

OFFICIAL REPORT OF PROCEEDINGS**Wednesday, 13 June 1984****The Council met at half past two o'clock****PRESENT**

HIS HONOUR THE DEPUTY TO THE GOVERNOR (*PRESIDENT*)
THE HONOURABLE THE CHIEF SECRETARY
SIR CHARLES PHILIP HADDON-CAVE, K.B.E., C.M.G., J.P.

THE HONOURABLE THE FINANCIAL SECRETARY
SIR JOHN HENRY BREMRIDGE, K.B.E., J.P.

THE HONOURABLE THE ATTORNEY GENERAL (*Acting*)
LAW DRAFTSMAN
MR. GERALD PAUL NAZARETH, O.B.E., Q.C., J.P.

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

THE HONOURABLE DENIS CAMPBELL BRAY, C.M.G., C.V.O., J.P.
SECRETARY FOR HOME AFFAIRS

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

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

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

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

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

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

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

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

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

DR. THE HONOURABLE THONG KAH-LEONG, C.B.E., J.P.
DIRECTOR OF MEDICAL AND HEALTH SERVICES

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

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

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

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

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

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

THE HONOURABLE HU FA-KUANG, J.P.

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

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

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

THE HONOURABLE CHAN KAM-CHUEN, J.P.

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

THE HONOURABLE COLVYN HUGH HAYE, C.B.E., J.P.
DIRECTOR OF EDUCATION

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

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

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

THE HONOURABLE MARIA TAM WAI-CHU, J.P.

DR. THE HONOURABLE HENRIETTA IP MAN-HING

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

THE HONOURABLE DAVID GREGORY JEAFFRESON, C.B.E., J.P.
SECRETARY FOR SECURITY

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

THE HONOURABLE CHAN NAI-KEONG, J.P.
SECRETARY FOR LANDS AND WORKS

THE HONOURABLE RONALD GEORGE BLACKER BRIDGE, J.P.
COMMISSIONER FOR LABOUR

THE HONOURABLE CHAN YING-LUN

THE HONOURABLE MRS. RITA FAN HSU LAI-TAI

THE HONOURABLE MRS. PAULINE NG CHOW MAY-LIN

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

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

ABSENT

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

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

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

IN ATTENDANCE

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

Papers

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

<i>Subject</i>	<i>L.N. No.</i>
Subsidiary Legislation:	
Public Health and Urban Services Ordinance. Cheung Chau Cemetery, Sandy Ridge Cemetery, Sandy Ridge Urn Cemetery, Tai O Cemetery and Wo Hop Shek Cemetery (Removal and Disposal of Human Remains) Order 1984	147
Supreme Court Ordinance. Rules of the Supreme Court (Amendment) Rules 1984	148
Public Health and Urban Services Ordinance. Hawker (Permitted Place) Declaration 1984	149
Shipping and Port Control Ordinance. Shipping and Port Control (Dwelling Vessels) (Amendment) Regulations 1984	150
Interpretation and General Clauses Ordinance. Specification of Public Officers (No. 2) Order 1984	151
Deposit-Taking Companies Ordinance. Notice of Exemption from Section 6	152

Oral answers to questions**Action against pornographic video tapes**

1. MR. CHEUNG YAN-LUNG asked:—*Will Government inform this Council how many prosecutions have been brought over the past two years for offering for rent or sale of pornographic video tapes to the public and what has been the range of penalties imposed?*

SECRETARY FOR HOME AFFAIRS:—Sir, action against pornographic video tapes is usually taken under the Objectionable Publications Ordinance, Cap. 150, by both the Police and the Customs and Excise Department.

In 1982 the police prosecuted 262 cases under the Objectionable Publications Ordinance. Only a small number involved video tapes as videos had not yet become so widely used. In 1983 the police prosecuted 277 cases, of which it is estimated about half involved video tapes. In the first four months of this year, 66 cases were prosecuted, of which more than half is estimated to be related to video tapes.

In 1982 the Customs and Excise Department prosecuted 27 cases with over 500 tapes seized. In 1983, 21 cases were prosecuted with nearly 1 800 tapes seized. Up to the end of April 1984, there have been 17 prosecutions by Customs and Excise with 474 tapes seized.

The maximum penalty provided for in law is a fine of \$100,000 and imprisonment for three years. In the majority of cases, the actual fines average about \$2,500; this is in a very wide range. However, fines as high as \$51,500 and imprisonment for six months have been passed on serious cases.

MR. CHEUNG YAN-LUNG:—*Sir, does the Government consider the level of penalty imposed effective with the view to preventing these video tapes from being rented out or sold?*

SECRETARY FOR HOME AFFAIRS:—*Sir, I think the problem is being contained, and in bad cases, as I have indicated, the courts have awarded severe punishment.*

Civil servants' cooperative housing scheme flats

2. MR. SO asked in Cantonese:—

本人在一九八二年五月十九日曾經提出，政務公務員的建屋合作社如果已將貸款全部清還，政府可否准許這些合作社將樓宇出售或重行發展。請問政府目前進展如何？

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

What progress has been made since the reply to my question on 19 May 1982 in deciding whether Government Officers' Housing Co-operative Societies which have fully repaid their loans should be allowed to sell or re-develop their properties?

SECRETARY FOR THE CIVIL SERVICE:—*Sir, some progress has been made on this matter since my reply to Mr. SO's question of two years ago, but it has been slower than I would have wished.*

During 1982 and 1983 discussions were held with the several Government departments involved, with many of the cooperative societies, with the Cooperative Societies Federation and with Staff Side representatives. These have led to the formulation of proposals which, if approved, would permit the legal title to civil servants' cooperative housing scheme flats to be transferred, subject to certain conditions, to individual members of the cooperative societies, who would then be free to dispose of their flats. The proposals would also enable the owners to redevelop their properties.

I propose to issue next month a consultative document formally inviting the views of all civil service housing cooperative societies and the Staff Side on these proposals. Action thereafter will depend on the views expressed in response to the consultative document.

Sir, should the proposals find favour, it is likely that the next step would be the drafting of amendments to the Cooperative Societies Ordinance and a reference to His Excellency in Council for advice whether an amending Bill should be introduced into this Council.

I should add that I am in close touch with the Registrar of Cooperative Societies who administers this Ordinance.

Road signs directing traffic to the vehicular ferries

3. MR. CHAN KAM-CHUEN asked:—*Is the posting of signs directing motorists to the vehicular ferries the responsibility of the Government? If so, why are such signs not as prominent as those which direct motorists to the Cross-Harbour Tunnel, particularly those intended to guide motorists to the ferries from North Kowloon through the complex routes in the Tai Kok Tsui and Mong Kok districts?*

SECRETARY FOR TRANSPORT:—Sir, the Government's responsibility for the erection of road signs includes signs directing traffic to the vehicular ferries. The general practice is that signs giving directions to trunk routes are more prominent than those giving directions to secondary routes. In this context the Cross-Harbour Tunnel forms part of Route 1, the major trunk route linking Hong Kong Island with Kowloon, whereas the vehicular ferry routes are not sections of trunk routes.

The signs to the ferries are located on district distributor roads leading to the ferry terminals, on the assumption that motorists will know broadly in which districts the ferry terminals are located. Thus neither Tai Kok Tsui nor Mong Kok districts have signs to the vehicular ferries; whereas there are 32 directional signs in Yau Ma Tei, Kowloon City and Kwun Tong to guide motorists to the four ferries in these areas.

Economic activities of hawkers

4. MR. WONG PO-YAN asked:—*Will Government inform this Council whether the economic activities of hawkers—both licensed and unlicensed are being included in our G.N.P. compilation? If so, what is their contribution.?*

SECRETARY FOR ECONOMIC SERVICES:—Sir, the economic activities of hawkers have been taken into account in the compilation of our gross domestic product statistics. They are included under the economic sector described as 'wholesale and retail, import/export trades, restaurants and hotels'. (*laughter*)

In 1983 hawkers contributed roughly \$1 billion to the economy, representing about 0.6% of total G.D.P. Because earnings from hawkers, particularly part-time hawkers, are difficult to measure, this estimate may not be very precise. It is obtained on the basis of information on the number of full-time hawkers and their average earnings gathered through the Census and Statistics Department's General Household Survey. In compiling this estimate no distinction is made between licensed and unlicensed hawkers.

Sir, in recent years, the estimated contribution of hawkers to the G.D.P. has risen in absolute terms but has remained fairly stable in relative terms.

MR. WONG PO-YAN:—*Sir, does Government have any idea about the public resources being used by the hawkers, for example, the road space and the net recurrent expenses in hawker control?*

SECRETARY FOR ECONOMIC SERVICES:—No, Sir, I have no idea this afternoon, but I shall make enquiries to see whether I can give some information in a written reply.

(The following written reply was provided subsequently.)

The Government has information on the recurrent expenses in hawker control, but not in respect of other forms of public resources used, such as road space. There is no record of which streets are effectively occupied by hawkers.

According to information supplied by the Urban Services Department, recurrent expenditure on hawker control in 1983-84 amounted to \$128.9 million. This figure covered both the urban areas and the New Territories, and included major expenditure items in relation to, for example, the General Duties Team, administration, licensing and cleansing. The revenue derived from hawker licences was \$43.9 million. The net recurrent expenses for hawker control was thus in the region of \$85 million.

Recommended date of consumption of food

5. MRS. NG asked in Cantonese:—

目前有些食品製造商在牛奶和其他食品的容器上印上保鮮期限，政府可否考慮規定所有製造商必須在食品包裝上以中文及英文印明該等期限？

(The following is the interpretation of what Mrs. NG asked.)

Will Government consider requiring the recommended date of consumption, given on the containers of milk and other food packages which has hitherto been provided voluntarily by food manufacturers, to be so labelled in Chinese as well as in English?

