

OFFICIAL REPORT OF PROCEEDINGS**Wednesday, 23 May 1979****The Council met at half past two o'clock****PRESENT**

HIS EXCELLENCY THE GOVERNOR (*PRESIDENT*)
SIR CRAWFORD MURRAY MACLEHOSE, GBE, KCMG, KCVO

THE HONOURABLE THE CHIEF SECRETARY
SIR JACK CATER, KBE, JP

THE HONOURABLE THE FINANCIAL SECRETARY (*Acting*)
MR HENRY CHING, 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 DAVID WYLIE McDONALD, CMG, JP
DIRECTOR OF PUBLIC WORKS

THE HONOURABLE KENNETH WALLIS JOSEPH TOPLEY, CMG, JP
DIRECTOR OF EDUCATION

THE HONOURABLE DAVID GREGORY JEAFFRESON, JP
SECRETARY FOR ECONOMIC SERVICES

THE HONOURABLE ALAN JAMES SCOTT, JP
SECRETARY FOR HOUSING

THE HONOURABLE EDWARD HEWITT NICHOLS, OBE, JP
DIRECTOR OF AGRICULTURE AND FISHERIES

THE HONOURABLE THOMAS LEE CHUN-YON, CBE, JP
DIRECTOR OF SOCIAL WELFARE

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

DR THE HONOURABLE THONG KAH-LEONG, JP
DIRECTOR OF MEDICAL AND HEALTH SERVICES

THE HONOURABLE ERIC PETER HO, JP
SECRETARY FOR SOCIAL SERVICES

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

THE HONOURABLE JAMES NEIL HENDERSON, JP
COMMISSIONER FOR LABOUR

THE HONOURABLE GERALD PAUL NAZARETH, OBE
LAW DRAFTSMAN

THE HONOURABLE OSWALD VICTOR CHEUNG, CBE, QC, JP

THE HONOURABLE ROGERIO HYNDMAN LOBO, CBE, JP

THE HONOURABLE JAMES WU MAN-HON, OBE, JP

THE HONOURABLE HILTON CHEONG-LEEN, OBE, JP

THE HONOURABLE LI FOOK-WO, CBE, JP

THE HONOURABLE JOHN HENRY BREMRIDGE, OBE, JP

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

THE HONOURABLE CHEN SHOU-LUM, OBE, JP

THE HONOURABLE LYDIA DUNN, OBE, JP

THE HONOURABLE LEUNG TAT-SHING, JP

THE REV. THE HONOURABLE PATRICK TERENCE McGOVERN, OBE, SJ, JP

THE HONOURABLE PETER C. WONG, JP

THE HONOURABLE WONG LAM, OBE, JP

THE HONOURABLE CHARLES YEUNG SIU-CHO, JP

DR THE HONOURABLE HO KAM-FAI

THE HONOURABLE ALLEN LEE PENG-FEI

THE HONOURABLE DAVID KENNEDY NEWBIGGING, JP

ABSENT

THE HONOURABLE DAVID HAROLD JORDAN, CMG, MBE, JP
DIRECTOR OF TRADE, INDUSTRY AND CUSTOMS

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

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

DR THE HONOURABLE RAYSON LISUNG HUANG, CBE, JP

THE HONOURABLE ANDREW SO KWOK-WING

IN ATTENDANCE

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

Oath

MR NAZARETH took the Oath of Allegiance and assumed his seat as a Member of the Council.

HIS EXCELLENCY THE PRESIDENT:—I have much pleasure in welcoming Mr NAZARETH to this Council.

Papers

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

<i>Subject</i>	<i>LN No</i>
Subsidiary Legislation:	
Oil (Conservation and Control) Ordinance 1979. Advertising, Display and Floodlighting (Restriction) Order 1979	117
Road Traffic (Protective Equipment) Regulations. Road Traffic (Protective Equipment) (Amendment of Schedule) Order 1979.....	123
Supreme Court Ordinance. Supreme Court Suitors' Funds Rules 1979.....	124
Public Order Ordinance. Marine Closed Area (No 5) Order 1979	125
Public Health and Urban Services Ordinance. Cheung Chau Cemetery, Sandy Ridge Cemetery and Wo Hop Shek Cemetery (Removal and Disposal of Human Remains) Order 1979	126
Evidence Ordinance. Evidence (Authorized Persons) (No 4) Order 1979.....	127
Immigration Ordinance. Immigration (Places of Detention) (Amendment) (No 9) Order 1979.....	128

<i>Subject</i>	<i>LN No</i>
Legal Officers Ordinance.	
Legal Officers Ordinance (Amendment of Schedule) Order 1979.....	129
Prisons Ordinance.	
Chi Ma Wan Prison (Discontinuance of Use) Order 1979.....	130
Sessional Paper 1978-79:	
No 54—Supplementary provisions for the quarter ended 31 December 1978 (published on 23.5.79).	

