OFFICIAL REPORT OF PROCEEDINGS

Wednesday, 22 June 1988

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
SIR DAVID ROBERT FORD, K.B.E., L.V.O., J.P.
THE HONOURABLE THE FINANCIAL SECRETARY (*Acting*)
MR. DAVID ALAN CHALLONER NENDICK, J.P.
THE HONOURABLE THE ATTORNEY GENERAL
MR. JEREMY FELL MATHEWS. 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, C.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 JOHN JOSEPH SWAINE, C.B.E., Q.C., 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, C.B.E., J.P.
DR. THE HONOURABLE HENRIETTA IP MAN-HING, O.B.E., J.P.
THE HONOURABLE MRS. RITA FAN HSU LAI-TAI, O.B.E., J.P.
THE HONOURABLE MRS. PAULINE NG CHOW MAY-LIN, J.P.
THE HONOURABLE PETER POON WING-CHEUNG, M.B.E., J.P.
THE HONOURABLE YEUNG PO-KWAN, O.B.E., C.P.M., 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, O.B.E., 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 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 ANDREW WONG WANG-FAT
THE HONOURABLE LAU WONG-FAT, M.B.E., J.P.
THE HONOURABLE MICHAEL LEUNG MAN-KIN, J.P.
SECRETARY FOR TRANSPORT
THE HONOURABLE EDWARD HO SING-TIN, J.P.
THE HONOURABLE GEOFFREY THOMAS BARNES, J.P.
SECRETARY FOR SECURITY
THE HONOURABLE PETER TSAO KWANG-YUNG, C.P.M., J.P.
SECRETARY FOR ADMINISTRATIVE SERVICES AND INFORMATION
THE HONOURABLE CHARLES ROBERT SAUNDERS, J.P.
SECRETARY FOR LANDS AND WORKS (*Acting*)
THE HONOURABLE DOMINIC WONG SHING-WAH, J.P.
SECRETARY FOR EDUCATION AND MANPOWER (*Acting*)

ABSENT

THE HONOURABLE LYDIA DUNN, C.B.E., J.P.
THE HONOURABLE STEPHEN CHEONG KAM-CHUEN, O.B.E., J.P.
THE HONOURABLE CHAN YING-LUN, J.P.
THE HONOURABLE KIM CHAM YAU-SUM, J.P.
THE HONOURABLE HELMUT SOHMEN

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:	
Corrupt and Illegal Practices Ordinance Legislative Council Election Expenses (Amendment) Order 1988	164/88
Road Traffic Ordinance Taxis (Limitation on Number) Notice 1988	165/88

Oral answers to questions

Invitation of tenders from the disabled

1. MR. HUI asked: *Will Government inform this Council whether consideration will be given to inviting some single tenders from sheltered workshops and self-employed disabled people who are able to supply goods or provide services up to government requirements?*

FINANCIAL SECRETARY: Sir, Government is conscious of the need to support those disabled persons who make an effort to take up gainful employment and participate in economically productive activities. We are always willing to consider offers from sheltered workshops and self-employed disabled persons who can produce goods or services required by the Government at a satisfactory standard and at fair and reasonable prices. We would also consider inviting single or restricted tenders from such organisations or individuals, on a case by case basis.

In so doing, however, we must bear in mind the overriding objective of Government's tendering procedures, which is to ensure, as far as possible, value for the taxpayer's money. In other words, we must seek to ensure that Government receives the best quality goods and the best possible services which are available at competitive prices. At the same time, we must also be fair to all potential suppliers.

Furthermore, as a signatory to the General Agreement on Tariffs and Trade, we are also obliged to award contracts for procurement of goods and services of value over $1.3 million by means of open tenders.

MR. HUI: *Sir, in the light of an increasing number of sheltered workshops and work activity centres catering to disabled workers, could the Government inform this Council whether the number of such single tenders will increase in the future to cope with increasing demands, provided the conditions as spelt out in the Financial Secretary's reply are met?*

FINANCIAL SECRETARY: Sir, sheltered workshops and self-employed disabled people may always apply to the Director of Government Supplies for registration as potential suppliers of specific goods or services. The director will consider inviting them to submit single tenders provided they meet the Government's basic requirements which I have already outlined.

Members may be interested in knowing that the Factory for the Blind, run by the Society for the Blind, has, over the last 10 years or so, developed a range of products which the Government requires, and orders valued over $3 million have been awarded to it.

Exemption of airport departure tax for dawn-to-evening visitors

2. MR. CHEONG-LEEN asked: *In order to promote Hong Kong as a shopping centre for tourists, will Government consider making it convenient for visitors on dawn-to-evening transit to leave the airport for shopping and sightseeing by exempting them from paying the airport tax when they depart from Hong Kong?*

FINANCIAL SECRETARY: Sir, I would be reluctant to consider exempting dawn-to-evening visitors from payment of air passenger departure tax. In addition to a substantial loss of Government revenue, this exemption would breach the reasonable principle that only those in genuine transit through Hong Kong, should be exempt from the tax. Furthermore, to ensure that those who claim to be exempt have, in fact, arrived only the same day would involve the introduction of a new monitoring system at the airport. The cost of introducing such a system would be disproportionate to any possible economic benefits that might accrue as a result.

MR. CHEONG-LEEN: *Sir, may I ask what is the approximate loss of Government revenue in terms of dollars and cents? And referring to the principle enunciated by the Financial Secretary, may I ask whether genuine transit passengers staying in Hong Kong for five or six hours could be exempt from the tax? This, I presume, is in accordance with the principle enunciated by the Financial Secretary.*

FINANCIAL SECRETARY: Sir, as I have already indicated in my main answer, there are considerable cost implications in making any change. I think it is worth amplifying what I mean by that. Currently the airport departure tax is collected by the airlines at the same time when passengers are completing their check-in procedures. The introduction of an exemption for visitors leaving on the same

day would involve an examination of evidence certifying that they had arrived on the same day, and this would, I believe, be more appropriately done by the Immigration Department who already have more than enough work on their plate. It would certainly substantially increase their workload.

On the other point on loss of revenue that Mr. Hilton CHEONG-LEEN raised—we can only make an estimate but the Hong Kong Tourist Association estimated that in 1987, there were some 235 000 visitors who stayed less than 24 hours. If one assumes that all those would be the people eligible for this particular concession, it would cost something in the region of $23 million.

MR. CHEONG-LEEN: *Sir, I referred only to dawn-to-dusk transit passengers, and not passengers who would stay for 24 hours or less. But may I ask the Financial Secretary if he has consulted the industry on the suggestion, and if not, would he care to pursue it with them to obtain their reaction, including the views of the airline companies?*

FINANCIAL SECRETARY: Sir, I would certainly take note of that suggestion. I do not believe there has been any consultation but I think the views of the tourist industry are already well known on the question of the tax as a whole. But we will certainly take note of it.

Unlawful use of stolen credit cards

3. MR. YEUNG asked: *Since the use of credit cards is becoming increasingly popular, will Government inform this Council whether there has been a rising trend of unlawful use of stolen credit cards in recent years and what steps will be taken to prevent or reduce the resulting loss to banks?*

SECRETARY FOR SECURITY: Sir, in the last five years, the number of cases reported to the police of the unlawful use of stolen credit cards has declined from 138 in 1983 to 53 in 1987. Based on reports in the first three months of 1988, there will be an estimated 48 cases this year. But these figures must be viewed with caution. The police believe that a substantial number of stolen credit cards are used in Hong Kong without reports ever being made to them.

The Counterfeit and Forgery Division of the Commercial Crime Bureau keeps in close touch with senior officials in local credit and charge card companies in order to keep abreast of developments in credit card crime and to minimise the opportunities for criminals. In 1987 and early 1988, the division, working closely with local and overseas card issuing companies, conducted a number of successful operations against overseas syndicates using stolen credit cards in Hong Kong. Six key figures were convicted of criminal offences relating to syndicate activities and sentenced to terms of imprisonment between six and 18 months.

As for preventive measures, there would certainly appear to be scope for card issuing companies, particularly those overseas, to improve their own security. Some banks persist in sending credit cards through the mail, often by unregistered mail, and many are stolen. There is also fierce competition in the credit card industry itself which can result in lower standards of screening card applicants.

While the police will continue to act on all reports received, the responsibility for improving security arrangements must rest with the card issuing companies which are best placed to judge for themselves the scale of the problem, as it affects their own businesses, and the remedial measures they would wish to adopt. The Government, for its part, stands ready to co-operate as necessary with the card issuing companies.

MR. YEUNG: *Sir, as it is estimated that the annual loss to banks due to unlawful use of stolen credit cards amounts to HK$230 million, will Government consider amending legislation so as to bring to justice such criminals, especially those connected with overseas syndicates?*

SECRETARY FOR SECURITY: Sir, I think the legislation itself is adequate but I shall certainly discuss with the Commissioner of Police initially, whether there are any improvements which need to be made.

Sexual abuse of mentally handicapped persons

4. MR. LAI asked (in Cantonese): *Will Government inform this Council how many cases of sexual abuse of the mentally handicapped persons have been reported to the Administration in the past three years? Of these cases, how many have resulted in prosecution and what is the result of these prosecutions?*

SECRETARY FOR SECURITY: Sir, in the past three years, 62 cases of sexual abuse of mentally handicapped persons were reported: 22 in 1985, 20 in 1986, 18 in 1987 and two between January and March 1988. Arising from these cases, 30 prosecutions were instituted.

