

OFFICIAL REPORT OF PROCEEDINGS**Wednesday, 25 November 1987****The Council met at half-past Two o'clock****PRESENT**HIS EXCELLENCY THE GOVERNOR (*PRESIDENT*)

SIR DAVID CLIVE WILSON, K.C.M.G.

THE HONOURABLE THE CHIEF SECRETARY

MR. DAVID ROBERT FORD, L.V.O., O.B.E., J.P.

THE HONOURABLE THE FINANCIAL SECRETARY

MR. PIERS JACOBS, O.B.E., J.P.

THE HONOURABLE THE ATTORNEY GENERAL (*Acting*)

MR. JEREMY FELL MATHEWS, J.P.

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

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

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

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

THE HONOURABLE HU FA-KUANG, O.B.E., J.P.

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

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

SECRETARY FOR DISTRICT ADMINISTRATION

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

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

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

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

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

DR. THE HONOURABLE HENRIETTA IP MAN-HING, O.B.E., J.P.

THE HONOURABLE CHAN YING-LUN, J.P.

THE HONOURABLE MRS. RITA FAN HSU LAI-TAI, J.P.

THE HONOURABLE MRS. PAULINE NG CHOW MAY-LIN, J.P.

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

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

THE HONOURABLE KIM CHAM YAU-SUM, J.P.

THE HONOURABLE JOHN WALTER CHAMBERS, O.B.E., J.P.

SECRETARY FOR HEALTH AND WELFARE

THE HONOURABLE JACKIE CHAN CHAI-KEUNG

THE HONOURABLE CHENG HON-KWAN, J.P.

THE HONOURABLE HILTON CHEONG-LEEN, C.B.E., J.P.

DR. THE HONOURABLE CHIU HIN-KWONG, J.P.

THE HONOURABLE CHUNG PUI-LAM

THE HONOURABLE THOMAS CLYDESDALE, J.P.
THE HONOURABLE HO SAI-CHU, M.B.E., J.P.
THE HONOURABLE HUI YIN-FAT
THE HONOURABLE RICHARD LAI SUNG-LUNG
DR. THE HONOURABLE CONRAD LAM KUI-SHING
THE HONOURABLE MARTIN LEE CHU-MING, Q.C., J.P.
THE HONOURABLE DESMOND LEE YU-TAI
THE HONOURABLE DAVID LI KWOK-PO, J.P.
THE HONOURABLE LIU LIT-FOR, J.P.
THE HONOURABLE NGAI SHIU-KIT, O.B.E., J.P.
THE HONOURABLE PANG CHUN-HOI, M.B.E.
THE HONOURABLE POON CHI-FAI
PROF. THE HONOURABLE POON CHUNG-KWONG
THE HONOURABLE HELMUT SOHMEN
THE HONOURABLE SZETO WAH
THE HONOURABLE TAI CHIN-WAH
THE HONOURABLE MRS. ROSANNA TAM WONG YICK-MING
THE HONOURABLE TAM YIU-CHUNG
DR. THE HONOURABLE DANIEL TSE, O.B.E., J.P.
THE HONOURABLE LAU WONG-FAT, M.B.E., J.P.
THE HONOURABLE GRAHAM, BARNES, J.P.
SECRETARY FOR LANDS AND WORKS
THE HONOURABLE RONALD GEORGE BLACKER BRIDGE, O.B.E., J.P.
SECRETARY FOR EDUCATION AND MANPOWER
THE HONOURABLE DAVID GREGORY JEAFFRESON, C.B.E., J.P.
SECRETARY FOR SECURITY
THE HONOURABLE MICHAEL LEUNG MAN-KIN, J.P.
SECRETARY FOR TRANSPORT
THE HONOURABLE NATHANIEL WILLIAM HAMISH MACLEOD, J.P.
SECRETARY FOR TRADE AND INDUSTRY
THE HONOURABLE EDWARD HO SING-TIN, J.P.

ABSENT

THE HONOURABLE JOHN JOSEPH SWAINE, C.B.E., Q.C., J.P.
THE HONOURABLE ANDREW WONG WANG-FAT

IN ATTENDANCE

THE CLERK TO THE LEGISLATIVE COUNCIL
MR. LAW KAM-SANG

Papers

The following papers were laid on the table pursuant to Standing Order 14(2):

Subject *L.N.No.*

Subsidiary Legislation:

Dangerous Goods Ordinance Dangerous Goods (Government Explosives Depots)(Amendment) Regulations 1987	375/87
Dangerous Goods Ordinance Dangerous Goods (General)(Amendment) Regulations 1987	376/87
Mining Ordinance Mines (Safety)(Amendment) Regulations 1987	377/87
Road Tunnels (Government) Ordinance Road Tunnels (Government)(Amendment) Regulations 1987	378/87
Registration of Persons Ordinance Registration of Persons (Application for New Identity Cards) (No. 6) Order 1987	379/87
Road Tunnels (Government) Regulations Lion Rock Tunnel (One-Way Toll Collection) Notice 1987	380/87
Public Health and Municipal Services Ordinance Swimming Pools (Urban Council)(Amendment)(No. 2) By-Laws 1987	381/87

Sessional Papers 1987-88:

- No. 21—Hong Kong Trade Development Council Annual Report and Accounts 1986-87
- No. 22—The Hong Kong Industrial Estates Corporation Annual Report 1986-87
- No. 23—Hong Kong Productivity Council Annual Report 1986-87

Addresses by Members presenting papers**Hong Kong Trade Development Council—Annual Report and Accounts 1986-87**

MISS DUNN: Sir, tabled today is the Annual Report of the Hong Kong Trade Development Council for the financial year 1986-87.

Hong Kong's overall trade performance recovered well during the year under review with total trade increasing by 18 per cent over the previous year. Domestic exports led the growth with 19 per cent and this trend has continued during 1987. We can expect domestic exports to record an impressive 20 per cent growth by the end of this year.

A number of factors made this strong resurgence possible. The appreciation of the Yen and European currencies has enhanced our competitiveness; generally strong consumer demand in our major markets, and liberalisation in some previously restricted markets has provided new trade opportunities.

We should also give credit to the efforts of our manufacturers in upgrading the quality and range of goods and in meeting the consumer demands of emerging markets such as Japan. In this respect, the work of the Trade Development Council in improving the image of our products and discovering market potential has contributed significantly.

Such a favourable combination of circumstances cannot exist indefinitely of course, and there is no room for complacency. The council's efforts will be all the more important if there is any slow down in the international trading climate after the recent disturbance in the world's financial markets.

The council plans an energetic programme of promotional events and trade missions to newer markets such as Japan, Korea, and China in Asia, to Spain and to Turkey. We will keep up the momentum in established markets, countering restrictive trade sentiment in the USA and Europe as vigorously as we can.

In response to the increasing demand for participation in trade shows and exhibitions, the council is extending its involvement in locally organised events. Central to this expansion is the new Hong Kong Convention and Exhibition Centre.

I am pleased to report, Sir, excellent progress on this project. Earlier this month we celebrated the topping out of the six-storey podium just a little over a year after Her Majesty the Queen laid the foundation stone. We are well on schedule for opening this magnificent centre at the end of next year.

With a total area of over 400 000 sq m including two 9 000 sq m exhibition halls capable of accommodating 16 000 people, the centre will enable Hong Kong to claim a leading position in the international convention and exhibition business.