Oral answers to questions

Refugees from Vietnam

1 MR CHEONG-LEEN asked:—*Apart from participating in discussions on setting up an island in South-East Asia for accepting refugees in transit from Vietnam, what other action has the Government taken in conjunction with the British Government to tackle the refugee problem, such as seeking positive cooperation from the Vietnamese Government to reduce the flow of refugees to Hong Kong?*

THE CHIEF SECRETARY:—Sir, the solution to the refugee problem lies ultimately with the Vietnamese Government to control the flow of people who wish to leave its country.

Representations have been made to the Vietnamese Government by Her Majesty's Government on our behalf regarding the trafficking in refugees and to stress the need to collaborate fully with the United Nations High Commissioner for Refugees to achieve an orderly outflow of people. Recently at a meeting in Jakarta, the Vietnamese delegate said such a scheme is being worked out. It remains to be seen whether it will be introduced and, if so, whether it will be effective.

Meanwhile, we remain alert and vigilant and explore every means of restricting the flow of refugees to Hong Kong. We have devised a system aimed at identifying and locating suspect vessels which may be about to engage in this trade. This system is helped by assistance from British diplomatic posts in the region and Her Majesty's Government. As a result we have been able to take pre-emptive action against some such ships. We also carry out sea and air reconnaissance using Royal Navy ships and both Royal Air Force and RHKAAF aircraft.

The small boat refugees problem is much more difficult, and to solve this we will have to rely heavily on the diplomatic action undertaken on our behalf by Her Majesty's Government and in support of UNHCR which I have already mentioned.

Her Majesty's Government is also supporting the Hong Kong Government in its appeals to other countries to increase the number of resettlement places available in third countries. Her Majesty's Government set a welcome lead in January by offering to receive 1 000 refugees from Hong Kong. Most refugees regard the USA as the resettlement country of first choice and to date the US authorities have provided by far the majority of resettlement places. For this reason we remain in close touch with the US Consulate General and with the American Government through diplomatic channels in Washington. We also ensure that no opportunity is missed to make representations to visiting American Ambassadors, Congressmen and officials.

Despite these efforts the response from most other countries has been disappointing. We, therefore, welcome the Minister of State's declaration in the House of Commons on 17 May that Her Majesty's Government will pursue all possible opportunities for increasing the rate of resettlement of refugees from Hong Kong and will keep the matter under careful review. Resettlement is not a problem for Hong Kong, nor for the countries of South East Asia, to solve alone: this is an international problem: it demands, it requires a much greater effort on the part of the nations of the World, and especially on the part of those well-endowed with resources, who undoubtedly could do more to help.

MR CHEONG-LEEN:—*Sir, would the Chief Secretary care to comment on the possible involvement of the Vietnamese Government in this tragic exodus of so many people?*

THE CHIEF SECRETARY:—*Sir, I have no doubt—and I believe that there can be no doubt—that the Vietnamese Government is aware of and is party to this disgusting trade in human misery: and, if I can add to that: in his statement of 17 May, the Minister of State, Mr BLAKER, said that the British Government, and I quote: 'will take every opportunity to impress on the Vietnamese Government an abhorrence of the policies which have driven so many people to flee that country, often at great risk of their lives.'*

MR CHEONG-LEEN:—*Sir, will Government consider the practicality of issuing visitor's visas to all Vietnamese refugees immediately on landing in Hong Kong so that they could approach direct the UNHCR office here to complete registration formalities for repatriation to other countries and to obtain what other aid they wish from the UNHCR office and from relatives and friends in Hong Kong?*

THE CHIEF SECRETARY:—Sir, any change in our present procedures by which Vietnamese refugees are allowed to remain here temporarily pending resettlement by UNHCR would need very careful consideration of all the factors involved and I would not wish to go further than this at this time.

MISS DUNN:—*Sir, what is the present estimate as to how long it will take to resettle the 30 000 odd Vietnamese refugees already in our camps here?*

THE CHIEF SECRETARY:—Sir, it is impossible to give a precise answer to this question, except other than, it seems a long time.

MR LO:—*Sir, on the question of third countries taking the refugees how many places have actually been promised to date?*

THE CHIEF SECRETARY:—Sir, I can give you the figures on the position to date: as from 1 January this year we have had resettled something like 3 300. The numbers we were expecting to be resettled in the next 2 or 3 months are less than originally hoped because of lack of finance, I understand, in some of the receiving countries.

MR LO:—*Sir, if one takes this figure against also the refugees from China the percentage of those resettled will be considerably less than say, 4% of the total refugees coming in for the period?*

THE CHIEF SECRETARY:—Yes, Sir, a very, very small figure.