SECRETARY FOR HEALTH AND WELFARE:—Sir, the short answer to the question is ‘yes’. The intention is to make such labelling a legal requirement, and the necessary amendment regulations are already being drafted. Very careful consideration will be given to the question of the language to be used for complying with the proposed regulations.

MRS. NG asked in Cantonese:—

在新法例未訂立之前，請問政府有甚麼措施禁止零售商出賣過期的保鮮裝飲品及其他食物？

(The following is the interpretation of what Mrs. NG asked.)

Sir, before the new regulations are ready what measures does the Government have to stop individual retailers from selling food which is past the recommended date of consumption?

SECRETARY FOR HEALTH AND WELFARE:—Sir, there are no plans for action to be taken on this issue in anticipation of the amendment regulations.

Installation of air-conditioning units

6. MR. F. K. HU asked:—*Will Government inform this Council what measures are taken to ensure that individual air-conditioning units, particularly in high-rise buildings, are securely installed?*

SECRETARY FOR LANDS AND WORKS:—Sir, the short answer is that Government does not impose conditions upon owners as to the manner in which individual air-conditioning units are initially installed.

Individual air-conditioning units or room-coolers such as those commonly fitted in window openings or in purpose-built apertures are considered to be ‘plant’ rather than part of a building and they do not fall within the definition of either ‘building’ or ‘building works’ set out in section 2 of the Buildings Ordinance. There is therefore no requirement for details of fixing to be submitted to the Building Authority.

In the event that the Buildings Ordinance Office receives a complaint to the effect that an air-conditioning unit is fixed in a dangerous manner and inspection reveals that the unit is indeed likely to fall the action which the staff of that Office would take would be to advise the police to barricade the area below the unit to prevent danger to the public pending the removal or securing of the unit.

Although, Sir, it should be mentioned that the problem of falling air-conditioners is at present minimal, owners should be aware of the fact that under section 4B(1) of the Summary Offences Ordinance, if *anything* is dropped

or allowed to fall from a building to the danger of any person in or near a public place, the person who drops that thing or allows it to fall commits an offence and is liable to a fine of \$10,000 and imprisonment for six months. It is thus in the owner's interest to ensure that their air-conditioners are securely installed and that the fixings are regularly checked and maintained.

MR. F. K. HU:—*Sir, can the Secretary for Lands and Works advise whether, for the reason of public safety, the Government will consider introducing legislation to require approved registered contractors to undertake installation and periodical inspection of individual air-conditioning units in high rise buildings?*

SECRETARY FOR LANDS AND WORKS:—*Sir, as I intimated in my reply, the problem at present is minimal, although I readily accept that the problem could become serious in the future because of the large number of air-conditioners being installed.*

The question of extending the ambit of the Buildings Ordinance to cover fixtures to support air-conditioning units and other plants which may project over a street is being considered by the Buildings Ordinance Office after recently having had a request to do so from the profession. So this matter is under active consideration.

Illegal immigrants working in factories

7. MR. CHEUNG YAN-LUNG asked:—*how often are checks made at factories to ascertain whether there are illegal immigrants working in the factories and what is the average level of fines imposed on the factory operators prosecuted for this offence?*

COMMISSIONER FOR LABOUR:—*Sir, Labour Inspectors check on illegal immigrants working in factories during their normal routine visits to check on breaches of labour legislation. They make about 100 000 such visits a year to about 60 000 factories, which means that each factory is visited on average about once every seven months.*

In addition to these visits the Labour Department also co-operates with the Police and Immigration Department in special anti-illegal immigration campaigns. So far 12 such campaigns have been conducted, each one lasting about three days and covering about 5 000 factories in addition to many other places of employment.

Since Part IVB of the Immigration Ordinance came into effect in November 1980, the Immigration Department has prosecuted 47 employers in connection with the employment of illegal immigrants and the average fine has been about \$1,000.

Display of speed check signs

8. MR. CHAN KAM-CHUEN asked:—*Would the Government consider including 'speed check' signs into the list of standard portable traffic signs so that they may be displayed prominently before check points and on Police equipment vans?*

SECRETARY FOR TRANSPORT:—Sir, I confirm that speed check signs are not included as prescribed traffic signs in the road traffic legislation. The police make a regular practice of displaying these signs not only to give advance warning of speed detection measures, but also to remind motorists of the need to obey the speed limit on the road. The signs are placed at the side of the road where motorists are used to looking for information, rather than on the top of police vans where they would in any case be less visible. And I might add the Commissioner of Police no doubt has better use for such vans.

It is not necessary to prescribe speed check signs in the legislation, because they are advisory by nature and discretionary in use. The speed limit signs (which are prescribed) provide the basis for prosecution of offenders.

MR. CHAN KAM-CHUEN:—*Sir, as these signs are small and placed at road level and may be hidden by passing cars, may I ask that their height be raised to or above eye level and the signs enlarged to match standard traffic signs so as not to undermine the original good intention and fair play in displaying the signs?*

SECRETARY FOR TRANSPORT:—Sir, I will certainly give that consideration, but on the matter of fair play I must point out that human nature being what it is, motorists cannot expect to have speed check signs immediately in the vicinity of actual speed limit signs. *(laughter)*

Dangerous consumer products

9. MRS. CHOW asked:—*Does Government keep any record of accidents caused by the use of dangerous consumer products and what steps does the Government take to protect the public from such products?*

SECRETARY FOR ECONOMIC SERVICES:—Sir, the Government does not itself keep a central record of accidents caused by the use of dangerous consumer products. The Consumer Council, however, includes amongst its statutory functions the receiving and examining of complaints by consumers of goods and services. In this context, the Council keeps a record of all complaints received, including details of any accidents involved.

As Members will be aware, the Consumer Council, a wholly subvented organization established by the Government, plays an important role in protecting the public by undertaking extensive product testing. The Council

publishers its findings. In a number of cases, the publicity given by the Consumer Council in relation to the dangers of using a particular product has led to the withdrawal of the product from the market or its improvement to an acceptable standard of safety.

In areas of major public concern, such as gas water heater safety, the Government has taken direct steps to eliminate the supply and installation of unsafe products. As I mentioned in this Council on 11 January this year, further legislation on gas safety is planned.

We believe that different aspects of the wide ranging problem of product safety are best dealt with by the particular departments concerned. For example, the Director of Electrical and Mechanical Services is now preparing drafting instructions for new regulations which will impose standards for certain electrical fittings and appliances.

Sir, the Consumer Council regularly draws our attention to products which, if defective or wrongly used, can represent a threat to the consumer, and I am grateful to the Council for its vigilance in this area.

MRS CHOW:—*Sir, I thank the Secretary for Economic Services for his reply, but as the measures described in this reply are by and large preventive, will the Secretary please inform this Council whether the Government would legislate for mandatory withdrawal of dangerous products from the market once serious accidents are known to have occurred?*

SECRETARY FOR ECONOMIC SERVICES:—*Sir, if a case is made for legislation in any particular area, we would certainly consider it. As I have mentioned, in the case of electrical appliances we are producing some legislation which, I hope, will be ready next year. It is difficult to think in terms of universal or blanket legislation because this is such a wide subject.*

Potential dangers posed by hawkers running away from possible arrest

10. MR. POON asked:—*In view of recent accidents to bystanders and pedestrians during hawker control operations, will Government inform this Council what steps are being taken to reduce the danger of such accidents in future?*

SECRETARY FOR HEALTH AND WELFARE:—*Sir, Mr. POON's question is, I think, prompted by recent press reports concerning two specific accidents which happened while officers of the Urban Services Department were engaged in the arrest of illegal hawkers. Incidentally, some 110 000 arrests for hawker offences were made last year in the urban area alone.*

I suggest, Sir, that it is not possible to bring an offender before the Courts, and to secure his just punishment, without first apprehending him. And it would

perhaps be naive not to expect him at least to attempt to avoid being taken. It is apparently in the act of trying to run away from possible arrest, that he poses a potential danger to bystanders.

Sir, I know of no way of reducing this potential danger in the case of illegal hawkers, other than by their complete and speedy removal from our streets. I am told that in the two specific accidents which were much publicized there is no evidence that the hawkers were actually being chased by law enforcement officers. Indeed, in one case the evidence is to the contrary. The hawker ran I am told, with complete disregard for the safety of bystanders, simply on sighting officers of the general duties teams at the other end of the street. I am informed that the general duties teams are under standing instruction to fit their actions to the prevailing circumstances, and they do not give chase when by so doing they might create a hazardous situation.

It is always sad when innocent bystanders are accidentally hurt as a result of the criminal or irresponsible behaviour of others. The degree of tragedy is heightened when the injuries suffered are serious or permanent, and when the victim is either very young or very old.

While not wishing to suggest that our streets are particularly dangerous—and in comparison with many other cities the reverse is undoubtedly the case—we are a concentrated and intensely urban community, and the danger of accidents will always be present. In such circumstances, Sir, cold comfort though it might be, I must stress that there is a duty on the part of every person in a public place to exercise care, caution and consideration and to be alert at all times to what is happening around him.

MISS DUNN:—*Sir, whilst I agree with the Secretary for Health and Welfare's sentiments, may I ask whether he is in fact saying that the Government is not taking any such steps and that there is no way to reduce the dangers of this kind of accident?*

SECRETARY FOR HEALTH AND WELFARE:—Yes, Sir.

MRS. NG asked in Cantonese:—

我想請問政府，在取締無牌小販行動之中，可否優先處理熟食小販問題，因為這些小販是構成衛生福利司所形容的危險成份最高的一種？

(The following is the interpretation of what Mrs. NG asked.)

In trying to eliminate illegal hawkers from our streets, can the Government give priority to dealing with hawkers who sell cooked food because they are the ones who pose the greatest potential danger described by the Secretary?