The management has already embarked on an extensive marketing programme and already reports confirmed bookings of almost 200 major international convention and exhibition events of more than one day's duration.

I invite Members, Sir, to study the annual report which gives a comprehensive review of the council's work during the last financial year.

I hope that they will find that the council has performed its functions in an efficient and effective way.

The Hong Kong Industrial Estates Corporation—Annual Report 1986-87

MR. CHEONG: Sir, I am pleased to table the 1986-87 Annual Report of the Hong Kong Industrial Estates Corporation. I would like to take the opportunity to highlight some of the corporation's achievements during the past year and then to say a few words about progress so far in this financial year.

In tabling the 1985-86 report last year I said that the corporation had its best year on record. Some 11 hectares of land at Tai Po and Yuen Long estates were disposed of. I am pleased to report that in the past year the corporation has maintained this encouraging performance, disposing of some 10.7 hectares of land through a total of 16 agreements for lease. This is nearly double the average annual figure achieved over the 10 years of the corporation's existence. Significantly, land sales at Yuen Long exceeded those at Tai Po for the first time. Given the Government's ambitious plans for upgrading the infrastructure of the north-west New Territories, I am sure that Yuen Long will prove an increasingly attractive location for both foreign and domestic investors.

Six single-storey standard factories were completed during the year also. All were occupied by the end of 1986 and therefore in order to assist those manufacturers who wish to start production with a minimum of delay, two more units are to be built at Yuen Long and should be ready for occupation by the end of 1988.

Thanks to the favourable results achieved in terms of land disposal, the corporation made a substantial repayment to the Development Loan Fund totalling HK\$112.3 million. Also, land formation works on the two estates came to an end in the summer of this year, thus reducing further expenditure to the minimum, that is, those required for administration and estate management only. This will no doubt enable the corporation to continue reducing at a satisfactory rate its indebtedness to the Development Loan Fund.

Turning now to the prospects for 1987-88, I am able to paint a very encouraging picture indeed. In the first seven months of the year, we disposed of some 11.5 hectares of land, breaking the record set in 1985-86 of land disposal for a full year. Revenue in the first six months amounted to about \$110 million, almost double our corporate target. Demand has been buoyant, we are currently averaging about 20 enquiries per month, and in the full year we expect to have disposed of about 20 hectares of land. In the longer term, assuming that adverse effects of the recent worldwide stock market crash would not precipitate a deep recession over the next few years, the corporation is confident that it will be able to meet its obligation to the Development Loan Fund in full. Thus, Government will not incur any losses on the cost of formation of all the land in the two industrial estates.

Sir, in planning for the future, we cannot afford to be complacent. By the end of 1987-88, land supply at Tai Po will be virtually exhausted, leaving some 50 hectares of land available, all at Yuen Long. At the present rate of land disposal, whatever supply that is available at Yuen Long could well be exhausted within five years' time. Also it is a fact that any infrastructural planning and development requires a long lead time. For these reasons the corporation has asked Government to consider granting us a site to develop Hong Kong's third industrial estate. I am happy to report that this project was endorsed in principle by the Industry Development Board yesterday. And, to ensure continuity in the promotion of the estates, we would hope to see the first phase of a new estate ready for occupation in the year 1992-93.

Quantity is of course only part of the picture, quality is at least as important. I personally find it immensely encouraging to see the type of projects—both of overseas and companies surveyed for their activities in 1986, no fewer than 42 per cent expressed local origin—now being attracted to the estates, some entailing more than \$100 million worth of investment in new, hi-tech operations. They represent a clear, strong, vote of confidence in the ability of our workforce to absorb new technologies and skills. Additionally the estates have succeeded in attracting a number of companies which produce the sort of precision components, parts and small mechanisms that our main-line manufacturers need for the assembly of high quality products. These investors represent a growing force in our supporting and linkage industries and it is perhaps significant that, out of 541 foreign satisfaction over the improving quality of these vital industries. The aim of the corporation, Sir, is to promote the quality of Hong Kong's industrial base. In this respect the estates have already proved their worth and, I believe, in the years ahead will be of immense support and importance to our industrial developments.

I would like to close by thanking the members of the corporation board for their support and the staff of the corporation and of the Industry Department for their untiring efforts in promoting the estates both in Hong Kong and abroad, thus ensuring such excellent results and bright prospects for the future.

Oral answers to questions

Identity checks on suspects by police

1. MR. CHEUNG asked (in Cantonese): *Will Government inform this Council how many suspects on the average are intercepted by policemen carrying out patrol duty in public places every day, and how many staff and computers in the police force are at present deployed to deal especially with enquiries made over radio telecommunication sets by patrolling policemen about information on the suspects intercepted?*

SECRETARY FOR SECURITY: Sir, during the 12 months from 1 November 1986 to 31 October 1987, an average of 5 700 persons each day were intercepted by police officers in public places and checked through the Police Operational Nominal Index Computer System. During the same period, patrolling police officers also checked an average of 808 identity cards each day through the Immigration Department's Identity Card Information System.

Sir, the police system is the police central data base. Using beat radios, patrolling officers have access to it at all times through their regional command and control centres.

Some 122 police staff are deployed in the regional command control centres and in the Criminal Records Bureau to deal with enquiries made by patrolling officers to computer data bases, on a 24 hour-per-day basis.

MR. CHEUNG (in Cantonese): *Sir, now on the average, how much time do police officers need to get the information on the people intercepted? Also, how many computers are there in use?*

SECRETARY FOR SECURITY: Sir, the time a policeman needs to consult the computer base is a matter of one or two minutes. There is one computer for the police and another computer for the Immigration Department.

MR. PETER C. WONG: *Sir, in his reply, the Secretary for Security said that each day 5 700 people were intercepted by the police. May I ask, Sir, under what circumstances were they intercepted?*

SECRETARY FOR SECURITY: They were intercepted, Sir, because the police had suspicions that they were people who were wanted by the police for offences.

Employment of children in 24-hour convenience stores

2. MR. CHAN YING-LUN asked (in Cantonese): *Will Government inform this Council whether it is aware that school age teenagers employed on night shift in 24-hour convenience stores are exposed to bad habits and triad influences, and whether it has taken steps to enforce, in respect of convenience stores, the Employment of Children Regulations which lay down the conditions for the employment of children between the ages of 13 to 15 years?*

SECRETARY FOR EDUCATION AND MANPOWER: Yes, Sir, the Government does realise that young teenagers on night shift could be exposed to bad influences. That is one reason why we have the Employment of Children Regulations.

While the managements of convenience stores are generally law-abiding, the Commissioner of Police has told me that, inevitably, some convenience stores do attract bad elements and are targets for intimidation and robbery. Police

officers on patrol pay particular attention to such stores at night. They keep in close touch with the staff and frequently check the customers.

The Employment of Children Regulations permit a child of 13 to 15 to work only in non-industrial establishments and only between 7 am and 7 pm. If he or she has not yet completed Secondary III, their employment is subject to further safeguards to ensure that their schooling is not disrupted.

However, as Mr. C's question implies, legislation does no good unless it is enforced. Labour inspectors therefore do regular checks, both day and night, to make sure that children are not employed illegally.

