

OFFICIAL REPORT OF PROCEEDINGS**Wednesday, 16 August 1978****The Council met at half past two o'clock****PRESENT**

HIS EXCELLENCY THE ACTING GOVERNOR (*PRESIDENT*)
SIR DENYS TUDOR EMIL ROBERTS, KBE, QC, JP

THE HONOURABLE THE FINANCIAL SECRETARY
MR CHARLES PHILIP HADDON-CAVE, CMG, JP

THE HONOURABLE THE ATTORNEY GENERAL
MR JOHN WILLIAM DIXON HOBLEY, CMG, QC, JP

THE HONOURABLE THE SECRETARY FOR HOME AFFAIRS
MR LI FOOK-KOW, CMG, JP

THE HONOURABLE DAVID AKERS-JONES, CMG, JP
SECRETARY FOR THE NEW TERRITORIES

THE HONOURABLE LEWIS MERVYN DAVIES, CMG, OBE, JP
SECRETARY FOR SECURITY

THE HONOURABLE ALAN JAMES SCOTT, JP
SECRETARY FOR HOUSING

THE HONOURABLE GARTH CECIL THRONTON, QC
SOLICITOR GENERAL

THE HONOURABLE DEREK JOHN CLAREMONT JONES, JP
SECRETARY FOR THE ENVIRONMENT

THE HONOURABLE JOHN CHARLES CREASEY WALDEN, JP
DIRECTOR OF HOME AFFAIRS

THE HONOURABLE JOHN MARTIN ROWLANDS, JP
SECRETARY FOR THE CIVIL SERVICE

THE HONOURABLE JAMES NEIL HENDERSON, JP
COMMISSIONER FOR LABOUR

THE HONOURABLE WILLIAM DORWARD, OBE, JP
DIRECTOR OF TRADE, INDUSTRY AND CUSTOMS (*Acting*)

THE HONOURABLE DAVID T. K. WONG, JP
SECRETARY FOR ECONOMIC SERVICES (*Acting*)

THE HONOURABLE WILLIAM COLLINS BELL, OBE, JP
DIRECTOR OF PUBLIC WORKS (*Acting*)

THE HONOURABLE JOHN MORRISON RIDDELL-SWAN, JP
DIRECTOR OF AGRICULTURE AND FISHERIES (*Acting*)

THE HONOURABLE JAMES WINDROW SWEETMAN, JP
DIRECTOR OF SOCIAL WELFARE (*Acting*)

DR THE HONOURABLE LAM SIM-FOOK, JP
DIRECTOR OF MEDICAL AND HEALTH SERVICES (*Acting*)

THE HONOURABLE COLVYN HUGH HAYE, JP
DIRECTOR OF EDUCATION (*Acting*)

THE HONOURABLE JOHN WALTER CHAMBERS, JP
SECRETARY FOR SOCIAL SERVICES (*Acting*)

THE HONOURABLE SIR SZE-YUEN CHUNG, CBE, JP

THE HONOURABLE LEE QUO-WEI, CBE, JP

THE HONOURABLE OSWALD VICTOR CHEUNG, CBE, QC, JP

THE HONOURABLE ROGERIO HYNDMAN LOBO, CBE, JP

THE HONOURABLE PETER GORDON WILLIAMS, OBE, JP

THE HONOURABLE JAMES WU MAN-HON, OBE, JP

THE HONOURABLE HILTON CHEONG-LEEN, OBE, JP

THE HONOURABLE LI FOOK-WO, OBE, JP

THE HONOURABLE JOHN HENRY BREMRIDGE, OBE, JP

DR THE HONOURABLE HARRY FANG SIN-YANG, OBE, JP

THE HONOURABLE MRS KWAN KO SIU-WAH, OBE, JP

THE HONOURABLE LO TAK-SHING, OBE, JP

THE HONOURABLE FRANCIS YUAN-HAO TIEN, OBE, JP

THE HONOURABLE ALEX WU SHU-CHIH, OBE, JP

THE REV THE HONOURABLE JOYCE MARY BENNETT, JP

THE HONOURABLE CHEN SHOU-LUM, JP

THE HONOURABLE LYDIA DUNN, OBE, JP

DR THE HONOURABLE HENRY HU HUNG-LICK, OBE, JP

THE HONOURABLE LEUNG TAT-SHING, JP

THE REV THE HONOURABLE PATRICK TERENCE McGOVERN, SJ, JP

THE HONOURABLE PETER C. WONG, JP

THE HONOURABLE WONG LAM, OBE, JP

THE HONOURABLE CHARLES YEUNG SIU-CHO, JP

ABSENT

DR THE HONOURABLE RAYSON LISUNG HUANG, CBE, JP

IN ATTENDANCE

THE CLERK TO THE LEGISLATIVE COUNCIL MR STEPHEN TAM SHU-PUI

Papers

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

<i>Subject</i>	<i>LN No</i>
Subsidiary Legislation:	
Hong Kong Royal Instructions 1917 to 1977. Standing Orders of the Legislative Council of Hong Kong Ending of 1977/78 Session	180
Public Health and Urban Services Ordinance. Food Business (New Territories) (Amendment) Regulations 1978.....	181
Public Health and Urban Services Ordinance. Frozen Confections (New Territories) (Amendment) Regulations 1978.....	182
Public Health and Urban Services Ordinance. Milk (New Territories) (Amendment) Regulations 1978	183
Road Traffic Ordinance. Traffic Wardens (Discipline) Regulations 1978.....	184
Port Control (Cargo Working Areas) Ordinance. Port Control (Public Cargo Working Area) (No 3) Order 1978.....	185
Public Health and Urban Services Ordinance. Public Health and Urban Services Ordinance (Designation of Libraries) (Revocation) Order 1978.....	186
Banking Ordinance. Specification of Specified Liquid Assets	187

Report:

Report of the UMELCO Police Group for the period 1 September 1977 to 30 April 1978 (published on 16.8.1978).

HIS EXCELLENCY THE PRESIDENT:—May I say what a pleasure it is to see Mr TIEN back with us again. I hope he is fully recovered.

Oral answers to questions

Small factories—construction of

1 MR CHEONG-LEEN asked:—*Within the next 3 years, how many small factories units of up to 1,000 sq. ft. per unit will be built*

- (a) *by the Housing Authority; and*
- (b) *by private enterprise?*

SECRETARY FOR HOUSING:—Sir,

- (a) 7,000 small factory units will be built by the Housing Authority in the next three years.
- (b) Information about the range of sizes of factory units to be completed by the private sector is not compiled by Government because developers have a degree of discretion to change the internal layout of their buildings. However, the high level of supply of flatted factory units (of all sizes) completed in 1977 that is—8.9 million sq. ft.—will continue, and indeed will grow, in 1978 and 1979, with forecast completions at 9.9 million sq. ft. and 13 million sq. ft. respectively.

Small factories—demand for

2 MR CHEONG-LEEN asked:—*Is there any indication that the number of such available factory units will fall short of the actual demand or need?*

SECRETARY FOR HOUSING:—Sir, it is very difficult to assess accurately the actual demand for small factory units, either in the public or private sector.

However, recent experience of clearances and our forecast for the next 2 or 3 years indicates that the Housing Authority's stock of factory units will not be sufficient to meet demand in the first part of the 3 years period referred to in my honourable Friend's first question.

As regards the private sector, it is not possible to forecast accurately the demand for small factory units because this depends on several factors including the state of the economy and the state of small industries, in particular, rent levels, locations, access and proximity to essential facilities, and so on. However, with the continuing large supply of all types of flatted factories, in the private sector, it is thought that the space coming on stream will adequately meet likely requirements.

MR CHEONG-LEEN:—*Sir, as regards the Housing Authority's commitments, will the 7,000 factory units which will be coming on stream within the next*

few years be sufficient to take care of the authority's commitments apart from the fact that there will be a shortage during the first part of the three- year period?

SECRETARY FOR HOUSING:—Yes, Sir.

MR CHEONG-LEEN:—*Sir, is the Secretary for Housing aware that there is a serious shortage of small factory units outside the housing authority's commitments, that is, in the private sector?*

SECRETARY FOR HOUSING:—Sir, assuming the definition of 'small' is under 1,000 sq. ft. there is apparently a shortage but I wouldn't say it's a severe shortage.

MR CHEONG-LEEN:—*Sir, has it been Government's policy to encourage private enterprise during the last two or three years to build small factory units, meaning of course 1,000 sq. ft. units and under?*

SECRETARY FOR HOUSING:—Sir, I am afraid I am not able to answer that question precisely because it falls more in the scope of one of my Colleagues, the Commissioner of Trade, Industry and Customs or the Secretary for Economic Services, or perhaps the Secretary for the Environment, but I will see that an appropriate answer is given in writing.