SECRETARY FOR HEALTH AND WELFARE:—Sir, the priority to be given really is a matter for the Urban Council to determine, but I do believe that they already give priority to illegal hawkers selling cooked food for precisely this reason.

MRS. CHOW:—*Can I asked the Secretary whether the Government intends to bring charges against the hawkers who so blatantly disregard the safety of others and the two hawkers in question?*

SECRETARY FOR HEALTH AND WELFARE:—I am not sure which of the two cases is referred to. In one case charges have already been laid and the hawker responsible was convicted and, I believe, imprisoned. In the second case the hawkers responsible have not yet been finally identified and enquiries are proceeding.

Role of the armed services

11. MR. CHAN YING-LUN asked:—*Will Government inform this Council of the role of the garrison stationed in Hong Kong?*

SECRETARY FOR SECURITY:—Sir, the primary role of the armed services, of which the Governor is Commander-in-Chief, is to assist the Hong Kong Government to maintain security and stability in Hong Kong.

In practice, they assume this role actively only when the Hong Kong Government asks them to do so and they would then act in support of the police and the other civil powers.

Their other main task is to help the Royal Hong Kong Police Force to combat illegal immigration into Hong Kong. They also play an active part in helping Government departments and voluntary organizations in community work, for example hill fire fighting, building bridges in villages and welfare projects.

MR. CHAN YING-LUN:—*Sir, will the Secretary for Security tell us what safeguards do we have to ensure that the garrison does not interfere with the day-to-day lives of the population?*

SECRETARY FOR SECURITY:—Sir, the fact of the matter is that the garrison does not interfere in the daily lives of the people of Hong Kong. But if it did do so without an instruction from the Governor as Commander in Chief, then those responsible would have to face the full military machinery for dealing with breach of discipline.

Government business

First reading of bill

ANTIBIOTICS, PHARMACY AND POISONS (MISCELLANEOUS AMENDMENTS) BILL 1984

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

Second reading of bills**ANTIBIOTICS, PHARMACY AND POISONS (MISCELLANEOUS AMENDMENTS) BILL 1984**

THE SECRETARY FOR HEALTH AND WELFARE moved the second reading of:—‘A bill to amend the Antibiotics Ordinance and the Pharmacy and Poisons Ordinance’.

He said:—Sir, I move the second reading of the Antibiotics, Pharmacy and Poisons (Miscellaneous Amendments) Bill 1984. Its purpose is to clarify the position of a person possessing a controlled antibiotic or poison which he has obtained by prescription.

Under the Antibiotics Ordinance and the Pharmacy and Poisons Ordinance, the possession of various specified antibiotic substances and poisons is prohibited. A judgment in a criminal appeal in September 1982 drew attention to the fact that this prohibition may be taken to apply to a patient who possesses antibiotics or poisons even although he does so as a result of a properly issued prescription. If charges were laid against him for possessing such substances, he could be convicted of technical offences.

It clearly cannot be the intention to prevent a person from having in his possession antibiotics and poisons received under a proper prescription, and so the Bill provides that a person who possesses controlled antibiotics or Part I poisons which have been supplied to him under the provisions of the two Ordinances does not thereby commit an offence.

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

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

Question put and agreed to.

DUTIABLE COMMODITIES (AMENDMENT) BILL 1984**Resumption of debate on second reading (30 May 1984)**

Question proposed.

Question put and agreed to.

Bill read the second time.

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

DUTIABLE COMMODITIES (AMENDMENT) (NO. 2) BILL 1984**Resumption of debate on second reading (30 May 1984)**

Question proposed.

Question put and agreed to.

Bill read the second time.

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

INLAND REVENUE (AMENDMENT) BILL 1984**Resumption of debate on second reading (30 May 1984)**

Question proposed.

MR. BROWN:—Sir, this Bill has a number of unique features, not least of which is the amount of adverse criticism it attracted prior to being written.

During the budget debate on 29 March I admitted to being a cautious man and suggested it would be more appropriate to study this legislation once it had seen the light of day. My colleagues and I have done just that, and we have examined it closely bearing in mind the very many representations received both prior and subsequent to the publication of the Bill.

Although this Bill was initially studied by the Legislative Council Monetary Policy Group, it was decided to expand the membership of that Group into a special *Ad-hoc* Group so that the many issues raised by both professional bodies and ordinary members of the public could be considered by a wider spectrum of experience. Sir, I speak as its Convener.

Representations received from the public ranged from the general to the particular. Whilst the former were interesting—and indeed on occasions, I might say, as colourful as the public responses they elicited from the Financial Secretary—the *Ad-hoc* Group concentrated its attention on the facts.

It is a fact—an undisputed one as far as I am aware—that retrospective taxation is bad in principle. It is a fact that the Bill, as originally published together with the Public Revenue Protection (Inland Revenue) Order on 30 March, contained provisions which were retrospective in that certain items were newly brought to charge with effect from a date prior to 1 April 1984. This has been accepted as a valid criticism by the Administration, and I am happy to

record, as a matter of fact, that the refinements to the original draft of this Bill to remedy this particular issue are accepted as being entirely satisfactory to Unofficial Members.

Another issue, regarding which the facts are not in dispute, is the desirability of making provision for foreign tax relief. This is not a matter of principle, but most jurisdictions do make such provision and, given Hong Kong's status in the international financial arena, it is desirable that we do likewise. The Administration has accepted this point of view and again the refinement to the Bill to achieve this objective is also applauded.

A matter which caused more difficulty was the undeniable fact that in throwing out the water dirtied by tax avoidance measures, the Bill, in its original form, also threw out the baby of genuine business transactions. Unofficials are of like mind with the Official Members of this Council regarding the need to preserve the yield from profits tax, and this was amply demonstrated, I think, in the budget debate speeches.

The result of much heartsearching over the need to support the principles on which we are all agreed, and the need to accommodate the very genuine fears that the measures as proposed would be detrimental to economic growth, is reflected in further significant refinements of the Bill. Although these amendments will not please everyone, they do remove most genuine business transaction from the ambit of the new proposals. Unofficial Members believe the refinements are a sensible solution to the problems highlighted by public debate, and they therefore support them. However, I feel sure that the Financial Secretary would agree with me that in legislation of this nature actual experience of its working will probably reveal the need for further fine tuning, and indeed it is clear from the remarks he made when introducing this Bill on 30 May that the Administration remains responsive to sensible suggestions to remedy any unforeseen effects which may result from the Bill's application. One area that I believe will require watching is the possible impact of the decision to disallow for tax relief interest paid by a Hong Kong subsidiary or associated company to an overseas parent. Many multi-national corporations finance their subsidiaries from a central treasury and whilst, therefore, clause 4(e) is a welcome refinement to the original proposals the provisions detailed under (B) and (C) of this clause may require reconsideration in the light of experience.

Sir, in the Budget Debate I made reference to the need to spell out in clear and precise terms what is meant by 'carrying on business in Hong Kong's in the context of tax legislation. Alas, I appear to have asked for the impossible. It would seem that a precise definition is beyond the ability of the English language, at least in its legal usage, and I assume incidentally the same applies to Chinese. The worries expressed in this connection therefore remain, but Unofficial Members have been given an undertaking that a 'Departmental Interpretation and Practising Note' will be issued so that the public will be aware of the Inland Revenue Department's current interpretation of this simple

phrase—a phrase that has such crucial importance as to whether tax is or is not payable. I understand that this Note will be issued shortly after this Bill has been enacted—assuming that it reaches the statute book as now intended.

Turning to the subject of the territorial source concept Unofficials have already made their position clear on the need not to compromise this corner stone of our tax legislation. We were most satisfied by the unequivocal undertaking given by the Financial Secretary in this Council on 25 April 1984 when he reiterated that the Government remained wedded to the principle that taxation should only be applied to income arising from Hong Kong. Never the one to mince his words, the Financial Secretary underlined this commitment by stating categorically that no proposals made by him to Executive Council would include changes to the basic territorial source criterion. I mention this this afternoon partly to underline the importance of the undertaking made, and partly because it does answer—and answer most satisfactorily—many representations we received on this key issue.

Whilst considerable changes were made to the original draft of this Bill before it was presented to us for its first reading—and such changes cover the most important issues considered by the *Ad-hoc* Committee—a number of other matters have subsequently arisen which have deserved careful deliberation. The *Ad-hoc* Committee believes that two of these merit amendments to the Bill at the committee stage. My Colleagues Messrs. Peter C. WONG and Peter POON will move these amendments, which I understand are acceptable to the Administration, and they will explain the reasons for them in their own speeches later in this debate.

Sir, it is the right of Government to introduce legislation to counter tax avoidance, and indeed it is its duty to do so. It is the duty of this Council to ensure that measures of this nature achieve their objective in a manner that is fair, and is seen to be fair, to all tax payers. The *Ad-hoc* Group is satisfied, subject to the agreed amendments to be passed at the committee stage, that the Bill now meets this criteria.

It follows, Sir, that I support the Motion.

MR. PETER C. WONG:—Sir, Mr. BROWN has covered fairly exhaustively the various aspects of the Bill, public reactions and representations, deliberations by Unofficial Members and discussions with the Administration.

I shall confine my remarks to the amendment relating to unit trusts which I will move at the committee stage.

With effect from 1 April 1984, the Bill proposes to bring to charge to profits tax sums received by or accruing by way of interest to businesses carried on in Hong Kong, notwithstanding that the funds in respect of which the interest arises are made available to the borrowers off-shore, and irrespective of the currency in respect of which the transaction is denominated.

The unit trust industry has put forward powerful arguments that in the interests of Hong Kong as a financial centre, certain concession should be made so that it would be viable for the industry to continue to operate in Hong Kong. The *Ad-hoc* Group has carefully studied the industry's representation, and after consultation with the Administration, come to the conclusion that having regard to the unique circumstances of the unit trust industry, it appears that it would be desirable to grant some measure of relief. To put the matter in perspective, it would be helpful to review the events of the past two years.

