that priority can be given to drafting the necessary legislation.

However, the success of such a system would depend to a great extent on the co-operation of the individual motorist, and I believe that with such co-operation and good driver discipline many traffic jams which at present occur would be avoided without the need for box junctions.

Court reporters

11. MR OSWALD CHEUNG asked: —

Is Government aware of the shortage of Court Reporters, and that the present strength is not capable of providing the court reporting required by law and, if so, what steps does Government intend to take to alleviate or improve the situation, and when might such steps be expected?

Oral Answers

THE COLONIAL SECRETARY (ACTING) (MR KIDD): —Sir, I am grateful to my honourable Friend for drawing attention to difficulties over court reporting which have been causing concern.

The present Court Reporters strength is 16, but there are in addition three vacant posts which should soon be filled.

There may well be a need to create further posts; and a recent request from the Registrar of the Supreme Court for more is now being given urgent attention and I hope we can reach a conclusion very shortly.

MR CHEUNG: —Sir, is Government aware that, even if these posts are created and filled, the Court Reporters would be able barely to cover criminal proceedings leaving no staff to cover civil proceedings?

THE COLONIAL SECRETARY (ACTING) (MR KIDD): —Sir, the Government is aware of the difficulties at present attending upon court reporting and these will be factors that will be taken into account in the review that is now being made of the current staffing position.

MR CHEUNG: —Do the steps which Government intends taking include a review of the salary scale and conditions of service for Court Reporters, seeing that there are three vacant posts not filled?

THE COLONIAL SECRETARY (ACTING) (MR KIDD): —Sir, in my original reply I did point out that three vacant posts would soon be filled; this is a matter of weeks. On the other point raised by my honourable Friend, I do not think that I can anticipate the conclusion of the review that we are now conducting; but we will certainly take into account all the factors which are relevant to this exercise.

Government business

Motion (in Committee)

SUPPLEMENTARY PROVISIONS FOR THE QUARTER ENDED 31ST MARCH 1972

Council went into Committee, *pursuant to Standing Order No 58(2)*, to consider the motion standing in the name of the FINANCIAL SECRETARY (MR HADDON-CAVE).

THE FINANCIAL SECRETARY (MR HADDON-CAVE) moved: —

That this Council approves the supplementary provisions for the quarter ended 31st March 1972, as set out in Paper No 4 of 1971-72.

He said: —Sir, the schedule for the fourth quarter of the financial year 1971-72 covers supplementary provisions totalling \$125.5 million. Of this sum, Public Works Non-Recurrent accounts for \$69.9 million, made up largely of \$19.3 million required as a result of faster progress on existing projects and \$40.3 million due generally to increased costs. Under the latter are \$16.7 million for major tunnel works for the High Island Water Scheme and \$15.5 million for the raising of Plover Cove Dams, the uprating and extension of the Sha Tin Treatment Works and Pumping Station and the Tai Po Tau Pumping Station.

Supplementary provision of \$22.5 million is required for the purchase of a block of flats and for faster progress on capital works for the Services under the Services Building programme. In accordance with the terms of the Defence Costs Agreement, the Hong Kong Government is committed to meeting expenditure on this programme of up to £ 17 million during the period 1971-76, and to paying a cash contribution to bring expenditure up to this amount in the event of under-spending. The Government Printer requires supplementary provision of \$2.7 million for increased consumption, higher cost of paper and other printing requisites and for work let out to contractors. The latter was unforeseen and consists mainly of educational television books for school children (the cost of which is fully recoverable) and fixed traffic penalty forms. The Director of Public Works requires \$5.9 million mainly for salaries to implement the 1971 salaries revision for minor staff.

The Finance Committee has approved all the items in the schedule and the purpose of this resolution is to seek the covering authority of honourable Members of this Council.

Question put and agreed to.

Council then resumed.

THE FINANCIAL SECRETARY (MR HADDON-CAVE) reported that the motion had been agreed to in committee without amendment.

Question agreed by the whole Council pursuant to Standing Order No 58(4).

Motion**PUBLIC HEALTH AND URBAN SERVICES ORDINANCE**

MR RICHARDSON moved the following motion: —

It is hereby resolved that the Public Cleansing and Prevention of Nuisances By-laws 1972, made by the Urban Council on the 8th August 1972, be approved.

He said: —The by-laws as a whole form the shaft, feathers and barb of the legislation which must be approved if the "Keep Hong Kong Clean" Campaign is to succeed. However, certain honourable Members expressed doubts as to whether the wording of by-law 5, as it now stands, could not be improved to reflect more clearly the intentions of both the Urban Council and of the Campaign Committee. Consequently, consultations have been held with certain honourable Members and I understand that my honourable Friend Mr CHEUNG will speak to the motion and that my honourable Friend the Attorney General will introduce a subsidiary motion for amendment. Dr Denny HUANG, who is both Chairman of the Campaign Committee and of the Environmental Hygiene Select Committee, has been consulted and is aware of the proposed amendment.

MR CHEUNG: —Sir, all of us can but hope that the campaign will succeed, but it did seem to some Unofficial Members, particularly to Dr CHUNG, Mr Q. W. LEE and myself, that by-law 5 as originally put forward was somewhat amorphous, vague and uncertain and possibly unjust in its operation; for instance it would have enabled an authorized officer, if litter were found on the roof of a building which were in common use, to require the occupier of the ground floor to remove the litter from the roof. Having now had an opportunity of ascertaining from the honourable Director of Urban Services what particular mischiefs these by-laws were aimed at, we suggested it might be advantageous to provide separately for public places like streets and pavements and for the common parts of a building, and we also suggested that some obligation might be put on the management committees or those who have undertaken the responsibility for maintaining the cleanliness of the common parts of a building. We are gratified that my Friend the honourable Attorney General has found it possible to redraft the by-laws more precisely and, we think, more equitably and more effectively, and we welcome the amendment which the honourable the Attorney General (Acting) will be moving in this Council.

MRS JOYCE SYMONS: —Sir, I am pleased to learn that two amendments, one to the Magistrates (Amendment) Bill 1972 and the other to

by-law 5 of the Public Cleansing and Prevention of Nuisances By-laws 1972, are being considered today, coinciding almost to the hour with a ceremony to launch the "Keep Hong Kong Clean" Campaign.

I am confident that the two amendments will demonstrate to members of the public the importance of the by-laws coupled with the earnest desire of the authorities to take a firm stand in the new action planned to seek the co-operation of the public in keeping our city clean.

Let no one make the mistake that the new campaign is just another campaign, just another Government stunt. Let no one imagine that we are merely to be cautioned, sued, encouraged or entertained. I am certain that the citizens of Hong Kong, Kowloon and the New Territories are aware that in the battle against filth a crisis has been reached, and as always in a crisis everyone is involved.

The choice is one for the people of Hong Kong. It must be self-evident that the great majority of our citizens are anxious for some wonderful metamorphosis, which can be brought about if everyone in every station of life is determined to clean up our city. The time for action has come, and the implementation of the decision to clean up the city must be matched by thought, effort and courage.

We are very fortunate to have exceptional leadership in our city these days. The genuine and positive interest shown in the "Keep Hong Kong Clean" Campaign by His Excellency the Governor augurs well for its success. The whole weight of Government will be behind the campaign, the efforts of many, including honourable Members of this Council who have worked tirelessly for months, must now be matched by the courageous co-operation of every man, woman and child. I have used the word courageous, because I mean it. To show that one cares for Hong Kong is to show courage; and as our people are normally clean in their persons and homes, it may be possible for them to be clean in the streets and on the highways and byways.

The optimism shown in the use of the word *keep* Hong Kong clean is significant. I wish a modern Confucius would pronounce an edict for our city of high-rise buildings, so that we may go about our daily business mindful of the need to be clean.

It will be a breath-taking vision indeed to observe a sparkingly clean city for the world to admire even more, for us to enjoy living in even more, and for the young to inherit with pride and gratitude. Our duty is clear.

Sir, I support the Public Cleansing and Prevention of Nuisances By-laws 1972 and the Magistrates (Amendment) Bill 1972.

Public Health and Urban Services Ordinance

DR CHUNG: —Sir, I was not intending to speak this afternoon but due to some oversight the point raised by my honourable colleague Mr T. K. ANN and myself was not relayed to Government in time. I therefore beg to ask for the indulgence of honourable Members for a few minutes to enable me, Sir, to voice a point on these by-laws.

In supporting this motion, which is part of the "Keep Hong Kong Clean" Campaign, I would like to draw my honourable Friend's attention to the implication of by-law 22(1) which reads as follows:

"An occupier of any premises or part of any premises in which there is any dangerous refuse or in which there is any trade refuse which exceeds three and one quarter cubic feet in quantity shall, before any such refuse is disposed of, inform the Council without delay of any arrangement made by him for the disposal of the refuse."