MR CHEONG-LEEN:—*Sir, is my honourable Friend aware that if Government steps up its lease enforcement programme in the next few years the shortage of small factory units will be even greater, particularly when more small workshops and factory units in the urban areas will be required to move?*

SECRETARY FOR HOUSING:—Sir, I think that was a hypothetical question, it started off with 'if', but I think the answer lies in the statement made in this Council by the then Secretary for the Environment on the 11 of February 1976, a copy of which I will provide, for my friend.

MR CHEONG-LEEN:—*Sir, do I understand then that, generally speaking, Government is aware of this problem and will keep it under constant review?*

SECRETARY FOR HOUSING:—To the extent that there is a problem, yes, Sir.

Coach services by KMB

3 MR ALEX WU asked:—*For the convenience of the residents living in the rapidly developing areas such as Beacon Hill and Broadcast Drive, will Government ask the Kowloon Motor Bus Company to extend to Sundays and public holidays the coach services which are at present operated by KMB only on weekdays between Star Ferry and these areas?*

SECRETARY FOR THE ENVIRONMENT:—Sir, the Kowloon Motor Bus Company has a limited number of coaches and it naturally deploys them in a way which will satisfy the travel demands of the largest number of people. On Sundays and public holidays there is a heavy and growing demand for recreational services to the New Territories and a number of coaches which operate in urban Kowloon during weekdays are diverted to these services. These include coaches on the Beacon Hill and Broadcast Drive routes. The disposition of services is, nevertheless, kept under continuous review and consideration will be given to operating these routes on Sundays and public holidays if and when the demand justifies it.

MR ALEX WU:—*Sir, has Government made a survey to determine whether there is such demand, especially in the light of the acute taxi shortage?*

SECRETARY FOR THE ENVIRONMENT:—Sir, there is a continuous dialogue going on between the Transport Department and both bus companies on routes and schedules, and I have no doubt that these particular routes have been discussed quite frequently, but I will ask the Department to get in touch again with the Company to make a special survey of demand on these routes.

Litter wardens

4 MR WILLIAMS asked:—*How many litter wardens are currently employed in Hong Kong and what was the figure 12 months ago?*

SECRETARY FOR THE CIVIL SERVICE:—Sir, there are at present 132 litter wardens employed in the urban area and 50 in the New Territories. The comparable figures 12 months ago were 106 and 52.

Litter offences

5 MR WILLIAMS asked:—*How many litter offences have been committed in the past 12 months, and the number for the 12 months prior to this?*

THE ATTORNEY GENERAL:—Sir, between 1 July 1976 and 30 June 1977, there were 29,844 prosecutions for litter offences. Between 1 July 1977 and 30 June this year, there were 29,450 prosecutions.

I cannot say how many litter offences were committed during those periods.

MR CHEONG-LEEN:—*Sir, may I ask a supplementary question? The fact that there has been a reduction in the number of litter wardens in the New Territories, can one assume from that that the situation in the New Territories has improved?*

HIS EXCELLENCY THE PRESIDENT:—We have actually gone past that question MR CHEONG-LEEN, we are on the next one.

MR CHEONG-LEEN:—*May I then, with your permission, Sir, ask the question in another way? (laughter) What are the number of prosecution, Sir, which took place in the New Territories during the past 12 months?*

THE ATTORNEY GENERAL:—Sir, I do not have those figures with me.

MR CHEONG-LEEN:—*Sir, can these be supplied at a later date?*

THE ATTORNEY GENERAL:—Yes, Sir.

(THE FOLLOWING WRITTEN REPLY WAS PROVIDED SUBSEQUENTLY)

Figures of prosecutions for litter offences committed in the New Territories are as follows

1 July 1976—30 June 1977—12,669

1 July 1977—30 June 1978—11,698.

Traffic congestion in Happy Valley

6 MR PETER, C. WONG asked:—

- (a) *Does Government agree that there is a very heavy traffic congestion at the junctions of Leighton Road with Wong Nei Chung Road, Morrison Hill Road, Percival Street, Lee Garden Road and Link Road as a result of the massive construction work in connection with the Aberdeen Tunnel?*
- (b) *if so, will Government consider, as an interim measure, banning learner drivers from these areas?*

SECRETARY FOR THE ENVIRONMENT:—Sir, I agree that the construction of the elevated approach roads to the Aberdeen Tunnel have slowed down traffic at the junctions mentioned by Mr WONG. With the exception of the Leighton Road/Morrison Hill Road junction, however, the traffic flow in the area is still reasonably satisfactory outside the heaviest peak hours and I consider that commendable efforts have been made to keep traffic moving.

As regards the second part of the question, learner drivers in this area are prevented from using the greater part of Caroline Hill Road and the major roads around Tung Lo Wan. They therefore have no alternative but to use Leighton, Wong Nai Chung and Morrison Hill Roads, although I should emphasize that they are banned from these roads at peak hours. There are no alternative learner routes and no off-street driving training

centres in this area and, given the limited locations now available to learner drivers, I would be reluctant to see them banned from these roads altogether.

MR PETER C. WONG:—*Sir, are there any off-street driving training centres elsewhere in Hong Kong or in Kowloon?*

SECRETARY FOR THE ENVIRONMENT:—*Sir, there are for the very beginners, the link trainers, the indoor driver training centres, but there are not at the moment any off-street centres where drivers can practise off the roads and, in fact, it is unsafe in my opinion for a learner driver to be allowed to go on the road on his own, to pass a driving test, until he has had actual experience of traffic conditions.*

MR PETER C. WONG:—*Sir, my honourable Friend spoke of no off-street driving centres in this area. Has Government any plans to set up such training centres?*

SECRETARY FOR THE ENVIRONMENT:—*Sir, there are discussions going on between Government and the Automobile Association to open off-street driver training centre at Butterfly Valley, I believe.*

Conditions of service for Police Force

7 MR CHEONG-LEEN asked:—

- (a) *Are the pay structure and other conditions of service of the Police Force considered adequate and reasonable in relation to the overall pay structure of the Civil Service, and*
- (b) *are there any areas where improvements are desirable and are being looked into?*

SECRETARY FOR THE CIVIL SERVICES:—*Sir, I believe that the pay and conditions of service of the Royal Hong Kong Police Force are at present about right in relation to the rest of the Civil Service.*

There is always room for improving conditions of service and we are currently considering improvements in regard to housing, certain allowances and recreation facilities, not only for the Police Force but also for other staff in the Civil Service.

MR CHEONG-LEEN:—*Sir, is there a report on housing under preparation, or which has just been completed and, if so, when will such a report be available for consideration by this Council?*

SECRETARY FOR THE CIVIL SERVICE:—*Sir, we are currently studying the general question of housing for the Civil Service and the next step is likely to be a submission to Your Excellency in Council.*

Space underneath flyovers—responsibility for

8 MR WONG LAM asked in Cantonese dialect:—

閣下，政府可否說明行車天橋下面之空地，屬何政府部門管理？

(The following is the interpretation of what Mr WONG Lam asked)

Will Government state which department is responsible for the management of the space underneath flyovers?

DIRECTOR OF PUBLIC WORKS:—Sir, the initial management of the land underneath flyovers is the responsibility of the Public Works Department in the urban area, and the New Territories Administration in the NT. Following the allocation of the land for a specific use, it then becomes the responsibility of the user department or the private organization concerned in accordance with the terms and conditions laid down.

Space underneath flyovers—utilization of

9 MR WONG LAM asked in Cantonese dialect:—

閣下，政府有何計劃善用行車天橋下面之空地？

(The following is the interpretation of what Mr WONG Lam asked)

What are Government's plans in making use of the space underneath flyovers?

DIRECTOR OF PUBLIC WORKS:—Sir, the Government acknowledges that, in the light of limited land resources, particularly in the built-up urban areas, some selective uses could, in some instances, be put to the space made available underneath flyovers.

I would, however, like to stress the phrase 'selective uses' since there are limitations and each individual site has to be considered on its merits. Policies on permitted uses which take into account their likely effects on the flyover structures, the adjacent ground level conditions and the environment generally have been formulated. In general, uses which might give rise to accidental damage to the supporting piers, or which might constitute a fire hazard, or generate an unacceptably high vehicular or pedestrian activity conflicting with through traffic, are excluded.

On a more positive note, allocations have already been made for such uses as amenity/sitting out areas and car parking, and consideration is currently being given to requests for refuse collection points and a mini-sports centre for volley ball, basket ball and badminton, together with ancillary facilities.

MR T. S. LO:—*Does Government also, Sir, acknowledge the probability that if proper use is not made of the space there is likely to be misuse of it?*

DIRECTOR OF PUBLIC WORKS:—Yes, Sir.

Ban on learner drivers during typhoon

10 MR PETER C. WONG asked:—*Will Government consider banning learner drivers from our roads when typhoon signal No 3 or above is hoisted?*

SECRETARY FOR THE ENVIRONMENT:—Sir, I consider that this suggestion is too drastic and that it is really a matter of common sense for driving instructors to keep their pupils off the roads when weather conditions are dangerous. At present driving tests conducted by the Transport Department are not automatically cancelled when the No 3 storm signal is hoisted, but all tests are suspended once the No 8 signal goes up. I am therefore prepared to consider a ban on learner drivers after the No 8 signal is hoisted and I will ask the Commissioner for Transport to contact the Driving Instructor Associations to seek their co-operation on these occasions.