In 1982 the unit trust industry sought exemption from profits tax in respect of gains accruing to unit trusts from the purchase and sale of securities. The industry argued that the threat of liability to profits tax continued to inhibit its growth potential, to the economic disadvantage of Hong Kong at large.

In practice, unit trusts, with a few exceptions, do not engage in trading in securities to any significant extent; transactions in securities undertaken by unit trusts are generally in the nature of capital investment transactions. The revenue implications of exemption from profits tax in respect of gains derived from disposal of securities by unit trusts would therefore be minimal.

Members will recall that as a result of the enactment of the Inland Revenue (Amendment) (No. 2) Bill in 1983, the potential liability to profits tax on gains derived from the disposal of securities of a unit trust was removed (s. 26A(1A)). This amendment, however, did not cover tax on interest income. Nevertheless, it was a recognition of the unique position of unit trusts.

When the present Bill was published the industry made further representation emphasizing that if the potential liability of Hong Kong unit trusts to tax on interest income remains, the future of Hong Kong's unit trust industry will be diminished, to the disadvantage of the financial sector as a whole.

It is not difficult to envisage that unless some concession is made in this area, it is likely that new funds will not be established in Hong Kong and many existing funds will be forced to relocate out of Hong Kong. This can be accomplished by simply changing the Hong Kong Trustee to an overseas Trustee.

There is merit in the arguments put forward by the industry. Bearing in mind that the revenue implications of exemption from profits tax in respect of unit trust interest income would be minimal, and the useful part which the industry plays in relation to Hong Kong's position as an international financial centre, the *Ad-hoc* Group has recommended to the Government that there is a case for some concession to be made.

Sir, I am happy to report that Government has acceded to our request and accordingly I will be moving an amendment to the Bill by the insertion of a new clause 4A which would have the effect of exempting unit trusts from tax liability in respect of sums received or accrued by way of interest.

Sir, subject to the agreed amendments, I support the Bill.

MRS. FAN:—Sir, I am in favour of any anti-tax-avoidance measures to protect the Government's revenue; and at this point in time, we are all painfully aware of the need to generate more revenue in order to offset our deficit as far as possible. However, I, for one, would place priority on the maintenance of Hong Kong as a major financial centre, and would jealously guard our simple and comparatively low tax system as a means to achieve the latter objective.

In its present form, the Inland Revenue (Amendment) Bill 1984 has no doubt improved considerably on its first draft which was issued together with the Revenue Protection Order signed on 30 March 1984. The reservation which I raised during the budget debate on 29 March 1984, however, has not been totally alleviated. I refer to the extension of our territorial concept in taxation to include off-shore interest in the tax net, and the growing complexity of our tax system, particularly relating to the imposing of restrictions on the treatment of interest payments.

In the taxing of off-shore interest, many have expressed their views that this represents a departure from our territorial tax concept. It is argued that if a company placed its surplus fund on overseas deposits, even though that the moneys originally arose from net profit derived from carrying on business in Hong Kong, there is insufficient justification to tax the interest gain from that deposit in view of the fact that firstly it is derived from off-shore and secondly it is not related to but merely results from the carrying on of a business in Hong Kong. The Financial Secretary, however, assured this Council on 25 April 1984, that 'The Government remains wedded to the principle that taxation should only be applied to income arising in or derived from Hong Kong.' The Commissioner of Inland Revenue also assured his audience in a tax seminar on 31 May 1984 that "This is not the first step in a sinister move to bring world-wide profits to charge.' The question remains whether the decision to tax off-shore interest will affect business in Hong Kong. In this, I tend to be more pessimistic than the Commissioner of Inland Revenue, who confidently said in the same seminar, 'As to the claim that business will be driven away, I can only say that those who go are probably not making a great economic contribution to Hong Kong anyway—and Hong Kong does not flourish on "hot money".'

At this junction, it may be pertinent to note that paragraph 133 of the Report of the Third Inland Revenue Ordinance Review Committee, suggested that 'if such a surplus is invested abroad we do not regard the interest as part of the profits in the manner described in paragraph 131.' (*The full text of paragraphs 131 and 133 was tabled for Members' reference*). While I can see a certain justification for taxing off-shore interest earned by financial institutions, I cannot see any rationale of including off-shore interest income derived by non-financial institutions in our tax net, except to generate more revenue.

The Financial Secretary expressed regret toward the growing complication of tax law but felt this was inevitable. I share his regrets. The simplicity of our tax legislation and our relatively low tax rate have enabled businessmen here to

conduct their operations free from tax considerations, and this accounts for one of Hong Kong's attractiveness as a financial centre. The proposed Bill, which imposes restrictions on the treatment of interest payment, will no doubt create complications to our tax system, especially for companies both carrying on onshore as well as off-shore business activities in Hong Kong. The growing complexity may well prompt Hong Kong businessmen, who in the past have not been interested in tax avoidance, to find it necessary to consider tax planning, in order to prevent this normal commercial transactions from being caught unexpectedly by the new Bill. Again, whether this will have any detrimental effect on Hong Kong's economy and the inland revenue system remains to be seen.

The main purpose of taxing off-shore interest is to increase revenue, and the 'heavily discounted estimate' is \$350 million according to the Commissioner of Inland Revenue. I sincerely hope that this will be the case, although I am afraid that the financial benefits generated may well be offset by the costs of implementing the legislation as well as the likely unfavourable economic and financial ramifications.

With these reservations on the Bill, Sir, I shall abstain from voting on the motion.

MR. POON:—Sir, the Financial Secretary's tax proposals in his Budget Speech on 29 February 1984 involve some important changes in the Inland Revenue Ordinance. Inevitably, there was a lot of controversy. The business circle and the legal and accounting professions were alarmed at the possible implications of such proposals. Numerous representations were made to UMELCO and they have all been carefully considered. The Bill before us will meet many of the constructive suggestions and criticisms.

No anti-tax avoidance legislation is perfect. We would have happily hoped that we can turn the clock back and re-introduce tax on interest income which would render most of the controversial new amendments unnecessary. For a variety of reasons, this cannot be and it is imperative that legislation be enacted as soon as possible to plug the tax loophole caused by the abolition of tax on certain interest income.

The Textile and Clothing Industry was concerned as to whether interest paid to financial institutions on loans backed by foreign currency deposits of its own business would be allowed as a tax deduction. The Commissioner of Inland Revenue has confirmed that such interest will be deductible and will not be caught under the new s. 16(2)(d), as the interest on such foreign currency deposits is chargeable to Hong Kong tax. To put it simply, there will not be double taxation in such a case.

The amendments to allow interest paid to persons other than financial institutions on money borrowed wholly and exclusively to finance capital expenditure on plant and machinery ranking for depreciation under the Inland

Revenue Ordinance and for purchase of trading stock used by the borrower in the production of profits chargeable under the said Ordinance will cater for genuine business transactions and cover most of the cases deserving relief. It may well be that other categories of interest ought to be considered for relief but we must wait and see how the new laws operate and learn from experience. If it is later found that there is genuine hardship in such cases. Government ought to consider further amendments.

There have been some vigorous but useful debates on whether the new tax legislation will be detrimental to business in Hong Kong in general and Hong Kong as a financial centre in particular. The Bill in its present form will remove a lot of doubts and fears but there are still certain matters of concern which cannot be entirely dismissed.

The new laws are arbitrary and complicated. There will be considerable administrative problems and difficulties. It is still difficult to know what the Inland Revenue Department will consider to be 'carrying on business' in Hong Kong. The family investment holding company in Hong Kong earning only passive interest overseas may have to pay profits tax. There is no provision for apportionment of interest for tax deduction purpose if only part of the loan from a person other than a financial institution is backed by a deposit of a closely-connected person. The de facto rejection of the so called 'provision of credit' test as a major criterion for determining the source of interest is still regarded by some to be an erosion of the territorial concept despite the assurance by the Financial Secretary that it is not Government's intention to extend the ambit of tax beyond the 'territorial basis'.

No law can cover all conceivable situations. Therefore many cases will have to be determined on their own merits and there are bound to be some inequities. We must also expect that the Inland Revenue Department will apply the new laws in a sensible and reasonable manner. Nevertheless, it is the uncertainty that worries businessmen and their advisers. Businessmen should be able to understand clearly what their tax liability would be if they were to engage in particular transactions. In their regard, it is most essential that properly detailed clarifications be made in the Practice Notes to be issued by the Commissioner of Inland Revenue on the new amendments. As these amendments will affect transactions entered into on or after to 1 April 1984, such Practice Notes should be made available as soon as possible.

On the whole, I am reasonably satisfied that the new Bill with the amendments to be proposed, will achieve to a great extent its purpose to counter tax avoidance. To the prophets who predict that entirely new tax avoidance schemes will emerge, the Financial Secretary has already drawn their attention to the strong House of Lords decision in *Furniss V Dawson* which greatly reinforces Inland Revenue's power to challenge the substance of tax avoidance

schemes. It has also been indicated that, if necessary, Government might also look at appropriate amendments to expand the present Section 61 of the Inland Revenue Ordinance which empowers an Assessor to disregard certain artificial tax avoidance transactions.

Finally, I share the view that the interest payment in relation to publicly listed debentures issued prior to 1 April 1984 should be allowed as a tax deduction. This is only fair as such debentures were issued for commercial purpose and without knowledge of Government's attention to disallow such interest. I shall propose the necessary amendment later.

With these remarks, Sir, I support the motion.

THE FINANCIAL SECRETARY:—Sir, very helpful discussions have taken place with the LegCo *Ad-hoc* Group and the Legislative Scrutiny Group respectively before and after the Bill was published. I am grateful to the knowledgeable Unofficial Members who participated and have given wise advice on the Bill. I am grateful also for the support, comments and indeed reservations of Mr. BROWN, Mr. WONG, Mr. POON and Mrs. FAN this afternoon.