I believe each and every factory produces more than three and one quarter cubic feet of refuse every day. Sir, I therefore presume that my honourable Friend the Director of Urban Services is clearly aware that there are about 20,000 registered and recorded industrial undertakings and another 10,000 or more unregistered and unrecorded factories, making a total of over 30,000 industrial concerns, large and small, in Hong Kong.

If this by-law is enforced—I hope it will be enforced—the Urban Council will, in the next few months, be receiving more than 30,000 communications from these factories seeking clarification and direction. Will my honourable Friend the Director of Urban Services give an assurance to this Council that this proposition under by-law 22(1) is a practical one both from the point of view of the Urban Council and of industrial undertakings in Hong Kong?

THE ATTORNEY GENERAL (ACTING) (MR SNEATH): —Sir, may I rise to speak to the motion which is before the Council at this moment to answer the point raised by my honourable Friend Dr CHUNG. He does of course call for an undertaking from my honourable Friend Mr RICHARDSON, who doubtless will give it in due course if he sees fit. But it might assist if I mention the reason why there is in the by-law here this reference to trade refuse exceeding three and a quarter cubic feet in quantity.

Sir, this follows an amendment made to the similar regulations which are to apply to the New Territories which was put in at a very late stage upon the authority, Sir, of the Governor in Council to obviate, it was hoped, a flood of enquiries to the Urban Services Division by

persons who had trade refuse to dispose of and thought they were required to get directions. It was assumed that, if one limited this, *i.e.* the need to get directions, to where you had more than three and a quarter cubic feet—and I would hasten to say, Sir, that that rather curious figure is chosen because that is the standard and approved size of what I would call a "dustbin", although I think it has another name—if you have more than will go in your dustbin it was thought necessary and appropriate that you should seek directions. But the point is, Sir, that it was hoped that people who had more than that amount of trade refuse would be not so many as to flood the department.

Now I think that whether it is or not is a matter of policy and doubtless my honourable Friend Mr RICHARDSON will deal with the matter either now or at a later stage.

MR RICHARDSON: —Sir, I would agree that three and a quarter cubic feet does sound a rather odd measurement, but it is the size of the standard dustbin; it is the size of a standard dustbin normally emptied once a week in England, whereas it is emptied once a day for anyone in Hong Kong.

At the moment the law reads, I believe, that we will undertake to remove refuse for any industrial undertaking which so wishes, at a cost. Last year industrial undertakings themselves, I believe, moved something like 105,000 tons of refuse to dumps and incinerators and requested us to remove only 1,700 tons.

I speak at something of a disadvantage as I am not Chairman of the Urban Council but I think, and I believe, that the Council did take this question into consideration when it recommended the adoption of these by-laws.

THE ATTORNEY GENERAL (ACTING) (MR SNEATH): —Sir, at this point, having obtained your permission under Standing Order No 21(1), I move without notice that the Public Cleansing and Prevention of Nuisances By-laws 1972 be amended as set forth in the paper which has been distributed to Members.

Sir, I am moving a subsidiary motion and the first thing I would like to say is that the changes do not affect the substance, and certainly do not reflect any change in policy. The intention is simply to spell out, as was indicated by my honourable Friend Mr CHEUNG, more clearly the liability which by-law 5 seeks to impose. There are really 3 changes. First, the liability on the occupier of premises to clean up a nuisance caused by litter outside his premises in a public place or in the common parts of a building was intended to be a liability imposed

[THE ATTORNEY GENERAL (ACTING)] **Public Health and Urban Services Ordinance**

on the occupiers whose front door, as it were, was immediately beside the nuisance which was found. So the first amendment is to qualify the word "premises" by stating that they are the premises adjoining, fronting or abutting on to the public place or common part of a building and having access to that public place or common part.

The second change is to split up the First Schedule which sets out those parts of a building which are called in the by-laws the common parts of a building. Then by reference to the paragraphs in the Schedule this liability on the occupier of premises is limited to nuisances in passageways, corridors, staircases, landings and courtyards: even that lengthy list, Sir, is not exhaustive but indicates the intention.

Now coming to the third change, it is that when a nuisance caused by litter occurs in a lift or on an escalator, the liability to clear it up lies on the persons having control in the management or in the cleansing of the building instead of, as was previously the case, on the occupiers of the premises. This, Sir, I suggest, is a logical development since if the tenant on, say, the 7th floor is only to be responsible for the litter in the passage, corridor and hall of the 7th floor, it seemed inconsistent to make him liable for litter in the lift which could have been put there by the tenants on any other floor.

I hope, Sir, that I have said enough to indicate the nature of, and the reasons for, these changes and to show that they do not affect the substance or the policy.

MR FORSGATE: —Sir, in rising to add my support to the adoption of these by-laws now before Council, may I say that I have been closely associated with their development both as Vice-Chairman of the Environmental Hygiene Select Committee of the Urban Council, and as a member of the "Keep Hong Kong Clean" Campaign Committee. In my opinion, as now amended, they clearly represent the requirements of both these committees in carrying out the essential anti-litter enforcement side of the campaign.

Proposed Amendments

1 Delete by-law 5 and substitute the following—

"Occupier of premises required to keep surroundings clean. **5.** (1) If any litter, glass, china, earthenware, tin or any substance likely to constitute a nuisance is found—

- (a) in a street or public place, within 20 feet of any premises fronting, adjoining or abutting on such street or public place and having direct access thereto; or

(b) in any common part of a building as is specified in paragraphs 4 and 6 of the First Schedule, within 20 feet of any premises fronting, adjoining or abutting on such common part and having direct access thereto,

a public officer authorized in writing in that behalf by the Council may by notice in writing served on the occupier of such premises, require him to remove therefrom the litter, glass, china, earthenware, tin or substance within one hour or such longer period as may be specified in the notice.

(2) If any litter, glass, china, earthenware, tin or any substance likely to constitute a nuisance is found in any common part of a building as is specified in paragraph 8 of the First Schedule, a public officer authorized in writing in that behalf by the Council may by notice in writing served on the person having control in the management or cleansing of the building, require him to remove therefrom the litter, glass, china, earthenware, tin or substance within one hour or such longer period as may be specified in the notice.

(3) A notice under paragraph (1) may also require the occupier to clean any area within 20 feet of his premises, to the satisfaction of the public officer serving the notice, within such period as may be specified in the notice.

(4) A person on whom a notice under paragraph (1) or (2) is served shall comply with the notice within the period specified therein."

2. In by-law 23(1)(b) delete "5(3)" and substitute the following—

“5(4)”

3 Delete the First Schedule and substitute the following—

"FIRST SCHEDULE

[by-law 3.]

COMMON PARTS OF A BUILDING

1. The roofs, chimneys, gables.
2. Water tanks, wells, sewers, drains, soil pipes, waste pipes, channels, water-courses, gutters, ducts, downpipes.
3. Cellars, toilets, water closets, wash houses, bathhouses and kitchens which are in common use by the occupiers of the building.
4. Ledges, yards, courtyards.
5. Compounds, garages, carpark, car ports and lanes.
6. Passageways, corridors, staircases, landings, light wells.

Public Health and Urban Services Ordinance

7. Staircase window frames and glazing, hatchways, roofways and outlets to the roofs and doors and gates giving access thereto.
8. Lifts, escalators, lift shafts and the housing of machinery and apparatus used in connexion therewith. "

Question put on subsidiary motion and agreed to.

Question put on main motion, with By-laws as amended, and agreed to.

First reading

PENSIONS (AMENDMENT) (NO 2) BILL 1972

ACCOUNTANTS BILL 1972

LEGAL AID (AMENDMENT) BILL 1972

MAGISTRATES (AMENDMENT) BILL 1972

DUTIABLE COMMODITIES (AMENDMENT) BILL 1972

**PUBLIC HEALTH AND URBAN SERVICES (AMENDMENT) (NO 4)
BILL 1972**

WATERWORKS (AMENDMENT) BILL 1972

Bills read the first time and ordered to be set down for second reading pursuant to Standing Order No 41(3).

Second reading

PENSIONS (AMENDMENT) (NO 2) BILL 1971

THE COLONIAL SECRETARY (ACTING) (MR KIDD) moved the second reading of:—"A bill to amend the Pensions Ordinance."

He said:—Sir, the bill seeks to equate the pension rights of male and female officers by abolition of the marriage bar.

The first amendment removes the Governor's power to retire a female officer on her marriage. The other substitutes "spouse" for "wife" where this appears in the relevant sections of the principal Ordinance, enabling benefits at present payable to a wife, widow and child of a male officer to be extended to the husband, widower and child of a female officer, except that any claim by the husband must be supported by satisfactory evidence of financial dependency upon his wife.