Secondary schools on Lantau Island

11 MR YEUNG asked:—*Will Government provide the growing student population on Lantau Island with sufficient secondary schools to save them from travelling to and from schools situated on Hong Kong Island or in Kowloon?*

DIRECTOR OF EDUCATION:—Sir, a new 12-classroom Government secondary school will be built in the southern part of the island to open in September 1981. This new school, together with the existing aided secondary school at Tai O, will provide sufficient places to meet the estimated demand from the 12-16 age group on Lantau Island for Form I - V places by 1983.

Validity period of driving licences

12 SIR S. Y. CHUNG asked:—

- (a) *Is Government aware that driving licences in the United Kingdom are now issued almost for life, that is, for a period of 70 years from the date of birth of the holder; and*
- (b) *if so, will Government consider extending the present maximum validity period of Hong Kong driving licences from 3 years to, say, 10 years, thus bringing it into line with that of passports?*

SECRETARY FOR THE ENVIRONMENT:—Sir, the Government is aware that driving licences issued in the United Kingdom are now valid until the holder reaches the age of 70. It is understood that it was decided to do this because of the high administrative costs of issuing licences and the severe strain on the computer system at the centralized national licensing office.

The policy on driving licences is different in Hong Kong and it is not considered desirable to extend the validity of a driving licence here from 3 to 10 years. The fee charged includes a substantial tax element, the actual cost of preparing and issuing licences being only about 20% of the fee. So a fixed fee for a licence valid for 10 years would need either to be very costly or it would lead to a reduction in revenue.

MR PETER C. WONG:—*Sir, is the Secretary for the Environment implying that in England the licence fee does not contain a tax element?*

SECRETARY FOR THE ENVIRONMENT:—Yes, Sir, I am implying that. (*Laughter*)

MR PETER C. WONG:—*Sir, why should Hong Kong's policy be different from that of the United Kingdom in this regard?*

SECRETARY FOR THE ENVIRONMENT:—Sir, fiscal policy is not in my sphere of responsibility. (*Laughter*)

THE FINANCIAL SECRETARY:—But I would be happy to explain at length if Members would like me to. (*Laughter*)

Child care workers

13 MISS KO asked:—*Will Government state whether there is any difficulty in either the public and private sectors in recruiting child care workers and supervisors with the necessary academic qualifications and experience required under the Child Care Centres Regulations 1976?*

DIRECTOR OF SOCIAL WELFARE:—Yes. Only 62 supervisors out of 199 have already been registered. The remainder are academically under-qualified or have less than the required 5 years' child care experience. In order to reduce to the minimum the number of waivers to these requirements it is proposed to reduce the academic qualifications from F. 5 with at least 5 subjects to 2 subjects at Grade E, and the experience required from 5 years to 3 years with a proviso that supervisors must be 25 years of age to ensure that they are old enough to shoulder such responsibilities.

Only 452 of the 1213 child care workers are qualified. 273 of the remaining 761 do not have the basic educational qualification of a F. 5 certificate with 5 passes at Grade E. The remaining 488 have not received the necessary training or experience.

To meet this difficulty I am proposing that the necessary academic qualification for a child care worker should either be 2 subjects at Grade E, or completion of F. 3 education, combined with a comprehensive part-time course which I hope can be introduced into the 5th technical institute now being built in Kowloon Tong. This will allow suitable non-academic F. 3 leavers the opportunity of looking after children.

Experience has shown that we put the qualifications for supervisors and child care workers too high. We propose to reduce them to a more realistic level which will, I hope, ease the difficulties of recruitment while at the same time ensure that children are adequately looked after.

MISS KO:—*Sir, when does Government plan a further review particularly with reference to the qualifications of supervisors and workers in child care centres?*

DIRECTOR OF SOCIAL WELFARE:—The present review has already been submitted to the Secretary for Social Services, Sir. After probably three years' time we'll have had more experience of taking in Form 3 graduates and when the full 9 years of free education have been applied then we shall review the matter again.

MISS KO:—*Sir, how will Government encourage or assist the child care centres of the voluntary agencies and in the private sector to raise or to improve the standard of their services and to gradually raise the qualifications required for workers?*

DIRECTOR OF SOCIAL WELFARE:—Sir, in the public sector, that is, the Government subvented sector, we are not going to use the subvention weapon to require operators of nurseries to recruit Form 3 leavers. The subvention will be pitched at Form 5 level. In both the public and private sectors we are operating short courses in the Lady Trench Training Centre for child care workers and also for supervisors. We also have an advisory inspectorate whose duties are to go and advise centres on how to improve conditions.

MR T. S. LO:—*Sir, going into a more practical note, I wonder whether Government could inform the Council whether it has any information as to whether any child has suffered in any child care centre through a supervisor not having had the necessary academic qualification?*

DIRECTOR OF SOCIAL WELFARE:—I do not think that any suffering can be directly attributed to a lack of an academic qualification in any particular instance but for supervisors it is considered necessary that they should have an adequate educational background so that they can apply modern methods of child care in their centres.

MR T. S. LO:—*Will Government therefore undertake to ensure that over-qualification will not be a problem with the Social Welfare Department, particularly in this particular aspect?*

DIRECTOR OF SOCIAL WELFARE:—Yes, Sir.

REV JOYCE M. BENNETT:—*Sir, will it be possible under these new regulations that a girl leaving at Form 3 and taking the part-time course to be promoted after years of experience to the post of supervisor?*

DIRECTOR OF SOCIAL WELFARE:—Sir, in exceptional circumstances I am empowered to exercise a waiver on a particular centre and if there were such a lowly educated person who has shown through her experience that she is suitable then I will consider each case on its merits.

REV JOYCE M. BENNETT:—*Sir, am I to understand that the part time course of a technical institute would not become equivalent to the Form 5 leaving?*

DIRECTOR OF SOCIAL WELFARE:—I will not look upon it as equivalent to Form 5 level but it will be a much more comprehensive and a much longer course, probably for one or two years in the technical institute whereas the ordinary courses in the Lady Trench Training Centre are only lasting for 6 weeks.

REV JOYCE M. BENNETT:—*Sir, may I ask the Government to consider up grading these courses at the technical institute so that there will be a more ready flow of applicants to the technical institute?*

DIRECTOR OF SOCIAL WELFARE:—Sir, I shall bear that in mind in my discussions with the Director of Education on the content of these courses.

Speech therapy

14 REV JOYCE M. BENNETT asked:—*What action will Government take to implement the recommendations in the report on the development of speech therapy training in Hong Kong prepared by Mr Bob Fawcus and the Education Department's special education section?*

DIRECTOR OF EDUCATION:—Sir, the Fawcus Report was received on 4 August 1978, and is now being studied. Implementation will depend on the feasibility of its recommendations.

REV JOYCE M. BENNETT:—*Sir, is the Honourable Member aware that there are insufficient speech therapists at the moment?*

DIRECTOR OF EDUCATION:—Only too aware, Sir, (*laughter*) which is why we asked Mr Fawcus to come and advise us on speech training.

REV JOYCE M. BENNETT:—*Sir, what constraints are there in the Department in respect of increasing the number of speech therapists?*

DIRECTOR OF EDUCATION:—Largely a matter of consideration, further consideration, by the Rehabilitation Development Co-ordinating Committee in terms of resources and academic input in the matter of upgrading the current training of speech therapists.

REV JOYCE M. BENNETT:—*Is the Government aware that speech defects in children, adolescents and adults can hinder personal development and prevent such persons obtaining and keeping employment?*

DIRECTOR OF EDUCATION:—Yes, Sir.

Tuen Mun Road—traffic regulation enforcement

15 MR WONG LAM asked in Cantonese dialect:—

閣下，鑒於屯門公路車禍頻仍，令人關注，請問政府將會採取何種措施，加強執行管制該公路有關超速駕駛，「扒頭」等交通規例？

(The following is the interpretation of what Mr WONG Lam asked)

In view of the alarming frequency of traffic accidents occurring along the new Tuen Mun Road, what steps will Government take to enforce more vigorously traffic regulations concerning speeding, over-taking, etc on this road?

SECRETARY FOR THE ENVIRONMENT:—Sir, I should first like to reiterate what the Director of Public Works said in reply to a question in this Council two weeks ago; that is that traffic accidents have not been more frequent along the new Tuen Mun Road than on any other busy road in the New Territories. The road opened on 6 May and between then and 12 August it witnessed 42 accidents. The rest of the New Territories had 1,015 accidents over the same period. Put in another way, the accident rate on the Tuen Mun Road has so far been 1 accident per 1 million vehicular kilometres, whereas on the Castle Peak Road the rate is 4 accidents per 1 million kilometres travelled.