Statistics on the outcome of these prosecutions are not yet available for 1985. In 1986, eight persons were prosecuted, of whom two were acquitted and six convicted. In 1987, six were prosecuted, of whom two were acquitted and four convicted. Between January and March 1988, two prosecutions were instituted and are not yet concluded.

I have set out the sentences passed by the courts in 1986 and 1987 in an appendix to this reply. The sentences range from a fine of $400 for indecent assault to imprisonment for seven years for rape.

APPENDIX

Sentences on defendants convicted of sexual abuse of mentally handicapped persons

	Offence	*Sentence*
1986	Rape	Seven years' imprisonment.
	Indecent assault	Bound over in the sum of $750 for one year and $500 costs.
	Indecent assault	Bound over in the sum of $500 for two years and $500 costs.
	Indecent assault	Six months' imprisonment, suspended for one year.
	Unlawful sexual intercourse	Probation for 12 months.
	Unlawful sexual intercourse	Nine months' imprisonment.
1987	Indecent assault	Fined $400.
	Unlawful sexual intercourse	Nine months' imprisonment.
	Unlawful sexual intercourse	Nine months' imprisonment.
	Unlawful sexual intercourse	Six months' imprisonment.

(*Note:* The victims in all the above cases were women)

MR. LAI (in Cantonese): *Sir, the Secretary for Security said in the first paragraph of his reply that in the past three years, 62 cases of sexual abuse of mentally handicapped persons had been received but there were only 30 prosecutions. Why were the other 32 cases not the subject of prosecution? Secondly, very often many cases depend on the evidence provided by the victims involved but they may not have good memories and may therefore be in an unfavourable position legally. Will the Government consider instituting special prosecuting procedures for such cases?*

SECRETARY FOR SECURITY: Sir, it is true that proportionately, fewer sexual offences against mentally handicapped women resulted in prosecutions than similar cases against women who are not handicapped. In the community as a whole, over the three years up to March 1988, there were 4 901 sexual offences against women, resulting in 3 226 prosecutions, that is to say, a 66 per cent rate in the community as a whole. This compares with prosecutions which I have mentioned, which is slightly fewer than 50 per cent. The police will always make every effort to secure a prosecution and conviction when any sexual offence is

involved but there are special difficulties when the mentally handicapped are involved. For example, the victim may not be able to identify his or her assailant, the quality of the evidence may not be adequate to justify arrest and prosecution and so on. In the circumstances, I do not find the prosecution rate of 50 per cent to be unduly low.

As regards the second part of the question, there was a similar question asked of the Attorney General on 20 May 1987, when he was dealing with this particular question. He was asked whether any assistance given to the mentally handicapped was provided when evidence was given in court, and the answer on that occasion was that 'No, they are treated as any other witness is treated, with consideration, and no doubt with special consideration in view of their disability.'.

MR. HUI: *Sir, in view of the vulnerability of the mentally handicapped in being sexually abused, could Government inform this Council whether there are any sexual education programmes specially designed for them?*

SECRETARY FOR SECURITY: Sir, I think this question really comes into the rehabilitation policy area, and this would normally, therefore, be a matter for the Secretary for Education and Manpower but with his forebearance I shall provide an outline of the particular efforts made, other than those by the police and the courts, to reduce sexual abuse of the mentally handicapped.

Staff of the Social Welfare Department day and residential centres for the mentally handicapped, and the staff of the centres run by voluntary agencies are briefed regularly on the risks of sexual abuse and how they can be minimised. Many of the staff have also attended Family Planning Association courses on sex education for the mentally handicapped. They spend a great deal of effort in teaching the people in their care how to recognise and how to avoid sexual abuse.

In addition, a training unit within the Social Welfare Department organises regular seminars and workshops for all the staff in that department and staff of subvented agencies who are involved with the mentally handicapped through their work.

In addition, the Social Welfare Department case workers and group workers also organise a variety of meetings and social functions for the mentally handicapped and this is done under supervision.

DR. HO: *Sir, among the 62 cases mentioned in paragraph 1 of the answer, how many of the victims were sexually assaulted by staff members of an institution where the mentally handicapped received services; and were these assailants given heavier punishment because they had taken advantage of their special relationships with the victims?*

SECRETARY FOR SECURITY: Sir, I am afraid I do not have those details but I shall undertake to provide a reply in writing. (See Annex I)

MR. LAI (in Cantonese): *Sir, will Government consider the various points outlined as follows, concerning the provision of evidence in court?*

Could the evidence be video-taped and analysed by psychologists and could the case social worker assist the victim in providing evidence? And if pregnancy results from sexual abuse, how will the matter be resolved? What assistance will be provided? And will abortion, in such circumstances, be permitted under the law?

SECRETARY FOR SECURITY: Sir, I will refer the various questions put to me to the Secretary for Education and Manpower for reply, with the exception of that on video recorders which I feel I am qualified to say something about.

The use of video recorders to take evidence from mentally handicapped victims is still being examined, at the same time as other possible uses. The ICAC, with whom I have been recently associated, have been considering the use of video recorders to record interviews with suspects, rather than statements from witnesses, and, with the Attorney General's Chambers, has drawn up a code of practice. As yet, however, no video recording has been used in a prosecution.

In England, the Criminal Justice Bill proposes a video link to relay to a court evidence given either by persons outside England, or by children under 14.

The uses I have just mentioned are not directly relevant to the mentally handicapped but if they prove successful, we shall consider introducing video recordings in a variety of situations, including those involving the mentally handicapped.

HIS EXCELLENCY THE PRESIDENT: Secretary for Education and Manpower, can you supplement that reply?

SECRETARY FOR EDUCATION AND MANPOWER: Sir, I do not think really that there is much to supplement in this case. In so far as taking evidence, prosecution and so on are concerned, all psychological services will be provided as far as possible.

MR. LAI (in Cantonese): *Sir, my second supplementary question relating to pregnancy has not been answered.*

SECRETARY FOR SECURITY: Sir, I shall have to look into that question and give a written reply. (See Annex II)

Waiting time required for consultation at government specialist clinics

5. MR. HO SAI-CHU asked (in Cantonese): *Will Government inform this Council what is the minimum and maximum waiting time for patients referred by general medical practitioners to obtain consultation at government specialist clinics, broken down by specialties, and whether or not it intends to improve the level of provision of specialist service in government hospitals and clinics?*

SECRETARY FOR HEALTH AND WELFARE: Sir, the minimum and maximum waiting time for consultation at government specialist clinics varies considerably between different specialties. With regard to surgery, the waiting time ranges from zero to 78 days, for paediatrics from two to 164 days, for medicine from two to 167 days, for orthopaedics and traumatology from nine to 100 days, for neurosurgery from seven to 12 days, for gynaecology from five to 89 days, for obstetrics from eight to 97 days, for radiotherapy from one to two days and for psychiatry from five to 20 days.

The average waiting time for most specialties ranges from two to 42 days, but in some areas such as obstetrics and medicine, however, it is as high as 59 and 83 days respectively.

I must emphasise, however, that the above statistics refer to non-acute cases only. All urgent cases are either attended to immediately or are referred to the nearest accident and emergency department for admission to hospital, if necessary.

Planned improvements to the public sector specialist services include the provision of two new specialist clinics to be completed by 1991 and 1996. These will be located at the Pamela Youde Hospital and the North District Hospital respectively. The provision of public sector hospital beds for all specialties will be increased by over 50 per cent from about 22 000 at present to nearly 35 000 in 1996, when the various major new hospital projects and expansion schemes have been completed, and this should result in a considerable improvement in services.

MR. HO SAI-CHU (in Cantonese): *With reference to the first paragraph of the Secretary's answer, will the Government inform this Council whether the waiting time of 167 days for medicine and 164 days for paediatrics are unduly long? Moreover, the average waiting time for obstetrics and medicine can be 59 days and 83 days respectively, which is about two to three months. Are they also unduly long? Before the new projects are completed in 1996, will there be any interim measure to improve the situation?*

SECRETARY FOR HEALTH AND WELFARE: Sir, many of these waiting times are longer, of course, than we would wish, but given the position that I explain later in my answer that acute cases are often dealt with immediately, and that anyone who is in danger of life and limb is seen by a specialist clinic in a very short time.

The Director of Medical and Health Services considers that the position is acceptable if not ideal. As regards the second part of Mr. HO's question, the various hospital projects to which I refer will come on stream throughout the period between now and 1996, so there should be a steady improvement throughout that period.

MR. POON CHI-FAI (in Cantonese): *Sir, has the Administration collated any information on cases in which patients' condition has deteriorated due to the long waiting time or patients have even died in the course of waiting? If not, will the Administration collate such information to understand such a serious problem? Moreover, do most of the patients having to wait come from the poor classes?*

SECRETARY FOR HEALTH AND WELFARE: Sir, I think that if any patient's condition is seriously deteriorating, they can always go, of course, to the accident and emergency department of any general hospital, so I am not aware of any statistics or any cases of patients actually dying because they were unable to see a specialist during that time. As regards the second part of the question, I should think that patients who attend public hospitals and out-patients clinics are generally the less well off. I am sure we have no statistics as to exactly the economic breakdown of these people but, in general, better off people tend to go to private doctors and private hospitals.

MRS. CHOW: *Sir, when the two new specialist clinics are completed in 1991 and 1996, how much will the waiting time be expected to be shortened in the different specialties?*

SECRETARY FOR HEALTH AND WELFARE: Sir, it is very difficult to forecast that sort of figure because waiting times depend upon a very large number of factors, not just the number of clinics and the number of doctors available. The distribution of people in different areas seems to vary and all these factors affect the waiting time, so I would not be able to hazard a guess as to the improvement, except to say that there certainly should be an improvement.