The sanction of the Secretary of State is being sought on the Pensions (Amendment) Regulations 1972. When this is obtained,

regulations will be submitted to Your Excellency in Council to be formally made; and then to this Council for approval.

MRS LI: —Sir, it is with great pleasure and satisfaction that I stand to give support to the Pensions (Amendment) (No 2) Bill now before Council. Although it has been six or seven long years since the Executive Council accepted in 1966 the principle that the marriage bar to the pensionability of female officers be withdrawn, the proposals for the implementation of this recommendation have finally been formulated.

I must here and now hasten to commend and congratulate the ladies in Government Service for their extreme patience which is considered a feminine virtue in Chinese women. However, I have a nagging suspicion that our brothers in Government have been taking some unfair advantage of their patience in putting off this issue in favour of other issues which they consider to be more important, because both the financial implications and the problem involved, if any, can not be considered so difficult or so enormous as to warrant 7 years of deliberation. However when a virtue has been rewarded eventually, we must accept it with good grace, and prepare ourselves to enjoy this hard-earned right of equality.

We appreciate the many long hours of thought and consideration given in the deliberation of the conditions of service and pension regulations which should be acceptable to our serving officers and potential young recruits at this initial and transitional stage. However, I would like to comment on three points of principle for reconsideration either at this stage or at a later occasion.

My first point concerns clause 5(1) paragraph (a) which amends section 18(1) and stipulates "a surviving spouse, a pension to the spouse, whilst he remains unmarried and of good character". It is the intention of the scheme to extend the pension benefits to widow, widower and children of the officers, either male or female provided the widow or widower remains unmarried. But I feel the second qualification that he or she be of "good character" is superfluous and could be deleted. What are the criteria for "good character"? How do we set any standard for such judgement? Can we say that a man is not of "good character" if he lives with a kept woman? How do we judge a person's character—by his standard of morals, by his activities or by his criminal tendencies?

My second point concerns the requirement for proof of "dependency" for claims of certain pension benefits by the husband upon his wife's death on duty or bankruptcy as stipulated in new clause 6. My feeling about this point is the fact that this stipulation violates the

[Mrs Li] **Pensions (Amendment) (No 2) Bill—second reading**

true meaning of equality. We are considering the principles of "rights" and "entitlement" and not about the question of financial need or a means test. Therefore I do not see the logic in the requirement for proof of dependency. In the present day Hong Kong, many housewives continue to work after marriage at jobs, professional practice or in business. It is very common for a wife to share the family responsibility and expenditure, either in the housekeeping expenses, the payment of instalments for their home or the children's education, especially when they are abroad. A woman's salary or pension certainly constitutes part of the family income to maintain a certain standard of living for the household, and her death or bankruptcy is certainly a loss to the family. The question in principle here is: is the spouse of a serving officer entitled to a pension or not. I am not here only defending the men; for once, in my life (*laughter*) I am defending a family institution where men and women share their responsibilities and therefore the benefits.

My final point concerns paid maternity leave for women officers. I am not going to repeat myself here because I have exhausted all my arguments time and again in this Council for the past many years. I would like to remind Government to take another look at the anomaly and inconsistency in the policies regarding the over-generous allowance of maternity leaves for low grade staff and none for the higher grade staff, and also the size of families for housing and tax exemption. I am not against people having as many children as they can afford to have, but as long as public money is being used to subsidize them, then the principle of equality between families must apply. Until Government has formulated a policy on population, the general principle adopted by the International Planned Parenthood Federation of two children per family should apply, in order to keep the world population at the present level.

I am sure that this bill, when enacted and together with the equal pay scheme when completed in 1975, will serve as an effective encouragement for more and more well-educated and well-trained young women to join the Civil Service. It has been proved without reservation all over the world that women employees are more loyal and stable. The restraint and patience displayed by the women nurses, the teachers and other officers are living proof of their loyalty and stability. Given the same chance for education and work opportunity, the reservoir of potential talents among women is unlimited.

After all that has been said about the long delay of this bill, which can be described in Chinese poetically as the belated appearance of Lady Beautiful after the sound of her footsteps on the stairs has been

heard for so long (*laughter*), I must congratulate at this point Government for taking the lead in closing the gap of discrimination by abolishing yet another social injustice. Thus begins a new era and a bright future for women of Hong Kong.

With these remarks, Sir, I beg to support the bill.

MR WOO: —Sir, I did not intend to speak but, on hearing my Friend's remarks on the amendment in clause 5(1), may I point out that the amendment substitutes "surviving spouse" for the word "widow" and therefore results in an equality which my Friend claims should be applied to both male and female; that is why the words "remain unmarried and of good character", which formerly applied only to the widow, now apply to both sexes. (*Laughter*).

MR Q. W. LEE: —Sir, I rise to echo the pleasure of my honourable Friend Mrs LI in her support of the Pensions (Amendment) (No 2) Bill which marks an important milestone for the conditions of service for female Government officers. I do appreciate all the feelings as expressed by her because she has been a champion in the movement for equal opportunities according to ability and regardless of sex.

As Mrs LI pointed out, the proposal to equate pensions rights of male and female officers was accepted in principle by Government as early as 1966. Six years is a long period for anyone to be patient. I have nothing but admiration for the ladies in the Civil Service for their tolerance which is now deservedly rewarded. Those who fought hard for the cause might have had a feeling of frustration. I only hope that this feeling can now be turned into satisfaction.

Although by virtue of the amendment to section 8 of the principal Ordinance female officers will no longer be required to retire upon marriage, the pensions rights for certain social and traditional reasons are not necessarily the same for both male and female officers. For example, clause 6 provides that a claim by a husband to certain pension benefits must be supported by evidence of his dependence upon his wife. The female officers are, I am sure, anxious to know whether there would be other restrictions in the eventual implementation of the policy of equating pensions rights under the Pensions (Amendment) Regulations 1972. I do hope that the married female officers can truly benefit from the offer of pensionability and that these restrictions, if any, will be minimal.

I shall be watching with great interest the response from female officers to this new arrangement; any indication of reluctance to take advantage of the offer must either be due to the attraction attached

[MR LEE] **Pensions (Amendment) (No 2) Bill—second reading**

to the existing conditions of service or to the excessive restrictions imposed on the implementation of the new policy.

Sir, I support the motion.

THE COLONIAL SECRETARY (ACTING) (MR KIDD): —Sir, I am grateful to my honourable Friends Mrs LI and Mr Q. W. LEE for their support of this legislation which has indeed, as has been pointed out very eloquently, taken some considerable time to reach this Council.

If I may comment on two aspects of the speeches which have a direct bearing on this legislation: first of all, my honourable Friend Mrs LI referred to the question of "good character". Mr Woo has already pointed out that the terminology has not changed as used in the principal Ordinance, but I do agree that it is a phrase which is somewhat difficult to define, and perhaps I can illustrate the position most clearly by one example. This would be in the case where a husband and wife deserted their family. In those circumstances, it would be open to the Governor to increase the benefits for the children of the family. In other words, that kind of situation is encompassed by the use of this term "of good character".

On the second point which has been referred to both by my honourable Friend Mrs LI and by my honourable Friend Mr Q. W. LEE—the question of the need for evidence of dependency of the husband—this may indeed appear to reflect on the Government's recognition of the equality of the sexes. But, it is, I believe, a fair recognition of the prevailing situation in which in the majority of the households the husband is responsible for the maintenance of the household. Should this social situation change, then it would be a simple matter to review the provisions of the legislation.

What I have said, Sir, I hope will serve to answer the comments by my honourable Friends. But I shall, before we proceed to be committee stage, consider again what has been said and see whether or not any amendments should be moved.

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).

Explanatory Memorandum

The amendments proposed by this Bill seek to equate the pension rights of male and female officers. The latter will no longer be required to retire upon marriage (by virtue of the amendment to section 8). Benefits which under the existing law pertain only to a wife, widow and child of a male officer are now extended to the husband, widower and child of a female officer, save that any claim by a husband must be supported by satisfactory evidence of financial dependency upon his wife.

ACCOUNTANTS BILL 1972

THE ATTORNEY GENERAL (ACTING) (MR SNEATH) moved the second reading of:—"A bill to establish the Hong Kong Society of Accountants and to provide for the registration and control of accountants, and for matters ancillary to or connected with the purposes aforesaid."

He said:—There has, Sir, been for some time a feeling that accountants should have their own professional body in Hong Kong, and that such a body should assume responsibility for training accountants and for controlling the practice of accountancy here.

At present auditors who are required to perform functions under the Companies Ordinance are under the control of the Authorized Auditors Board established by that Ordinance. That Board was charged with the duty of registering persons whom it deemed to be duly qualified; and it also exercised disciplinary powers. The Board will disappear with the repeal of the relevant sections of the Companies Ordinance by this bill; and clause 43 provides that henceforth any reference in our legislation to an auditor or to an auditor whose name is on the Authorized List of Auditors kept under the Companies Ordinance shall be treated as a reference to an accountant holding a practising certificate under the proposed Ordinance.