The Government is, nevertheless, very conscious of the need to enforce traffic regulations on the new road as vigorously as possible, especially in view of the temptations it provides for speeding and hazardous overtaking. An eight man police unit has been specially assigned for this purpose, operating on the road between 7am and 11pm. In addition, at all times, emergency

police units and normal divisional patrols can be called up at short notice. Almost 2,000 prosecutions have already been taken out against motorists breaking traffic regulations on this road, of which 1,400 have been for speeding and 413 for disobeying traffic signs, mainly crossing the double white line when overtaking.

Hong Kong workers' welfare

16 MISS DUNN asked:—

- (a) *Is Government aware of the statement made by the Under-Secretary of State for Industry in the House of Commons on 24 July 1978 that Hong Kong workers are grossly exploited and that Hong Kong has neither health and safety at work legislation nor an employment protection Ordinance;*
- (b) *if so, will Government lodge the strongest possible protest with Her Majesty's Government and express Hong Kong's resentment over this totally baseless and unjustified statement?*

COMMISSIONER FOR LABOUR:—Sir, the Government is aware of what was said by the Under Secretary of State for Industry in the House of Commons on 24 July.

He did not in fact suggest that Hong Kong had no health and safety or employment legislation, although he did say that Hong Kong workers are grossly exploited.

The Government has already drawn the attention of the Foreign and Commonwealth Office to this statement.

I understand that the remark, which was made during the course of a debate about the problems faced by the British cutlery industry, should not be regarded as a considered statement of Her Majesty's Government's views.

MISS DUNN:—*Sir, while accepting the Commissioner for Labour's understanding that these remarks should not be regarded as a considered statement of Her Majesty's Government's views, how does the Commissioner reconcile HMG's constitutional responsibility for Hong Kong on the one hand, with the apparent prejudice and ignorance of local conditions and social progress of some of its ministers on the other?*

COMMISSIONER FOR LABOUR:—I have not been a constitutional lawyer and I find it difficult to reconcile such matters. I think all Government from time to time suffer from one spokesman saying one thing and another, another.

MISS DUNN:—*Sir, does the Government agree that for a minister, as opposed to an ordinary MP, to make such a remark in the House of Commons is particularly damaging and reprehensible?*

COMMISSIONER FOR LABOUR:—I think, the person concerned, although I am open to correction, is not in fact a minister, although he is a member of the Government. I certainly regard the effects of such statements as unfortunate.

MR JAMES WU:—*Does my honourable Friend agree with what the Under-Secretary of State has said?*

COMMISSIONER FOR LABOUR:—Emphatically no, Sir.

MR JAMES WU:—*Then why does my Honourable Friend not clearly refute what was said by the Under-Secretary of State, in defence of Hong Kong's interest?*

COMMISSIONER FOR LABOUR:—The question, I think, Sir, is concerned with the position of Her Majesty's Government in this matter, not this Government.

MR JAMES WU:—*Sir, does not the Commissioner for Labour in Hong Kong, have the responsibility of telling the truth in defence of Hong Kong's interest?*

COMMISSIONER FOR LABOUR:—I do, Sir, frequently and I think I might add that if there is doubt about Her Majesty's Government's position in this matter, there was a statement also made in the House of Lords on 5 July by a Minister of State for the Foreign Office, expressing the favourable progress which has been made by Hong Kong in international labour conventions as compared with other dependent territories and other South-East Asian countries.

MR CHEONG-LEEN:—*Sir, will my honourable Friend agree that, if the statement in question should not be regarded as a considered statement by HM Government, should it then be taken as an ill-considered statement by a member of HM Government?*

COMMISSIONER FOR LABOUR:—That is certainly one construction that could be put upon it.

MR CHEONG-LEEN:—*Is there any other construction? (Laughter).*

Statement

UMELCO Police Group—Report to 30 April 1978

SECRETARY FOR SECURITY:—Amongst the papers laid on the table this afternoon is the report of the UMELCO Police Group appointed by the Governor for the first eight months of its operation, up to 30 April 1978.

During 1977, the Commissioner of Police reviewed the machinery for examining complaints against the Police and invited Members of UMELCO to meet regularly with senior Police officers to monitor Police handling of complaints made against Police officers by members of the public.

The panel, under the chairmanship of Sir Sidney Gordon, comprised five other Unofficial Members and a senior Police officer. The Solicitor General was co-opted as a Member of the Group. The Group has held 21 meetings. I would like to pay tribute to the work which the Group has so far performed and for the very careful and methodical way in which it has examined all the cases put before it, many of them complicated and involving much reading.

The establishment of the Group has provided a useful forum in which an independent examination can be made of the outcome of Police enquiries into individual complaints. As such it is most welcome and gives grounds for confidence to the public that complaints are examined in depth and in detail.

An important factor which has emerged from this new scheme is the protection which the thorough examination of complaints offers Police officers from malicious and unjustified complaints. Since the system came into effect there have been two prosecutions for making false complaints and six further cases are pending.

To carry out its duties, the Group has devised procedures with the Commissioner of Police which have proved effective, but which will be kept under review and modified if this is found to be necessary. It has also instituted a system whereby a further check of some cases is undertaken by the UMELCO staff. Most of these checks follow complaints of a frame-up, of planting of evidence or of the withdrawal of a complaint.

Paragraph 9(a) of the report refers to the need for the allocation of additional staff to the Complaints Against Police Office. The Standing Finance Committee of this Council, at its meeting on 19 July, approved the creation of such additional posts in the Discipline & Complaints Wing of the Management and Development Branch, of the Police Headquarters as appear to be necessary to ensure that investigations on the basis of the estimated caseload can be carried out in accordance with the procedures I have outlined. Suitably experienced officers are now being deployed to fill these posts.

The UMELCO Police Group will continue to report to the Governor at regular intervals, probably annually, hereafter. The Government would like to express its appreciation of the valuable and necessary service, to both the general public and the Royal Hong Kong Police, performed by the Group.

Government Business

Motions

LOANS (ASIAN DEVELOPMENT BANK) ORDINANCE

THE FINANCIAL SECRETARY moved the following motion:—That—

- (a) the First Schedule to the Loans (Asian Development Bank) Ordinance be amended by inserting after Item Three the following new Item—

Item Four

An amount in various currencies equivalent to nineteen million five hundred thousand United States dollars (US\$19,500,000) for the purposes of a project involving the construction of a regional hospital with about 1400 beds, including teaching facilities and a polyclinic, at Sha Tin New Town.'

- (b) the Second Schedule to the Loans (Asian Development Bank) Ordinance be amended by inserting after the third paragraph the following new paragraph—

'The maximum amount which may be advanced pending reimbursement under section 5(2) in any financial year in connection with the project described in Item Four of the First Schedule is ninety-two million Hong Kong dollars (HK\$92,000,000).'

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

The Loans (Asian Development Bank) Ordinance enables the Government to raise loans from the Asian Development Bank for specific project listed in the First Schedule. Initially, the Government was authorized to borrow an amount equivalent to US\$21.5 million towards the desalting plant at Lok On Pai. Subsequently, in 1976 and 1977, by resolutions of this Council, the Government was authorized to raise two further loans equivalent to US\$20 million and US\$20.5 million respectively to help finance the foreign exchange cost of the Shatin Sewage Treatment Project and the Shatin Urban Development Project.

In this year's budget speech I mentioned that negotiations were in chain for a fourth loan from the Bank and for the benefit of serious students of my budget speeches, the exact reference is paragraph 146.

Honourable Members will be pleased to learn that these negotiations have now been satisfactorily concluded. Subject to approval by the Board of Directors of the Bank, a loan is to be made available in various currencies equivalent to a total of US\$19.5 million and for the financing of a substantial proportion of the foreign exchange cost of the Sha Tin Hospital-Polyclinic Project. The loan will be repayable in 13 years at an interest rate of 7.7% per annum and it attracts a commitment charge of 0.75%.

The Foreign and Commonwealth Office has indicated its willingness or the willingness rather of Her Majesty's Government to provide the necessary guarantee for this loan and formal approval is expected to be given once the loan has been approved by the Board of Directors of the Bank.

Sir, I regard the terms of the loan as satisfactory and the purpose of this motion is to make a resolution to amend the First and Second Schedules to the Loans (Asian Development Bank) Ordinance to enable the loan agreement to be signed.

In accordance with past practice, the loan agreement, when signed, will be laid on the table for the information of Honourable Members.

Question put and agreed to.

FACTORIES AND INDUSTRIAL UNDERTAKINGS ORDINANCE

THE COMMISSIONER FOR LABOUR moved the following motion:—That the Factories and Industrial Undertakings (Lifting Appliances and Lifting Gear) (Amendment) Regulations 1978, made by the Commissioner for Labour on the 14 July 1978 be approved.

Resumption of debate on 2.8.78

FACTORIES AND INDUSTRIAL UNDERTAKINGS ORDINANCE

SIR S. Y. CHUNG moved the following motion:—That the Factories and Industrial Undertakings (Lifting Appliances and Lifting Gear) (Amendment) Regulations 1978, made by the Commissioner for Labour on the 14 July 1978, be amended in accordance with the Schedule.