Mr. BROWN has rightly pointed out that it is the duty of Government to introduce legislation to counter tax avoidance. Mrs. FAN agrees. I am determined to do this; and I am sure that the Bill will in part help to achieve this objective without hindering genuine business borrowings or dampening the interest of potential foreign investors in Hong Kong. It is worth bearing in mind that complicated law arises only from the need to counteract byzantine avoidance measures.

I note the concern that has been expressed over the phrase 'carrying on a business in Hong Kong's. This is a technical expression well known in taxation law which, however, is unfortunately not capable of precise definition. The question as to whether a person is or is not carrying on a business in Hong Kong can only be determined by taking into account all the relevant facts of that situation. However, I can assure honourable Members that the Commissioner of Inland Revenue will, as usual, examine each case carefully. He will also issue a Departmental Interpretation and Practice Note giving guidance on this matter after the Bill is enacted. I confirm also that the Administration will remain open to further representations if unforeseen problems arise.

Mr. Peter C. WONG and Mr. Peter POON will move two amendments to the Bill at the committee stage. They have explained them in detail. I am happy to confirm that the Administration accepts the proposed amendments in their entirety.

Sir, I beg to move.

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).

EVIDENCE (AMENDMENT) BILL 1984

Resumption of debate on second reading (30 May 1984)

Question proposed.

MR. PETER C. WONG:—Sir, the main object of the Bill is twofold: to amend the existing rules of evidence relating to the proof of recorded information, and to provide a new procedure for obtaining evidence outside Hong Kong for use in criminal proceedings in Hong Kong.

The main proposals include—

1. The definition ‘banker’s book’ in section 2 of the principal Ordinance does not cover the computerized records of modern banking transactions. It is therefore necessary to replace it by a more comprehensive definition of ‘banker’s record’ which will extend to records kept otherwise than in written form.
2. A new provision enables evidence of the fact that no record of the happening of an event exists, to be admitted in certain circumstances in criminal cases to prove that the event in question did not happen. Certain safeguards are incorporated.
3. Another new provision deals with the admissibility in evidence in criminal proceedings of copies of, or extracts from, foreign records. For production in court, these documents must be certified by the Chief Secretary. A definition of ‘foreign document’ is included.
4. Section 22 of the Ordinance relating to the admissibility in criminal proceedings of business records is repealed and replaced by new provisions covering a wider spectrum, including discs, tapes, microfilms and computer records. The hearsay nature of such evidence makes it desirable to provide for safeguards. Such evidence will only be admissible if direct oral evidence of the fact would be admissible.
5. Section 77B(1) of the Ordinance which deals with the jurisdiction of the High Court to assist in obtaining evidence for criminal proceedings instituted in overseas courts is extended to include proceedings which are likely to be instituted if the relevant evidence is obtained. Whether such extension is necessary is a matter of opinion, but on balance, it is considered to be desirable.

6. A new Part VIII A provides for two things—
- (a) a procedure whereby the High Court in Hong Kong may issue letters of request to overseas courts to assist in obtaining evidence for use in criminal proceedings in Hong Kong; and
 - (b) the admissibility in those proceedings of the evidence so obtained.

The new proposals introduce important changes which will facilitate the tendering of evidence, particularly in criminal proceedings. The Bill is highly technical, and its provisions have been carefully studied by the Legislation Scrutiny Group. Consultations with the Administration have helped to clarify a number of queries and also resulted in the following agreed amendments—

1. *Clause 4*

New section 19A(1) allows foreign documents certified by the Chief Secretary to be produced in court. A new subsection (4) will be inserted requiring 14 days' notice in writing of the intention to tender such document. It was considered that to ensure fairness, appropriate notice should be given to the opposite party.

2. *Clause 7*

- (a) In subsection (3)(b)(ii) the words 'if found' will be deleted and substituted by the phrase 'if such a person is found'. This change serves to remove any ambiguity that might arise.
- (b) Subsection (13) will be amended to make it possible for the definition of 'computer' in subsection (12) to be amended by a resolution of this Council.

Members of the Legislation Scrutiny Group are satisfied that the Bill has achieved its objective and will further strengthen our legislation in this important area of the law.

One final point. The Administration has undertaken to draw up guidelines with respect to the practice and procedure applicable to the new section 19A(1). Foreign documents to be produced in court must be accompanied by a certificate purporting to be signed by the Chief Secretary. Members of the Legislation Scrutiny Group are concerned that unless clear guidelines are drawn up, the defendant or his legal representative may be confronted with bureaucratic obstacles.

Sir, subject to the agreed amendments, I support the motion.

THE ATTORNEY GENERAL:—Sir, I must thank Mr. Peter WONG and the Legislation Scrutiny Group for the careful attention they have given to this rather technical Bill. It is reassuring to learn that the Group are satisfied that the Bill will achieve its object.

Mr. Peter WONG has explained the agreed amendments he will move at the committee stage. I would however like to add a little about the first of those

amendments. New section 19A(1) seeks only to provide a simple means of getting foreign documents admitted in evidence in criminal proceedings. All that is required is a certificate from the Chief Secretary that the foreign document has been received by him in connection with those criminal proceedings. The new section very sensibly leaves it to the court to determine the weight or probative force to be given to the document. In requiring 14 days notice to be given of the intention to tender such document, the proposed committee stage amendment will introduce a most valuable safeguard, in that the party notified should then be able to mount an effective challenge to the documents if they are suspect or deficient in some way. The proposal for 14 days notice is therefore welcome. It corresponds to similar provision in new section 22A(6) and fits well into the scheme of the Bill.

However, Sir, as a bureaucrat of long standing, I find myself less enthusiastic about the Group's fears that without guidelines, defendants or their legal representatives may be confronted with bureaucratic obstacles. (*laughter*) Nonetheless I confirm that guidelines will be produced. These I hope will make it abundantly clear that no bureaucratic obstacles are intended, or indeed will be permitted.

Sir, I beg to move.

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).

THE HONG KONG ACADEMY FOR PERFORMING ARTS BILL 1984

Resumption of debate on second reading (30 May 1984)

Question proposed.

MR. ALEX WU:—Sir, I rise to support the Hong Kong Academy for Performing Arts Bill 1984, which will give statutory effect to the founding of the Academy.

When the Secretary for Home Affairs moved the second reading of this Bill, he paid generous tribute to the hard work and dedication of the Chairman and members of the Provisional Council. On behalf of all members of that Council, I should like to thank my honourable friend, Mr. Denis BRAY, for his kind remarks. For my part, it has been my privilege to participate in a project of vital importance to Hong Kong. And I would wish to express my own appreciation and gratitude to my colleagues on the Provisional Council for their invaluable contributions.

Sir, no great enterprise can be brought to fruition without co-operative endeavour. I should like to join Mr. BRAY in paying special tribute to the Chairman and Stewards of the Royal Hong Kong Jockey Club for their munificent gift of a building which, in the extent and quality of its facilities, will be outstanding by any international standards. The gift of the Academy is yet another sterling example of the generosity and foresight of the Club in fostering the arts, among their numerous community projects of substance. Thanks are due to each and everyone of those who have given support, guidance and encouragement to the Provisional Council towards making the Academy a reality.

There is no doubt that the veritable explosion of interest in the performing arts, which has occurred in Hong Kong over recent years, has both enriched the community and enhanced the image and reputation of Hong Kong abroad. I believe that this interest will continue to grow with the increasing accessibility of the arts in their various forms.

The question was whether that enthusiasm should be allowed to develop unnurtured.

The Academy for Performing Arts will have as its primary function the duty of training the future leaders, both performers and teachers, of the performing arts in the community. It will also assist in the development of outstanding talent at the pre-tertiary level. It will encourage the highest standards of professionalism in the performing arts companies. More generally, through interaction with the various sections of the community, it will foster a better understanding and appreciation of the arts.

The ultimate aim of the Academy is to train students so that they will achieve lasting fulfilment in a satisfying career and will thereby serve the whole community of Hong Kong. It is anticipated that in four years time, when the Academy's first students graduate, there will be a wide variety of outlets and a steady demand for their particular expertise. They will be able to contribute to the growth and the localization of our performing groups and companies. By filling posts in our schools, they will help realize the plans for developing the role of the arts in education already envisaged by the Government. They will add strength to the flourishing private teaching sector, which already plays a vital part in the training of our talented young people. They will, in short, after an equally exacting training, stand side by side with their fellow professionals, such as doctors, engineers, accountants, lawyers and with their work to improve and enrich the life of our community. In time, we shall see not only their artistic but also their economic contributions to Hong Kong. The Academy therefore merits equal attention and support as that given to institutions which train professionals for other sectors of the community.

Sir, I am a strong believer that the arts are for everybody. The A.P.A. is not an exclusive organization. The public should visit and use the facilities of the Academy as the occasion offers, and that, as well as achieving a reputation as

an institution of international renown, the Academy for Performing Arts should earn a special place in the hearts and minds of the people of Hong Kong.

There is a saying in Chinese, 飲水思源, meaning when one takes a drink of water, he should always remember the source. With this in mind, I would like to mention that the cause of tertiary training in the performing arts in Hong Kong has been pioneered by the Hong Kong Academy of Ballet and the Hong Kong Conservatory of Music. By arrangements with their organizers, these institutions are being subsumed by the Academy, thus ensuring the endeavours of all those concerned with the two bodies will be continued. And the subsumption process has been smooth and expeditious.

Sir, it has taken considerable time for the project to evolve into the present form, since the concept of the Academy was crystalized by the Government Music Consultant, Mr. David STONE, and endorsed by the UMELCO Cultural Affairs Panel in 1981. The course taken may be regarded as marathonic. But the difference is that with a marathon race, there is a finishing line and there is only one winner. In the case of the Academy, the stream of the Arts will transcend any date line, and for Hong Kong there shall be many winners. I wish the Director, Prof. Basil DEANE and his team of uncompromising professionals at the Academy every success.