MR CHEN:—*To what extent is support forthcoming from the UNHCR financially or otherwise?*

THE CHIEF SECRETARY:—Sir, the UNHCR provides finance for those refugees who have been handed over to that organization. At the moment, there is a certain slowness in taking people from us and we would hope to see an improvement in that regard in the near future. But what is required is a substantial increase in the number of UNHCR people here and, I might say, in Macau too.

Subsidy for social welfare agencies

2 REV. JOYCE M. BENNETT asked:—*Sir, will the Director of Social Welfare say how many voluntary agencies are to receive 30% to 50% less than the subsidy for which they applied for 1979/80? Will the Director state the reasons why subsidy to voluntary agencies is less than desired and so severely cut back?*

DIRECTOR OF SOCIAL WELFARE:—Sir, of the 100 voluntary welfare agencies which applied for government subvention for 1979/80, four are to receive

more than the amount they asked for and 19 are to receive 30% to 50% less than the amount for which they applied. However, of these 19, 14 will receive a higher level of subvention compared with 1978/79.

There has been no cutting back of expenditure. In all cases, the subsidy given is that which is estimated to be sufficient to maintain existing levels of service and to enable new services or better standards of service to be introduced within approved government policies. If during the year this proved to be insufficient, supplementary grants may be considered. The Government cannot commit itself to giving an agency what it asks for but must have regard to the funds available for our allocation in the one line vote, the capacity of the agency, its other sources of income, existing levels of service and whether planned expansion or improved services are in line with approved programme and are realistic in terms of implementation. On this basis, 85 out of 100 agencies will receive a higher level of subvention this year compared with last year.

REV. JOYCE M. BENNETT:—*Sir, is it correct to say that 5 organizations are getting less subvention than in the year 1977/78?*

DIRECTOR OF SOCIAL WELFARE:—*Sir, if this is so there must be reasons for the reduced subvention. There are various reasons for this which are possible. First is that they may have other sources of income more than what they got last year or there may be other reasons which I cannot generalize.*

REV. JOYCE M. BENNETT:—*Will these 5 organizations have to dismiss staff and reduce their programmes?*

DIRECTOR OF SOCIAL WELFARE:—*I don't think so, Sir.*

REV. JOYCE M. BENNETT:—*Will this reduction of subvention cause loss of morale in those organizations and cause more social workers to leave voluntary agencies for the Government civil service?*

DIRECTOR OF SOCIAL WELFARE:—*Sir, I do not think this is likely because agencies have been informed that if they have difficulty to maintain their existing service they could always come to us and appeal and in fact the Social Welfare Advisory Committee is having a series of meetings to consider these appeals.*

Landslip and flooding

3 MISS DUNN asked:—*Sir, in view of the approach of the wet season, will the Government state:*

(a) *whether it has adequately identified the areas and buildings which might be vulnerable to landslips and flooding,*

- (b) *what steps have been taken to protect residents and properties there, and*
(c) *in the event of minor landslips and flooding what arrangements have been made to expedite clearances and minimise inconvenience to the public generally?*

DIRECTOR OF PUBLIC WORKS:—Sir, geotechnical inspections have been carried out on more than 10 000 slopes throughout the territory which were thought might affect public safety and property. Fortunately the conditions on the vast majority of these slopes were found to be satisfactory and required little or no remedial work.

However more detailed geotechnical studies were recommended for the remainder and we are engaged on a progressive programme of investigation of these slopes. Where a detailed study has shown that the stability of a slope is inadequate preventive works have been put in hand as a matter of urgency. Where such slopes lie in private land notices have been issued to the owners informing them of the situation and requiring them to take appropriate action to make the slopes safe.

As far as flooding is concerned there are altogether 25 known blackspots throughout the territory which are under special surveillance and for which drainage improvement schemes are in hand or are under investigation.

In answer to the last part of the question I can only repeat the information I have previously given to this Council. Experienced personnel and specialist equipment are kept on a 24 hour stand-by system to deal promptly with all blockages and floodings reported to the departmental control centre.

MISS DUNN:—*Sir, are potentially vulnerable areas monitored during periods of excessive and prolonged rain?*

DIRECTOR OF PUBLIC WORKS:—Yes, Sir.

MISS DUNN:—*Is the Government satisfied that the measures taken are adequate to prevent a repetition of the two landslips disasters which took place in 1972?*

DIRECTOR OF PUBLIC WORKS:—Yes, Sir.