The main purpose of the bill therefore is to establish in Hong Kong a Society of Accountants, and to give it statutory responsibility not only for maintaining a register of duly qualified accountants and for regulating their professional conduct and practice, but also for their training and examination. This latter, Sir, is a most important aspect of the work of the proposed Society. Up till now embryo accountants—if I may call them that—had to go overseas to qualify or else seek enrolment here in Hong Kong with the Australian Society of Accountants, which body in fact is conducting its last examinations here later this year, or alternatively the would be accountant could enrol with the Association of Certified Accountants—who also conduct examinations. I would

[THE ATTORNEY GENERAL (ACTING)] **Accountants Bill—second reading**

like, Sir, to take this opportunity of acknowledging the debt owed to these two bodies for the help they have given in the past in this field.

The new Society will be a corporate body comprised of all accountants registered under the Ordinance, and I will explain in a moment, Sir, how one qualifies to be registered. The Society would have a President and a Vice-President elected by the Society's own Council, which itself will consist of my Friend the honourable Financial Secretary or his representative, the Accountant General or his representative and 10 accountants elected each year at the Society's Annual General Meeting; and, Sir, the President and Vice-President must be chosen from amongst those elected members of the Council.

This Council will have vested in it the general management and conduct of the Society, including the appointment of a disciplinary committee to undertake any disciplinary proceedings which may become necessary. This Committee may order the removal from the register of the name of any accountant whom it finds—after due inquiry, of course—to have done any of the things as set out in clause 34, which things include being convicted of an offence under the Perjury Ordinance—or of any other offence involving dishonesty (whether in Hong Kong or elsewhere)—being guilty of professional misconduct or of dishonourable conduct as an accountant, or wilfully refusing to comply with the Society's by-laws. An appeal lies to the Full Court against an order that an accountant's name be struck off this register.

The general administrator of the Society will be its Registrar who would be appointed under clause 21 by the Council; and naturally one of his main functions will be to maintain the register.

And so, Sir, now I should revert to the question of how one gets on to the register. Clause 24 sets out the qualifications that are required. A person must be over 21, be of good character—qualification with which I hope nobody will object (*laughter*)—and either a member of one of the institutions set out in the schedule for the bill, or else have passed such examinations in accountancy and have acquired such practical experience as the Society may prescribe. A person possessing all these qualifications does not thereby become entitled to registration, for clause 26 empowers the Council of the Society to reject an application for registration, but if it does so it must state the reason and give notice of that reason to the applicant. However, a person whose name is at present on the list of Authorized Auditors kept under the Companies Ordinance is entitled to have his name placed on the register and entitled thereafter to obtain a practising certificate, and furthermore for the first six months following the coming into force of this Ordinance

such a person may continue to perform those duties which the Companies Ordinance requires to be performed by an auditor.

Once on the register an accountant may obtain for each year a practising certificate. This is his passport to practise public accountancy; this being the term used in the bill for the practice of accountancy for reward. Each practising accountant is required to have a registered office and to notify the Registrar of any change of address of that office. Clause 29, Sir, prohibits any person not authorized under the bill from practising public accountancy—that is accountancy for gain—and similarly requires auditors of companies to be accountants possessing practising certificates. To practise accountancy for gain or to pretend to be qualified to do so are both made offences under clause 42.

That, Sir, is all I propose saying about the bill. Honourable Members will find in the Explanatory Memorandum attached to it more details about the various clauses. But in conclusion, Sir, I would like to pay tribute to the Working Party comprised of leading members of this profession who gave much time and thought to the preparation of the drafting instructions for this bill. I understand that the finished product here today has their blessing and, of course, it was also approved by a Government Working Party.

MR WONG: —Sir, I welcome this legislation to establish the Hong Kong Society of Accountants and to provide for the registration of accountants and regulation of their professional practice and conduct and training. This bill clearly defines the organization, objects, and powers of the Society of Accountants and will bring order into a very important profession in our society.

There is one point, however, on which I would like to seek a modification. Clause 29 reads:

"**29.** (1) No person shall practise public accountancy unless he is registered as an accountant and holds a practising certificate.

(2) No person other than an accountant holding a practising certificate shall hold any appointment or render any services, whether unpaid or otherwise, —

(a) as an auditor of a company within the meaning of the Companies Ordinance; or

(b) as an auditor of accounts for the purpose of any other Ordinance.

(3) Nothing in this Ordinance shall prevent—

(a) a person, who is not offering his services to the public as an accountant or auditor, from the use of such a designation in respect of his salaried employment;

[MR WONG] **Accountants Bill—second reading**

- (b) a person from—
- (i) practising publicly and describing himself as a secretary, book-keeper, tax-consultant or cost-consultant; or
 - (ii) describing himself by any other designation not conveying the impression that he is entitled to practise public accountancy; or
- (c) a member of a club, institution or association, which is not carried on with a view to profit, from acting as auditor of the club, institution or association."

I am thinking in terms of the incorporated non-profit making charitable organizations which number in hundreds. It is traditional that these organizations would normally have their books audited by a qualified accountant now to be registered under the Ordinance but not necessary holding a practising certificate. It is unlikely that due to the demand on his time a person holding a practising certificate would feel able to render free service to charitable organizations which in the past have been helped by public spirited qualified accountants. This new bill would put these charitable institutions in an invidious position by depriving them of the traditional service which has hitherto been given to them. Therefore, if Government agrees, at the committee stage I would propose to add an amendment between clauses 44 and 45 reading as follows:

"This Ordinance shall not apply to a person who is registered as an accountant under section 22 not holding a practising certificate but authorized by the Council of the Society to audit the books without reward of any charitable institution or trust of a public character whose name appears in the list of charitable institutions and trusts published in the *Gazette* from time to time for the purpose of the Inland Revenue Ordinance (Chapter 112)."

With these remarks, I support the motion.

THE ATTORNEY GENERAL (ACTING) (MR SNEATH): —Sir, I welcome both the support of my honourable Friend and also the point he has made, because I am sure that Hong Kong would not wish to lose the valuable services that accountants have given freely in the past in helping charitable organizations to tot up their books. Indeed I hope we can agree a form of amendment to be moved at the committee stage to preserve the position.

Question put and agreed to.

Bill read the second time.

Bill committed to a committee of the whole Council pursuant to Standing Order No 43(1).

Explanatory Memorandum

This Bill provides for the registration of accountants and the regulation of their professional practice and conduct. It also contains provisions prohibiting unregistered persons from practising public accountancy.

2. *Part I. Preliminary.*

Clause 1 provides for the commencement of the Bill. Clause 2 contains definitions the most important of which is "public accountancy".

3. *Part II.*

This Part provides for the incorporation, as a body corporate with perpetual succession, of the Hong Kong Society of Accountants (hereinafter referred to as the Society). Provisions for the appointment of a President and Vice-President of the Society and for the Society to have a common seal are contained in clauses 4 and 6.

Clause 7 specifies the objects of the Society. Subject to approval by the Governor in Council, the Society is empowered by clause 8 to make by-laws relating to specified matters.

4. *Part III. The Council of the Society.*

Clause 10 establishes the Council, which will be the governing body of the Society. Clause 11 makes provision for filling casual and other vacancies for elected members of the Council. Clause 12 deals with the retirement of elected members in rotation.

Clause 13 specifies the procedure to be followed for the election of accountants as "elected members" of the Council. In certain events, such as resignation, absence from meetings of the Council or bankruptcy, an elected member will be deemed to have vacated the Council (clause 15).

Clauses 18 and 19 confer powers upon the Council, and clause 20 provides for the reimbursement of expenses of Council members.

5. *Part IV. The registration of accountants.*

Under this Part, the Council is required to appoint a Registrar of Accountants, who will be the secretary to the Society. The

Accountants Bill—second reading*[Explanatory Memorandum]*

Registrar's duties include maintaining the register of accountants, which will be open to public inspection. He will also be responsible for the issue to accountants of certificates of registration.

Clause 24 specifies the qualifications required for registration as an accountant. Any person whose name is on the list of Authorized Auditors kept under section 131(3) of the Companies Ordinance (Cap. 32) will be entitled to be registered as an accountant.