In the first 10 months of this year, labour inspectors made more than 23 000 visits to the kind of places where children are likely to be employed illegally. Only 24 cases of illegal employment of children were found. In 15 of these cases, the employers are being prosecuted and in the remaining nine, the investigation is continuing.

Apart from the kind of routine checks of which I have just spoken, the Labour Inspectorate a month ago conducted a special one-week operation directed against the kind of places felt to be specially at risk, including 24-hour convenience stores. Inspectors visited a total of 449 such establishments during the day, in the evening and late at night. In this operation, the inspectors found four cases of illegal employment of children, but none of them in convenience stores. In fact the impression formed by the labour inspectors is that the managements of convenience stores are generally law-abiding.

The Labour Inspectorate will continue to keep an eye on establishments where children are likely to be illegally employed. If anyone has reason to believe that any particular establishment is employing children on night shifts, the Labour Department will welcome any such information and will follow it up.

MR. CHAN YING-LUN (in Cantonese): *Sir, the Secretary for Education and Manpower made an appeal in the last paragraph. Could I ask the Government to please pay special attention to Kwun Tong, Mong Kok, Causeway Bay and Ngau Tau Kok, where there are many convenience stores. This information is given to me by school social workers.*

SECRETARY FOR EDUCATION AND MANPOWER: Sir, I am grateful to Mr. CHAN for this information and will certainly pass it on to the Labour Department. If his informants or school social workers have any more detailed information which they could pass to the department, this would be even more useful.

MR. YEUNG: *Sir, will the Secretary state whether the four cases of illegal employment of children found in the special one-week operation are repeat cases of the 24 similar ones found in the first 10 months of the year? And if so, what action was taken against those establishments?*

SECRETARY FOR EDUCATION AND MANPOWER: The figures are included in the original figures but as far as I know, they are not repeat cases.

MRS. TAM: *Sir, in the answer the Secretary said that the employment of young people who had not yet completed Form III was subject to further safeguards to ensure that their schooling was not disrupted. Could the Secretary inform this Council what these further safeguards are?*

SECRETARY FOR EDUCATION AND MANPOWER: If a child of school age is employed, then the parents of the child must give their permission and also a certificate must be produced to show that the child is in fact in school. And the hours that the child may work are limited per day and they are limited to working at times which will not interfere with their school work.

MR. DESMOND LEE: *Sir, may I refer to the 15 cases of prosecution against illegal employment of children mentioned in the answer and ask what sort of sentences have been given?*

SECRETARY FOR EDUCATION AND MANPOWER: Sir, I do not have specific information on these particular cases but the normal penalties are fines of between \$500 and \$2,000.

MR. PETER C. WONG: *Sir, in the first 10 months of this year, of the 23 000 visits made by the Labour Inspectorate, 24 cases of illegal employment of children were discovered. And of these, 15 are being prosecuted and the remaining nine are still under investigation. Does that imply, Sir, that these cases were discovered only very recently? And could the Secretary inform this Council how recent were these cases discovered?*

SECRETARY FOR EDUCATION AND MANPOWER: The ones where we have not reached the stage of prosecution would certainly be the more recent cases. I would imagine they have been discovered in the last month or two.

MR. CHAN YING-LUN (in Cantonese): *Sir, the Secretary for Education and Manpower told us in the first paragraph that youngsters on night shifts could be exposed to bad influences and these teenagers may not be under the age of 15. They may well be over 15 and they may still be exposed to bad influences but these people are not protected by the law in any special ways. As 24-hour convenience stores and hamburger stores are proliferating, could we consider amending the law to prohibit teenagers aged 15 and above who are still studying from working on night shift in these stores?*

SECRETARY FOR EDUCATION AND MANPOWER: Sir, I would be happy to ask the Labour Department to think about whether there is a case for extending protection to children over the age of 15.

Cautioning of adult offenders

3. MR. CHUNG asked: *A scheme has recently been introduced in the United Kingdom whereby adult offenders may be cautioned rather than prosecuted for offences of a trivial nature. Will Government inform this Council whether it would consider introducing a similar scheme in Hong Kong?*

SECRETARY FOR SECURITY: Sir, there is no new scheme as such in the United Kingdom covering the cautioning of adult offenders. But there is a well-established system there for cautioning when it would not make sense to prosecute. Briefly, the police have always had to exercise common sense in deciding whether to lay charges, particularly in relation to minor offences. Individual chief constables have issued guidelines to their police officers on how to use their discretion. Then in February 1985, the Home Office recommended guidelines to all chief constables to encourage consistency in deciding when to issue a caution, both to juvenile and to adult offenders.

Briefly, the guidelines are aimed mainly at the sort of adult offender who it would not always make sense to prosecute, for example, the elderly, the infirm, the young and the mentally ill, when the circumstances of the crime are not particularly serious. But in all cases, the guidelines the Home Office issued state that the evidence must be sufficient for prosecution, the offender must admit the offence and he must agree to be cautioned. The caution will be recorded and may be used in making future prosecution decisions.

Sir, in Hong Kong, the Royal Hong Kong Police Force may also exercise some discretion in dealing with offenders. The commissioner has issued guidelines to his officers on giving cautions in the case of minor offences, and particularly minor traffic offences. Important factors that the police must take into consideration are the nature of the offence, the intention and demeanour of the offender and the absence of any harm done or an aggrieved party.

In November 1986, the Attorney General issued guidelines to the Independent Commission Against Corruption on occasions when it might be in the public interest for ICAC officers formally to caution adult offenders rather than to prosecute them. These guidelines follow very closely those which the Home Office issued in 1985. But I must stress that the decision here on whether or not to caution rests with the Attorney General and not with the Commissioner Against Corruption.

Earlier this year we considered introducing similar guidelines for all law enforcement departments in the Government on using a formal caution as an alternative to prosecuting adult offenders.

After careful consideration, we decided not to introduce such guidelines. The situation in Hong Kong basically is rather different from what it is in the United Kingdom. In Hong Kong the Attorney General's Chambers can provide a central prosecuting authority to which the police and the other disciplined

forces have easy access for quick advice on whether to prosecute in individual cases.

MR. CHUNG: *Sir, the Secretary mentioned that the Commissioner of Police had issued guidelines to his officers on giving cautions in the case of minor offences. Could the Secretary inform this Council what minor offences other than minor traffic offences are included in the guidelines?*

SECRETARY FOR SECURITY: As to the other minor offences, it is more a case of the nature of the offence and the circumstances, than it is the actual offence itself. As I say, those deciding to caution must take into account the nature of the offence, the intention and demeanour of the offender, the absence of any harm done or an aggrieved party.

MRS. CHOW: *Sir, regardless of whether there are guidelines or not, can the Secretary clarify as to whether or not we do have a caution scheme in existence similar to the one referred to in Mr. CHUNG's question, in law enforcement departments other than the ICAC and the police, and whether in practice it has been used, and whether Government wishes to see it used?*

SECRETARY FOR SECURITY: No, Sir, the cautioning is not being used by departments other than the police in the circumstances I have described.