Staffing for social welfare programmes

4 MR CHEONG-LEEN asked:—*Sir, what are Government's plans to recruit, train and utilize a sufficient number of staff to implement all the programmes in the White Paper on 'Social Welfare into the 1980's'?*

DIRECTOR OF SOCIAL WELFARE:—Sir, the Government's plans are as follows:

- (1) increasing the number of social work students in various training institutions with effect from the 1979/80 academic year;

- (2) making more economic use of trained manpower in the Social Welfare Department through the implementation of the welfare class review which will relieve a considerable number of trained social workers from duties involving minimal social work content;
- (3) improving the conditions of service of social workers through the implementation of the welfare class review and the regionalization of the Department which will provide additional promotion prospects for Social Welfare Department staff;
- (4) organizing in-service training courses for under-qualified staff on the advice of the Advisory Committee on Social Work Training; and
- (5) making greater use of part-time workers by voluntary agencies to take advantage of those trained social workers who for various reasons do not wish to work full-time.

MR CHEONG-LEEN:—*Sir, what is the present position regarding Government's proposals to increase the in-take of social work students at the two universities and the Polytechnic?*

DIRECTOR OF SOCIAL WELFARE:—*Sir, in 1979/80 the training capacity at the HK University, the Chinese University, the Polytechnic as well as the Baptist College will increase varying from 10% to 40%. The total number increased is about 34 for the coming academic year.*

MR CHEONG-LEEN:—*Sir, what measures is Government adopting to increase in-service training for social workers in order to meet the targets laid down in the White Paper?*

DIRECTOR OF SOCIAL WELFARE:—*Sir, in the event that Government and the voluntary agencies are not able to recruit sufficient number of trained personnel to implement the projects under the White Paper, they may have to recruit non-trained people in which case in-service training in the Social Welfare Department will be stepped up to cater for the need of the non-trained staff.*

Chinese patent medicines

5 MR WONG LAM asked in Cantonese dialect:—

閣下，請問政府現時採取何種管制措施，以確保中藥配方成藥並無含有藥劑及毒藥規例附表所列的物品，以保障服用者的安全，又該等措施是否有效？

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

Sir, will Government state what measures of control are being used to ensure that Chinese patent medicines do not contain any substance listed in the Schedules to the Pharmacy and Poisons Regulations, in order to safeguard the

health of those who take such medicines, and say whether these measures are effective?

DIRECTOR OF MEDICAL AND HEALTH SERVICES:—Sir, samples of Chinese patent medicines are taken routinely from medicine shops and also on complaints from the public by the staff of the Forensic Pharmacy Section for analysis.

Stocks of such medicines, if found to contain scheduled drugs, are seized under the provisions of the Pharmacy and Poisons Ordinance and the cases are reported to the Police who will normally institute proceedings with a view to prosecutions.

These measures have proved to be so effective that since January this year only less than 3% of the samples taken are found to contain scheduled drugs as compared to over 30% of the samples taken over the same period last year.

MR WONG LAM asked in Cantonese dialect:—

閣下，既然有效，會不會繼續採取行動呢？

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

Sir, since these measures are so effective, will you continue these measures?

DIRECTOR OF MEDICAL AND HEALTH SERVICES:—Sir, the Forensic Pharmacy Section will certainly continue to take all necessary action.

Street sleepers

6 DR HO asked:—*Sir, what measures are being taken by Government to find homes for vagrant and untidy street sleepers, and to discourage them from taking to the streets again?*

DIRECTOR OF SOCIAL WELFARE:—Sir, all street sleepers known to the Department are offered help, whether in terms of housing, financial assistance or counselling. For those who have no home to return to, the Department arranges placements in a temporary shelter pending rehousing in public housing estates if they qualify under the criteria of the compassionate rehousing quota. Others may be referred for hostel accommodation or if they are old and require personal care, to old people's homes.

The Department can only help those who are willing to accept help. Unfortunately, most of the street sleepers in this category are unwilling or unable to communicate with us and many are reluctant to accept any offer of help. In these circumstances, there is little that we can do. The Department is currently studying a report recently submitted by the Committee on Urban

Concerns of the Hong Kong Council of Social Service, which may throw new light on how the problems of street sleepers should be tackled in future.

DR HO:—*Sir, in the interest of public health will it be feasible and desirable to have these unco-operative street sleepers removed from the streets, and placed them in a temporary shelter pending a longer term plan to be formulated?*

DIRECTOR OF SOCIAL WELFARE:—*Sir, I understand there is no provision in law at present for these people to be compulsorily removed from the streets. When we come across cases which are unco-operative, efforts are made to persuade them to be seen by a doctor, for a medical or psychiatric examination. Where these people cannot be persuaded to go to a hospital, the Police may have to be called in to assist but I am afraid at present there is nothing more we could do to remove them from the streets.*

MR LO:—*Sir, are they not loiterers?*

THE ATTORNEY GENERAL:—That is an attractive suggestion, Sir, but not quite what the law is intended for.

REV. JOYCE M. BENNETT:—*Sir, does the Social Welfare Department keep a register of such vagrants known to them?*

DIRECTOR OF SOCIAL WELFARE:—Yes, Sir, up to the present, there are 455 such people known to the Social Welfare Department.