SCHEDULE

1 In regulation 1, insert after '1978' the following—
 'and shall come into operation on a day to be appointed by the Commissioner for Labour by notice in the *Gazette*'.

2 Add after regulation 1 the following new regulation—

'Amendment of regulation 2.(Cap. 59, sub. leg.)	1A. Regulation 2 of the principal regulations is amended— (a) by deleting 'These' and substituting the following— '(1) Subject to paragraph (2), these'; and (b) by inserting after paragraph (1) the following paragraph— '(2) Regulations 12A, 15A, 15B and 15C shall apply to lifting appliances, and regulation 18(1) (ea) and (eb) shall
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apply to chains, ropes and lifting gear, used for raising or lowering or as a means of suspension in any industrial undertaking (other than construction work) at a dock, quay, wharf or warehouse.’.

SIR S. Y. CHUNG:—Your Excellency, I move the motion standing in my name. During the past ten years we in Hong Kong have introduced a spate of labour legislation with a view to providing minimum standards for our workforce, firstly, in respect of health and safety at work and, secondly, in respect of job security and fringe benefits. In the last two months alone, this Council has approved no less than six sets of Regulations made under the Factories and Industrial Undertakings Ordinance. More important, however, is the fact that we not only pass labour legislation but also enforce it faithfully by a veritable army of factory inspectors and labour officers. I think I would be right in saying that we in Hong Kong have the largest number of factory inspectors per square kilometre of industrial space in the world. And believe me, as evidenced by the considerable grumbling one hears in industry about unsympathetic factory inspectors, these officers do take their work very seriously indeed.

It is against this background that my Unofficial Colleagues and I find it hard to accept the statement made by the Under-Secretary of State for Industry in the House of Commons on 24 July 1978 that the workers in Hong Kong are grossly exploited. It also implies though not explicitly that we have neither health and safety at work legislation nor an employment protection ordinance. It is quite amazing and in fact a pity that such a baseless and unjustified statement and implication could have been made by a senior official of Her Majesty Government about a dependent territory of the United Kingdom. Nonetheless, I was pleased to learn during question time earlier this afternoon that the Hong Kong Government has drawn the attention of HMG in this unfortunate incident.

Sir, two weeks ago the Commissioner for Labour moved a motion in this Council seeking approval of the Factories and Industrial Undertakings (Lifting Appliances and Lifting Gears) (Amendment) Regulations 1978. If these Regulations were approved by this Council this afternoon without modification, I can say without fear of contradiction that we in Hong Kong would have the most stringent safety legislation in the world for this type of industrial equipment. This would be in stark contrast to the view expressed by the British Under-Secretary of State for Industry. I say this because these new Regulations require, *inter alia*, that irrespective of the size of the lifting appliance and the nature of the industrial undertaking as defined in the Principal Ordinance:

- (a) each chain, rope and lifting gear shall be inspected before use on each occasion by a competent person;

- (b) each lifting appliance must be operated only by a competent person; and
- (c) when a load is left suspended from a lifting appliance, a competent person must be present during the period of suspension.

I am sure that the Commissioner for Labour will agree with me that these requirements are neither practicable nor necessary except in respect of industrial undertakings such as docks, quays, wharfs and warehouses and for cranes and lifting appliances exceeding a certain size.

I have another point to raise on the Regulations now before Council. It is customary to give a period of notice before enforcement of factory laws so that persons affected can make the necessary preparations to comply with such laws. I therefore do not understand why this practice has not been followed in the case of the Regulations now before Council.

Consequently, Sir, Honourable Members will find before them a resolution of which I have given notice and which is acceptable to Government. Briefly, the purpose of this resolution is to amend the Factories and Industrial Undertakings (Lifting Appliances and Lifting Gears) (Amendment) Regulations 1978 so as to make it clear that they will apply only to any industrial undertaking (other than construction work) at a dock, quay, wharf or warehouse and that they shall not come into operation until a day to be appointed by the Commissioner for Labour by notice in the Gazette. Sir, I therefore move that the Factories and Industrial Undertakings (Lifting Appliances and Lifting Gears) (Amendment) Regulations 1978 made by the Commissioner for Labour on the 14 July 1978 be amended as set forth in the paper before Honourable Members.

COMMISSIONER FOR LABOUR:—Sir, I wish to thank Sir S. Y. CHUNG for his general support in this motion. He is correct that the primary intention of these regulations is to deal with safety in dock work and consultations were based on this premise. I confirm that the amendments he has proposed are acceptable to me.

Questions put and agreed to.

Second reading of bill

INLAND REVENUE (AMENDMENT) BILL 1978

Resumption of debate on second reading (9 August 1978)

Question proposed.

MR ALEX WU:—Sir, in the closing stage of the debate on this Bill, I shall be brief in referring to a matter of principle, while associating myself with

Father MCGOVERN's tribute to the professional Members and the Convenor of the *ad hoc* group.

Principles have been freely invoked during this debate. Sir S. Y. CHUNG, while declaring his own interest in banking, firmly enunciated the principle of equal taxation for all sectors of the business community. Mr BREMRIDGE reminded us that we are 'mercifully free from preferential fiscal distortions'.

It is consistent sensible practice which inspires confidence. To enshrine fiscal practice as principle, especially with a Financial Secretary of such attested resolution as ours, could be embarrassing.

Among the assertions which have been made with great assurance in this debate is that this measure will not frighten away from Hong Kong any financial business worth having. I hope not. But can we be sure?

About the only point of view which was not freely available in the most careful and thorough discussion of this Bill was that of the institutions which are not yet doing business here.

Maybe we should consider a lower rate of tax under this Bill. Would it be such a great breach of principle? Do we need to close the door by adopting as a principle what is really another adjustment of practice?

With the hope that the Financial Secretary will not find this too flexible an attitude I support the Bill.

THE FINANCIAL SECRETARY:—Sir,

(1) *Introduction*

Those Honourable Members who spoke on the resumption of this debate last Wednesday dealt succinctly with the several questions relating to this Bill, as published, which have been the subject of their deliberations and consultations during the past five months.

In the latter part of this speech which I am afraid some time away, I shall try to explain, equally succinctly, the amendments I shall be moving at the Committee Stage. These amendments will, I hope, satisfy Honourable Members on all but one question, namely, the treatment of profits from interest on so-called shareholders' funds. As I am unable to agree that such profits should be exempt from charge, I am clearly obligated to explain why. This I shall do shortly when dealing with a number of other critical comments on the Bill, which I am also unable to accept. But may I begin, Sir, by restating for the record, both here and abroad, the underlying principle of the Bill?

(2) *The Underlying Principle of the Bill*

Under Part IV of the Inland Revenue Ordinance, the profits tax charge is limited to profits satisfying a double test. The *first* test is that the profits

must be the product of the carrying on of a trade, profession or business in Hong Kong; and the *second* test is that the profits must themselves arise in, or be derived from, Hong Kong. Now in respect of the profits from interest earnings, the second test for identifying whether particular profits arise in, or are derived from, Hong Kong has proved to be inadequate because the Ordinance lays down no method of determining where the interest arises in or is derived from. However, by tradition, and based on case law which is generally accepted, the Commissioner for Inland Revenue has applied a test which is based on the place where the credit is made available to the borrower, that is to say, the provision of credit test. Thus, in respect of profits from interest earnings, the present position is that it is possible to carry out all material operations in Hong Kong and yet, provided the credit is made available outside Hong Kong, no tax is payable. This has resulted in financial institutions receiving, in practice, favourable treatment which is not available to other businesses in Hong Kong. There exists, as Sir S. Y. CHUNG and Mr T. S. LO pointed out, a loophole which needs to be plugged.

So, the Inland Revenue (Amendment) Bill 1978 seeks to amend the charge to profits tax on financial institutions, with a view to placing them in a similar position to other businesses. To this end, by way of a deeming provision, the Bill seeks to charge to profits tax interest where it arises through, or from, the carrying on by a bank or other financial institution of its business in Hong Kong, irrespective of the provision of credit test. As Mr Q. W. LEE and Mr BREMRIDGE reminded us, the Bill has its origins in one of the recommendations of the Third Inland Revenue Ordinance Review Committee. The Government accepted the Review Committee's view that it is a bank's organization in Hong Kong, and the use to which that organization is put to raise funds and on-lend them, which are the source of its profits from interest.

Without the enactment of this Bill, the existing loophole, through the application of the provision of credit test, will remain unplugged and the loss of legitimate revenue involved will become progressively larger as the financial services sector of our economy expands.

(3) *Unacceptable Criticisms of the Bill*

So much, Sir, for the underlying principle of the Bill. I shall now deal with seven specific criticisms of the Bill, which are not accommodated by the Committee Stage amendments.