MR. CHEONG: *Sir, could the Secretary tell us the number of cases in the police in which caution has been used instead of prosecution, let us say, in the past year or so?*

SECRETARY FOR SECURITY: I have asked that question from the police and it would take them a long time to produce the statistics and a lot of effort. But if my hon. Friend insists, I will certainly ask for it to be done. (See Annex I)

Advice to industrial undertakings on pollution control

4. PROF. POON asked: *Will Government consider providing technical assistance and advice to industrial undertakings in the territory to help them identify ways and means of reducing the level of pollution they are producing and, if so, will such assistance be provided before the relevant legislative controls are introduced?*

SECRETARY FOR HEALTH AND WELFARE: Sir, in the course of establishing pollution controls in Hong Kong, it has been our experience that most industrial undertakings take little notice of advice on pollution reduction methods in advance of the introduction of legislative controls. This is perhaps not difficult to understand, given that industrialists wish to avoid placing themselves at what they perceive may be a competitive disadvantage, when there is no compulsion on their competitors to do the same.

Nevertheless, before pollution control legislation is introduced, there is always widespread consultation with industrial bodies and the Environmental Protection Department does give technical advice on pollution matters. Where legislation is already in place, specific information is supplied on air pollution abatement measures, chimney applications, sewage, wastewater treatment and similar matters. Formal advice is also provided to industry through the issue of codes of practice, such as the recent code on the use of asbestos.

Publicity material on the requirements of the Water Pollution Control Ordinance and the Air Pollution Control Ordinance has been widely circulated and prospective tenants of the industrial estates are provided with information on environmental requirements. Every opportunity is taken to brief industry through technical journals and professional seminars, and the Environmental Division of the Hong Kong Productivity Council, which is subvented by the Government and works closely with the Environmental Protection Department, is a prime source of detailed advice on industrial pollution problems.

It is the Government's policy to minimise the economic impact of pollution controls and to emphasise to industrialists that modern, environmentally acceptable plant is often more efficient and cost-effective. Moreover, up to 70 per cent of capital investment in new plant is understand tax deductible.

Sir, although much advice and assistance is given to industrial undertakings on pollution controls, I must emphasise that prevention of pollution is part and parcel of the efficient operation of an industrial enterprise. Industrialists themselves must, therefore, be ultimately responsible for the pollution which they cause and it is unacceptable for the social and economic cost of such pollution to be a general charge on the community rather than an indirect charge through the cost of the product; that is of course to the extent that additional costs are involved, which is by no means always the case.

PROF. POON: *With reference to paragraph 4 of the Secretary's answer, will the Government also consider it important to give advice to industrialists, many of whom are running very small industries, as to how they can improve their existing plants to make them environmentally acceptable?*

SECRETARY FOR HEALTH AND WELFARE: Yes, Sir, I am sure that the Environmental Protection Department would be only too glad to advise on matters of this sort.

MR. POON CHI-FAI (in Cantonese): *Sir, there are a number of ways in controlling pollution caused by industries and the lead time for implementation is long. In the interim period, are there short-term measures to reduce the nuisance created in the environment and the impact on workers? For instance, Kwai Chung and Kwun Tong are the most seriously affected districts in Hong Kong.*

SECRETARY FOR HEALTH AND WELFARE: Sir, there are of course many methods of dealing with pollution caused by industries of one sort and another. Some of these problems can only be settled by long-term planning solutions, that is, in some cases actually removing the source of pollution completely. But in many cases there are short-term interim measures that can be adopted and I am sure that the EPD and the Productivity Council will be very pleased to advise on cases of this sort.

Issue of cigarettes to prisoners

5. DR. IP asked: *Will Government inform this Council whether, in keeping with its anti-smoking policy, it will review the Correctional Services Department's current practice of issuing cigarettes to prisoners upon request?*

SECRETARY FOR SECURITY: Sir, cigarettes are issued only to adult prisoners who have indicated that they are smokers. Young prisoners and inmates of training and detention centres are not allowed to smoke. The issue of cigarettes to adult prisoners has existed for a long time. It would be difficult to withdraw it without causing serious reactions in the adult institutions. A high proportion of male prisoners are smokers. That said, the Commissioner of Correctional Services is well aware of the Government's anti-smoking policy. In keeping with this policy, health talks on the ill effects of smoking are organised, and all adult prisoners are required to attend. Anti-smoking posters and literature are widely publicised and displayed throughout the institutions. In other words, the Correctional Services adopt the same approach of persuasion and education as in the Government's anti-smoking campaign for the public at large.

DR. IP: *Sir, are cigarettes in fact used as a form of currency for the purpose of trading within the prisons? If so, is this tolerated?*

SECRETARY FOR SECURITY: No, Sir, it is not tolerated and if it does take place the persons concerned are liable to punishment.

DR. IP: *What percentage of adult prisoners claim they smoke; what is the maximum number of cigarettes distributed per day and are they distributed free?*

SECRETARY FOR SECURITY: I will take the first three questions as one: 95 per cent of adult prisoners are smokers, they are issued with one packet of cigarettes a week and they are allowed to buy from the meagre earnings that they make working in the prison industries, if they are working in prison industries.

MR. YEUNG: *Sir, having regard to the Government's warning that smoking is hazardous to health, will Government justify the implications of the issue of cigarettes to adult prisoners?*

SECRETARY FOR SECURITY: The issue, Sir, of one packet of cigarettes a week I do not think is going to be tremendously detrimental to the health of the individual prisoner, but what we are particularly concerned about is that going into a prison is a pretty traumatic experience anyway. And if we add to that by stopping people smoking just with the blow of an axe, I think the consequences in terms of disturbances within prisons could be quite serious. Do not forget, Sir, we do have from time to time disturbances in our prisons.

MISS DUNN: *Sir, how does the percentage of 91 per cent compare to the population as a whole—is it higher or lower than the rate of smokers in the community?*

SECRETARY FOR SECURITY: Yes, Sir, it is of course very much higher.

DR. CHIU: *Sir, will the Government inform this Council what is the difference between cigarette addiction and drug addiction, and why are they treated differently in the Correctional Services Department, that is, in favour of cigarette smokers?*

SECRETARY FOR SECURITY: Well, Sir, it is a matter I should have thought quite obviously of degree; I mean, you cannot have drug addiction which in itself is illegal, being carried on in prisons. Cigarette smoking, I agree, is harmful, but it is not anything like as harmful as taking drugs.

DR. IP: *Sir, is anything offered to the non-smokers as an alternative? If no, is this preferential treatment for the smokers?*

SECRETARY FOR SECURITY: No, Sir, nothing is offered to the non-smokers as an alternative. You could say, of course, that they are lucky because in the long, long run they will survive longer than the smokers!

HIS EXCELLENCY THE GOVERNOR: I have two more names down; I will take two more supplementaries on this and then I think we have probably exhausted the question. Mr. Desmond LEE?

MR. DESMOND LEE: *Sir, if cigarettes are not used as a means for trading in prisons, are they used as stakes for gambling?*

SECRETARY FOR SECURITY: The answer to that question, Sir, is that they should not be. Whether they are or are not behind the scenes or out of the sight of the wardens is another matter.

MR. CHEONG-LEEN: *Sir, because a high percentage of the adult population in the prisons are smokers, could steps be taken to strengthen and improve the antismoking education within the prisons?*

SECRETARY FOR SECURITY: Yes, Sir, I can assure my hon. Friend also that both the Commissioner for Correctional Services and his deputy are absolutely paranoid anti-smokers!