REV. JOYCE M. BENNETT:—*Sir, could the Director give advice to the general public as to the action they should take to help these people?*

DIRECTOR OF SOCIAL WELFARE:—*Sir, as a matter of fact we have been notified of the existence of such cases by members of the general public. Most of these are referred to us.*

Government Business

Motion

MAGISTRATES ORDINANCE

THE ATTORNEY GENERAL moved the following motion:—That the Third Schedule to the Ordinance be amended—

(a) by deleting paragraph 3(1) and substituting the following—

'(1) Any offence against section 4(4), 5(4A), 15(1) or 20 of the Road (Cap. 220.) Traffic Ordinance.'; and

(b) by adding the following—

‘7. *Lion Rock Tunnel.*

(Cap. 140, Any offence against the Lion Rock Tunnel Regulations.
sub. leg.)

8. *Hong Kong Airport.*

(Cap. 292, Any offence against regulation 4, 11, 17, 19A, 20, 23, 24, 25 or 26 of
sub. leg.) the Hong Kong Airport (Traffic) Regulations.’.

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

Secton 18 of the Magistrates Ordinance enables a defendant to plead guilty by letter to any of the offences specified in the Third Schedule to the Ordinance. The purpose of this resolution is to add a number of further offences to the Third Schedule.

Motion (in Committee)

SUPPLEMENTARY PROVISIONS FOR THE QUARTER ENDED 31 DECEMBER 1978

Council went into Committee, pursuant to Standing Order 58(2), to consider the motion standing in the name of the Financial Secretary.

THE FINANCIAL SECRETARY moved the following motion:—That this Council approves the supplementary provisions for the quarter ended 31 December 1978 as set out in Paper No 54.

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

The schedule of supplementary provisions for the third quarter of the financial year 1978-79, that is for the period 1 October to 31 December 1978, covers a total amount of 472 million dollars. The major part of this sum, 323 million dollars were required for expenditure on public works projects, mainly as a result of more rapid progress on existing projects and the upgrading of 14 new projects to Category A of the Public Works Programme.

The supplementary provisions covered by the schedule resulted in a net increase of 100 million dollars in the estimated expenditure for the year, the remainder being offset by savings under other subheads of expenditure and by the freezing of funds provided under Head 52 Miscellaneous Services Subhead 100 Additional commitments.

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

Sir, I beg to move.

Question put and agreed to.

Council then resumed.

THE FINANCIAL SECRETARY reported that the motion had been agreed to in committee without amendment.

Question agreed by the whole Council pursuant to Standing Order 58(4).

First reading of bill

REGISTRATION OF BIRTHS, DEATHS AND ADOPTION (MISCELLANEOUS AMENDMENTS) BILL 1979

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

Second reading of bills

REGISTRATION OF BIRTHS, DEATHS AND ADOPTION (MISCELLANEOUS AMENDMENTS) BILL 1979

THE SECRETARY FOR SECURITY moved the second reading of:—‘A bill to amend certain Ordinances relating to the registration of births and deaths and the adoption of children.’

He said:—Sir, this Bill proposes amendments to:—the Births Registration (Special Registers) Ordinance; the Deaths Registration (Special Registers) Ordinance; and the Adoption Ordinance.

The amendments arise from the proposal to transfer responsibility for the registration of Births, Deaths and Marriages from the Registrar General’s Department to the Registration of Persons Office of the Immigration Department. Details of the amendments are provided in the explanatory memorandum attached to the Bill.

The absorption in 1977 of the Registration of Persons Office by the Immigration Department concentrated responsibility for personal documentation, such as identity cards and travel documents, in a single organization. It has been represented that it would be a logical extension of this arrangement and more convenient to bring the Births, Deaths and Marriages Registries within the same organization.

This transfer of responsibility will in no way affect the operation of the Registries as far as the public is concerned, or the standard of service provided. If the Bill is passed the transfer will take place in July.

*Motion made. That the debate on the second reading of the Bill be adjourned—*THE SECRETARY FOR SECURITY.

AUDIT (AMENDMENT) BILL 1979

Resumption of debate on second reading (9 May 1979)

Question proposed.

Question put and agreed to.

Bill read the second time.

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

INLAND REVENUE (AMENDMENT) (NO 5) BILL 1979

Resumption of debate on second reading (9 May 1979)

Question proposed.

Question put and agreed to.

Bill read the second time.

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

CRIMES (AMENDMENT) (NO 2) BILL 1979

Resumption of debate on second reading (25 April 1979)

Question proposed.

MR CHEONG-LEEN:—Sir, the passage of this Bill—as it will be amended by the Attorney General at the Third Reading—is expected to enable the Police to deal more effectively with individuals or gangs which frighten law-abiding citizens by behaving in an offensive, insulting, bullying or intimidating manner.