With these words, Sir, I support the Bill before Council.

DR. HO:—Sir, in recent years, the people of Hong Kong have been enjoying a shortening work week and a higher real income. These changed conditions have enabled our people to participate more freely in a diverse range of cultural and artistic pursuits. At the same time, the Government has spared no efforts in promoting this interest by way of providing facilities and financial subsidies to a wide spectrum of arts activities. The Hong Kong Academy for Performing Arts Bill 1984 is a witness to this policy.

I note with pride that Hong Kong has established itself as a cultural leader in the Southeast Asian region. Our local performing personalities are enthusiastically welcome overseas and are highly regarded. The proposed Academy for Performing Arts, with its provision of training, education and research in music, dance, drama and technical arts will definitely enhance the status of Hong Kong as a cultural centre in Asia.

In addition, this Bill enables the Academy to provide financial assistance, by way of grants and loans, to needy students so that no students with proven potential for artistic development will be barred from enrolling into the Academy for lack of means.

To maximize its contributions to the local performing arts, I strongly suggest that the Academy should adopt a liberal education policy. It should lay a balanced emphasis on oriental and western forms and styles in the four arts disciplines under its administration. Alongside the curriculum constructed

for school leavers gifted in the performing arts, a set of special programmes, containing part-time and refresher courses, must be designed to upgrade the level of skill and knowledge of the various local performing arts organizations. An active link and consultation with major arts institutions overseas must be maintained as a means to keep our performing arts in line with international trend and standards.

Hong Kong is a multi-dimensional community. Its achievements are more than economic. Continued investment in cultural and artistic developments will lead to an enrichment of our lives, and should therefore warrant the support of our community.

With these remarks, Sir, I have much pleasure to support the motion.

MRS. CHOW:—Sir, the myth that the Performing Arts in Hong Kong are the exclusive and dispensable pastime of the elite and the wealthy should no longer be perpetuated.

Even in the bad old days when Hong Kong was considered a cultural desert, local art forms such as the Cantonese Opera and the Live Theatre were popular amongst all strata of society, although the western forms such as music and ballet were reserved for the more sophisticated and intellectual.

In the last decade or so, through relentless efforts by the Urban Council, the Education Department and more recently the Recreation and Culture Department, as well as through the dedication and perseverance of art enthusiasts in the private sector, the scene of the Performing Arts has gone through a metamorphosis so stunning that Hong Kong is now comparable to any other major cities in the world in terms of the level of activities that we maintain.

Very few cities in the world can boast of the extensive network of arts festivals undertaken on the central, regional as well as district level as we do. Performances of world standard are staged not only in the City Hall but also in the Tsuen Wan Town Hall. Most district boards hold their own local festivals. Our school festivals of music, speech and dance are among the biggest in the world in terms of participants. Cultural facilities in all shapes and sizes are mushrooming in all districts. By the late 1980's there will be 45 000 seats everyday waiting to be filled by audiences of cultural events.

It is in answer to present demands and in anticipation of the rapid growth and development in the Performing Arts that the Academy is to be established. Apart from catering to the aspirations and talent of our young artists to become professional performers in music, acting, dance it aims also to train directors, producers, designers, composers and dramatists who are the off-stage artists, less visible, but equally important to the performance.

Educational opportunities in a field which has been hitherto inaccessible to those artistic talents who could not afford to study overseas will open up shortly right at our doorstep. This will undoubtedly achieve the desirable effect of offering training opportunities not according to who can best afford them but whose talents are more deserving. In this respect I would like to mention that the proposed annual fee per person of HK\$5,000 did strike me to be on the high side. However I am persuaded that it is reasonable since, comparatively speaking, a student at the academy requires more individual attention than this counterpart in other post secondary institutions. In addition I have been assured that scholarships and grants will be readily available to the talented youngsters who are financially in need of such assistance.

I, for one, am greatly enthused with the prospect of the Academy, for I am certain it will serve as the guiding light for Hong Kong's own pursuit of standards of excellence in the various fields of performing arts. Furthermore, its existence will have far-reaching effect on areas of entertainment, education and industry which are related to the performing arts. But at the end of the day, what will distinguish this Academy as uniquely Hong Kong is its determination to enrich its achievement of artistic standards with close ties between itself and the community it serves.

With these words, Sir, I have great pleasure in supporting the motion.

SECRETARY FOR HOME AFFAIRS:—Sir, it will be a great encouragement to the Director and all involved with the Hong Kong Academy for Performing Arts to learn of the warm welcome given to it in this Council.

If there were any doubt that the Academy was needed this would be dispelled by the overwhelming response to the announcement that it could now receive applications for admission. This announcement was made only a week ago and already 1 400 enquiries have been received for the 70 vacancies that are available this year.

There has been some comment on the cost of running these courses. They will be high but we have to recognize that different disciplines do involve different costs of training. The size of the academy is modest. We have already seen that there will be severe competition for entry. We know that there is immense talent in Hong Kong. It would do less than justice to the gifted young people who are accepted by the Academy to fail to bring out their best and bring them up to world standards. This we aim to do.

As Mrs. CHOW has pointed out the high running cost has been reflected in the fee to be charged but there will be the usual arrangements for assistance for those who cannot afford the fee.

Dr. HO also asked for an assurance that equal emphasis be given to eastern and western art-forms. This is the intention of the Provisional Council. I would hope that a synthesis of art-forms will emerge as Hong Kong's own contribution to the development of these arts. Dr. HO also said that apart from

full-time students, others interested in the performing arts should be encouraged to maintain close contact with the Academy. The Director, is, I know, most anxious to promote out-reached activities by the Academy and will certainly welcome Dr. HO's remarks.

Mr. Alex WU, who as Chairman of the Provisional Council, has been involved from the beginning, mentioned the early days of this venture. I wonder if honourable Members realize just how fast we have moved.

It was just three years ago almost to the day that the Jockey Club indicated it was prepared to fund a major new project and accepted the suggestion that this should be some sort of a centre for performing arts. There was no site. We had only the vaguest idea what such a centre involved. Mr. David STONE was asked to travel around the world and find out what others did. He met dozens of people, built up an international informal panel of expert artistic advisers and produced an architect's brief within months. The Project Board lost no time in appointing architects, securing a site and starting work. By now we know what is required in the building. We had not even started on the requirements for staff and curriculum.

In a more orthodox way of proceeding I suppose that after about three years we should be publishing a glossy report on the plans for the whole project and debating whether or not to go ahead. Instead the Academy is taking in the first students in September and occupying the completed building a year later.

We are used to fast movement in Hong Kong but even so I think this speed of action is quite remarkable.

Sir, I beg to move.

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).

FIXED PENALTY (TRAFFIC CONTRAVENTIONS) (AMENDMENT) (NO. 2) BILL 1984

Resumption of debate on second reading (30 May 1984)

Question proposed.

Question put and agreed to.

Bill read the second time.

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

LANDLORD AND TENANT (CONSOLIDATION) (AMENDMENT) BILL 1984

Resumption of debate on second reading (16 May 1984)

Question proposed.

MR. PETER C. WONG:—Sir, before I speak I have to declare a marginal interest. As I have said in this Council on several occasions, my firm acts for tenants as well as landlords.

Sir, this Bill makes further amendments to the principal Ordinance as part of the process of continuous review of the complex question of rent control pursuant to the recommendations of the Committee of Review accepted by the Government in early 1981.

In introducing the second reading of the Bill on 16 May this year, the Secretary for Housing eloquently explained the relevant events that had occurred since 1977 and highlighted the salient points of the present proposals.

As tenancy matters are of general public interest, it may be desirable to recapitulate the new measures proposed by the Bill. They include—

(A) Pre-war premises

1. From 1 July this year all pre-war business premises will be decontrolled or excluded from Part I. Nevertheless, they will become subject to Part V of the Ordinance, which deals with notice of termination of tenancy. Section 122(1)(b) stipulates that the notice shall be served by the landlord, not less than six months, or by the tenant, not less than one month, before the day on which it takes effect.

2. The rent payable by tenants of pre-war domestic premises is at the moment 16 times the standard rent. Standard rent is defined as rent payable in respect of the premises as at 25 December 1941. The Bill raises the permitted rent from 16 to 21 times.

(B) Post-war premises

1. From 19 December this year, premises with a rateable value of \$35,000 or above will be decontrolled or excluded from Part II, but will be subject to Part IV which provides security of tenure at the prevailing market rent. For the purpose of exclusion from Part II, the rateable value will be the old rateable value as at 10 June 1983 and this will continue to apply at least until the next review.

About 2 000 tenancies will be affected, most of which are held in the name of corporations. According to information supplied by the Administration, the average controlled rent of premises with a rateable value of between \$35,000 and \$40,000 is about \$10,000 per month, whereas the prevailing market rent of similar premises is about \$13,000. From the statistics presented, it is apparent that this further decontrol of luxury premises is not expected to create undue hardship.

2. A new provision permits the transfer of tenancies from Part II to Part IV. Part II, I repeat, relates to controlled post-war domestic premises while Part IV provides security of tenure at the prevailing market rent. There is merit in such proposal as it adds flexibility to the legislation. It is therefore a measure to be welcomed.

3. The existing method of calculating permitted rent increase under Part II is to divide the difference between the prevailing market rent and the controlled rent by the factor '2'. Any increase, however, may not exceed 30% of the current rent. It is now proposed to remove the factor '2' and to raise the permitted rent increase from 30% to 45%. The precise method of calculation is contained in the relevant subsection.

There is no reason to doubt the Secretary for Housing's statement that those affected by the proposed increase would still be paying less than half of the amount payable by new tenants for comparable premises. The upward adjustment is therefore not excessive.