(a) *Alleged inconsistency with the territorial source concept*

First, it has been alleged in a number of written representations that the Bill is inconsistent with the territorial source concept. This is simply not so. The Bill does no more than correct the anomalous situation which has arisen as a result of the Revenue's sole reliance on the provision of credit test. The touchstone of the liability to charge is the carrying on of business in

Hong Kong and not the taxpayer's residence. Indeed, non-residents and residents are treated alike. And, in response to Mr Q. W. LEE's request, I readily confirm the Government's commitment to the territorial source concept.

(b) Existing law is adequate for the purpose

Secondly, some members of the legal profession have put it to me that the loophole, which arises from sole reliance on the provision of credit test, is capable of being plugged without an amending Bill. They argue that the Commissioner is entitled to bring these profits to charge in the absence of a contrary decision of a Hong Kong court on the application of the provision of credit test which, in their view, need not be the only determining factor.

This is all very well, but the provision of credit test is, as I have already said, generally accepted and has well understood legal antecedents established in the courts of various Commonwealth countries. If the Commissioner decided to impose a profits tax charge by suddenly ignoring the legal basis on which the provision of credit test is founded this would create an atmosphere of unacceptable uncertainty while a test case was before the courts; and, today, at least, I would not quarrel with Mr BREMRIDGE's maxim that 'uncertain law is usually worse than bad law'.

(c) Alleged discriminatory nature of the Bill

Thirdly, it has been put to me that, because the Bill singles out financial institutions, it is discriminatory; and, therefore, the deeming device is inappropriate. The proponents of this argument point out that, where an individual or corporation places surplus funds abroad, the interest earnings are not exigible to Hong Kong tax.

The position of a bank or a deposit-taking company, however, is not analogous to that of an individual or a corporation engaged, say, in a manufacturing operation. When an individual or a corporation places surplus funds abroad, this act is not necessarily related to the carrying on of a business in Hong Kong; that is to say, if these funds are merely surplus funds placed abroad to earn interest, a profits tax charge does not arise because the interest earnings are not profits arising from the carrying on of a business in Hong Kong. By contrast, banks and deposit-taking companies *are* engaged in the business of borrowing and lending and they make their profits by borrowing more cheaply than they lend (*laughter*). As Mr LO Tak-shing pointed out: '(only banks and deposit-taking companies) collect deposits as a business'. To the extent that the operations involved in their borrowing and lending transactions take place in Hong Kong, it is entirely logical that the profits from such transactions should be liable to Hong Kong tax. Those Unofficial Members who have spoken in this debate have clearly been in agreement with this view, that is to say, they have agreed that profits

from such transactions ought to be brought to charge in Hong Kong in the same way as other profits which, arising through the carrying on of a business in Hong Kong (for example, a manufacturing business selling shirts to Europe) are brought to charge.

(d) *Incidence of tax*

Fourthly, it has been put to me, though with less force, that there is no need to plug the loophole in the present system in view of the present state of our public finances. This point overlooks the primary objective of the Bill which is to improve the yield from the charge to help me to maintain the rate of tax on corporate profits generally at 17% for as long as possible to the undoubted benefit of the growth rate of the economy (and, incidentally, Sir, in reply to Mr Alex WU's suggestion I am afraid there can only be one rate of corporation profits tax). I am sure Honourable Members support me in this primary objective of the Bill. The Bill is also a reform measure and I entirely agree with Sir S. Y. CHUNG when he said that we should seek 'to ensure that the different sectors of our business community contribute towards the public purse on a more equitable basis'.

(e) *Economic implications of the Bill*

Fifthly, several economic arguments against the Bill have surfaced in the press and elsewhere—some expected, some unexpected. There have been forecasts of a mass migration of banking business from Hong Kong to more alluring places and, in support, simplistic comparisons have been made between the proposed treatment of the category of profits this Bill is concerned with and the taxation treatment of those profits elsewhere. It has been prophesied that what is called to be 'the ultimate damage' from the proposed extension of the profits tax charge could be 'enormous'. On more than one occasion I have been adjured 'to retire from the brink' as the Revenue is likely to lose more than it gains by the enactment of the Bill. Until the resumption of this debate last week, I had, in fact, received very few comments in favour of the Bill, although I was gratified to read a report that one banker was of the view that 'the tax in question, which would expose earnings on locally groomed foreign loans to standard Hong Kong profits tax, is not terribly onerous as presently perceived'. I was *not* so gratified to read another view which claimed that 'the new law appears to go against the previous laissez-faire, low tax policy of the Hong Kong Government, which certainly (has) provided the background against which Hong Kong (has) prospered'.

When a revenue law is being amended, it is not unusual for arguments to be advanced that business will be driven away. This is a familiar argument to anyone who has had anything to do with taxation and is incapable of proof or disproof except by putting it to the test. Nevertheless, I would be

the first to admit that the argument ought to be weighed very seriously, if there is, in fact, any truth in it. The question is: will the enactment of the Bill drive business away from Hong Kong to any significant extent?

Again, Sir, I would like to emphasise that this is a tax which is merely an extension of the existing ambit of the profits tax charge. It is *not* an entirely new tax; and, as such, it does *not* imply any change in the Government's attitude towards those doing business here, or wishing to set up in business here. I do not deny that some banking business could be removed elsewhere and, if the gloomier views which have been put forward prove to have some substance in them, the yield may be a little disappointing. But I am surprised that it should be suggested, almost in the same breath that, at \$80 million per annum the yield is insignificant and the tax easily avoidable, and yet that the tax is likely to be very detrimental to the well-being of Hong Kong. Provided we relentlessly pursue budgetary and fiscal and economic and monetary policies which are appropriate to our circumstances, the advantages of conducting business in Hong Kong, in all sectors of our economy, will remain in my views self-evident to those concerned and in particular I would stress that it is not our intention to modify our general non-discriminatory approach in response to special pleading from any quarter. As Mr BREMRIDGE so rightly pointed out 'Hong Kong is mercifully free from preferential fiscal distortions'; and, I personally would add from other distortions as well.

(f) *Implementation date*

Sixthly, it has been argued that the implementation date of 1 April 1978 is retroactive because those financial institutions which have accounting periods ending other than at 31 March will be liable to tax on profits of periods ending prior to 1 April 1978. I can only repeat what I said when I spoke at length on this point when moving the Second Reading, namely, that those affected by the Bill are in no worse position than the generality of taxpayers in that the level or the incidence of any tax may be changed at relatively short notice.

I am guided in this respect by the long arm of precedent. For example, when my predecessor introduced the Inland Revenue (Amendment) Bill 1971, to give legislative effect to certain proposals arising from the recommendations of the Second Inland Revenue Ordinance Review Committee, new sections were introduced to deem receipts from the grant of the right to exhibit films and the right to use patents, trademarks, etc. as assessable profits. These deeming provisions were introduced and applied with effect from 1 April 1971 and assessments were *then* based on the profits of the preceding year.

(g) *Shareholders' funds*

Finally, there is the question of exemption from the deeming provision in clause 3 of the Bill interest arising from the employment overseas of shareholders' funds. This has been one of the more disputatious questions raised during the last few months and I regret that the outcome of my discussions with Unofficial Members has been that we have had to leave it that we agree cordially to differ.

Unofficial Members referred me to paragraphs 131-133 of the Review Committee's report, wherein there is a reference to

'the basic situation in which the organization which the bank possesses in Hong Kong is brought into existence and put to work for the purpose of collecting (as deposits) the very funds which are used for the purpose, amongst others, of entering into the transaction which gives rise to the receipt of interest'

the Review Committee's conclusion being that

'the profits obtained in this way could not have been obtained but for the existence of the organization through which the deposits are gathered in.'

Unofficial Members argued that, to be consistent with the concept of deposit-taking, the employment overseas of 'shareholders' funds' should be excluded. The employment overseas of shareholders' funds, they further argued, was analogous to the investment overseas of funds by an individual or a corporation, interest thereon not being brought to charge under the Ordinance. Thus, they argued that the Bill sought to charge profits from interest which, if it had been received by an individual shareholder, as a private individual, would not be chargeable.

I am afraid I remain unconvinced of the wisdom of providing for the exemption sought by Unofficial Members on points of principle and having regard to practical considerations as well.

To begin with points of principle: *first*, the underlying objective of the Bill is quite clear. It is to tax all *profits* arising from business carried on in Hong Kong and this objective, based as it is on the territorial source concept, would not be achieved if an artificial distinction were drawn between interest from assets which are claimed to represent 'shareholders' funds' and those which do not.

Secondly, the capital structure of any corporation—be it a bank or a trading corporation—should not, in itself, be a factor in determining the question of tax liability. Thus to distinguish between interest earned on shareholders' funds and interest earned on other funds would discriminate against financial institutions which rely on loan capital as against share capital. Such a distinction is nowhere provided for in the Inland Revenue

Ordinance and profits from the employment of shareholders' funds and other funds are treated alike.