Clauses 25 and 26 deal with the procedure to be followed on application for registration as an accountant. In circumstances such as the resignation or death of an accountant, or failure to renew registration annually in accordance with clause 28(1) the Council is required to order the removal of the name of the accountant in question from the register (clause 27). An accountant practising public accountancy is required to hold a practising certificate, which will be issued to him only if the Council is satisfied that he has had the prescribed practical experience. Accountants who are registered as such by reason solely of the fact that their names appeared in Part II of the list of Authorized Auditors kept under section 131(3) of the Companies Ordinance will however be entitled to be issued with a practising certificate (clauses 29 and 30). By clause 31, every accountant practising public accountancy is required to maintain a registered office. Failure to do so will be an offence punishable on conviction by a fine of \$1,000. An official list of accountants is required to be published annually in the *Gazette*. This list will be evidence that a person named in it is an accountant holding a practising certificate, and a certificate by the Registrar as to certain matters relating to the registration of accountants will be evidence of the facts stated therein (clause 32).

6. *Part V. The Disciplinary Committee.*

Clause 33 sets out the membership of the Disciplinary Committee, which is to consist of three members of the Council. The Committee's duty is to investigate complaints of misconduct by an accountant. Its powers are contained in clauses 35 and 36.

By clause 37, complainants, and accountants who are the subject of disciplinary inquiries, are entitled to be legally represented before the Disciplinary Committee. The Disciplinary Committee, upon being satisfied as to the truth of a complaint referred to it by the Council, may order the removal of the name of the accountant in question from the register either permanently

or for a specific period, or that the Registrar is to record a reprimand in the register in respect of the accountant. Alternatively, the Disciplinary Committee may postpone judgment on the complaint for a period not exceeding two years (clause 35).

Clause 39 enables a person whose name has been removed from the register of accountants to apply to the Council for the restoration of his name to the register. By clause 41, an appeal will lie to the Full Court by a person whose application for registration as an accountant has been rejected, or by an accountant whose application for a practising certificate has been refused, whose name has been removed from the register for any reason or who has been reprimanded by the Disciplinary Committee.

Clause 42 creates offences punishable on conviction by a fine of \$2,000 and imprisonment for 6 months. In particular the practice of public accountancy by a person who is not an accountant holding a practising certificate is an offence.

7. *Part VII. Miscellaneous provisions.*

By clause 43 a reference in any legislation to "an auditor", or to "an auditor whose name is in the authorized list of auditors kept under section 131(3) of the Companies Ordinance" is to be construed as referring to an accountant holding a practising certificate. The Bill will not apply to the Director of Audit or to public officers in connexion with the discharge of their public duties (clause 44). By clause 45 a person who does not hold a practising certificate will not be able to recover fees charged by him for public accountancy work. Provision is made in clause 47 for the amendment, by order of the Governor, of the Schedule of "approved institutes". Clause 48 provides that Council meetings and general meetings of the Society will not be invalidated by failure to give notice thereof. Clause 49 makes provision for the resignation of accountants from the Society. Clause 50 is a transitional provision designed to enable persons whose names appear in the authorized list of auditors kept under section 131(3) of the Companies Ordinance (Cap. 32) to continue to perform the duties of auditors for six months after this Bill comes into operation. Clause 51 deals with the appointment of the first Council members and the holding of the first meeting of the Council. Except in relation to anything done or suffered or omitted to be done before this Bill comes into operation, certain provisions of the Companies Ordinance are repealed, and rules relating to authorized auditors are revoked (clause 52).

LEGAL AID (AMENDMENT) BILL 1972

THE ATTORNEY GENERAL (ACTING) (MR SNEATH) moved the second reading of:—"A bill to amend the Legal Aid Ordinance."

Legal Aid (Amendment) Bill—second reading

He said: —Sir, it is intended that legal aid officers and of course the Director, his Deputy and Assistant Directors, shall go into court to conduct cases on behalf of legally aided persons. It is therefore necessary to ensure that they do so on the same footing as barristers and solicitors who practise regularly in these courts. Clause 2 replaces subsection (3) of section 3 for that purpose.

It is also necessary, Sir, to provide that the normal fees and costs which become due in the course of litigation are recoverable when legal aid officers conduct such litigation, and so clause 3 seeks to amend section 28 to enable the Governor in Council to make regulations for this purpose.

Honourable Members may have noted that though I refer to legal aid officers conducting litigation, that office as such is not mentioned in the Ordinance, and hence the proposed new subsection (3) of section 3 would not appear to apply to them. However, as they say in some navies in the world, all are admirals, because legal aid officers are being appointed as Assistant Directors of Legal Aid for the purposes of this Ordinance. So the analogy should not be pursued and I can assure honourable Members that there are no financial commitments in those appointments.

Question put and agreed to.

Bill read the second time.

Bill committed to a committee of the whole Council pursuant to Standing Order No 43(1).

Explanatory Memorandum

This Bill amends section 3 of the principal Ordinance so that the Director of Legal Aid, the Deputy Director of Legal Aid, and Assistant Directors of Legal Aid have all the rights, powers, privileges, and duties of a barrister and solicitor admitted to practice under the Legal Practitioners Ordinance when carrying out powers and duties under the principal Ordinance, and under rules made pursuant to section 9A of the Criminal Procedure Ordinance (which rules relate to legal aid in criminal cases).

The Bill also amends section 28 of the principal Ordinance so as to confer on the Governor in Council power to make regulations providing for the fees and costs of the Director, Deputy Director, and Assistant Directors in relation to any contentious or non-contentious litigation in which they become involved when carrying out their duties under the Ordinance.

3.53 p.m.

HIS EXCELLENCY THE PRESIDENT: —Honourable Members, it is now seven minutes to four. Perhaps at this point Members would like an adjournment. We will adjourn then till ten minutes past four.

4.10 p.m.

HIS EXCELLENCY THE PRESIDENT: —Council will resume.

MAGISTRATES (AMENDMENT) BILL 1972

THE ATTORNEY GENERAL (ACTING) (MR SNEATH) moved the second reading of: —"A bill to amend the Magistrates Ordinance."

He said: —Sir, this bill is also concerned with the "Keep Hong Kong Clean Campaign". One of the problems in this Campaign is how to deal effectively with offences against the litter laws. Summary justice in the form of on-the-spot fines has been considered and rejected. But it is felt that we must try if we can to have, if not summary, then at least swift justice for these offences.

Under our present system a prosecution can normally be commenced in one of two ways. An application may be made to a magistrate for a summons to be issued, and then the summons has to be served on the suspected person. The other way is to arrest this person, and then either to bring him before a magistrate to be charged or else to release him on bail on condition that he appears to answer a charge before a magistrate. This latter method of arrest has in practice to be used when the suspect has no fixed address to which a summons could be delivered.

But neither method really meets the requirements for prosecuting litter offences. It would surely not be appropriate to arrest every litter offender, and perhaps everybody would agree with that, but certainly the summons procedure does not provide the swift justice that is being sought. So what this bill proposes is a new method for notifying the person that he is to be charged with a litter offence and requiring him to appear in court for that purpose.

The bill provides for a statutory form of notice to be prescribed, and this notice can be handed to any person suspected of having committed any of the offences listed in the new Fourth Schedule which the bill seeks to attach to the principal Ordinance. The notice would specify which offence is alleged and give sufficient details to direct that person's mind to the particular commission or omission which is being complained of; it will inform the suspect of the time and date when his appearance in a named magistracy is required.

[THE ATTORNEY GENERAL (ACTING)] **Magistrates (Amendment) Bill—
second reading**

I am informed by the Registrar of the Supreme Court that in each of the magistracies to be named a magistrate or JPs will sit at the times specified to deal exclusively with these offences. It was envisaged, Sir, that these cases would be dealt as quickly as within 24 hours—that is within 24 hours of the notice being handed to the alleged offender. However, I understand that some honourable Members have expressed considerable concern at the prospect of people being required to attend court at such short notice. In consequence, Sir, consideration will be given to an amendment so as to provide that the date to be specified in the notice shall be not less than 3 clear days, or any other time that is found to be suitable, but not less than a certain period after the date on which it is handed to the person concerned.

Should a person fail to comply with one of these notices the magistrate may issue his warrant to cause the person to be brought before him. Consideration is being given, Sir, to moving another amendment in committee stage to permit a person to send his representative who could plead guilty on his behalf and pay the fine imposed. I should stress, Sir, that the function of such a representative is limited to pleading guilty and paying the fine if he is not there to plead not guilty and argue the case. But this amendment, if it is moved and passed, should provide for the solution in most of the cases where a person is genuinely unable to attend court on the day specified in his notice—by reason, for example, of ill-health.

But where a warrant has to be issued and executed, then the proposed new subsection (5) to section 8A would require a magistrate to mulct the person concerned in costs amounting to not less than \$20 nor to more than \$400. This provision is mandatory indicating that such costs should be payable whether or not a person is thereafter convicted; but there is, Sir, a proviso to protect the person who did not comply because of exceptional circumstances which would render it quite inequitable to require him to attend at the time specified.

With those remarks, I beg to move.