DR. CHIU: *Sir, will the Government inform this Council whether there are arrangements to refer patients from specialist clinics with long waiting lists to those with shorter waiting lists? If yes, how do these arrangements work?*

SECRETARY FOR HEALTH AND WELFARE: Sir, I am sure that certainly in emergency cases this could be done. I am not sure of the details of how it works but I will find out from the director and let Dr. CHIU have a note. (See Annex III)

DR. LAM (in Cantonese): *Sir, with a view to providing specialist treatment to patients, has the Administration ever considered inviting specialists in private practice to provide voluntary or semi-voluntary services to the Government to solve the problem?*

SECRETARY FOR HEALTH AND WELFARE: Sir, so far as I am aware this has not been done but one of the recommendations of the Scott report on hospital service was that there should be arrangements for private doctors to serve in government and aided hospitals, and I hope that the advent of the Hospital Authority will make this possible.

DR. IP: *Sir, Secretary for Health and Welfare said that acute cases are handled right away. Is he aware that after admission to Queen Mary Hospital, elderly persons with a fractured femur which is, of course, an acute case, sometimes have to wait for a few months before surgery can be done because of an inadequate number of anaesthetic sessions for orthopaedic surgery?*

SECRETARY FOR HEALTH AND WELFARE: Sir, I was not aware of this particular problem but I will draw this to the attention of the director.

MR. EDWARD HO: *What is the target for the reduced waiting time?*

SECRETARY FOR HEALTH AND WELFARE: Sir, once again I have to say that the situation varies very much between different specialties and depends on the severity of the conditions. In some minor conditions, it is quite acceptable for a patient to have to wait several months before an appointment can be given. In critical cases, clearly it is not possible, I think, to state any target date to cover all specialties and all types and all severities, of ailment.

MRS. CHOW: *Does the Government accept that the present length of waiting time, both in average terms and in maximum terms, is not acceptable? And if Government does accept that it is unacceptably long, would there be some kind of plan to try and shorten the average or the maximum in the interim before the two new clinics are completed? In other words, could some kind of target be set up, as suggested by Mr. HO, that they need to be shortened because they are unacceptably long at the moment?*

SECRETARY FOR HEALTH AND WELFARE: Sir, I think, as I said earlier, the director feels that the waiting times are certainly not ideal and should be improved, but he does not see the present situation as a crisis. There are plans to expand hospital services generally. New hospitals, of course, very often include specialist clinics in addition to the specific ones that I have referred to. So we have plans to improve the situation.

MR. CHEONG-LEEN: *Sir, specifically in the case of paediatrics, which involves children, what is the average waiting time, and can measures be taken to reduce the maximum period which is given as 164 days?*

SECRETARY FOR HEALTH AND WELFARE: Sir, the average waiting time for paediatrics is 41 days. Certainly paediatrics is one of the areas which has high priority for improvement.

Non-traditional religious activities in schools

6. MR. DESMOND LEE asked: *Will Government inform this Council whether any reports regarding activities of non-traditional religious sects or cults in schools have been received and, if so, whether any investigations have been carried out and what the findings are?*

SECRETARY FOR DISTRICT ADMINISTRATION: Sir, during the past five years, only one report had been received by the Education Department in 1986 concerning suspected non-traditional religious activities involving a few students of a government secondary school. The incident had been reported to the police and no illegal activities had been detected upon investigation. The principal of the school had also discussed the incident with the students and the parents concerned. Since then, no further reports of unusual religious activities had been made on the religious group in question.

MR. DESMOND LEE: *In the case which was reported in 1986, what were the activities which are described in the answer as 'non-traditional'?*

SECRETARY FOR DISTRICT ADMINISTRATION: Sir, I think the case was of a school finding that the group concerned was engaged in activities which were not socially acceptable.

Channels for conveying views on the draft Basic Law

7. MR. SZETO asked (in Cantonese): *At a recent meeting with Members of the Executive and Legislative Councils, the Rt. Hon. Sir Geoffrey Howe, Secretary of State for Foreign and Commonwealth Affairs, undertook to pass on the views of the Legislative Council as well as those of the municipal councils and district boards on the draft Basic Law (for solicitation of opinions) to the Chinese Government through diplomatic channels. Will Government inform this Council how it would collect the views of the two municipal councils and the district boards, and to which government department these councils and boards should submit their views?*

CHIEF SECRETARY: Sir, the Government is very prepared to arrange for the views of the municipal councils and district boards on the draft Basic Law to be passed on to the Chinese Authorities through diplomatic channels. However, it is for the councils and boards concerned to decide whether they do wish to make use of this procedure to convey whatever views they may have on the draft Basic Law. If they do, the request should be addressed to the Secretary for Municipal Services in respect of the two municipal councils and the Secretary for District Administration in respect of district boards.

MR. SZETO (in Cantonese): *Sir, will the Government inform the Council of the following figures. First of all, the district boards that have discussed the draft Basic Law. Second, the district boards which are prepared to discuss the draft Basic Law but have not. Third, the district boards that have not yet decided whether they will discuss the draft Basic Law. Fourth, the district boards that have decided not to discuss the draft Basic Law.*

CHIEF SECRETARY: Sir, I think the answer will require some crystal ball gazing but I will do my best to provide the details required by Mr. SZETO Wah. (See Annex IV)

Emergency measures to cope with breakdown of public transport services

8. MRS. NG asked (in Cantonese): *Two traffic accidents involving the derailment of a goods wagon at KCRC University Station and the breakdown of a container truck at the Lion Rock Tunnel caused traffic chaos in Kowloon on 4 June 1988. In the light of these accidents, will Government inform this Council, in the event of train derailment or service interruptions of other public utilities, what measures will be taken to cope with the chaotic situations and investigate into the cause of the accidents with a view to avoiding the occurrence of similar incidents?*

SECRETARY FOR TRANSPORT: Sir, the Government have well established procedures to cope with breakdown in one or more of the public transport services or serious traffic disruption on our roads and tunnels.

After an accident has occurred, the police is the first line of contact. They will undertake all necessary traffic and crowd control measures. Standing orders exist to ensure swift dissemination of information through the Police Public Relations Bureau which has direct links with the Information Services Department and the media.

The Transport Department is responsible for the overall co-ordination and arrangement of emergency public transport services through the affected area, advising the public through the media to avoid the scene of incident and strengthening services in other areas. All transport operators are required to inform the Transport Department whenever their service is disrupted so that alternative transport services could be arranged. Depending on the extent of disruption, the department's Emergency Transport Control Unit will be activated.

In emergency situations requiring the opening of roads for repair of public utilities, the repair work will be carried out by the relevant utilities. Reinstatement of the roads will be co-ordinated by Highways Department. Wherever practicable, repair work is undertaken outside the peak traffic period.

Investigation into train accidents, including derailment, are undertaken by the rail corporations either in-house or by outside experts. In the case of the KCR's recent derailment incidents, a full investigation is under way by an outside consultant and a report is expected in about three weeks' time. The corporations are also required, under their respective Ordinances, to report to the Chief Secretary on accidents involving train derailment. The Chief Secretary, if necessary, may call for a separate review by a railway inspector. Similarly, the franchised bus and ferry operators are also required to report major accidents to the police and the Director of Marine respectively. Similar procedures exist for public utilities to establish the cause of accidents and report to Government.

Notwithstanding these arrangements, the dual accidents on 4 June showed that the deployment of alternative public transport services need to be better planned and co-ordinated with traffic diversion arrangements, especially where accidents occur on the major strategic routes. In addition, a closer link between Government's emergency procedures and those of the public transport operators and utilities is essential. A full review has, therefore, been undertaken and revised procedures are now adopted. With immediate effect, whenever accidents occur on the strategic routes and irrespective of the nature of such accidents, the Transport Department's Emergency Transport Control Unit will be activated to co-ordinate and develop overall remedial measures and to disseminate information to the public. Details of these arrangements will be announced at a press conference later this afternoon.

Sir, no emergency procedures can effectively provide for the variety, combination and effects of any accident. But all practicable measures will be taken at the earliest opportunity to minimise disruption. Inconvenience to commuters is inevitable given our congested roads and the very high density of vehicles per kilometre. We do need public patience and understanding in those circumstances. In particular, we urge all motorists to avoid using the congested corridors, so that disruption to the affected areas could be contained and minimised.

MRS. NG (in Cantonese): *Sir, I am glad to know that the Emergency Transport Control Unit of the department will be responsible for co-ordination and arrangement of emergency public transport services. I think you will contact KCRC, the franchised ferries and bus companies. Other than these companies, will you also contact the associations of the taxi trade and public light bus operators so that these bodies will also send their cars to the affected areas? We believe these vehicles will be able to take commuters with more flexibility.*

SECRETARY FOR TRANSPORT (in Cantonese): Sir, at present the Transport Department's Emergency Transport Control Unit has the telephone numbers of all public transport companies. Of course, first of all they will contact the

bus companies, the ferry companies and the KCRC, but if and when it is necessary, we can always consider contacting the taxis and the public light bus associations. Certainly this can be done.

DR. LAM (in Cantonese): *Sir, as regards the Emergency Transport Control Unit, may we know about the members of the unit and who is responsible for leading the unit?*

SECRETARY FOR TRANSPORT (in Cantonese): Sir, the Transport Department's Emergency Transport Control Unit is chaired by the Deputy Commissioner for Transport with the regional assistant commissioners and the chief transport offices as members. Whenever necessary the unit can get the necessary directive from the Commissioner for Transport or even from myself in serious emergencies.