Many of these gangs claim triad affiliations because they use triad symbols and mysticism to instil fear in the minds of people living in the

neighbourhood. For this reason, they are still commonly known as 'Hak She Wooi (黑社會)', or 'Black Societies'.

Hong Kong aspires to be a community where law and order, as it is recognized and interpreted in England, prevails. The Attorney General believes that the powers encoded in the amended Bill are required to enable the Police to give more effective protection to the public against the menacing activities of the 'Black Societies'. I support him in this respect.

Concurrently, since the Bill confers even more powers in the hands of the Police, it will be incumbent upon the Commissioner of Police to lay down practical administrative guidelines to make sure that these powers are not misused or abused at the operational level. This aspect represents a strong reservation on the part of many members of the public who support the Bill.

I suggest also that Government make available the Chinese text of the Bill as amended and passed in this Council to all members of the Police Force at the operational level. Copies should be widely circulated at the CDO and New Territories District Board levels, as well as among all MACs.

I understand that it is the Government's intention to consider repealing section 27 of the Public Order Ordinance. This intention on Government's part is laudable as it gives credence to the view that Hong Kong is a community which aims at the preservation of law and order and respect for individual liberty.

Living in one of the most overcrowded cities in the world, our 5 million population are daily subjected to the anxieties, frustrations and problems which endanger the quality of life. As such, small incidents can be blown up to dangerous proportions to endanger public order if a sense of proportion does not prevail.

I believe the final responsibility rests upon the shoulders of all level-headed citizens in Hong Kong to firstly, uphold the law for the preservation of peace and good order, and secondly, to vigilantly ensure that the law is so codified that it does not, unwittingly or otherwise, become a tool to attack the dignity and basic rights of the individual.

Sir, I support the amended version of the Bill.

MR LO:—Sir, this is a very short Bill but it has attracted widespread criticism from diverse segments of the community.

Firstly, those keen to strengthen the law to deal with the lawless have expressed the view that even this amending legislation will be quite inadequate. They would have us amend the law so as to make it an offence if a person is merely found in the company of a known criminal. I congratulate the Attorney General for refraining from introducing this concept into this Council.

Secondly, those interested in reducing the opportunity for the police to abuse their powers, consider the Bill to be bereft of safeguards for the individual.

Thirdly, those familiar with the overcrowded condition that is Hong Kong have been quick to point out that when a person's home is a small cubicle, to wish to get out of it for a little air or space is hardly reprehensible. Nonetheless under the present law he could be arrested for that and under the original proposed amendment sent to prison for two years.

Against this background the LegCo Legal Group met and discussed the Bill amongst themselves and with the Attorney General. During these discussions we noted amongst other things that section 27 of the Public Order Ordinance has given the police far wider powers than those sought under this Bill.

After considerable discussion the following agreements have been reached between the Unofficials and the Administration:—

Firstly, the Bill be amended so that a person will not commit an offence for loitering if he has a satisfactory explanation for his presence there, and thus in my view it would be wrong to arrest him unless he fails to give a satisfactory explanation or account of his presence at the time of his arrest.

Secondly, the Bill will be amended so that the offence of obstructing any person will only be committed by a loiterer if he does so wilfully and not otherwise.

Thirdly, the Bill will be amended so that the maximum prison sentence for loitering or wilful obstruction will be six months instead of the two years maximum originally proposed in the Bill.

Fourthly, the Attorney General will try to move in due course an amendment to the Public Order Ordinance deleting therefrom section 27.

I have no doubt that this package will not completely satisfy all our critics but I trust that they will agree that it represents a considerable improvement on the original Bill and I would ask them to accept it if only in the spirit of giving an encouraging vote of confidence in our improving Police Force.

There is, however, another aspect to this Bill and it relates to the delays of justice. I do not know if Members of Council are all familiar with the procedure before the Magistracies in Hong Kong whereby if a person pleads guilty to a charge when he is brought up before the Court, his case is dealt with immediately but if he pleads 'not guilty' to the charge he is remanded in custody until the date fixed for his hearing.

Over a period of 5½ months from 1 November last year, over 2 500 days were spent by persons accused of loitering, in Lai Chi Kok Reception Centre. None of these days was spent by anyone convicted of any crime.

Indeed, over a period of about three months, that is from 27 November 1978 to 10 March this year, seven persons accused of loitering spent over 30 days each in the Reception Centre, and they were subsequently either discharged or acquitted. I am aware that the conviction rate for those charged with loitering is high. However, might not one comment that the delays involved in awaiting trial for loitering are an immense deterrent against anyone pleading 'not guilty' particularly when one remembers that the maximum penalty for loitering under the existing law was only three months. It is true that this comment would not apply to a person able to raise bail. In practical terms, this means no more than that it has become a crime to be poor!