Outreach service for elderly people

6. DR. CHIU asked: *Given that outreach social work for the elderly is now provided by only a few voluntary agencies on a very limited scale, will Government inform this Council what role it plays in the provision of this service at present and whether it has any plans to expand this service?*

SECRETARY FOR HEALTH AND WELFARE: Sir, although there is no specific programme as such for the provision of outreach services to the elderly, this does not mean that considerable effort is not put into reaching out to elderly people in their own homes. Various services are provided which cater for different needs.

Firstly, social workers from the Social Welfare Department's family services centres reach out to individual elderly people who have been identified or reported as being in need of care and assistance. Secondly, social workers from the department's youth and community offices and group work units, as well as volunteers from a number of subvented and non-subvented welfare agencies, do visit the elderly and particularly those who live alone. Thirdly, the elderly are the major beneficiaries of the subvented home help service which provides domestic help including the cooking of meals. There is also a subvented pool bus service for the elderly and particularly useful to those living in remote areas. The various outreach services which I have mentioned are, of course, in addition to the network of day and residential services for the elderly such as social centres, day-care centres and homes.

Sir, there are plans for the steady expansion of most of the services I have referred to, in particular home help, the family service centres, day centres and social centres for the elderly.

DR. CHIU: *Sir, in order to further identify the demand for elderly outreach social service, will Government inform this Council whether it will launch any publicity activities similar to the Child Abuse Campaign, so as to urge the general public to report to a government department or voluntary agency when they encounter those elderly people who need help?*

SECRETARY FOR HEALTH AND WELFARE: Sir, a great deal of publicity is arranged by various agencies and by the Government, encouraging people to respect the elderly, to look after them and to meet their needs. Recently we have had the Festival of the Elderly, which is an annual event and there are many similar occasions on which care of the elderly is advanced by means of publicity.

MR. HUI: *Sir, if there is a demonstrated need for outreach work for elderly people who could not or have not been served by existing services, will Government consider providing a subsidy for such purposes?*

SECRETARY FOR HEALTH AND WELFARE: *Sir, we would certainly be prepared to consider the case for subvention in such circumstances, although, of course, elderly outreach would have to compete with the many other demands for resources in this area.*

Review of loitering law

7. MR. CHEONG-LEEN asked: *Will Government inform this Council whether it has plans to review the loitering law taking into account the fact that social conditions have improved since 1979 when the law was first enacted, and that the law may be subject to abuse?*

SECRETARY FOR SECURITY: *Sir, on 17 November 1987 the Law Reform Commission was asked to consider:*

Whether the law relating to the offences of loitering contained in section 160 of the Crimes Ordinance should be amended and, if so, what changes should be made.

MR. CHEONG-LEEN: *Sir, will the Secretary for Security bring to the attention of the Law Reform Commission the following pertinent observations which were made by the then Attorney General, Mr. John HOBLEY, when he moved the Second Reading of the Crimes (Amendment)(No.2) Bill 1979 on 25 April 1979. I think his observations give some background of the social conditions existing at that time, especially in the older resettlement estates and which may not necessarily apply in the modern estates and in the streets of urban Kowloon. He said: 'the police force has also found it difficult to cope adequately with groups of thugs or bullies skulking around in the street or public parts of buildings, behaving in an offensive or menacing way without actual aggression ... What this Bill seeks therefore is the introduction of an enlarged loitering law which will help in crime prevention and generally help the police force to minimise the public manifestations of the association of thugs and bullies. The aim must be to obtain mastery of the gangs which is essential in order to obtain the public co-operation which is needed if the real activities of the gangs are to be tackled successfully.'*

SECRETARY FOR SECURITY: *Yes, Sir.*

MRS. FAN: *Sir, can the Secretary for Security inform this Council whether the use of the loitering law as an effective means to prevent crime from being committed has decreased in recent years, and if so, whether he intends to draw the attention of the Law Reform Commission to this factor?*

SECRETARY FOR SECURITY: Sir, I certainly endorse my hon. Friend's comment that the loitering law is a very useful way of preventing crime. Its use in the past few years has been: a little over 2 000 cases have been prosecuted in 1983, 2 500 in 1984, 1 800 in 1985 and 1 200 in 1986, and about 1 000 so far this year.

Control of 'friendly associations'

8. DR. TSE asked (in Cantonese): *Given that there are well-known cases where some so-called friendly associations registered under the Societies Ordinance are running unlicensed restaurants and conducting games of mahjong on their premises, will Government inform this Council what are the existing controls on these establishments; who are enforcing these controls; and whether such controls are considered adequate?*

SECRETARY FOR SECURITY: Sir, control of the establishments to which my hon. Friend is referring is contained principally in the Gambling Ordinance, the Societies Ordinance, and, from the public health aspect, in the Public Health and Municipal Services Ordinance. There has been some controversy in recent months over interpretation and enforcement of the law and I hope that my answer this afternoon will clear up some of the misunderstanding.

Playing mahjong is lawful in premises occupied or used by a society registered under the Societies Ordinance only provided first of all, a fee is not charged for admission to the premises; secondly, the game does not involve playing against a bank kept by one or more of the players; and third, the game is not promoted by way of trade or business or for the private gain of any person except the players.

The Societies Ordinance, allows action to be taken against a registered society which is suspected to have been involved in unlawful gambling. Under section 8 of the Ordinance, if it appears to the Registrar of Societies (that is to say the Commissioner of Police) that the activities of any registered society are not in accordance with its constitution or rules, he may order the society to stop those activities. If a society ignores this warning the commissioner may cancel its registration. The society, if it then continued to operate, would be an unlawful society and its members would be liable to prosecution.

Enforcement action against groups involved in gambling is the responsibility of the Commissioner of Police. He pays particular attention to clubs and associations (whether or not they fall within the control of the Societies Ordinance) which he believes are fronts for gambling establishments. Some of these are also known, or suspected to be involved with, triads and other organised criminal syndicates. Bona fide societies and associations who abide by the law need have nothing to fear.

To touch briefly on public health, restaurants in clubs and associations are exempted from the requirement to obtain a licence under the Food Business (Urban Council) and (Regional Council) By-laws. But they are inspected

monthly by Health Inspectors of the Urban or Regional Services Departments to ensure that food and hygiene standards and sanitary conditions are acceptable. The inspectors will advise the operators to improve standards or abate nuisances as necessary. The Secretary for Municipal Services considers that these controls are adequate.

As to the last part of my hon. Friend's question, I would say that existing controls are adequate. But recent correspondence from interested associations to Members of this Council suggests that there may be a need to clarify the law. We are now reviewing the Gambling Ordinance with particular attention to the playing of mahjong. The issue will be discussed at the next meeting of the Fight Crime Committee.

DR. TSE (in Cantonese): *Sir, there is usually very little space in the so-called 'friendly associations' and yet there are usually very many people and many very small compartments in them. When a fire breaks out, there is great danger to life. What controls are there on the part of Government to prevent such occurrences?*

SECRETARY FOR SECURITY: Yes, Sir, the normal anti-fire measures would apply to these organisations and the Director of Fire Services would do his utmost as always, to make sure that these requirements are met.

MR. PETER POON: *Sir, can the Secretary for Security amplify on point (b) in paragraph 2 of his answer which says that the game does not involve playing against a bank kept by one or more of the players. There has been a lot of confusion regarding the interpretation of this clause. One Chinese translation is '做莊'. How can you play mahjong with anybody 做莊? You cannot play mahjong without a banker. If the banker is meant to be the house, that would mean that the person running the mahjong game. That should be made clear to the public.*

SECRETARY FOR SECURITY: Sir, I am one of the privileged few who is no expert in any way whatsoever when it comes to gambling, but I will put my hon. Friend's point to the police, and I am sure that it will make sense to them.