Thirdly, the proposal implies that certain assets of a bank are the exclusive property of the shareholders. This is neither the case legally, nor in practice, because a bank's creditors (including its depositors) have a claim over the generality of its assets and rank prior to shareholders in any claim on assets which may be said to represent 'shareholders' fund'; and it is the adequacy, liquidity and safety of all assets which an intending depositor looks to when doing business with a bank. To draw a distinction between assets representing shareholders' funds and assets representing depositors' and other creditors' funds is a legal and practical impossibility.

Fourthly, Sir, as I explained earlier, the position of a financial institution such as a bank is not analogous to that of an individual or a manufacturer. A bank's capital exists to provide the security which a lender (that is to say, a depositor) is looking for before he commits his resources to it. This security, that is, shareholders' funds, is an essential ingredient in creating a bank's profits and is fundamental to the business of banking without which a bank would be unable to attract deposits.

On the practical side, the Commissioner of Inland Revenue foresees considerable difficulty in obtaining details of 'shareholders' funds', and endless arguments as to which assets represent 'shareholders' funds'. unless a statutory, and of necessity, arbitrary definition or formula were written into the Ordinance. Furthermore, there is likely, very likely to be considerable difficulty in persuading non-resident Hong Kong banks to furnish their worldwide accounts, including details of hidden reserves, to enable the Commissioner to calculate relevant figures of shareholders' funds. It would not be reasonable on other grounds to call for such accounts.

(4) *Proposed Amendments to the Bill*

Turning now, Sir, to the Bill itself: as Honourable Members have said, four amendments have been agreed with them in order to minimise misunderstanding and reduce apprehension that the Bill is cast wider than was intended. In public discussion a good deal has been made of what one commentator described as 'the enormous ambiguity' in the present wording of the Bill. I think this is a gross exaggeration. But I concede that, as presently worded, the intended scope of the charge may not have been made manifest, and I concede that the use of words and phrases such as 'indirectly' and 'principal activity' may be capable of wide interpretations. At the same time, it is not possible for me to reply definitively to questions about the tax liability of financial institutions doing business in certain hypothetical situations. There are, Sir, infinite variations to a banking transaction, particularly in an international financial system which has become so complex and sophisticated. In the final analysis, the liability to tax can only depend on the totality of the circumstances of each case.

I shall now deal with the Bill as published clause by clause.

(a) *Definition of financial institution*

Unofficial Members have argued that the definition in clause 2 of the Bill of a 'financial institution' namely, 'any . . . person who is carrying on a business . . . the principal activity of which . . . is the borrowing and lending of money', goes far wider than intended. Accordingly, they argued that the definition should be narrowed down and that the scope of the charge should be precisely defined to apply only to banks licensed under the Banking Ordinance and to deposit-taking companies registered under the Deposit-taking Companies Ordinance, their subsidiaries and associated companies. They argued that this was the intention of the Review Committee.

The particular definition of a 'financial institution' in the published Bill gave effect, in my view, to the thought underlying the Review Committee's recommendation which was to bring to charge all profits derived from borrowing and lending transactions of banks and those institutions which engage in deposit-taking and what the Review Committee called 'related business'; and this definition avoids the objections to relating the provisions of one Ordinance to those of another. However, I see the strength of the argument that the scope of the charge should be defined at the outside with precision but, if avoidance measures begin to be devised which enable some institutions effectively to defeat the purpose of the Bill, they will have to be dealt with later on.

I am, therefore, prepared, albeit a little reluctantly, to move an amendment at the Committee Stage to clause 2 to define a financial institution in such a way as to avoid the use of the phrase 'principal activity' and define a financial institution as a bank licensed under the Banking Ordinance; a deposit-taking company registered under the Deposit-taking Companies Ordinance; and any associated corporation of a bank or deposit-taking company which itself carries on the business of taking deposits which would have been liable to register under the Deposit-taking Companies Ordinance if it had not been exempted under section 3(2) of that Ordinance. This section, Section 3(2) of the Deposit-taking Companies Ordinance, allows, *inter alia*, a corporation to take deposits from licensed banks or registered deposit-taking companies without registering as a deposit-taking company. I hope this approach will satisfy everyone that it is not our intention to try to bring into the net associated corporations which are not engaged in the banking or deposit-taking business, but which merely happen to be members of a group which includes a bank or deposit-taking company.

(b) *'Directly or indirectly'*

Unofficial Members have been very critical of clause 3(b) of the Bill, as published, which adds a new sub-section to the deeming provision of the principal Ordinance (Section 15) to bring into charge—

‘Sums, not otherwise chargeable to tax under this part, received by or accrued to a bank or other financial institution by way of interest which arises directly or indirectly through or from the carrying on by the bank or other financial institution of its business in the Colony, notwithstanding that the moneys in respect of which the interest is received or accrues are made available outside the Colony.’

The present wording of this clause was chosen with very great care to conform with the provisions of the existing charging section of the principal Ordinance. The words used whatever might be said, the words used have specific meanings which are well understood in taxation law and in the courts.

I am advised that there are dangers in making any attempt to alter the language of this clause. However, in defence to the views expressed by Unofficial Members that the inclusion of the word ‘indirectly’ would lead to endless arguments as to its proper interpretation and cast the net wider than intended by the Review Committee, I shall move an amendment at the Committee Stage for the deletion of the words ‘directly or indirectly’ altogether.

(c) Basis period

Next, to ensure that the extension of the charge only affects the profits of banks and deposit-taking companies whilst they are so licensed or registered, at the Committee Stage, I shall be moving the insertion of an additional sub-clause to clause 3 of the published Bill to give effect to this.

(d) Relief from double taxation

Finally, Sir, Unofficial Members have proposed that, to cater for the possibility that foreign tax may also have been charged on the interest which forms part of the profits now being brought to charge in Hong Kong (*eg* withholding tax on the gross interest earned) a deduction should be allowed of the foreign tax on the same profits, that is to say, foreign tax should be treated as an expense.

This proposal caused the Commissioner of Inland Revenue and me some difficulty like all the Unofficial Members’ proposals on my desk (*laughter*). To begin with, to grant a deduction in respect of profits brought to charge under the Bill would be discriminatory against other types of profits in respect of which no such deduction is allowed in computing the tax payable. Our policy has always been, and most certainly remains, to levy taxes only on earning and profits which arise in, or are derived from, Hong Kong. In these circumstances, the question of double taxation of profits is unlikely to arise for companies managed and controlled in Hong Kong. In the case of companies managed and controlled elsewhere, it is likely that unilateral relief from double taxation will be provided for under their own domestic legislation.

It must also be remembered that there is already limited relief under Part VIII of the Inland Revenue Ordinance in respect of profits taxed in other Commonwealth countries.

However, as a general gesture to the few cases which may arise, I propose to introduce a new clause at the Committee Stage to provide for a deduction from profits brought into charge by this Bill of tax already suffered on those profits. The relief will be restricted to companies managed and controlled in Hong Kong because, as I have said, Sir, companies managed and controlled elsewhere are likely to receive unilateral relief under their own domestic tax legislation. Obviously, where relief is already available under Part VIII of the Ordinance, additional relief under what will be clause 4 of this Bill will not be available.

(5) *Conclusion*

That is all I have to say, Sir, on this Bill apart from wishing Honourable Members a peaceful and relaxing recess. So I move that this motion be now put.

Question put and agreed to.

Bill read the second time.

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

Committee stage of bill

Council went into committee.

INLAND REVENUE (AMENDMENT) BILL 1978

Clause 1

THE FINANCIAL SECRETARY:—I move that clause 1 be amended as set forth in the paper circulated to Honourable Members.

Proposed amendment

Clause 1

That clause 1(1) be amended by inserting after '(Amendment)' the following—
'(No 3)'.

The amendment was agreed to.

Clause 1, as amended, was agreed to.

Clause 2

THE FINANCIAL SECRETARY:—Sir, I move that clause 2 be amended as set forth in the paper before Honourable Members.

The purpose of this amendment is to redefine a financial institution, so as to avoid the use of the phrase ‘principal activity or one of the principal activities’ in the published Bill.

Proposed amendment

Clause 2

That clause 2 be deleted and that there be substituted the following—

- ‘Amend- 2 Section 2 of the principal Ordinance is amended—
ment of (a) in subsection (1) by inserting after the definition of ‘executor’ the
section following definition—
2. (Cap. “financial institution”, means—
112.) (a) a bank licensed under the Banking Ordinance;
(Cap. (b) a corporation which has control over the bank or
155.) (c) a corporation which is under the control of the same
person as is the bank or deposit-taking company;
‘control’, in relation to a corporation, means the power of a person to
secure—
(a) by means of the holding of shares or the possession of
voting power in or in relation to that or any other
corporation; or
(b) by virtue of any powers conferred by the articles of
association or other document regulating that or any
other corporation, that the affairs of the first-mentioned
corporation are conducted in accordance with the wishes
of that person.’.

The amendment was agreed to.

Clause 2, as amended, was agreed to.