MR. JACKIE CHAN (in Cantonese): *Sir, under the existing legislation, are the public utilities and public transport companies obliged to comply with the emergency arrangement made by the Transport Department? If so, did the Government exercise its authority to co-ordinate these public transport vehicles during the recent incident of derailment? And if the Government had done so, were these companies co-operative? Does the Government have adequate power really to co-ordinate activities to tackle an emergency?*

SECRETARY FOR TRANSPORT (in Cantonese): Sir, according to present transport regulations, the Commissioner for Transport has adequate power to make such emergency arrangements with all public transport companies. As for the KCRC, again through the department and through myself we can make such arrangements. So the answer is yes; we do have the power to make the necessary arrangements.

As far as we know, no company has acted unco-operatively. Even in the recent case of derailment, there was close co-ordination between the KCRC, the KMB and the Transport Department and KMB was most helpful in deploying its vehicles to help the commuters. So I do not think we would have any legal difficulties on this point.

MISS TAM: *What has the Secretary for Transport learnt out of the investigation of the incident on 4 June and the investigation on the gas leak incident near the Lion Roak Tunnel on 30 April so as to ensure that we can eliminate the risk of having 10 hours' congestion on the road in the future?*

SECRETARY FOR TRANSPORT: Sir, I think there are several lessons to be learnt from these incidents. In the first place, the Emergency Transport Control Unit in the Transport Department needs to be activated under any circumstances wherever the major routes are affected, including the two railways. The second

point is that the level of decision making has to be at the right level in future. In the past, it tends to be below directorate level and it does seem to us that it is necessary to escalate it to at least directorate level or even higher in order to enable decisions to be made on the spot as regards the arrangements for emergency transport. The third point we have learnt from this is that there should be closer liaison and co-ordination of the senior levels of the transport companies and the Government, and this we have included in our new procedures. And finally we have learnt also from this that the utilities companies have to play a more active part in the organisation and we have already impressed upon them the need to deploy all the resources and to involve government departments in the repair work. As far as the gas leakage incident was concerned, it was also necessary to decide on the spot whether, in the light of the traffic congestion that might result from the repair work, the inconvenience to the public was as important as the safety aspect. But in this case, we did learn that the safety aspect is overriding and the decision made was the right one in that particular case.

DR. HO: *Sir, does the Lion Rock Tunnel Control Office has in its possession towing cars which are powerful enough to tow away the largest container trucks so as to clear the road for traffic again? And in the Lion Rock Tunnel incident why did it take so many hours to tow away the disabled container truck?*

SECRETARY FOR TRANSPORT: Sir, in fact, this is another lesson we have learnt from this, although we did know about the problem. The Transport Department does not have the heavy duty cranes to tow away big container trucks so far. Such a heavy duty crane costs $3 million, the department had asked for this equipment many times but was rejected by the Finance Branch because of the cost. This is quite a valid reason because the crane is so costly and it is used only probably once or twice a year. But in the light of recent incidents and bearing in mind the cost to the community, we do feel there is a case for reconsidering the request and we are now asking the Finance Branch to reconsider.

In the meantime, we are now relying on the commercial operators to help. There are nine companies in Hong Kong with 34 cranes, mainly in Kowloon and the New Territories, and these can be deployed but they take a long time, at least one and a half hours to two hours, to come to the scene. This is just not good enough, so we do need a crane at Lion Rock Tunnel to deal with similar situations in the future.

MR. EDWARD HO: *Sir, in order for the public to be immediately aware of congested corridors, will the Government consider firstly designating one radio channel for continuous traffic news as is done in some countries in Europe; and secondly, displaying traffic congestion information along main traffic routes as is practised in Japan?*

SECRETARY FOR TRANSPORT: Sir, I think I have to defer this to the Secretary for Administrative Services and Information as regards dedicating a channel to traffic news. But as far as the existing radio and television network is concerned, I believe that arrangements are now in hand to ensure that the effectiveness of the radio network is maximised as far as possible to give the public the widest information on the spots affected and also advance notice to ensure that motorists will avoid the areas affected in future.

HIS EXCELLENCY THE PRESIDENT: Secretary for Administrative Services and Information, can you add to that reply?

SECRETARY FOR ADMINISTRATIVE SERVICES AND INFORMATION: Sir, as part of the plan outlined earlier by the Secretary for Transport, consideration is being given to asking either Radio Television Hong Kong or even Commercial Radio to include in their programmes broadcasts of this nature when there is a monumental traffic jam.

MR. ANDREW WONG (in Cantonese): *Sir, I am very interested in this Emergency Transport Control Unit. First of all, do we really have this Emergency Transport Control Unit now? If it exists now, how many staff do you have in this unit? If it is newly established or if you intend to extend this unit, how much extra manpower will you need and what extra facilities will you require?*

SECRETARY FOR TRANSPORT (in Cantonese): Sir, the Emergency Transport Control Unit has been existing for quite a while. As for the staff, it includes everyone in the Transport Department. We can use over a thousand staff. All we are doing is to add in new working procedures. Now we are asking senior officials to co-ordinate work and, whenever necessary, to get directives from the Commissioner for Transport or even I myself for major decisions.

MRS. CHOW: *Sir, I am sure that many of my colleagues will agree with me that the scenes that we saw showing people trying to climb on the bus—a near-riot situation—was chaotic and frightening, and hopefully not to be repeated again. May I ask the Secretary what specifically is being considered as a measure to prevent the same kind of near-riot scenes from re-occurring? And in the light of what he said about co-operation that he already has from the public transport companies, what else will he do to ensure that alternative modes of transport will be subsidised to remove the huge crowds that may accumulate and cause the chaos similar to that witnessed on 4 June?*

SECRETARY FOR TRANSPORT: Sir, I must, first of all, give great credit to the police force for their very effective control of the crowd on that particular day, but the lesson to be learnt from this is not so much the companies concerned not being willing to help; it is a question of the timing between the accident and the availability of alternative transport. This is precisely where the new procedures

come in, and that is that we have to decide at a very senior level when to activate the system and when to deploy those resources through the companies concerned. Sir, the new procedures will now ensure that in future any accident on the major routes will be handled at the right level. So we hope this will avoid a similar incident of this kind in future.

MR. EDWARD HO: *Sir, I do not think the Secretary has answered adequately my first question, neither has he answered my second question. The first question was regarding continuous broadcasting of traffic news to help motorists to select the best route, because congestion takes place almost every day irrespective of whether there is an accident or not. The second part of my question was on displaying of potential traffic congestion information along traffic routes such as is practised in Japan.*

SECRETARY FOR TRANSPORT: Yes, Sir, I think on the first point we will now be ensuring that the radio stations will do their best to disseminate information as frequently as possible. As regards the second point, I would like to look at this and see whether we can do the same thing in Hong Kong.

Written answer to question

Marine Reserve Parks

9. DR. LAM asked: *In view of the aggravating problem of pollution in Hong Kong waters during recent years, will Government inform this Council whether consideration will be given to setting up marine reserve parks, as has been done in places such as Australia, the Maldives and the Seychelles and so on, to protect the local beaches and our marine ecological environment?*

SECRETARY FOR HEALTH AND WELFARE: Sir, the Government is examining the need for marine reserves for the purpose of conserving certain areas of the local marine and coastal environment which are of scientific or educational interest. Consultation within the Administration is in progress to examine the various implications of a proposal recently made by the World Wide Fund for Nature, Hong Kong, in conjunction with the Marine Biological Association of Hong Kong, for the creation of a marine reserve.

The concept of marine reserve parks is an attractive one, involving planning controls and statutory pollution prevention to protect an area of the marine environment. It would be appropriate for the protection of areas which are at present relatively or completely unspoilt, containing natural flora and fauna rare or unique within Hong Kong, and desired by the community to be kept in that condition. It does not seem appropriate, however, to use the marine park concept for the protection of gazetted bathing beaches, for which other forms of protection, compatible with mass recreation, are necessary. These include the Water Pollution Control Ordinance and the Hong Kong Planning Standards and Guidelines.

Government Business

First Reading of Bills

BANKRUPTCY (AMENDMENT) BILL 1988

COMPANIES (AMENDMENT) (NO.2) BILL 1988

COMMISSIONER FOR ADMINISTRATIVE COMPLAINTS BILL 1988

JUDICIAL SERVICE COMMISSION (AMENDMENT) BILL 1988

BANKING (AMENDMENT) (NO.2) BILL 1988

HONG KONG FUTURES EXCHANGE LIMITED (TEMPORARY PROVISIONS) BILL 1988

MONEY LENDERS (AMENDMENT) BILL 1988

SOCIETIES (AMENDMENT) (NO.2) BILL 1988

Bills read the First time and ordered to be set down for Second Reading pursuant to Standing Order 41(3).

Second Reading of Bills

BANKRUPTCY (AMENDMENT) BILL 1988

THE CHIEF SECRETARY moved the Second Reading of: 'A Bill to amend the Bankruptcy Ordinance'.

He said: Sir, I move that the Bankruptcy (Amendment) Bill 1988 be read a Second time.

The purpose of this Bill is to enable the bankruptcy judge to give more time to the hearing of contested bankruptcy petitions by allowing the Supreme Court Master to hear uncontested petitions. This will contribute to a better use of the bankruptcy judge's time.

Under the existing laws, a bankruptcy petition may be presented by a petitioning creditor on the debtor committing an act of bankruptcy. The debtor may object to the petition by filing his objection with the Official Receiver not less than three days prior to the hearing, on notice to the petitioning creditor or his solicitor.