DR. HO: *Complaints have been received by OMELCO from the staff of certain social clubs for being charged on aiding and abetting the operation of unlawful gambling. How does the Administration ensure that the staff of social clubs will be properly and duly informed or will become aware of the cancellation when the registration of the club is cancelled by the authorities?*

SECRETARY FOR SECURITY: The Registrar, Sir, will inform the club concerned and it will be up to the club concerned to inform its staff.

MR. CHEONG: *Sir, in the Secretary's reply in respect of health inspectors inspecting the premises of the clubs and associations, it implies that the inspectors will only advise the operators but have no power to right whatever they think is wrong. Is Government considering further action to enforce the proper standards?*

SECRETARY FOR SECURITY: Sir, I am afraid my hon. Friend's question is somewhat outside my own province, but I will put his point to the Director of Urban Services and give him an answer in writing. (See Annex II)

MR. LAI: *Sir, at the moment a lot of the innocent citizens of Hong Kong playing mahjong in fraternity associations have been arrested and found guilty; they have been charged and then have a record. Some have attended court and have been proved not guilty whereas those who have not attended court have been given a verdict of guilty. Will the Administration consider not enforcing the regulations so strictly until the review of the Gambling Ordinance is completed?*

SECRETARY FOR SECURITY: I personally, Sir, find it very difficult to believe that people go gambling in these organisations that are fronts for gambling establishments and do not know they are doing it! I do not think honestly we can issue—if I may use the horrible word—an 'amnesty' until such time as the review has been completed.

MR. MARTIN LEE: *Sir, why should the review of the Gambling Ordinance with particular regard to the playing of mahjong be entrusted to the Fight Crime Committee, none of the members of which is even a good mahjong player?*

SECRETARY FOR SECURITY: Sir, that sounds to me like a very, very serious charge against members of the Fight Crime Committee!

Written answers to questions

Use of walkman-type radios and cassette recorders

9. MR. POON CHI-FAI asked: *In view of the popularity of walkman-type (ear-phone) radios/cassette tape players, will Government inform this Council whether:*

- (a) it will conduct any study to ascertain the effect of prolonged listening to these gadgets on the users, such as the possibility of weakening or loss of hearing;*
- (b) traffic accidents will occur as a result of drivers or pedestrians being distracted whilst attentively listening to these musical equipment;*
- (c) any publicity will be given on their proper use; and*
- (d) the manufacturers or the importers will be requested to enclose in these products a description of their proper use?*

SECRETARY FOR HEALTH AND WELFARE: Sir, the answers to the four questions, in the order they were asked, are:

- (a) There is at present no plan to study the effect of prolonged listening to walkman-type radios and cassette tape players on hearing, as there is no known case of serious damage to hearing being caused in this way.
- (b) In general, any distraction to road users, be they drivers or pedestrians, is potentially dangerous and should be discouraged. Regulation 42(e) of the Road Traffic (Traffic Control) Regulations prohibits motor-cyclists from wearing radio or cassette earphones when driving. The Road Users' Code, which is widely distributed to the public and made available to all driving licence holders, emphasises that earphones should not be worn whilst driving any vehicle. The code also advises pedestrians to give full attention to the traffic and not to engage in other activities, such as listening to a radio or cassette while crossing the road.
- (c) The 1988-89 Road Safety Campaign will include in its publicity a warning against the use of earphones when driving on or crossing a road.
- (d) There is no intention at present to require manufacturers or importers of portable radios or cassette players to provide guidance on their proper use.

2:2:1 system in post-secondary colleges

10. MR. DESMOND LEE asked: *With reference to the reply given by the Secretary for Education and Manpower at the Legislative Council sitting on 8 January 1986 on the question of the 2:2:1 system in post-secondary colleges, will the Government advise this Council of the progress regarding the assessment of the institutions registered under the Post-Secondary Colleges Ordinance?*

SECRETARY FOR EDUCATION AND MANPOWER: There are at present two institutions registered under the Post-Secondary Colleges Ordinance. Only one of them operates with the 2-2-1 system for which partial government financial assistance is granted. The other has chosen to continue to offer four-year diploma courses without such assistance.

As stated in the 1978 White Paper on the Development of Senior Secondary and Tertiary Education, the 2-2-1 system enables the college operating it to contribute towards Government's targets for sixth form and tertiary education places. In the current academic year the college concerned is providing 422 places at the secondary VI and secondary VII levels and 707 places at the higher diploma level.

In 1987, 87 per cent of the college's secondary VII students obtained passes in two or more subjects in the A-level Examination. At the same time, according to the employment survey conducted by the college in respect of its 1986 Higher Diploma graduates, 95 per cent had either obtained employment or proceeded to further studies within four months of graduation.

As regards the formal assessment of the college, the Government has invited the United Kingdom Council for National Academic Awards (CNAA) to conduct an institutional review of the college. A validation team from the CNAA will visit the college next week to examine its facilities and teaching resources and to make a report to the Government on its strengths and weaknesses and on the level and worth of its exit qualifications. The Government expects to receive the CNAA's report early in 1988.

Driving-offence points system

11. MR. CHAN YING-LUN asked: *Will Government inform this Council how many drivers have been disqualified on incurring the maximum 15 penalty points since the implementation of the driving-offence points system, how many of them are drivers by occupation, whether Government is satisfied with the effectiveness of the driving-offence points system, and if not whether a review will be conducted?*

SECRETARY FOR TRANSPORT: Sir, since the introduction of the driving-offence points system in August 1984, a total of 2 011 drivers have so far been disqualified for incurring 15 or more penalty points. Of these, 584 or 29 per cent are known to be professional drivers, that is, holders of driving licences of taxis, buses, PLBs or medium/heavy goods vehicles. The rest are holders of driving licences of private cars, light goods vehicles or motor cycles. Some of the disqualified light goods vehicle drivers may of course also be drivers by occupation. However, as holders of private car driving licences are permitted at present to drive light goods vehicles, separate statistics are not available for this category of drivers.

The Government is generally satisfied with the effectiveness of the system, particularly in making those drivers incurring penalty points much more cautious in their driving standards and behaviour to avoid incurring further points. This is clearly borne out by the fact that of the 117 655 drivers who have incurred penalty points since the beginning of the scheme, only 2 011 drivers or 1.7 per cent have been disqualified, as mentioned earlier. The Government therefore considers that while the scheme is being and will continue to be closely monitored, there is no need at present to conduct a full review.

Statement

Duty structure for tobacco

FINANCIAL SECRETARY: Sir, in my 1987 Budget speech, I mentioned that the Administration would review the structure of our present duties on tobacco. This review is now complete.

Our existing duty structure has three key characteristics. First, the duty payable is levied on a weight basis. Second, there is a differential in duty rates between imported cigarettes and locally manufactured cigarettes. Third, the present system requires the prepayment and subsequent reimbursement of duty in respect of locally manufactured tobacco products that are exported from Hong Kong.

Our review has identified a number of problems arising from these characteristics. First, the duty differential in favour of locally manufactured cigarettes is vulnerable to criticism by exporting countries, even though the present differential of 10 per cent is within our rights and obligations under the General Agreement on Tariffs and Trade.