After this Bill becomes law the backlog in the Courts will presumably increase, days spent in remand will lengthen, and so unless either we drastically increase the establishment of Magistrates or we become far more selective in deciding whom to prosecute, the present bad position will simply get worse.

May I thus urge that something be done about it.

On the understanding that amendments will be moved in Committee on the lines I have indicated, I shall vote in favour of the motion.

MR WONG LAM delivered his speech in Cantonese dialect:—

督憲閣下：原則上，本人並不反對政府修訂「刑事罪條例」，使到警方能夠更有效地處理不法之徒在公眾地方或大廈之公共部份遊蕩的問題。但本人覺得這項修訂賦予警方相當大的權力，對於經驗較淺或一時疏忽的警員來說，很容易變成一種無故干預人身自由的權力。故此，本人認為有關法例亦應該為正當市民提供有效的保障。

假如涉嫌遊蕩者於解釋不為警員接納而被帶返警署，則該警員應立即將不接納解釋之原因，交由督察級或以上之負責人處理。而另一方面，涉嫌遊蕩者亦應有權要求在最短時間內面見督察級或以上之負責人，再作解釋。這種保障應廣泛宣傳，使市民能夠明白政府雖然加緊對付不法之徒，但亦顧及正當市民人身自由應有的保障。

另外，本人認為警務處長必須訂定詳細之內部規條，對於濫用此項權力之警員，施以適當之懲罰。

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

Your Excellency, in principle I have no objection to Government amending the Crimes Ordinance to enable the police to handle more effectively the problem of lawless characters loitering in public places or in public parts of buildings. However, I feel that the amendment gives the police considerable powers which, in the hands of less experienced officers or officers who happen to be negligent, may easily result in unjustifiable interference with personal freedom. Therefore, I think the legislation in question should also provide for effective protection for law-abiding people.

If a policeman finds the explanation of a person suspected to have loitered unacceptable, and takes him to a police station, he should immediately refer the case to an officer of inspectorate rank or above and state his

reasons for not accepting the explanation. On the other hand, the person suspected of loitering should have the right to request an interview as soon as possible with an officer of inspectorate rank or above to explain his case. Such safeguard should be given the widest publicity so that the public may see that although tighter measures are taken by the Government against lawless elements, protection of personal freedom of law-abiding people is not neglected.

In addition, I think the Commissioner of Police should lay down in detail a set of internal regulations providing for appropriate disciplinary action against any policeman who abuses such power.

THE ATTORNEY GENERAL:—This Bill, Sir, has aroused the controversy which was to be expected, but I would say that the ensuing discussion of it, in comments which I have received from concerned groups and in the press, has been constructive. There has been general acceptance of the fact that there is a gang problem which must be tackled.

My discussions, Sir, with Unofficial Members can reasonably be described as intense. There was a frank exchange of views on the Bill and the problems which it raises.

The factor which has equally concerned Members and others is the risk of abuse. I spoke of this when I moved the Second Reading. I then said that we must plainly rely on the major steps that have been taken in the past two years with the development of the Complaints Against the Police Office and the monitoring role performed by the UMELCO Group. There is no doubt about that, but the Commissioner of Police has also now finalized the guidelines which he proposes to issue in relation to the consideration of charges for any of the offences under the proposed section 160. These instructions are important because they tackle the possibility of abuse right at the outset. In particular, the Commissioner intends, as Mr WONG Lam has advocated, to direct that a charge for an offence under the proposed section should not be brought unless the case has been considered by a CID officer of at least the rank of inspector. This means that a case will always be considered by an experienced police officer. And it is right that I should say that the Commissioner and his senior officers are fully alert to the risks of abuse. They have taken proper steps to combat that risk.

Sir, the course which this Bill has taken is a good example in my view of the continuous struggle on the one hand to uphold the freedom of the individual and on the other to ensure effective maintenance of law and order in the general public interest. I think it can fairly be said that we have got the balance about right.

Members will have noticed that the amendments that I propose to move in Committee do not provide for a fine as a punishment for the offences under sub-sections (2) and 2(A) of the proposed new section. The amendments

do provide for a fine as a punishment for the offence under sub-section (1), which substantially replaces an existing offence which may now be punished by a fine. I propose that a fine should not be a possible punishment for the offences under sub-sections (2) and (2A) because I cannot conceive of circumstances in which a fine would be appropriate given the nature of the offences. There will of course be a range of punishments and alternative courses other than the imprisonment provided for in the subsections concerned.

I confirm, Sir, that the Government intends to introduce legislation to repeal section 27 of the Public Order Ordinance. This is in response to a proposal made by Unofficial Members. The proposal was made because there is a degree of overlap, as to the exact extent of which Unofficial Members and I agreed to differ, between the proposed section 160 and section 27 of the Public Order Ordinance.