A debtor may also petition for his own bankruptcy, and the Official Receiver is entitled to appear in any proceedings in respect of that bankruptcy. These petitions, which are rare, are generally unopposed.

If a creditor's petition is not contested, it is set down with debtors' petitions on the unopposed list for hearing on the same morning. It is these hearings which it is now proposed should be before a master of the Supreme Court, rather than the bankruptcy judge. In the event of late opposition to a petition on the unopposed list, the petition may be ceased to be unopposed and the master will remit it to the bankruptcy judge. The master may also remit to the judge any matter of complexity.

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

Question on adjournment proposed, put and agreed to.

COMPANIES (AMENDMENT) (NO.2) BILL 1988

THE CHIEF SECRETARY moved the Second Reading of: 'A Bill to amend the Companies Ordinance'.

He said: Sir, I move that the Companies (Amendment) (No.2) Bill 1988 be read a Second time.

The purpose of this Bill is to enable the companies judge to give more time to the hearing of contested petitions for the winding-up of companies by allowing the Supreme Court Masters to hear uncontested petitions. It is very similar in its general intent to the Bankruptcy (Amendment) Bill on which I have just spoken.

A petition to wind up a company is presented at the Supreme Court Registry, when a date for hearing is appointed. It is then advertised and served upon the company, unless the petition is presented by the company itself. Anyone who wishes to object to the petition for the winding-up of a company must file an affidavit for such purpose within seven days of the date on which the petition is filed.

If a petition is uncontested, it is set down with others on the unopposed list for hearing the same morning. It is these hearings which is now proposed to be before a master of the Supreme Court, rather than the companies judge. In the event of late opposition to a petition on the unopposed list, the petition may be ceased to be unopposed and the master will remit it to the companies judge. The master may also remit to the judge any matter of complexity.

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

Question on adjournment proposed, put and agreed to.

COMMISSIONER FOR ADMINISTRATIVE COMPLAINTS BILL 1988

THE CHIEF SECRETARY moved the Second Reading of: 'A Bill to make provision for the appointment, powers and functions of a Commissioner to investigate complaints concerning administrative actions taken on behalf of the Government or public authorities, and for purposes connected therewith.'

He said: Sir, I move that the Commissioner for Administrative Complaints Bill 1988 be read a Second time.

On 8 April last year, following a period of public consultation on the consultative document: 'Redress of Grievances', I said in this Council that the Government agreed in principle with the majority view that an independent authority should be established to deal with complaints alleging maladministration, and I undertook to bring forward definitive proposals for further discussion. These proposals were brought forward in the form of a White Bill, the Commissioner for Administrative Complaints Bill 1987, which was published for public discussion on 30 October 1987. During the consultation on the White Bill which ended last December, we received 24 written submissions from groups and individuals, including the minutes of four area committee meetings; we also took note of the opinions of some 30 groups and individuals as reported in the press, as well as the editorial views of various newspapers and periodicals.

Also, in November last year, this Council set up an ad hoc group to study the White Bill, under the convenorship of Mrs. Selina CHOW. The group, after meeting with representatives from the Government on three occasions, forwarded its comments on the Bill to the Government in March this year. Besides formulating its own views, the group had also commented on some of the suggestions contained in the public submissions.

Sir, the Government has studied very carefully the comments made by members of the public and by the ad hoc group, and has given serious consideration to what changes could then be made to improve the White Bill. The Bill, now before Members, reflects the outcome of this consideration and incorporates a total of 22 changes to the White Bill.

The overall effect of these changes has been to broaden the jurisdiction of the commissioner, by removing or refining some of the earlier exclusions from his jurisdiction. An example is the removal of the exclusion in schedule 2 that prevented the commissioner from investigating actions taken for the purposes of investigating crime or of protecting the security of Hong Kong.

However, there are three main aspects of the White Bill in respect of which, after considering all the relevant factors, the Government has decided not to adopt the changes suggested by some commentators and supported by some members of the ad hoc group.

The first of these is the question of access to the commissioner by complainants. It was argued in most public submissions that complainants should have direct access to the commissioner, rather than have to go through Members of this Council. These commentators considered that direct access would emphasise the commissioner's independence; make him more effective and credible in the eyes of the public; avoid discouraging members of the public from lodging complaints; and avoid overburdening Members of this Council.

In the light of this public reaction, the ad hoc group indicated that a majority of its members favoured direct access, but that the group was also aware of the counter-arguments. These are as follows:

first, the principle is that the primary responsibility for protecting the individual against any wrongful acts of the executive should rest with the legislature and the courts. The referral system we propose, namely that the commissioner, should only investigate complaints referred to him by a Member of this Council, recognises this principle;

secondly, the Commissioner for Administrative Complaints will be required to inform the complainant, and the Legislative Council Member by whom the complaint was referred, of the result of his investigation in each case. This provides a useful mechanism for Members of this Council to monitor closely the work of the commissioner;

thridly, the establishment of the Commissioner for Administrative Complaints is intended to supplement and strengthen the existing channels for the redress of grievances and not to replace any of them. It is clearly desirable to avoid disrupting the operation of the other channels which have been working well. OMELCO has a widely recognised role at the apex of the existing channels for dealing with the complaints against the Administration. This should be preserved;

fourthly, direct access to the Commissioner for Administrative Complaints could result in considerable duplication of resources. Experience shows that many complainants tend to lodge their complaints simultaneously through a number of different channels; and

finally, the function of the Commissioner for Administrative Complaints is to investigate only complaints concerning maladministration. Again, experience shows that most public complaints against the Administration concern matters of policy or are otherwise outside the commissioner's jurisdiction. Direct access could well result in the commissioner having to turn away large numbers of complaints received on the grounds that they fall outside his remit. This could do serious damage to his credibility even before he has had time to establish it.

In short, besides the practical advantages of maintaining OMELCO's position as an important channel for dealing with public complaints against the Administration, indirect access fits better with our already comprehensive system for the redress of grievances. Providing direct access could disrupt the system we already have without producing any real compensating benefits.

Let me hasten to add that I do not agree to the view held in some quarters that indirect access will result in bureaucratic delay and obfuscation. Hong Kong is too small a place for the referral procedure to act as an impediment and I have no doubt that Members of this Council, supported by the OMELCO Complaints Division, will act promptly on the maladministration complaints they receive.

The second main aspect of the White Bill which was widely commented upon is the exclusion of the police and the ICAC from the commissioner's jurisdiction. Most of the comments queried this exclusion on the grounds that the police and the ICAC should not investigate complaints against themselves; that it was unfair to leave them out; that the police were included in almost every country which has an established ombudsman, including New Zealand; that complaints procedures against the police are seen as unsatisfactory by the public; and that it would increase the credibility of the Complaints Against Police Office if it were taken over. The ad hoc group indicated that its members held different views on the matter, some in support of excluding the police and the ICAC and others against.

Sir, our reasons for excluding them are as follows:

first, both the police and the ICAC have already independently monitored redress systems which are working well and there is no justification for replacing or duplicating them;

secondly, if the Commissioner for Administrative Complaints took over these organisations, most of his time would be taken up in dealing with complaints against the police which number about 400 per month—some eight times the anticipated monthly volume of complaints to be dealt with by the commissioner; and

thirdly, complaints against the police and the ICAC are of a fundamentally different nature to maladministration complaints, being for the most part justifiable in the courts or involving internal discipline.

Sir, for these reasons, we do not see inclusion of the police and the ICAC as a practical option. However, I will say that it is our intention to appoint the Commissioner for Administrative Complaints as an ex officio member of both the Police Complaints Committee and the ICAC Complaints Committee. This will allow him to lend his expertise to these monitoring organisations and bolster their operation.

The third aspect in respect of which the Government proposes not to make any changes relate to the method of appointment of the commissioner. Some members of the Legislative Council ad hoc group have suggested that the commissioner should be appointed by the Governor with the approval of this Council, rather than by the Governor alone, on the grounds that it would enhance the commissioner's independent status. Other Members, however, recognised that this could unduly politcise the appointment procedure. The government's view is that appointment by the Governor would be more appropriate in the context of our existing constitutional arrangements. I can assure Members that great care will be taken when making the appointment to ensure that the candidate is generally acceptable to this Council and the people of Hong Kong.

Much comment in the public response to the White Bill concerned the perception that the proposed commissioner would be ineffective because his powers were too limited. Some commentators appeared to want an all powerful watchdog with sweeping powers to censure the Government, reverse unpopular policies, prosecute government officials and pay compensation to aggrieved individuals. Sir, such notions are, if I may say so, somewhat misconceived, because they take no account of the existing arrangements in Hong Kong. We already have a well developed and comprehensive system for redressing the grievances felt by the public arising from the acts of the Government, based on an independent judiciary, a partially elected legislature and a range of other channels. OMELCO is well established as the focus for complaints against the Government of all types. The introduction of any ombudsman-like authority has to take into account this state of affairs and be carefully designed not to overlap with the existing redress system. Sir, I believe we have successfully achieved this with the Bill before this Council today, while at the same time ensuring that the commissioner has more than adequate power to perform the functions for which he is designed, namely, to investigate complaints of maladministration against the Government. He will be independent; he will have sufficient staff to carry out his duties swiftly and effectively; he will have almost unlimited access to government files; he will have powers of entry into government premises, and he will have sufficient means with which to ensure that his recommendations are heard and acted upon. It is in the interests of the community, of this Council and of the Government that he succeeds in his endeavours, thereby contributing to a more open and accountable government for the benefit of the community as a whole.