Second, the duty drawback system is cumbersome to operate. Cigarette manufacturers pay duty on the import of raw materials used in cigarette production. And later, when they export finished products, manufacturers can claim drawback according to the net weight of tobacco contained in the cigarettes exported. To assess the weight of tobacco exported, a complicated and labour intensive control system has been established involving both government departments and local manufacturers. The drawback system was originally introduced as a means of ensuring that duty was paid on all tobacco imported into Hong Kong and not subsequently re-exported or destroyed. But over the years and with changes in the pattern of trade the drawback system has become increasingly cumbersome and decreasingly appropriate.

Third, there is a problem with manufacturing loss allowances. The Commissioner of Customs and Excise is empowered by law to exempt from duty the tobacco losses incurred in the cigarette manufacturing process. Given the nature of cigarette manufacturing, it is impossible to identify the actual losses corresponding to each batch of production. Hence, the allowance is given as a percentage of the raw materials released from bond for duty payment. This percentage has to be reviewed periodically in the light of the actual quantities of wastage collected as against the weight of raw materials released from the bond over a certain period. Consequential duty adjustments are then made after each review. This practice is both time consuming and, by its very nature, somewhat arbitrary in its results.

The fourth problem concerning the existing duty is that the structure renders the revenue susceptible to changes in the tobacco weight content of cigarettes. The latest technology in cigarette production allows manufacturers to use gas to

pump up tobacco leaf to increase its normal volume. Blowing up tobacco leaf causes it to take up more space without increasing its weight. The net effect of this is less tobacco, and hence on our present system less duty, per cigarette. For a fixed level of cigarette consumption, the use of puffed tobacco therefore results in falling revenue.

In view of these problems, I have concluded that we need a major overhaul of the current tobacco duty structure. Accordingly, Sir, I propose that duty on cigarettes should no longer be levied on a weight basis. Instead, I propose that it be levied on a 'per cigarette' basis and applied only to those cigarettes, whether locally made or imported, which are destined for the local market. The new system will have a number of advantages. It will be easy to administer. It will obviate the need for a drawback system. And it will remove problems associated with manufacturing loss allowance and weight adjustments. In addition, it will provide us with an opportunity to remove the duty differential between locally made and imported cigarettes, and this will no doubt be welcomed by our trading partners. The key aims of the change I am proposing are simplicity and evenhandedness.

On the basis that the current level of revenue yield is to be maintained and assuming no change in consumption pattern, I propose a uniform duty rate of \$165 per 1 000 cigarettes for both local and imported brands. Duties on other tobacco products, such as cigars and snuff, will continue to be levied according to weight, given their immense diversity in size and quality.

As I have indicated, the rate I propose is intended to be revenue neutral as regards the overall duty paid on products released to the local market. In fact, however, this change is likely to result in a reduction in the duty revenue collected in the current financial year by some \$290 million (to \$815 million). However, this figure of \$290 million is not a revenue loss. The bulk of this figure represents the duty that, on the current system, would have been collected in 1987-88 but later paid back to manufacturers in 1988-89 in respect of exported cigarettes. The reduction is a once-for-all effect. It results from technical adjustments which are made in introducing a new duty system. In the next financial year revenue will not be distorted by prepayments and drawbacks, and should revert to a level similar to that experienced in previous years.

If I had left the change until a next Budget, it would merely have meant that the effects of any revenue distortion would mostly be felt in 1988-89 instead of in this financial year. Introducing the changes now will have the advantage of confining all the distortion within this financial year. This will enable us to operate the new system throughout 1988-89. I should stress again the nature of the distortion. It does not represent a gift to the manufacturers. It simply represents the earlier than usual repayment of money that would be due to them anyway in respect of tobacco products exported from Hong Kong.

Questions may be raised on the effect of the removal of the differential on local manufacturers. Although it is difficult to make a detailed assessment, it is

perhaps useful to note that over 80 per cent of locally made cigarettes are exported and are thus currently eligible for drawback of duties. Additionally, under the new duty regime all manufacturers will gain the benefit of avoiding the need to prepay duty, and then in due course to apply for drawback of duty, on products destined for export. Furthermore, the rate of differential has been reduced over the years, and Government has on a number of occasions stated its intention of eliminating the differential altogether. The local trade has been warned that Government could not assure them forever the relative benefits that they have enjoyed in the past.

As regards the effect on cigarette retail prices, I expect it to vary between brands depending on their current tobacco weight contents. Heavier than average cigarettes will attract less duty than before. Lighter than average cigarettes will attract more duty than before. There will be 'winners' and 'losers' amongst both imported and locally manufactured brands. As regards actual retail prices, it will be up to the manufacturers to decide whether or not to absorb duty increases into current retail prices and conversely whether or not to pass on the benefits of duty decreases to consumers.

Sir, the new duty structure comes into effect this afternoon by virtue of a Public Revenue Protection Order. In due course, I shall introduce into this Council an amendment Bill to the Dutiable Commodities Ordinance to formalise the changes.

Government Business

Second Reading of Bills

EXECUTIVE AND LEGISLATIVE COUNCILS (MEMBERS) BILL 1987

Resumption of debate on Second Reading (14 October 1987)

Question proposed, put and agreed to.

Bill read the Second time.

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

FISHERIES PROTECTION (AMENDMENT) BILL 1987

Resumption of debate on Second Reading (28 October 1987)

Question proposed, put and agreed to.

Bill read the Second time.

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

INLAND REVENUE (AMENDMENT) (NO. 2) BILL 1987

Resumption of debate on Second Reading (14 October 1987)

Question proposed.

MR. PETER POON: Sir, I rise to support the Inland Revenue (Amendment) (No. 2) Bill. For a considerable period of time there have been complaints that Hong Kong employees working elsewhere, in particular in China, had to bear double taxation on their salaries of emoluments. Government was asked to amend our tax legislation to eliminate this burden. In his 1987-88 Budget speech, the Financial Secretary stated that he would be considering the time apportionment method. In his speech on 14 October 1987 in moving the Second Reading of the present Bill, he explained his reasons for changing his approach: he considers a new approach a better way to grant relief without involving undue loss of revenue to Hong Kong which may arise under the original arbitrary 60 days rule, and in view of the definitive views on the law of 'time apportionment' given in the High Court judgement in the 'Goepfert' case, decided since his 1987-88 Budget speech.

As the law now stands after the said case, employees under contract entered into overseas will only be taxed on income for services rendered in Hong Kong. However, Hong Kong employees will still enjoy no automatic 'time apportionment' relief on employment income earned outside Hong Kong. The present Bill will exempt liability to Hong Kong salaries tax for such employees on income arising from services rendered outside Hong Kong if it can be established that tax has been paid there in respect of such income. This is evidently fair as it takes away the element of double tax imposed by Hong Kong.

The Legislative Council ad hoc group on this Bill received two representations and had one meeting with the Administration. We understand that consultation had been undertaken with various professional and other bodies, including chambers of commerce, before the Bill was published and the Bill has been refined as a result of such consultation.