MR CHEUNG: —Whilst expedition is a very laudable objective in judicial proceedings, I would rather be sure and right than swift. But it has seemed to me that to require a person to appear within 24 hours before magistrates is somewhat demanding. Few persons can re-arrange their affairs in such a short span of time or be able to collect his case together, or to get legal advice, or indeed to recover from the shock with being served with such a notice. I would myself have thought that a week would be the proper notice to give a defendant for appearing in court, but the majority of my colleagues, who move with

more alacrity and swiftness than I, are disposed to think that 3 or 4 days would be reasonable notice: and for the common good, I defer to their judgement. Accordingly, I welcome the amendment which Mr SNEATH will move at the committee stage, that at least 3 clear days notice be given to a person to require him to appear in Court.

The new procedure introduced by this bill does away with well-known and well tried safeguards in procedural law. I hope it will be recognized that this new procedure is being introduced to deal with exceptional circumstances, and perhaps even a state of emergency in the litter world. I hope it will not be taken as a precedent in other fields.

With those remarks, Sir, I support the bill.

Question put and agreed to.

Bill read the second time.

Bill committed to a committee of the whole Council pursuant to Standing Order No 43(1).

Explanatory Memorandum

Clause 2 empowers certain public officers to give a notice to a person suspected of having committed certain specific offence so as to require that person to appear at a fixed time and place before a magistrate. If such a person fails to comply with the notice, the magistrate may issue a warrant for his arrest and if he is subsequently brought before the magistrate, the magistrate shall, except in special circumstances, order payment by him of costs between \$20 and \$400, whether or not he is convicted of the offence alleged.

Clause 3 enables the Governor in Council to amend the new Fourth Schedule by order.

Clause 4 adds a new Fourth Schedule to the principal Ordinance specifying the public officers empowered under clause 2 and the offences in respect of which such powers may be exercised.

DUTIABLE COMMODITIES (AMENDMENT) BILL 1972

MR J. CATER moved the second reading of:—"A bill to amend the Dutiable Commodities Ordinance."

He said:—Sir, the object of this bill is to put it beyond doubt that toilet preparations containing over 1.2% of ethyl alcohol by volume are dutiable.

[MR CATER] **Dutiable Commodities (Amendment) Bill—second reading**

Duty is not payable on denatured spirits so certified by the Government Chemist. In 1970, section 53 of the Dutiable Commodities Ordinance was amended in the definition of "denatured spirits" to allow, without payment of duty, the import of mixtures of ethyl alcohol for industrial use, provided that such mixtures could not readily be converted into an intoxicating liquor. Some doubt has arisen as to whether this amendment might in some cases have gone further than was intended in relation to toilet preparations: clause 2 of this bill will remedy this situation by specifically excluding toilet preparations from the definition of "denatured spirits".

Question put and agreed to.

Bill read the second time.

Bill committed to a committee of the whole Council pursuant to Standing Order No 43(1).

Explanatory Memorandum

Clause 2 of the Bill amends section 53 of the principal Ordinance as follows—

- (a) liquor mixed with substances intended for industrial use is included in the definition of denatured spirits;
- (b) liquor contained in or used as a toilet preparation is excluded from the definition of denatured spirits;
- (c) a definition of toilet preparation is inserted into the section; and
- (d) a minor technical amendment is made to the definition of liquor.

**PUBLIC HEALTH AND URBAN SERVICES (AMENDMENT)
(NO 4) BILL 1972**

MR RICHARDSON moved the second reading of:—"A bill to amend the Public Health and Urban Services Ordinance."

He said:—Sir, the Urban Council's revised hawker policy envisages the introduction of new legislation to enable hawkers to know precisely where, when and how they may carry on their trade, greater protection for law-abiding hawkers, vigilant control over licensed hawkers who

disobey the law and stronger measures to reduce the number of unlicensed hawkers.

Before the detailed by-laws and regulations can be made it will be necessary to amend the principal Ordinance, and the Public Health and Urban Services (Amendment) (No 4) Bill 1972 seeks to extend the powers of the authority to make new regulations, to empower the Commissioner for Transport to declare any street to be set aside for hawking purposes, and to provide in certain instances for the mandatory forfeiture of commodities and equipment belonging to hawkers.

Clause 2 enables various regulations to be made, including one which will confer on magistrates the power to recommend to the authority that the licence of a hawker convicted of an offence under the regulations be either cancelled or suspended.

Clause 3 enables the Commissioner for Transport to set aside certain public streets where hawkers may legally operate and, if necessary, to limit vehicular traffic on them. The appropriate authority—the Urban Council in respect of the urban areas and the Director of Urban Services in respect of the New Territories—may then allocate pitches in these streets to hawkers. At present the authority is empowered to set aside areas where hawking is prohibited. The proposed amendment requires the authority to state where hawking is permitted.

We have, Sir, for a long time been concerned about the ineffectiveness of existing hawker control measures. Under existing legislation it is necessary for us to arrest a hawker who causes obstruction and return to him his barrow or other equipment and all his commodities unless they happen to be "food for man". Consequently, he can, and very often is, back in business on the streets within an hour or so of his arrest. Because of this, the Urban Council has after very careful consideration come to the conclusion that mandatory forfeiture of the goods and paraphernalia used for illegal hawking is the only effective means of dealing with the four most serious types of hawking offence. These are hawking without a licence, hawking in an area where hawking is not permitted, hawking at a fixed pitch without a fixed pitch licence and hawking outside the boundary of a designated pitch. Clause 4 of the bill consequently gives effect to these intentions by repealing section 86 of the principal Ordinance and substituting clauses 86 to 86D.

The new section 86 provides for the seizure of hawker equipment and commodities where a hawking offence is believed to have been committed, but a person who was lawfully entitled to their possession at the time of the seizure can claim their return. There is provision for the payment to a claimant of the value of perishable commodities which are disposed of after seizure, but return of the articles or payment

[MR RICHARDSON] **Public Health and Urban Services (Amendment) (No 4) Bill—second reading**

of the value of perishable commodities may be refused if the claim is not made within 48 hours after seizure or if an information for a hawkers offence involving the articles is laid within 72 hours after seizure.

The new section 86A provides that on the conviction of a person of one of the four major hawking offences, the magistrate must, in addition to any other penalty, order the forfeiture of the articles seized. For other hawking offences, the magistrate must order forfeiture unless he finds special reasons why such an order should not be made. In case of acquittal, or a decision by the court not to forfeit, the equipment or the value of the perishable commodities which have been disposed of must be returned, provided the accused can prove that he was lawfully entitled to possession of them at the time of seizure.

The new section 86B provides for the seizure of equipment and commodities abandoned by hawkers. A person lawfully entitled to possession of them at the time of seizure can make a claim within 48 hours after seizure for their return and payment of the value of any perishable commodities which have been disposed of. This amendment is necessary because large numbers of barrows, carts, and other paraphernalia are often left apparently abandoned in the streets and side lanes—although quite often they are chained to parking meters or traffic signs and effectively prevent the streets from being cleansed.

The new section 86C provides that where the authority refuses to return to a claimant articles seized under section 86 or section 86B, or to pay to him the value of perishable commodities disposed of under these sections, or where a claimant is dissatisfied with the amount of payment offered to him, he may apply to the court for an order returning the articles to him or paying to him the value which he sets upon the commodities, but such an application must be made within fourteen days after refusal or payment, as the case may be. If the court makes the order sought it may award to the applicant such sum against the Crown by way of costs as it thinks fair and reasonable.

The new section 86D provides for the forfeiture of seized equipment or commodities where no claim is made within the statutory period, or where a claim has been refused and no application is made to the court for redress within fourteen days of the refusal.

Clause 5 makes minor amendments to the Third, Sixth, and Ninth Schedules to the principal Ordinance. The amendments are consequential on clauses 2, 3 and 4. The only provision of significance is the amendment to the Ninth Schedule which provides for a

maximum penalty of \$1,000 for contravention of the new section 83B inserted by clause 3 of this bill.

I must stress that this proposed amending legislation is essential if hawkers are to be effectively controlled and if the "Keep Hong Kong Clean" Campaign is to succeed in areas where hawking now makes any form of cleansing virtually impossible and where, as a result, rats and flies breed freely and the residents suffer quite unnecessarily from the dirt and filth generated by conglomerations of hawkers. I would, nevertheless, assure honourable Members that as part of the build-up of the "Keep Hong Kong Clean" Campaign, the assistance of all hawkers and their associations will be sought. They, like others, will also be subjected to publicity in every form, and I hope that before the massive clean-up begins they will also be subjected to a mounting pressure of public opinion. I would also like to re-assure the community at large that when the proposed legislation is enacted, it will be applied both humanely and impartially.

Question put and agreed to.

Bill read the second time.