Mr LO, Sir, has spoken of his concern about possible delay between a plea of not guilty and the trial date where persons are charged under the proposed section and remanded in custody pending trial. When answering a question in this Council in December 1977, I said that the average period between the first appearance of a defendant in a magistrate's court and the date fixed for the hearing of the case when the proceedings are defended is one month. I added that in custodial cases the usual period is somewhat shorter. In the brief time that I have had in which to check the current position, I think that the latter statement needs qualification in respect of some courts so that it is wise to assume an average interval of about a month. I recognize, Sir, the force of Mr LO's points and I can say with confidence that trial delays will be a matter of particular concern to the new Chief Justice. I have also already spoken of the directions which the Commissioner of Police is to give to the Police Force. I do not expect the introduction of these new offences to result in an upsurge in the number of prosecutions for loitering.

Finally, Sir, I note Mr CHEONG-LEEN's suggestion about the need to make the provisions of the Bill widely known at all levels in the Police Force and among others. I shall see what can be done.

Question put and agreed to.

Bill read the second time.

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

Committee stage of bills

Council went into Committee.

AUDIT (AMENDMENT) BILL 1979

Clauses 1 and 2 were agreed to.

INLAND REVENUE (AMENDMENT) (NO 5) BILL 1979

Clauses 1 and 2 were agreed to.

CRIMES (AMENDMENT) (NO 2) BILL 1979

Clause 1 was agreed to.

Clause 2

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

*Proposed amendment***Clause 2**

That clause 2 be amended in proposed new section 160 by deleting subsections (1) and (2) and substituting the following—

‘(1) Any person who loiters in a public place or in the common parts of any building shall, unless he gives a satisfactory account of himself and a satisfactory explanation for his presence there, be guilty of an offence and shall be liable on conviction to a fine of \$2 000 and to imprisonment for 6 months.

(2) Any person who loiters in a public place or in the common parts of any building and in any way wilfully obstructs any person using that place or the common parts of that building, shall be guilty of an offence and shall be liable on conviction to imprisonment for 6 months.

(2A) If any person loiters in a public place or in the common parts of any building and his presence there, either alone or with others, causes any person reasonably to be concerned for his safety or well-being, he shall be guilty of an offence and shall be liable on conviction to imprisonment for 2 years.’.

The amendment was agreed to.

Clause 2, as amended, was agreed to.

Clauses 3 and 4 were agreed to.

Council then resumed.

Third reading of bills

THE ATTORNEY GENERAL reported that the

AUDIT (AMENDMENT) BILL

INLAND REVENUE (AMENDMENT) (NO 5) BILL

had passed through Committee without amendment and that the

CRIMES (AMENDMENT) (NO 2) BILL

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

Question put on each Bill and agreed to.

Bills read the third time and passed.

Valedictory

HIS EXCELLENCY THE PRESIDENT:—Honourable Members, this is the last occasion on which John HOBLEY will sit with us as a member of this Council and this is after nearly 26 years of public service, of which for the last six he served as Attorney General. I think there are few offices of Government which are more responsible or more exacting: the Attorney General must constantly render his advice and build his legislative edifice in a triangle which is bounded by what is legally sound, what is morally right and what is politically possible. Outside this triangle lies catastrophe, within it is studded with land mines and faults and flaws, all of which he must avoid. It is a task which requires not only professional expertise and a high sense of the rule of law, but also political judgment and ingenuity. And in this difficult task John HOBLEY has performed with great distinction and shown himself to be not only a first-class lawyer and the most loyal and effective Member of this Council but also a personality of quality who will long be remembered. I am sure that all Members will join me in expressing gratitude for his long and devoted public service and in wishing him and his wife well for the future.

MR CHEUNG:—Sir, Unofficial Members wish to be associated with every word that you have said. Month after month John HOBLEY has suffered requests—if I may use an euphemism—from Unofficial Members for clarification, justification or modification of his legislative proposals, and he has suffered it all with a fortitude and a forbearance that would have done credit to Sir Thomas MORE. The legislative process would have ground to a halt if we had not been able to discuss things with him as frankly and as openly as we have done. We were never tired of listening to his wisdom (as a great man once said) nor of imparting our own. (*laughter*)

It is with the utmost regret, Sir, that we see John leave the Government. I can't, as is usual on these occasions, wish him a happy and leisurely retirement, for he is much too young to retire; rather we wish him success and contentment in whatever new endeavours to which he will devote his youthful energy and zest.

Adjournment and next sitting

HIS EXCELLENCY THE PRESIDENT:—In accordance with Standing Orders I now adjourn the Council until 2.30pm on Wednesday 6 June 1979.

Adjourned accordingly at twenty-two minutes past three O'clock.