Clause 3

THE FINANCIAL SECRETARY:—Sir, I move that clause 3 be amended as set forth in the paper before Honourable Members.

The purpose of the amendment is *first* to delete ‘directly or indirectly’ from clause 3(b) of the published Bill to avoid endless argument said to its proper interpretation and *secondly* to insert a provision to ensure that the extension of the charge only affects the profits of banks and deposit-taking companies while they are so licensed or registered.

*Proposed amendment***Clause 3**

That clause 3 be deleted and that there be substituted the following—

- ‘Amend
ment of
section
15.
- 3** Section 15 of the principal Ordinance is amended—
- (a) in subsection (1)—
- (i) by deleting the full stop at the end of paragraph (h) and substituting a semicolon; and
- (ii) by inserting after paragraph (h) the following paragraph—
- “(i) sum, not otherwise chargeable to tax under this Part, received by or accrued to a financial institution by way of interest which arises through or from the carrying on by the financial institution of its business in the Colony, notwithstanding that the moneys in respect of which the interest is received or accrues are made available outside the Colony.’; and
- (b) by inserting after subsection (2) the following subsection—
- ‘(3) Where in the basis period for any year of assessment a financial institution was not a financial institution for the whole of that period, in that, if the institution is a bank it was not licensed for the whole of that period or if the institution is a deposit-taking company it was not registered for the whole of that period, then subsection (1) (i) shall apply only in respect of such part of the basis period during which the bank or deposit-taking company was licensed or registered, as the case may be.’

The amendment was agreed to.

Clause 3, as amended, was agreed to.

New clause 4 ‘Amendment of section 16’.

Clause read the first time and ordered to be set down for second reading pursuant to Standing Order 46(6).

Clause 4

THE FINANCIAL SECRETARY:—Sir, I move that clause 4 be inserted as set forth in the paper before Honourable Members.

Clause 4 adds a new clause to make provision for a deduction from profits brought to charge under the Bill of foreign tax of substantial the same nature as tax imposed under this Ordinance. These deductions will be restricted to companies managed and controlled in Hong Kong and will be available only where relief is not already available under Part XIII of the Ordinance.

Question put and agreed to.

Clause read the second time.

THE FINANCIAL SECRETARY:—I move that new clause 4 be added to the Bill.

Proposed addition

New clause

That there be added after clause 3 the following clause—

‘Amend
ment of
section
16.

4 Section 16(1) of the principal Ordinance is amended by inserting after paragraph (b) the following paragraph—

‘(c) tax of substantially the same nature as tax imposed under this Ordinance, proved to the satisfaction of the Commissioner to have been paid elsewhere, whether by deduction or otherwise, by any financial institution which is managed and controlled in the Colony, during the basis period for the year of assessment in respect of profits chargeable to tax by virtue of section 15(1)(i):

Provided that no deduction shall be made under this paragraph if the financial institution concerned is eligible for relief under Part VIII in respect of such profits;’.

The addition of the new clause was agreed to.

Council then resumed.

Third reading of bill

The Attorney General reported that the INLAND REVENUE (AMENDMENT) BILL 1978 had passed through Committee with amendments and moved the third reading of the bill.

Question put on the bill and agreed to.

Bill read the third time and passed.

Valedictory to Sir Denys Roberts, Chief Secretary

HIS EXCELLENCY THE PRESIDENT:—Members of Council, this is the last occasion of this Council on which a meeting of this Council will be attended by the Chief Secretary, in any of the disguises in which he has appeared in it the past 15 years.

Not without reluctance, I feel it is appropriate for me to mark the occasion, (*laughter*) even if my close, and sometimes unsatisfactory, relationship with him makes it difficult for me to refer to him with the relentless adulation which is customary when delivering a valedictory address. (*laughter*)

However, there comes a point, in the life of any ancient survivor, when his personal faults, and the various catastrophes for which he was responsible, are charitably shrouded in a fog of longevity.

The Chief Secretary has been an *ex-officio* Member for an uninterrupted period of 12 years, and indeed appeared in this Council briefly as long as 1963. Therefore, it is fair to accord to him the same degree of uncritical reverence as is accorded to any octogenarian who can still tie his own shoelaces. (*laughter*)

Consequently, I feel obliged to avoid any criticism, however well merited it may be, of the somewhat obscure and indeterminate role which he has played during this long period. This is another of those frequent occasions on which honesty would be in the worst possible taste. (*laughter*)

Instead, I shall confine myself to delivering the kind of innocuous and inaccurate testimonial with which a managing director marks the retirement of an employee who has been asked to resign early because nobody can think what to do with him. Though I must make it clear that I do not imply that the Chief Secretary has vacated his seat in this Council in comparable circumstances.

I can however, express my appreciation of the consistent and unquestioning support which he has given to Government proposals during the years of his membership of Council. (*laughter*) I do not recall any occasion on which he has matched the suicidal bravery of Mr T. S. LO by voting against a Government motion. (*laughter*) And he has developed a pleasing range of tones when saying ‘aye’ which will be greatly missed by Members with a taste for music. (*laughter*)

During his seven years as Attorney General, he achieved a higher rate of production of legislation, much of it unworkable or irrelevant or both,

(laughter) than any of his predecessors. And it can be fairly claimed, in his favour, that the obscurity of some of the drafting for which he was responsible has contributed substantially to the prosperity of the legal profession. (laughter)

As Chief Secretary, his main achievement appears to be to have increased the number of Official Members of Council to a point at which it becomes difficult to see any convincing justification for his own continued membership, (laughter) unless it is accepted that he performed a useful function in dealing with questions which were either unanswerable or were too trivial for his colleagues. (laughter)

Although it is usual on these occasions to refer *only* to the merits, some of which may have been hitherto undetected, of the retiring official, on this occasion the Chief Secretary has asked me to depart from tradition and to express, on his behalf, his deep appreciation of the friendliness, tolerance and willing assistance which he has received from all Members of Council during his term of office.

It is perhaps, natural enough that Official Members, who occasionally allow their thoughts to wander momentarily from the public interest to the advancement of their own careers, (laughter) should have found it prudent to give the Chief Secretary their diligent and unquestioning support.

It is, however, more unusual, particularly if you study the conduct of other legislative assemblies, that he should have received from members of 'the other side of the house' the patience, understanding and goodwill, both personally and in the despatch of public business, which they have invariably shown towards him.

In conclusion, he has asked me to say how deeply he values the privilege of having served for so long in this Council, which has played such a vital role in the astonishing development of Hong Kong in the past decade.

He will recall with gratitude the invariable kindness and courtesy which he has received from all Members and which have made his service far more of a pleasure than a duty. He wishes you all good fortune in the exciting days which lie ahead for Hong Kong.

SIR S. Y. CHUNG:—Your Excellency, as you have just said that this will be the last sitting of this Council that you, Sir, will attend either as Acting Governor or Chief Secretary, I would like on behalf of my Unofficial Colleagues and myself to take this opportunity to pay tribute to the very contribution you have made to public affairs, both within and outside this Council, during your long and distinguished career with the Hong Kong Government since 1962.

On this occasion, I believe, Sir, that I have a greater freedom to say something about the contribution made by the Chief Secretary than your good self, Sir, as Attorney General you shall go down in posterity for the

vast amount of important legislation that found its way to our statute books from your Chambers during your tenure of office from 1966 to 1973. In the same capacity you were quick to realize that Hong Kong had shed its past as an entrepot and become a rapidly developing industrial and financial centre and you tackled with zest the unenviable task of making new and complex laws on the one hand and updating and revising many of our outmoded victorian laws on the other.

You have been Chief Secretary now for nearly five years. These have been years of unprecedented development and social progress in Hong Kong, often undertaken in the face of adversity. We have been fortunate indeed to have you as the Governor's right-hand man, the chief executive of the Government and the head of the civil service during this period of our rapid growth. You have secured and held the trust equally of the civil service and of Unofficials to whom you have been a fount of wisdom and understanding and a person of massive and imperturbable reliability. Not only have your outstanding contributions to the formulation of Government policies been a significant factor in Hong Kong's success story but your own personal integrity and dedication has acted as a spur to our own efforts to make Hong Kong a better place for us all to live in.

In this Council you will always be remembered for your clarity, your eloquence, your wit and your sagacity. These attributes, together with your personal charm and unfailing good manners, have found expression in you as one of the most formidable opponents that the Unofficials have ever had to face in debate in this Council.

My Unofficial Colleagues and I have no doubt that you will bring these same outstanding qualities to bear in your next appointment as the Chief Justice of Hong Kong and we wish you, Sir, every success in the future in that high office.

HIS EXCELLENCY THE PRESIDENT:—Thank you very much, Sir S. Y. I greatly appreciate your kind words which are far more generous than I deserve.

Adjournment and next sitting

HIS EXCELLENCY THE PRESIDENT:—In accordance with Standing Orders, adjourn the Council until 2.30pm. Wednesday 11 October 1978 when the new session of the Council will begin.

Adjourned accordingly at eight minutes past four o'clock.