Bill committed to a committee of the whole Council pursuant to Standing Order No 43(1).

Explanatory Memorandum

The Bill amends the Public Health and Urban Services Ordinance.

Clause 2 repeals section 83 of the principal Ordinance, and substitutes two new sections. The new section 83 defines the terms "equipment", "commodity", and "stall" for the purposes of sections 83A to 86D of the principal Ordinance. The section also defines a hawker offence for the purpose of those sections as being an offence against section 83B (which section is inserted by clause 3 of the Bill) or against regulations made under section 83A.

The new section 83A gives the Urban Council in relation to the urban areas and the Governor in Council in relation to the New Territories (that is to say the Authority mentioned in the section) more extensive powers to make regulations for the control of hawkers. Subsection (2) rewrites subsection (2) of the existing section 83. In the latter case the only substantive change is to confer on the Director of Urban Services power to declare areas in the New Territories where hawking is permitted or prohibited for the purpose of regulations made under subsection (1). As a result of the amendment the Governor in Council will no longer have this power.

**Public Health and Urban Services (Amendment) (No 4) Bill—
second reading**

[*Explanatory Memorandum*]

Clause 3 inserts into the principal Ordinance a new section 83B which empowers the Commissioner for Transport to declare a street to be set aside for hawking purposes. Where a street is set aside in accordance with the clause, the Commissioner may order the street to be closed completely to vehicles or to be closed to vehicles travelling in a particular direction. The appropriate authority may then allocate pitches in the street to hawkers in accordance with regulations made under section 83A.

Clause 4 substitutes for section 86 of the principal Ordinance five new sections, 86 to 86D, which deal with the seizure and forfeiture of hawker equipment and commodities.

The new section 86 provides for the seizure of hawker equipment and commodities in respect of which there is reason to believe that a hawker offence has been committed. Provision is made in the section for the immediate disposal of perishable commodities that have been seized. The section further provides for the return of seized equipment and commodities where a claim is made by the person who was lawfully entitled to possession of them at the time of the seizure. In the case of perishable commodities that have been disposed of, there is provision for the payment of the value of the commodities to such a claimant. Return of the seized articles or payment of the value of perishable commodities may be refused if the claim is not made within 48 hours after the date of seizure or if an information for a hawker offence involving the articles is laid within 72 hours after the date of seizure.

The new section 86A provides that, on the conviction of a person of a hawker offence specifically requiring mandatory forfeiture (i.e. one of the four offences specified in the new regulations that are to be made under section 83A of the principal Ordinance), the magistrate must, in addition to any other penalty, order the forfeiture of articles seized under the new section 86 or, in the case of articles which are commodities of a perishable nature that have been disposed of by way of sale, order the forfeiture of the proceeds of sale. For other hawking offences the magistrate must order the forfeiture of the seized articles unless he finds special reasons why such an order should not be made. If an accused person is acquitted, or the court, for special reasons, declines to make a forfeiture order, the seized articles are to be returned to the person provided the magistrate is satisfied that that person was lawfully entitled to possession of them at

the time of the seizure. Where the articles are perishable commodities that have been disposed of, there is provision for the payment of the amount of the value of those commodities.

The new section 86B provides for the seizure of equipment and commodities abandoned by hawkers. Provision is made for the immediate disposal of perishable commodities. A claim may be made for the return of the seized articles, or the payment of the amount of the value of perishable commodities that have been disposed of. Such a claim may be refused if it is not made within 48 hours after the date of the seizure or if the claimant is unable to show that he was lawfully entitled to possession of the articles at time of their seizure.

The new section 86C relates to applications to the magistrate's court by persons aggrieved at the seizure of hawker equipment or commodities under section 86 or section 86B. An aggrieved person may apply to the court for an order directing the return of seized equipment or commodities which he claims to be entitled, or, in the case of perishable commodities that have been otherwise disposed of, for payment of the amount of the value of the commodities. Such an application may be made where there has been a refusal by the seizing authority (that is the Police, the Urban Council in relation to the urban areas, or the Director of Urban Services in relation to the New Territories) to return the seized articles or to pay the amount of the value of perishable commodities. An application may also be made where a person to whom a payment in respect of perishable commodities has been made is dissatisfied with the amount of the payment. The application must be made within 14 days after the date of refusal or payment, as the case may be. Before the court can make the order applied for, it must be satisfied that, at the time of the seizure, the applicant was lawfully entitled to possession of the seized articles and that he was using them for a lawful purpose.

The new section 86D provides for the forfeiture of seized equipment or commodities by operation of law where no claim is made in respect of the equipment or commodities within 48 hours after the date of seizure or, if such a claim has been made but refused, no application is made to the magistrate's court within 14 days after the refusal.

Clause 5 makes minor amendments to the Third, Sixth, and Ninth Schedules to the principal Ordinance. The amendments are consequential on clauses 2, 3, and 4. The only provision of any significance is the amendment to the Ninth Schedule which provides for a maximum penalty of \$1,000 for contravention of the new section 83B inserted by *clause 3* of this Bill.

WATERWORKS (AMENDMENT) BILL 1972

MR ROBERTSON moved the second reading of:—"A bill to amend the Waterworks Ordinance."

He said:—Sir, the Waterworks Ordinance empowers the Water Authority to issue accounts for water at quarterly or lesser intervals. The objective of the amendment is to authorize the Water Authority to issue bills less frequently.

Since 1965, when separate water metering became compulsory for each residence in new buildings, the number of meters has increased annually by about 60,000 to a total now of about 450,000.

Water accounts are at present issued quarterly, and the number of these has grown from 1.7 million last year to 2 million this year. This high growth rate, the large numbers involved, and the complications of different charges for domestic and non-domestic consumers introduced last year have placed a great burden on the Waterworks billing organization.

To relieve some of this pressure, which will allow improvements to the system to be more readily implemented, it is proposed to issue water accounts three times a year instead of four.

Question put and agreed to.

Bill read the second time.

Bill committed to a committee of the whole Council pursuant to Standing Order No 43(1).

Explanatory Memorandum

Under section 5(a) of the Ordinance the Water Authority has power to take from every consumer an undertaking to pay to the Accountant General charges for water and meter rent quarterly or at such lesser periods as the Water Authority may in any case determine. The amendment in clause 3 removes the quarterly time limit and in future a consumer will undertake to pay the charges at such intervals as the water authority may determine. The amendment in clause 2 is consequential.

Clause 4 will preserve the validity of all undertakings given under the present provision in section 5(a) of the Ordinance.

IMMIGRATION (AMENDMENT) BILL 1972**Resumption of debate on second reading (2nd August 1972)**

Question again proposed.

MR CHEUNG:—Sir, I need only speak on clause 4 of the bill, which seeks to amend subsection 5 of section 11 of the Ordinance and it is the only clause which causes concern amongst all my Unofficial colleagues. In order to put it in its proper perspective, I have to refer to subsection 2 of section 11 of the Ordinance. Now, when an immigration officer gives permission to a person to land in Hong Kong, subsection 2 of section 11 empowers the immigration officer to do two things: first, to prescribe the period of stay, and second, to impose such other conditions as the immigration officer may think fit upon the visitor; but the other conditions that the immigration officer may impose are only such as are authorized by the Director generally, or as might be authorized by the Director in a particular case.

My Unofficial colleagues have no objection to amending subsection 5 so as to allow officers of the rank of immigration officer to extend a period of stay which has been imposed by virtue of subsection 2.

But notwithstanding the eloquent plea which has been put forward by the honourable the Attorney General (Acting) when he moved the second reading of this bill, my colleagues are of the opinion that it would be quite wrong to allow an immigration officer, or indeed any officer other than the Director, his deputy or an assistant director, to vary conditions of stay which have been imposed pursuant to subsection 2, which are conditions, as I have said, authorized by the Director generally or in a particular case. Because if you allow an immigration officer to vary the conditions of stay, you would really render nugatory the safeguards incorporated in subsection 2 of the Ordinance. It would make a nonsense of subsection 2 if you say that the immigration officer can only impose conditions authorized by the Director and then allow an immigration officer under subsection 5 to impose conditions which have not been authorized by the Director as defined in subsection 2. And for those reasons, the intention of my colleagues is to move an amendment at the committee stage to limit the change in subsection 5 so as to permit immigration officers only to enlarge periods of stay, and to retain the requirement that it would have to be the Director, as defined by the Ordinance, which would include the Deputy and the Assistant Directors, to cancel conditions of stay or vary conditions of stay imposed under subsection 2.

I trust the Government would find it possible to support that amendment at the committee stage.