4. Clause 31(b) allows fresh lettings of fully furnished premises for a short term not exceeding one year to be excluded from tenancy and rent controls. The Commissioner of Rating and Valuation has to satisfy himself that the tenant understands the effect of the exclusion and that the conditions specified in this sub-section are met. This new provision again adds flexibility to the legislation and therefore deserves support.

5. Where the landlord intends to rebuild the premises and the Tribunal grants an order for possession under Part II or declines to make an order for the grant of a new tenancy under Part IV, compensation is payable to the tenant under section 53A(4) and section 119F(4) respectively. Compensation awarded under these two sections generally far exceeds the minimum level provided by the legislation. This is not considered to be desirable. To ensure consistency and facilitate the speedy determination of applications, the Bill proposes a standard rate of compensation equivalent to twice the rateable value as at 10 June 1983 together with an amount to cover removal expenses and loss in respect of fittings, curtains and carpets. The basic amount is therefore certain, the only variables being removal expenses and loss in respect of paraphernalia which could not be removed. The determination of compensation for the variables should be fairly simple and should not present any difficulty.

(C) *Miscellaneous and technical amendments*

Apart from technical amendments to facilitate the administration of the Ordinance, two proposals under this category deserve attention.

1. Under Part II, section 50(6)(n) excludes from control a tenancy in writing for a fixed term of five years or longer which contains no provision—

- (a) for earlier determination by the landlord other than by forfeiture; and
- (b) for any premium or fine or for any increase in the rent during the fixed term.

Under Part V, section 121(2) contains a similar exclusion for a tenancy for a fixed term of three years or more.

It is normal practice in a tenancy agreement to provide for determination of the agreement following the destruction, or partial destruction, of or damage to the premises. However, the Courts have held that such provision may be interpreted as earlier determination.

The Bill now amends the relevant sections so that a provision for determination following destruction of or damage to the premises is permissible. This amendment removes an anomaly that was not intended.

2. A notice to quit may now be sent by ordinary post. This change is in line with current provisions in other Ordinances.

Unofficial Members in general support the proposals contained in the Bill. The *Ad-hoc* Group set up to examine the 37 clauses in the Bill has held lengthy discussions with the Administration covering more than 23 specific points. As a result of these discussions, the Administration has agreed to amendments to clauses 12, 15, 16, 17, 21 and 24 and the addition of a new clause 23A.

The amendment to clause 12 is to ensure that a 'reasonable' period of time is allowed for responding to the Commissioner of Rating and Valuation's requisition for information in respect of pre-war premises. Clause 24 will be similarly amended in respect of post-war premises.

Clause 21 will be amended by deleting section 54 in Part II of the Ordinance which deals with notification of new rents. Since fresh lettings created on or after 10 June 1983 are excluded from Part II controls, the removal of this section will simplify the working of the Ordinance without impairing protection to either landlord or tenant. The deletion of section 54 necessitates consequential amendments to clauses 15 and 16, and the insertion of a new clause 23A.

Clause 17 will be amended to require an application by one party for the transfer of a tenancy from Part II to Part IV to be made in a specified form in duplicate rather than in triplicate. The Commissioner of Rating and Valuation considers an application in duplicate sufficient to enable him to discharge his function under the new section 51B.

Sir, three related Bills—

1. the Lands Tribunal (Amendment) Bill 1984
2. the Judicial Service Commission (Amendment) Bill 1984 and
3. the Stamp Duty (Amendment) Bill 1984

have been considered by the Legislation Scrutiny Group. The amendments are non-controversial. The first two Bills rectify certain omissions, while the third empowers the District Court to call on the expertise of the Lands Tribunal to assist in stamp duty appeals. A desirable feature of the latter provision is that it will also provide some measure of consistency in decisions relating to these specialized issues.

Sir, subject to the agreed amendments, I support the Bill.

REVD. P. T. MCGOVERN:—Sir, in October 1976, the then Governor in his Address to this Council said on the subject of housing in general ‘Our target is self-contained housing for all and within the means of all, by the early 80’s’. And again on public housing in particular His Excellency said ‘The back of the problem should be broken by ‘84, provided all concerned maintain the pressure necessary to keep on our target.’

As we all know only too well, in spite of all concerned maintaining the pressure, the target turned out to be a moving target, and because of events beyond our control—chiefly legal and illegal immigration from the mainland—housing in 1984 still remains our biggest social and economic problem. In spite of spectacular achievements in public housing there are still hundreds of thousands of people who are unable to rent or buy a dwelling at a price they can afford.

While this remains so, and for other reasons which I have given repeatedly since 1977, and which in my judgement are still valid, but which I will not repeat today, I intend to vote against this Bill as I have done against four of its predecessors.

The Bill contains some good points, especially the continuation of some rent control over some property. But Part II is wrong in principle in that it further eases the way for an increase in rents towards the still Unfair Market Rent, when what the hundreds of thousands of virtually homeless people need is a decrease in rents to a level they can afford. A time like this when the supply is far short of both the demand and the need, is not the time to ease control. I will not go over all that ground again.

A brief word of warning. If, as some people hope, as a result of the greater availability of land, and the beginning of the end of the most recent recession, the property market again picks up, the increases in rent allowed today, 45%, are such that they could become excessive if or when rents go notably up again. I remind you of the concessions to landlords in the Bill of June 1977. At the time they seemed small, yet by December of that same year Government had to propose a blanket rent control on all postwar premises. Something similar could happen again. At the moment the speculators are nursing their burnt fingers in kid gloves, but they are a hardy lot and have proved before that they can make a quick recovery at the sight of the possible cure of another quick buck.

Sir, I end with a statement of fact in case anyone talks loosely about rents easing or softening. In the current issue of the 'Monthly Digest of Statistics' you will find in the Consumer Price Indices A and B and Hang Seng that the item 'Housing' has gone up about ten points in the previous 12 months as it did several years running now. The item 'housing' is largely an index of rent. And in case anyone talks loosely about not going up in real terms I remind you that wages in real terms have not gone up in the same period. (Again consult the statistics issued by the Government, so it must be right.)

Sir, I oppose the motion that the Bill be read a second time, and if it is, for convenience sake, I will abstain from the committee stage and third reading.

DR. IP:—Sir, to begin, I declare my interest in this Bill, as a director of a company owning controlled premises. However, I will state clearly my reasons in support of this Bill.

Rent control was legislated to protect tenants from *landlords profiteering* on the *inadequate supply of housing*, thereby depriving tenants of one of the *basic necessities* of their livelihood. The increasing supply of housing now, itself *inhibits landlords to profiteer* by charging exorbitant rents. Therefore gradually rent control becomes unnecessary.

The increasing supply of housing is well demonstrated in 'The Property Review 1984' published by the Rating and Valuation Department. It reveals that at the end of 1983, there were 8 485 *vacant housing units* less than 40 square metres; 9 645 between 40 to 70 square metres; 3 010 between 70 to 100 square metres; 2 605 between 100 to 160 square metres and lastly 1 785 vacant housing units over 160 square metres.

Furthermore there would be 16 825 and 31 545 small new flats less than 70 square metres completed and coming onto the market in the end of 1984 and 1985 respectively. I mention this particularly because it is the low-income tenants of small housing units who are most likely to be affected by rent decontrol, *if they have no alternatives. But they have.*

This Bill is one of a series of bills to systematically decontrol rent. And I compliment the Administration in producing such a fine piece of legislation, complicated as it may be, but so meticulously well calculated so as not to bring significant hardship to the tenants affected.

Concentrating on the residential premises, the only ones which will be decontrolled are the luxury flats, 73% of which are let to corporations anyway.

As for the pre-war domestic premises and those tenancies with very low controlled rents, the proposals made to phase in the decontrol process, bring the average rent effectively up to no more than *45% of the prevailing market rent*. Although 24 700 tenancies will be affected, to put the matter in the right perspective, 120 000 tenancies will not be, as rents already exceed the 45% mark.

Turning to premises due for redevelopment, I approve of the standardization of compensation to *twice the rateable value* regardless of the length of occupation and I find it equitable to offer accurately assessable *relocation expenses*. These measures will help to eliminate time consuming exercises of *unproductive bargaining between landlords and tenants* which in the past have inevitably lead to disputes coming up before the Lands Tribunal for adjudication. If in the future the Lands Tribunal would *speedily* handle such disputes and *faithfully abide by the standardized compensation and relocation costs*, this will assist developers in budgetting for their redevelopment. It is also reassuring to know, that when the new rateable values come into play in the future, necessary adjustments would be made to the method of calculation to keep the actual cost of compensation to be relatively the same.

We need developers to build more houses to meet our needs. We need developments in Hong Kong to provide for job opportunities. We need redevelopments to replace the large numbers of old domestic premises with modern housing—for *the betterment of and the future of Hong Kong*.

Sir, with these comments, I support the Bill before this Council.

SECRETARY FOR HOUSING:—Sir, I should like to thank Mr. Peter C. WONG and Dr. Henrietta IP for their unreserved support for the Bill; and Father MCGOVERN, too, for his milder than usual opposition to the proposals. Indeed, he went so far as to say the Bill possessed some good points. (*laughter*) The work that my Unofficial Colleagues have put in to examine the proposals and their co-operation in discussing them is very much appreciated.

I am grateful for Father MCGOVERN's appreciation of the difficulties that have hindered the Government's determined efforts in meeting the housing targets set in different circumstances in the early seventies. Nevertheless, he did acknowledge the spectacular achievement in public housing in recent years when annual targets higher than those earlier envisaged have been consistently

exceeded. I should add that, because of the availability of land and the efficiency of the public housing production programme, we are now confident that this high level of production will not only be maintained but will be improved before the end of the decade. If Father MCGOVERN's reference to 'the hundreds of thousands of virtually homeless persons' was, as he has just mentioned to me, in respect of squatters, roof-top dwellers, temporary housing dwellers, caged men, slum dwellers etc., then they are not directly affected by this Bill. These people are more likely to be looking toward public housing to solve their housing needs and the continued high level of production should be welcomed by them.