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

Question on adjournment proposed, put and agreed to.

JUDICIAL SERVICE COMMISSION (AMENDMENT) BILL 1988

THE CHIEF SECRETARY moved the Second Reading of: 'A Bill to amend the Judicial Service commission Ordinance'.

He said: Sir, I move that the Judicial Service Commission (Amendment) Bill 1988 be read a Second time.

In his speech at the opening of the legal year in January this year, the then Chief Justice announced a number of measures which it was proposed to take, aimed at underlining the independence of the Judiciary. The purpose of this Bill is to introduce the changes proposed for the Judicial Service Commission. These are to increase the membership of the commission and to remove the requirement for the decisions to be unanimous.

At present, the Judicial Service Commission is composed of two members of the Judiciary, including the Chief Justice as chairman; three members of the legal profession, including the Attorney General; and one lay member, the Chairman of the Public Service Commission. It is now proposed to expand the membership of the commission so that it is composed of three members of the Judiciary, including the Chief Justice as chairman; three members of the legal profession, including the Attorney General; and three lay members including the Chairman of the Public Service Commission. Thus, in future, the Judiciary, the legal profession and lay members will all be equally represented on the commission.

As a consequence of the increase in membership from six to nine, the Bill also provides for an increase in the quorum from the Chief Justice plus two members to the Chief Justice plus four members.

The other change introduced by the Bill concerns decisions taken by the commission. At present, such decisions are required to be unanimous. This arrangement can clearly give rise to difficulties and to a theoretical situation, which I hasten to add has not happened in practice, in which a single member could effectively veto a decision of the remainder. The Bill therefore provides that in future decisions should be taken by a substantial majority. The majority will vary depending on the numbers present. When eight or nine members are present, a majority of six in favour will be required; when six or seven members are present, a majority of five in favour will be required; and when only five members are present, a decision would require the support of all those attending. These arrangements will, I believe, provide a more satisfactory basis for decision-taking by the commission.

Sir, Members will have seen from the press reports that the Bar Association and the Law Society have jointly raised a number of points on the Bill. With the Council's indulgence, I should like to take this opportunity to comment briefly on them.

The two learned bodies have expressed concern about the lack of prior consultation on the Bill. The fact is that the Bill was published in the Government Gazette 12 days ago; it is being introduced into this Council today; and the date of its Second Reading and subsequent stages has yet to be fixed. This procedure provides ample opportunity for interested parties to express their views on the Bill before a final decision is made by this Council, and I am pleased to note, Sir, that the two learned bodies have taken that opportunity.

The two bodies have emphasised the need to preserve the independence of the judiciary. I do not think there can be any doubt about this. Indeed, as I said earlier, the Bill now before Members is part of a package of measures designed to underline and enhance that independence. I might add that the proposals embodied in the Bill have the full agreement of the Judiciary itself.

Sir, I now turn to the specific queries raised by the two learned bodies.

First, they have asked whether the Attorney General and the Chairman of the Public Service Commission should remain as members of the Judicial Service Commission. The government's view is that it would be entirely appropriate that they should do so: the Attorney General, because of his role as the Governor's principal adviser on legal matters; and the Chairman, Public Service Commission, because of his independent status and his expertise in appointment matters.

Secondly, they have asked whether the lay members of the Judicial Service Commission should be selected and appointed by the Governor. The government's view is that they should, in line with the well-established system in Hong Kong.

Thirdly, they have asked whether representatives of the Bar Association and the Law Society should formally be nominated by the respective body. I should point out that the Bill before Members provides for the appointment of, among others, a barrister and a solicitor. As with the present Judicial Service Commission, these appointments are made in their individual capacities as practising members of the legal profession, and not as representatives of their professional bodies.

Fourthly, they have asked whether the present requirement for all recommendations made by the Judicial Service Commission to be unanimous should be preserved. I have already explained, Sir, why it is not desirable to insist on unanimity.

Finally, the two learned bodies have asked whether the present procedure for screening and interviewing candidates for judicial appointments should be altered. Sir, this is an administrative matter which is not directly relevant to the Bill and should, I suggest, be for the Judicial Service Commission itself to advise upon.

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

Question on adjournment proposed, put and agreed to.

BANKING (AMENDMENT) (NO.2) BILL 1988

THE FINANCIAL SECRETARY moved the Second Reading of: 'A Bill to amend the Banking Ordinance'.

He said: Sir, I move that the Banking (Amendment) (No.2) Bill 1988 be read a Second time.

The purpose of this Bill is to amend sections 120 and 121 of the Banking Ordinance to enable the Commissioner of Banking to disclose information concerning locally incorporated authorised institutions to specified statutory offices in Hong Kong and to their overseas counterparts.

While the proposals aim at facilitating close co-operation between supervisors, the immediate cause for the Bill arises from the need to provide information to the United Kingdom regulatory authorities, as a result of the implementation of the United Kingdom Financial Services Act 1986.

The United Kingdom Financial Services Act 1986 requires certain regulatory bodies in the United Kingdom, that is, the Securities and Investment Board (SIB) and a number of self-regulating organisations (SROs) to assess, and subsequently, to monitor the financial soundness of the institutions authorised to conduct investment business in the United Kingdom. In the case of an overseas institution, the SIB and SROs will require the supervisors in the centre in which the institution is based to assist them in the task. If co-operation is not forthcoming, the institution may be required to incorporate itself in the United Kingdom or may even have its authorisation withheld. One of the three Hong Kong banks with United Kingdom branches has sought to be authorised under the Act and other Hong Kong banks may also want authorisation in due course. But as our Banking Ordinance now stands, it is not possible to provide the necessary information to the United Kingdom supervisors.

Clause 3 of the Bill, therefore, seeks to amend section 121 of the principal Ordinance to empower the Commissioner of Banking to provide information on matters relating to the affairs of an authorised institution to overseas regulatory authorities. Such information will only be disclosed if the commissioner is satisfied that the authority concerned is subject to adequate secrecy provisions and the information will enable or assist the authority to exercise its functions.

The Bill also seeks to facilitate disclosure of information by the Commissioner of Banking to other local supervisors. At present, the Commissioner of Banking is not free to disclose confidential information to the Commissioner for Securities and Commodities Trading or the Insurance Authority without seeking my permission in each case. With the growing integration of the financial markets and the need for closer co-operation between supervisors, the number of instances in which consultation is necessary is increasing. Clause 2(2)

of the Bill, therefore, amends the principal Ordinance to enable information to be passed directly to other local supervisors to assist them in their respective functions.

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

Question on adjournment proposed, put and agreed to.

HONG KONG FUTURES EXCHANGE LIMITED (TEMPORARY PROVISIONS) BILL 1988

THE FINANCIAL SECRETARY moved the Second Reading of 'A Bill to make temporary provision in respect of the holding of the third annual general meeting of the Hong Kong Futures Exchange Limited, for the laying of a profit and loss account and balance sheet before that meeting, and for purposes connected therewith'.

He said: Sir, I move that the Hong Kong Futures Exchange Limited (Temporary Provisions) Bill 1988 be read a Second time.

The purpose of this Bill is to postpone the holding of the third annual general meeting of the Hong Kong Futures Exchange Limited due to be held on or before 30 September 1988 by a period of up to six months. There is also an additional provision for the period to be extended for a further three months by resolution of this Council.

Among the recommendations made by the Securities Review Committee were proposals for extensive revision of the constitution, internal management and risk-management structure of the Futures Exchange. In the opinion of the committee, the installation of the proposed reforms should be preconditions for the continuation of the Futures Exchange.

The need for the temporary provisions set out in the Bill arises from two inter-related issues. First, under section 122 of the Companies Ordinance, the accounts and balance sheet of the exchange company must be laid before an annual general meeting within nine months from the end of each financial year. Since the Futures Exchange's last financial year ended on 31 December 1987, the next annual general meeting should be held by the end of September 1988.

Secondly, the articles of association of the exchange company provide that the Government was to appoint the whole of the exchange company's initial board of directors after the articles came into effect in 1985. In the second year, 1986, two thirds of the board was to be government appointed, and in the third year, 1987, one third. These provisions to appoint government directors will, however, expire when the exchange company holds its 1988 annual general

meeting. In the fourth year, and thereafter, there can be no government appointed director on the board of the Futures Exchange under the provisions of the articles. All directors must be elected from amongst members of the exchange.

The four current government appointed directors on the board of the Futures Exchange include the chairman and the executive vice-chairman, neither of whom is eligible for election to the board as they are not members of the exchange. These persons were appointed in October last year to assist in steering the exchange through the difficult period.

The Government is now closely examining the recommendations contained in the Securities Review Committee Report. Although we have not yet come to a final view on the recommendations, we believe that it will be necessary for the Futures Exchange to introduce substantial changes, both in its internal structure and in the way risk is managed. Although we shall proceed with all despatch, the likelihood that such changes can be implemented by the end of September is extremely remote. It is, therefore, highly desirable for the present board of directors, including those appointed by the Government, who have the invaluable experience of running the Futures Exchange since last October, to retain their positions for a few more months in order to assist in the implementation process and maintain public confidence in the futures market during the interim period. This can be achieved by postponing the coming annual general meeting of the exchange company.

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

Question on adjournment proposed, put and agreed to.

MONEY LENDERS (AMENDMENT) BILL 1988

THE FINANCIAL SECRETARY moved the Second Reading of 'A Bill to amend the Money Lenders Ordinance'.

He said: Sir, I move that the Money Lenders (Amendment) Bill 1988 be read a Second time.