THE ATTORNEY GENERAL (ACTING) (MR SNEATH):—Sir, I do not know about an eloquent plea, but I do think that perhaps I did not argue the case sufficiently fully when moving the second reading, although on that occasion I was very conscious of speaking for an awfully long time. But on that occasion, Sir, I gave figures to illustrate the

[THE ATTORNEY GENERAL (ACTING)] **Immigration (Amendment) Bill—
resumption of debate on second reading
(2.8.72)**

need for permitting immigration officers to exercise the powers under this subsection. But I did so only in relation to applications for extension of stay, and that is the power exercisable under paragraph (c); and I should perhaps have given figures to show and illustrate an equal need for immigration officers to have the power conferred by paragraph (a), that is to say, to cancel or to vary conditions of stay—conditions of stay otherwise, of course, than a limit of stay. Sir, over the past year there have been something more than 600 cases to be dealt with each month under paragraph (a). I am informed that the most common cases are where persons seek permission for a change in the conditions of stay to enable them to take up employment, or else to study here in Hong Kong, or thirdly, to change their status by varying the conditions of stay, to change their status from that of strictly a visitor to some form of residence where they have been able to prove that they do have a close connection with the Colony, such as an immediate family living here.

So, Sir, it would appear that unless the power to grant these applications is vested in immigration officers, it will be the public who are likely to suffer because clearly assistant directors could not handle this volume of work without serious delays occurring.

But having said that, Sir, I will, of course, discuss the matter further with my honourable Friend in the hopes that we can reach a mutually satisfactory form of amendment, if one is still thought to be necessary. In passing, I would suggest that it may be fairly easy to provide that the safeguard to which he referred, namely, that the conditions of stay have to be those authorized by the Director, may quite easily be incorporated into subsection 5.

Finally, Sir, I am informed that there is no objection to amending the bill so that the power to impose additional conditions of stay which is exercised under sub-paragraph (b) should be retained in the hands of assistant directors, deputies and the director himself.

Question put and agreed to.

Bill read the second time.

Bill committed to a committee of the whole Council pursuant to Standing Order No 43(1).

SUMMARY OFFENCES (AMENDMENT) BILL 1972

Resumption of debate on second reading (2nd August 1972)

Question again proposed.

MR FORSGATE:—Sir, it is well recognized that one of the stresses imposed by living in a city is noise, and one which it is extremely difficult to regulate because its effects are hard to quantify.

Tension and apprehension resulting from noise seem to add up to insecurity and the pattern of modern life in Hong Kong suggests that with the passage of time, matters will become worse. If the urban dwellers of Victoria and Kowloon once laughed at the proverbial countryman in the New Territories with rice straws in his hair, the rural dweller may now shake his head sadly and sympathetically at the city sufferer from "metropoliphobia".

Man (of course in this context I include woman) like many other forms of life has instinctive reaction patterns to noise, and it is this concern which has prompted the amendment now under debate.

Although, as yet, neither of the two Advisory Committees on pollution has been saddled with the job of defining and quantifying the extent of this problem, evidence has, however, been produced elsewhere to prove that exposure to excessive noise can create serious medical problems. Also, a British sociologist has said that 36% of the population of Britain are affected by noise in their houses. Given our densities, the percentage must be at least double. Therefore, as an environmentalist, I am wholly behind the principle of the introduction of legislation reducing noise pollution. However, I do feel that in its present format, a considerable amount of confusion will occur in the minds of the general public, the Government departments who will be required to enforce its application, and also those who are directly involved in the carrying out of the operation forming the subject of the offence.

Turning specifically to the provisions of the Summary Offences (Amendment) Bill 1972, I wish to draw honourable Members' attention to section 13(1)(b), which specifically states:

"Any person who between the hours of 8.00 *p.m.* and 6.00 *a.m.* or on any public holiday, operates or causes or permits to operate a piledriver shall be guilty of an offence and shall be liable to a fine of five thousand dollars".

I consider one has to look with some caution at the words "piledriver". What does it mean? I do not feel that it is necessary to have to await the determination of the courts if any one chooses to take the matter to litigation, and I am of the opinion that there is a very real justification for a clear and substantive definition of "piledriver" to be incorporated in the bill. In this connection I would refer to the following:

- (a) What is the effect of the bill on bored piles and other systems where the methods of carrying out piling are such that the

[MR FORSGATE] **Summary Offences (Amendment) Bill—
resumption of debate on second reading (2.8.72)**

noise level is the same or even less than that associated with other building operations acceptable within the provisions of section 13(1)(b)?

- (b) What is its effect on sheet piling operations when the noise level is virtually equivalent to that of friction and percussion piling?

Apart from the lack of definition mentioned previously, I am also of the opinion that its restriction to pile driving operations tends to eliminate those operations where virtually the same noise intensity exists. I refer in particular to the use of compressors (that is those without effective silencers and sound insulation), and I feel that if we are going to introduce amending legislation, then the incorporation of an additional clause to cover this operation should be considered; also a precise definition of an acceptable method of measuring noise.

Finally, Sir, I am of the considered opinion that these restrictions will have the effect of increasing building costs, and that the resultant delay in completion times of contracts and its subsequent effect on bank interest charges will certainly result in an increase in the final costs. This, however, is a premium which we must be prepared to accept if we are to put into practical effect our awakening concern for the future well-being and contentment of the citizens of Hong Kong.

With these remarks, Sir, I support the bill.

MR ROBERTSON: —Sir, my honourable Friend Mr FORSGATE makes the valid point that if we intend to control piledriving we must be able to define it and identify it. It is the intention that the restrictions proposed should be applied to all piling whether the pile is made of metal or concrete, a sheet pile or a bearing pile, and whether the pile is hammered, screwed or sunk into the ground by excavation. This must be made clear and could be, during the committee stage of the bill, by framing a suitable definition of "piledriving".

In one way this could be considered illogical, since there may be some piling methods which are not so noisy as some other building works, to which these proposed restrictions will not apply. However, the objective here is to reduce noise and, as a first step, the noise of piling. The method proposed will avoid the considerable practical difficulties of defining and measuring "noise".

As to my honourable Friend's second and third points, I should like to comment on these together. As he says, the restrictions on piling

will cause an increase in building costs as a result of slowing down piling works. If restrictions were also imposed at this time on other building works, building costs would increase further, and progress would be slower still. I think that we should be somewhat cautious in interfering too much, at one time, with the building industry, which is already under considerable strain, and we should look upon the proposed restrictions on piledriving as a useful first step, to which other steps may be added at a later date.

Question put and agreed to.

Bill read the second time.

Bill committed to a committee of the whole Council pursuant to Standing Order No 43(1).

Committee stage

Council went into Committee.

URBAN COUNCIL (AMENDMENT) BILL 1972

Clauses 1 to 3 were agreed to.

POWERS OF ATTORNEY BILL 1972

Clauses 1 to 8 and the Schedule were agreed to.

PERJURY (AMENDMENT) BILL 1972

Clauses 1 and 2 were agreed to.

BIRTHS AND DEATHS REGISTRATION (AMENDMENT) BILL 1972

Clauses 1 and 2 were agreed to.

CROWN LAND BILL 1972

HIS EXCELLENCY THE PRESIDENT: —We will take the clauses in blocks of not more than five.

Clauses 1 to 7 were agreed to.

Clause 8.

Crown Land Bill—committee stage

MR ROBERTSON: —Sir, the proposed amendment to clause 8 will permit the holder of a prospecting licence, a mining licence or a sand removal permit to go about his proper business on the unleased land to which his licence or permit relates. Sir, I beg to move that clause 8 be amended as set out in the paper before honourable Members.

*Proposed Amendment**Clause*

8 That clause 8 be amended in subclause (1) by deleting "A person" and substituting the following—

"Except under and in accordance with a prospecting licence, mining licence or sand removal permit, a person".

The amendment was agreed to.

Clause 8, as amended, was agreed to.

Clauses 9 to 17 were agreed to.

Clause 18.

MR ROBERTSON: —Sir, the proposed amendment to clause 18 is consistent with the amendment just made to clause 8. I therefore beg to move that clause 18 be amended as set out in the paper before honourable Members.

*Proposed Amendment**Clause*

18 That clause 18 be amended in subclause (1) by inserting after "section 6" the following—

“, 8”.

The amendment was agreed to.

Clause 18, as amended, was agreed to.

Clauses 19 to 22 and the First and Second Schedules were agreed to.

Council then resumed.

Third reading

THE ATTORNEY GENERAL (ACTING) (MR SNEATH) reported that the

Urban Council (Amendment) Bill 1972

Powers of Attorney Bill 1972

Perjury (Amendment) Bill 1972

Births and Deaths Registration (Amendment) Bill 1972

had passed through Committee without amendment and that the

Crown Land Bill 1972

had passed through Committee with amendment and moved that the third reading of each of the bills.

Question put on each bill 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 half past two o'clock on Wednesday, the 30th of August.

Adjourned accordingly at ten minutes to five o'clock.