Our Members are generally satisfied with the explanations given by the Administration on the points raised in the representations. One difficulty, however, deserves our concern: the Bill requires that tax should be paid before relief is given. Because of the difference in the time of assessment or the payment of tax elsewhere, evidence of payment of tax may not be able to be provided by

the taxpayer when the salaries tax assessment is made by the Commissioner of Inland Revenue in Hong Kong. We are, , assured that this technical difficulty can be met by administrative action by the commissioner. The commissioner indicated that he will be prepared, in appropriate circumstances, to hold over such tax on production of proof of overseas tax liability and discharge the tax on subsequent production of evidence of payment. This solution appears to be fair and acceptable and I hope that the Financial Secretary can confirm the arrangements in his reply.

Finally, we do not consider reasonable or appropriate the suggestion that Hong Kong should give up tax due to it by Hong Kong employees on income earned for services rendered in Hong Kong merely because other countries tax them on a worldwide basis on account of citizenship or residence.

Sir, with these remarks, I support the Bill.

MR. SOHMEN: Sir, I have little to add to Mr. Peter POON's remarks on this Bill other than to say that I also fully support it. There have been many calls in Hong Kong over the years for double taxation relief, and the proposed legislation goes a long way to achieve it in an equitable manner creating, hopefully, fewer administrative difficulties.

There has been considerable debate among the experts following the Financial Secretary's announcement in his last Budget speech, suggesting then that new legislation would be based on automatic time apportionment for persons subject to salaries tax rendering services outside Hong Kong for more than 60 days in total. In the event, a judicial decision already referred to by Mr. POON has forced a reassessment, resulting in the present Bill. Its provisions are on the one hand more precise than automatic time apportionment and on the other hand more sweeping in a sense, since once the conditions in section 2 of the Bill are met, Hong Kong tax relief is fully available irrespective of the actual quantum of tax paid in the other jurisdiction.

While tax laws are more regularly commented upon or criticised by those defending the position of the taxpayers, as legislators we must assure ourselves that proposed tax legislation also adequately protects the revenue. I was somewhat concerned that the terminology in clause 2(c)(i) of the Bill—referring to 'substantially the same nature as salaries tax' when describing the income chargeable to tax elsewhere—might create loopholes through interpretative difficulties in determining whether such income was of the same nature. After all, most other jurisdictions do not have as simple a tax structure as Hong Kong.

The ad hoc group however received replies from the Administration to the effect that since salaries tax in Hong Kong was generally recognised as substantially similar to income tax elsewhere, the Administration could see few

problems arising in the application of this provision. The Administration also advised that the verification of actual tax paid elsewhere would create no practical difficulties.

These assurances, together with the other clarifications which will be made by way of practice notes as mentioned by Mr. Peter POON, make me confident that this Bill is a good one. I am not bothered by the distinction between Hong Kong and non-Hong Kong employments which will continue to be drawn if we maintain our source-based system. The alleged disadvantages to Hong Kong belongers in comparison to expatriates under the scope of this Bill are not of a nature that would suggest a need for a change in the approach.

FINANCIAL SECRETARY: Sir, I am grateful for the comments made this afternoon by Mr. Peter POON and Mr. Helmut SOHMEN and for their support.

Mr. POON has referred to a difficulty which might arise where at the time Hong Kong tax is assessed, foreign tax, although chargeable, has not actually been paid. I can confirm that in this situation, the Commissioner of Inland Revenue will, where justified, apply the discretionary powers he has under the Ordinance to hold over payment of the Hong Kong tax. Upon application, the commissioner will hold over payment of that part of the tax assessed which is attributable to services rendered in the foreign territory. Once the foreign tax has been paid and proof thereof submitted by the taxpayer, the Hong Kong tax will be discharged.

Mr. SOHMEN has stated that his initial concern over the phrase 'substantially the same nature as salaries tax' was relieved by assurances given at a meeting between the ad hoc group and the Administration. The commissioner has also assured me on this point, that he foresees no real difficulty. He will enlarge upon the phrase in the practice note to be issued after this Bill has become law with a view to preventing any misunderstanding as to just what taxes he regards as substantially the same nature as our salaries tax.

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).

Committee stage of Bills

Council went into Committee.

EXECUTIVE AND LEGISLATIVE COUNCILS (MEMBERS) BILL 1987

Clauses 1 and 2 were agreed.

FISHERIES PROTECTION (AMENDMENT) BILL 1987

Clauses 1 to 9 were agreed.

INLAND REVENUE (AMENDMENT) (NO. 2) BILL 1987

Clauses 1 and 2 were agreed.

Council then resumed.

Third Reading of Bills

THE ATTORNEY GENERAL reported that the

EXECUTIVE AND LEGISLATIVE COUNCILS (MEMBERS) BILL 1987

FISHERIES PROTECTION (AMENDMENT) BILL 1987 and the

INLAND REVENUE (AMENDMENT) (NO. 2) BILL 1987

had passed through Committee without amendment.

Question put on the Bills and agreed to.

Bills read the Third time and passed.

Adjournment and next sitting

HIS EXCELLENCY THE PRESIDENT: In accordance with Standing Orders I now adjourn the Council until 2.30 pm on Wednesday, 2 December 1987.

Adjourned accordingly at thirteen minutes to Four o'clock.

Note: The short titles of the bills listed in the Hansard have been translated into Chinese for information and guidance only, they do not have authoritative effect in Chinese.

WRITTEN ANSWERS**Annex I****Written answer by the Secretary for Security to Mr. CHEONG'S supplementary question to Question 3**

I am afraid that your question is impossible to answer as far as adult offenders are concerned. Unlike the ICAC, where the decision to caution is taken by the Attorney General as an alternative to prosecution, the police do not have a system for formally cautioning adult offenders, although they often caution people on-the-spot for minor offences, such as traffic infringements. Hundreds of such cautions are issued daily.

But police superintendents and above may formally caution juvenile offenders, that is, offenders under the age of 17, instead of recommending prosecution, under certain circumstances. In 1987 the police formally cautioned 4 745 juvenile offenders (compared with 3 638 in 1986 and 3 895 in 1985).

Annex II**Written answer by the Secretary for Security to Mr. CHEONG'S supplementary question to Question 8**

The health inspectors during their inspections to clubs and associations exercise powers in relation to the following laws and by-laws:

- (a) *Sale of 'prohibited foods' and 'restricted food'*
Operators of clubs and canteens are prohibited from selling certain foods specified in the First Schedule to the Food Business (Regional Council) By-laws and the Food Business (Urban Council) By-laws. Except with the permission in writing of the Regional Council and the Urban Council, no clubs and canteen can sell food items referred to in the Second Schedule to the same By-laws.
- (b) *Sale of wholesome food*
Although clubs at present do not need a licence from the Urban Council to operate, operators are still liable to prosecution under the Public Health and Municipal Services Ordinance, should it be found that the foods they sell are unwholesome, adulterated, or not of a quality and nature demanded by the purchaser.
- (c) *Abatement of nuisances*
The provisions in the Public Health and Urban Services Ordinance, regarding the abatement of nuisances apply to clubs and associations in the same way as to other premises.

WRITTEN ANSWERS—*Continued*

Where a Health Inspector finds that the by-laws and regulations are being contravened, in the first instance he will usually simply advise the owner of the premises to improve the situation. If this advice is not allowed within a reasonable time, then legal action is taken.

A review of the application of the Food Business (Urban Council) By-laws and (Regional Council) By-laws to clubs is in hand. The possible need to extend licensing controls to clubs is being considered as part of the review.