As I mentioned in my speech on 16 of May and so eloquently touched upon by Dr. Henrietta IP, it is clear that circumstances have changed considerably since the introduction of the blanket rent control measures in 1979. The fact is that the supply and demand situation for housing has improved and there is no doubt that there has been a softening of the rental market during the past two years. It is for these very reasons and in the light of the improving economy that further steps to ease rent control are considered appropriate.

While I can understand Father MCGOVERN's concern about a possible upswing in the rental market, the long-term solution to such a problem must be to improve the supply of suitable accommodation, rather than to prolong rent control for a particular sector of the housing market.

I am delighted that the proposals for compensation for tenancies affected by redevelopment have been so well received by Dr. Henrietta IP. I believe that the more realistic basis of compensation will assist landlords and tenants in the early settlement of disputes and will facilitate earlier redevelopment.

Since publication of the Bill early in May, the reaction from the media has been generally favourable and I think it is fair to say that the package has been generally well received.

Sir, I beg to move.

(At this point, Mr. T. S. LO, Miss L. DUNN, Mr. C. YEUNG, Mr. K. C. CHAN, Mr. Stephen CHEONG, Mr. P. POON, Mr. Y. L. CHEUNG, Miss M. TAM and Mrs. S. CHOW declared their interests.)

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).

LANDS TRIBUNAL (AMENDMENT) BILL 1984**Resumption of debate on second reading (16 May 1984)**

Question proposed.

Question put and agreed to.

Bill read the second time.

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

JUDICIAL SERVICE COMMISSION (AMENDMENT) BILL 1984**Resumption of debate on second reading (16 May 1984)**

Question proposed.

Question put and agreed to.

Bill read the second time.

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

STAMP DUTY (AMENDMENT) BILL 1984**Resumption of debate on second reading (16 May 1984)**

Question proposed.

Question put and agreed to.

Bill read the second time.

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

Committee stage of bills

Council went into Committee.

DUTIABLE COMMODITIES (AMENDMENT) BILL 1984

Clauses 1 to 8 were agreed to.

DUTIABLE COMMODITIES (AMENDMENT) (NO. 2) BILL 1984

Clauses 1 and 2 were agreed to.

INLAND REVENUE (AMENDMENT) BILL 1984

Clauses 1, 2, 3, 5 and 6 were agreed to.

Clause 4

MR. POON:—I move that clause 4 be amended as set out in the paper circulated to Members.

*Proposed amendment***Clause 4**

That clause 4(b) be amended in new subsection (5) by deleting ‘where the deduction is in respect of sums payable prior to 1 April 1984’ and substituting the following—

‘where—

- (a) the deduction is in respect of sums payable prior to 1 April 1984; or
- (b) the person chargeable to tax is a corporation and the deduction is in respect of interest payable by that corporation on debentures listed prior to 1 April 1984 on a stock exchange in Hong Kong, or other stock exchange recognized for the purposes of this subsection by the Commissioner.’

The amendment was agreed to.

Clause 4, as amended, was agreed to.

New clause 4A. ‘Amendment of section 26A’

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

MR. PETER C. WONG:—In accordance with Standing Order 46(6), I move that new clause 4A as set out in the paper circulated to Members be read a second time.

Question put and agreed to.

Clause read the second time.

MR. PETER C. WONG:—I move that clause 4A be added to the Bill.

Proposed Addition

New clause 4A

That the following clause be inserted after clause 4—

‘Amendment of section 26A.	<p>4A. Section 26A of the principal Ordinance is amended by deleting subsection (1A)(a) and substituting the following—</p> <p>“(a) For the purposes of this Part—</p> <p style="padding-left: 20px;">(i) the profits on the disposal of securities by trustees; and</p> <p style="padding-left: 20px;">(ii) sums received or accrued to trustees by way of interest, where the trustees are trustees under a unit trust authorized under section 15 of the Securities Ordinance, shall not be included in the profits of any corporation or other person chargeable to tax under this Part.”.</p>
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The addition of the new clause was agreed to.

EVIDENCE (AMENDMENT) BILL 1984

Clauses 1, 2, 3, 5, 6, 8 to 11 were agreed to.

Clauses 4 and 7

MR. PETER C. WONG:—I move that clauses 4 and 7 be amended as set out in the paper circulated to Members for the reasons given in my speech.

Proposed amendments

Clause 4

That clause 4 be amended by inserting after subsection (3) in new section 19A the following—

‘(4) Unless the court otherwise orders, a document shall not be admitted in evidence under this section unless 14 days’ notice in writing of the intention to tender such document in evidence, together with a copy

thereof and of the certificate of the Chief Secretary in respect thereof, has been served—

- (a) where the document is tendered by the prosecution, on the defendant (or, if more than one, on each defendant) or his solicitor;
- (b) where the document is tendered by a defendant, on the Attorney General,

but nothing in this subsection shall affect the admissibility of a document in respect of which notice has not been served in accordance with the requirements of this subsection if no person entitled to be so served objects to its being so admitted.’

Clause 7

That clause 7 be amended in new section 22A—

- (a) in subsection (3)(b)(ii) by deleting ‘if found’ and substituting the following—
‘if such a person is found’; and
- (b) in subsection (13) by deleting ‘Governor may by order’ and substituting the following—
‘Legislative Council may by resolution’.

The amendments were agreed to.

Clauses 4 and 7, as amended, were agreed to.

THE HONG KONG ACADEMY FOR PERFORMING ARTS BILL 1984

Clauses 1 to 28 were agreed to.

FIXED PENALTY (TRAFFIC CONTRAVENTIONS) (AMENDMENT) (NO. 2) BILL 1984

Clauses 1 to 13 were agreed to.

LANDLORD AND TENANT (CONSOLIDATION) (AMENDMENT) BILL 1984

Clauses 1 to 11, 13, 14, 18 to 20, 22, 23, 25 to 37 were agreed to.

Clauses 12, 15, 16, 17, 21 and 24

MR. PETER C. WONG:—I move that the clauses specified be amended as set out in the paper circulated to Members. The reasons have already been explained in my speech.

Proposed amendments

Clause 12

That clause 12 be amended in the new section 44A(1)(a), by inserting, immediately after ‘such’, the following—

‘reasonable’.

Clause 15

That clause 15 be amended by deleting “67” and substituting the following—
“66” and substituting the following—

“54 to 67” and substituting the following—
“55 to 66”.

Clause 16

That the Bill be amended by deleting clause 16 and substituting the following—

‘Amendment
of section
50B

16. Section 50B(2) of the principal Ordinance is amended by deleting paragraph (c).’.

Clause 17

That clause 17 be amended in the new section 51B(1) by deleting ‘triplicate’ and substituting the following—

‘duplicate’.

Clause 21

That clause 21 be amended by deleting ‘amended by deleting subsection (3)’ and substituting the following—

‘repealed’.

Clause 24

That clause 24 be amended by inserting, immediately after ‘amended’, the following—
‘—

(a) in paragraph (a), by inserting, immediately after “such”, the following—

“reasonable”; and

(b)’.

The amendments were agreed to.

Clauses 12, 15, 16, 17, 21 and 24, as amended, were agreed to.

New Clause 23A. 'Amendment of section 62.'

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

MR. PETER C. WONG:—In accordance with Standing Order 46(6). I move that new clause 23A as set out in the paper circulated to Members be read a second time.

Question put and agreed to.

Clause read the second time.

MR. PETER C. WONG:—I move that new clause 23A be added to the Bill.

Proposed Addition

Clause 23A

That the Bill be amended by inserting after clause 23 the following—

'Amendment of section 62.	23A. Section 62 of the principal Ordinance is amended by deleting "54,".'
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The addition of the new clause was agreed to.

LANDS TRIBUNAL (AMENDMENT) BILL 1984

Clauses 1 to 3 were agreed to.

JUDICIAL SERVICE COMMISSION (AMENDMENT) BILL 1984

Clauses 1 and 2 were agreed to.

STAMP DUTY (AMENDMENT) BILL 1984

Clause 1

SECRETARY FOR HOUSING:—I move that clause I be amended as set out in the paper circulated to Members. This is just to add a serial number to the Ordinance.

Proposed amendment

Clause 1

That clause 1 be amended by inserting after ‘(Amendment)’ the following—
‘(No. 2)’.

The amendment was agreed to.

Clause 1, as amended, was agreed to.

Clause 2 was agreed to.

Council then resumed.

Third reading of bills

THE ATTORNEY GENERAL reported that the

DUTIABLE COMMODITIES (AMENDMENT) BILL

DUTIABLE COMMODITIES (AMENDMENT) (NO. 2) BILL

HONG KONG ACADEMY FOR PERFORMING ARTS BILL

FIXED PENALTY (TRAFFIC CONTRAVENTIONS) (AMENDMENT) (NO. 2) BILL

LANDS TRIBUNAL (AMENDMENT) BILL and the

JUDICIAL SERVICE COMMISSION (AMENDMENT) BILL

had passed through Committee without amendment and the

INLAND REVENUE (AMENDMENT) BILL

EVIDENCE (AMENDMENT) BILL

LANDLORD AND TENANT (CONSOLIDATION) (AMENDMENT) BILL

STAMP DUTY (AMENDMENT) BILL

had passed through Committee with amendments, and moved the third reading of the Bills.

Question put on the Bills and agreed to.

Bills read the third time and passed.

Adjournment and next sitting

HIS HONOUR THE PRESIDENT:—In accordance with Standing Orders I now adjourn the Council until 2.30 p.m. on 27 June 1984.

Adjourned accordingly at twenty-eight minutes to five o'clock.