The Money Lenders Ordinance was enacted in 1980 principally to curb loansharking. It provides a framework for the licensing of money lenders, the control of money lending transactions, and the prohibition of excessive interest rates. In the operation of the Ordinance over the years, a number of weaknesses has emerged. Experience has also shown that certain genuine commercial transactions have been caught even though they were not intended to be, and indeed, ought not to be, caught by the provisions of the Ordinance. The purpose of this Bill is to remedy these problems.

The first set of amendments seeks to simplify the licensing procedure. An application for a money lender's licence is determined by a licensing court comprising a magistrate and two assessors. At present, a hearing by the full court is required, whether or not an objection is made to the application. As an unopposed application is invariably granted, it is proposed that such applications should be dealt with by a magistrate sitting alone.

The second set of amendments seeks to improve the administration of the Ordinance. At present, an advertisement to lend money is only required to show the name of the money lender. To help the police in controlling these advertisements, it is proposed that the licence number of the money lender should also be printed in any advertisement. Failure to comply will attract a maximum fine of HK$100,000 and two years' imprisonment.

The Registrar of Money Lenders, or any person authorised by him may enter any premises and inspect documents to ascertain whether the provisions of the Ordinance have been complied with. As such inspections are, in fact, carried out by the police, it is proposed that the police should be given express powers under the Ordinance. These powers shall only be used when the police have a reasonable suspicion that the money lender has committed an offence. Any documents seized must be related to the offence. If no prosecution were instituted within three months, the documents would be returned.

Under the present Ordinance, information can only be disclosed in legal proceedings or in reports of such proceedings. To allow for greater co-operation between enforcement agencies, it is proposed that information may also be disclosed to the Financial Secretary, the Secretary for Monetary Affairs and any other public officer authorised by the Financial Secretary.

The third set of amendments seeks to widen the scope of existing exemptions from all or part of the provisions of the Ordinance. Banks and deposit-taking companies licensed or registered under the Banking Ordinance are to be completely removed from the ambit of the Money Lenders Ordinance. At present, they are subject only to the provisions which specify a maximum effective interest rate of 60 per cent a year. We consider that the highly competitive environment for bank lending business provides adequate safeguards against exploitation of borrowers. More importantly, the 60 per cent restriction could inhibit the proper working of the interest rate mechanism in the wholesale money market in support of the linked exchange rate.

The terms of large corporate and syndicated loans which may make references to wholesale money market interest rates, are also to be exempted from the interest rate ceiling. Large borrowers should be able to protect themselves. It is, therefore, proposed that the provisions on excessive interest rates should not apply to any loans specified in the first schedule that are made to a company with a paid up share capital of not less than $1 million. Additions have also been made to the list of exemptions in the first schedule to include a loan made to a company with more than $1 million paid up share capital, a loan for the

purpose of import and export financing, a loan upon terms involving the issue of securities with a prospectus, and a loan made to a publicly listed company on the Stock Exchange of Hong Kong or other approved stock exchanges.

Finally, to give greater flexibility, the registrar will be given powers to grant general and specific exemptions. The registrar may, after consultation with the Financial Secretary, exempt a class of money lender, or a loan, or class of loan, by a class of money lender from all or any of the provisions of the Ordinance. The registrar may also, upon application by a money lender, exempt him from specified provisions of the Ordinance.

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

Question on adjournment proposed, put and agreed to.

SOCIETIES (AMENDMENT) (NO.2) BILL 1988

THE SECRETARY FOR SECURITY moved the Second Reading of 'A Bill to amend the Societies Ordinance'.

He said: Sir, I move the Second Reading of the Societies (Amendment) (No.2) Bill 1988.

The purpose of this Bill is to introduce a triad renunciation scheme which will allow a triad member, or a person who believes himself to be a triad member, formally to renounce his triad membership. It is believed that there are people who have been initiated as triad members, or have joined triad societies, who may have done so under duress. Some triad members take oaths during their initiation, and this has given rise to the assertion: 'once a triad, always a triad'. Under the law as it stands, there are no means by which an initiated triad member, can absolve himself of his membership. He will always face the possibility of prosecution under the Societies Ordinance.

The idea of a statutory scheme of renunciation of triad membership was first mooted in the Fight Crime Committee's discussion document 'Options for Changes in the Law and in the Administration of the Law to Counter the Triad Problem' published in April 1986. The document proposed that the scheme should be run by the police in conjunction with the judiciary. The Fight Crime Committee, however, considered that, in order to encourage more people to renounce their triad membership, the scheme should be independent of police or judicial assistance and should be administrative in nature, similar to a licensing or parole scheme. It would apply to all members of the community, including government staff.

The Bill provides for a triad renunciation tribunal to be established to operate the triad renunciation scheme and to consider applications for renunciation of triad membership. The proceedings and records of the tribunals will be kept

confidential and records will only be released in specified circumstances. The tribunal will be served by a secretariat of government officers, all of whom would be subject to strict secrecy provisions.

Successful applicants under the triad renunciation scheme, whether they be formal members of triad societies or 'non-triad' renouncers, would be granted a stay of prosecution in respect of specified offences relating to triad membership under sections 19 to 23 of the Societies Ordinance which pre-date the renunciation and are disclosed in their application. After five years, the proceedings for these offences would lapse and the renouncer would be left with neither a conviction nor acquittal being recorded.

During public consultation on the triad discussion document in 1986, public reaction to the proposal for the introduction of a scheme of triad renunciation was favourable. A survey of prison inmates also showed that the scheme was widely supported.

Sir, turning to the legislative proposals themselves, clause 3 of the Bill introduces 13 new sections to the Societies Ordinance.

Section 26A provides for the establishment of a triad renunciation tribunal which will administer the scheme. Section 26B provides for the appointment of members of the tribunal by the Governor.

The procedures for applying for renunciation of triad membership are set out in sections 26C to 26G. Formal applications would be made on a standard form to be specified by the tribunal. Applications will be considered in strict confidence, and only the records of successful renouncers will be kept. Section 26K stipulates that all records of unsuccessful applications will be destroyed and section 26L lays down that all proceedings and records will be kept confidential and records will only be released under circumstances specified in sections 26H and 26I. Under section 26I, a court which has convicted a person of specified offences relating to triad societies is required to call for a certificate from the tribunal, before passing sentence, as to whether the defendant in the previous five years has renounced triad membership.

In order to discourage false or frivolous applications, it will be an offence under section 26M to make false statements to the tribunal or to impersonate others before the tribunal. The renunciation of any person committing an offence under this section would be made void.

Sir, it is hoped to start this scheme in the autumn. There are no means of predicting how many people will come forward, but we shall ensure a good degree of publicity beforehand. We shall review the scheme after six months.

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

Question on adjournment proposed, put and agreed to.

INTERPRETATION AND GENERAL CLAUSES (AMENDMENT) BILL 1988

Resumption of debate on Second Reading (8 June 1988)

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).

AUDIT (AMENDMENT) BILL 1988

Resumption of debate on Second Reading (8 June 1988)

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).

MENTAL HEALTH (AMENDMENT) BILL 1987

Resumption of debate on Second Reading (1 July 1987)

Question proposed.

MRS. TAM: Sir, since the Mental Health (Amendment) Bill 1987 was gazetted just over a year ago, a Legislative Council ad hoc group was set up to examine the Bill. Despite all good intentions of improving care for mental patients while protecting the public, the Bill is a controversial one. The group recognised the complex and sensitive nature of the Bill from the start and, therefore, set about studying its provisions in detail under eight major topics. Between 29 July 1987 and 30 May 1988, the group held a total of 15 meetings, including six meetings with the Administration and one meeting with professionals interested in the Bill. During the entire process, I was most impressed by the frank communication and spirit of co-operation adopted by the Administration, and it is very much due to their open and receptive attitude that we are able to come to satisfactory conclusions on many major issues.

The first major controversial area concerns the definitions of 'mental disorder'. Whilst agreeing with the broad definition provided in the Bill, the group was concerned that the inclusion of 'mental impairment' as a state of mind which was associated with aggressive or irresponsible conduct might give rise to unnecessary misunderstanding. It was also felt that mentally handicapped persons without aggressive or irresponsible conduct should not be liable to detention in a mental hospital. As a result of extensive research into various definitions and in-depth discussions about the needs of the different categories of patients, the Administration has agreed to remove any unfortunate labelling effect which this Bill may have on the mentally handicapped. Amendments will be moved in Committee in accordance with this agreement.

Whilst recognising the Bill's provision for guardianship of mentally handicapped adults, the group has gone a step further to recommend that separate legislation should be provided for the mentally handicapped in the long run. This is no easy task, and the group is appreciative of the positive line taken by the Administration in establishing a working group for this purpose. Dr. HO Kam-fai will explain in greater detail the rationale behind the group's recommendation.

The Bill provides for the person named as guardian in a guardianship application to be either the Director of Social Welfare or any other person accepted by the Director of Social Welfare. There has been criticisms that such an arrangement enables the director to be judged and jury in her own course. After clarifying with the Administration, the group is satisfied that the Director of Social Welfare is best placed to assess the suitability of nominated guardians, that channels of appeal are available at the district court and the mental health review tribunal, and that she will only act as guardian of last resort. An amendment will be moved in Committee to emphasise the last point mentioned.

Sir, the group welcomes the Bill's provision for the guardinanship of mentally disordered persons, including mentally handicapped adults. It is pleased to note that the Administration has overcome the hesitation to implement the guardianship provisions before 1989 because of manpower constraints, and will now implement them as soon as the guardianship regulations are made.

Sir, a major breakthrough in the protection of mental patients is the setting up of a mental health review tribunal. In order to ensure that the tribunal can serve as an effective channel for patients detained in mental hospitals for a review of their case, the group paid particular attention to the strength of its membership. The group has repeatedly stressed the need for members of the tribunal to have knowledge and experience in social work to discuss the social aspects of the cases, including social assessment reports, as well as the need for a medical member on the tribunal to be doctors with relevant psychiatric qualifications. The Administration has also accepted these points and an amendment will be moved in Committee.

One of the most controversial issues involved in the Bill is the role of police officers. There are criticisms that the police are given too much power. In the Bill, if a police officer finds in any place a person who appears to be suffering from mental disorder, he can take him to a hospital. The group shares the concern of the legal profession and other voluntary agencies and has pursued these points assiduously. The group's major concern is that the welfare of the patient should be taken care of and it considers that it is in the interest of the patient to be taken to a hospital where he can receive treatment rather than to a police station, as is required under the existing law. Thus the specific provision for removal to a hospital is necessary. The group also accepts the veiw that although 'any place' includes private premises, a police officer can only enter private premises in pursuance of some statutory or Common Law power. The Bill does not confer upon the police any additional power to enter private premises.

However, to ensure further protection of the individual, the group has persuaded the Administration to agree to certain safeguards. The group feels that a stricter discipline should be imposed upon the police in his assessment before taking action. Thus 'a person who appears to be suffering from mental disorder' should be replaced by 'a person whom he reasonably believes to be suffering from mental disorder'.

Once taken to a hospital, the person should receive adequate medical care. The Administration has agreed in principle that the patients should be seen by psychiatric doctors where necessary. Owing to the shortage of manpower, suitable arrangements will be made in four years' time. The group has urged the Administration that in the interim, these persons should be seen by doctors with at least three years' experience. The Administration has also agreed that patients will be informed of their rights to be examined by a doctor of their own choice.

The group has sought the introduction of further safeguards particularly with regards to the detention of patients. The Bill provides for applications for the detention of patients to be made by a registered medical practitioner who has examined the patient within the previous 14 days. An amendment will be sought in Committee to reduce this to seven days.

The Bill provides for such applications to be made to a district judge, magistrate or justice of the peace. The group has received representations from the Bar Association, suggesting mandatory hearing by a judge or magistrate before a decision is made. Recognising that detentions in a mental hospital will have significant repercussion on a person's life, the group has proposed a compromise, that rather than making a hearing mandatory in every case, such persons should be given the right to be heard by a magistrate or judge, and should be informed of such right and be given the opportunity to exercise it if they so wish. The group also feels that a magistrate or judge will be better

qualified to authorise the detention particularly where hearings are involved. An amendment will be moved in Committee to delete the reference to justice of the peace under these provisions.

Sir, I have outlined some of the major points of principles discussed and the improvements we see as necessary to provide better safeguard for the rights of the patients which the legislation seeks to protect. To achieve a fine balance is a complex task, and I am confident that the Bill in its amended form will be acceptable to all parties concerned and will fulfill its stated purposes.

With these remarks, Sir, I support the motion.

DR. HO: Sir, the amendments embodied in this Bill are to improve the provisions in the existing Mental Health Ordinance, which have become inadequate due to changes in rehabilitation concepts and social attitudes towards the mentally disordered. The proposed amendments take into account the arguments advanced by different groups interested in the subject of mental illness and represent well balanced considerations. For example, the medical emphasis in the treatment and care of the mentally disordered is delicately weighed against the legalistic emphasis; the human rights of the individual against the protection of the general public; and the need for therapy and care of the mentally sick persons who often lack insight into their illness against the respect for their personal liberties.

I shall address myself to three aspects of the Bill which have caused concern to the community of Hong Kong. They are the definition of mentally handicapped, the role of the police and the mental health review tribunal.

Mental disorder is defined in clause 2 of the Bill, among other things, as arrested or incomplete development of mind, including mental impairment. Representatives of organisations working with the mentally handicapped have argued that only a small proportion of the mentally handicapped population is afflicted with mental impairment which is associated with aggressive or irresponsible conduct. They have submitted that the condition of the mentally handicapped is normally not amenable to treatment and what they require are care and training. Therefore, they have suggested that the mentally handicapped without aggressive or irrresponsible conduct should not be subject to compulsory detention and treatment in a mental hospital. After consultation, the Administration has agreed to delete the phrase under section 2 'including mental impairment' and to amend the relevant section to the effect that persons suffering only from arrested or incomplete development of mind should not be subject to detention. Furthermore, the Administration has agreed to set up a working party in three months' time to assess the need and desirability of introducing a separate legislation to take care of the various aspects of welfare of the mentally handicapped. It is understood that the working party is expected to finish the task within a period of 18 months. May I ask the Administration to confirm this?

There are criticisms that the police might be given too much power under the proposed new section 71B which provides that if a police officer finds in any place a person who appears to him to be suffering from mental disorder and to be in immediate need of care or control, he may take him to a place of safety. After consultation, the Administration has agreed to replace the phrase 'who appears to him' by 'whom he reasonably believes to be'. To exercise his powers under this section, the police officer must satisfy himself that two conditions have been met, namely: (*a*) a person whom he reasonably believes to be suffering from mental disorder, and (*b*) the person is in immediate need of care and control. Furthermore, mentally sick persons often do not know that they need treatment and, therefore, they do not take the initiative to seek it. Hence, it would be in the interest of the community and of the patient himself if the police officer is so empowered. After all, the police officer is given the power only to remove the suspected mentally sick person to the accident and emergency department of the nearest hospital where he will be placed in the authority of a registered medical practitioner and will be examined within 24 hours. In the circumstances, the enforcement of section 71B does not appear to me to infringe on civil liberties. As a matter of fact, it is appropriate to spell out clearly the extent of powers and duties of a police officer in relation to handling of suspected non-offender mentally disordered persons in legislation.

People also worry that a police officer may have power to enter private premises to remove suspected mentally sick persons. Section 71B does not give a police officer such power. He can enter private premises only by invitation or in pursuance of some statutory or Common Law power. Only the owner of the premises or a tenant over the age of discretion has the right to invite. The reason why the provision of this section is not restricted to public places is to enable a mental patient or a non-offender mental patient who is incapable of recognising his need for medical and psychiatric treatments to receive early care and treatment in his own interest or for the protection of others.

I must emphatically point out that section 71B does not provide a police officer with greater power than the existing Ordinance. It gives statutory powers to a police officer to enable him to take the suspected mental patient directly to the hospital rather than to the police station.

Public fears have been expressed that detention in a mental hospital for a prolonged period might be used as a ready excuse to deny a person of his civil liberties. Clause 22 of the Bill provides for a new part IVA of the Ordinance which establishes a mental health review tribunal, an important safeguard against infringement of civil liberties. The tribunal is empowered to review cases automatically or by application in relation to detention, conditional discharge, absence on trial and guardianship. Under the existing law, certified mental patients have very limited avenues of appeal against their continued detention. Non-offender patients cannot appeal on their own whereas offender patients can. The proposed tribunal is authorised to deal with all appeals lodged with it and is also empowered to discharge patients absolutely or conditionally.

Given the wide powers to decide on the justification of the patient's need for detention, the proper operation and composition of the tribunal are vital. The operation is governed by a set of rules formulated by the Chief Justice under section 59G. These rules will be subsidiary legislation and thus subject to the supervisory jurisdiction of the Legislative Council under section 34 of the Interpretation and General Clauses Ordinance.

To make informed decisions relating to conditional discharge, absence on trial and guardianship, information about the patient's personal, social and family background in addition to medical assessment is indispensable. I am glad to say that the Administration has conceded to include a social worker as a member of the tribunal. The input of a social worker will be of immense value to making decisions on the rehabilitation and aftercare of the patient outside the mental hospital and to minimising the rate of relapse as a result of social hardship and stresses associated with living in the community.

No doubt, the amendments proposed in the Bill are great improvements over the current Mental Health Ordinance. The new Bill, if enacted, will be able to provide better treatment and care for individual mental patients while their personal liberties are more properly safeguarded. Meanwhile, the public will be appropriately protected from the threats of the mentally disordered persons. Needless to say, the successful implementation of the Bill is contingent upon the speedy availability of the various categories of trained psychiatric manpower and community support facilities, both of which are very much in short supply.

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

DR. IP: Sir, I rise to support the Mental Health (Amendment) Bill 1987. I have found that it will adequately cover situations such as when a mentally ill person is neglecting himself to the point of death or when a child is neglected while in the custody of a mentally ill person. I am glad to hear from the Administration, during the discussion on the Bill, that arrangements will be made so that parents or guardians of mentally handicapped adults can indicate their willingness to the medical treatment and operations on a standard form. I am also satisfied that although guardians of mentally handicapped adults cannot have full power to dispose of the entire property of the handicapped person, they will have adequate powers to use income from it for his benefit.

What I am unhappy about, Sir, is that it has taken five years since I first alerted the Administration to the need for a piece of legislation to protect and care for mentally handicapped adults that the Bill was first read. And when it did arrive, the legislation was embedded in a Bill for the mentally ill at large. The distinction between what is meant by mental illness and what is meant by mental handicap is already unclear to a lot of laymen. The mingling of these two concepts into one Bill, I am afraid, would simply make matters worse and more confusing. I admit that mentally handicapped persons may also suffer with mental illness. And if they do, I stress that they are no different from the

mentally ill of normal intelligence and should be treated as such there is definitely an advantage to separate the Bills affecting these two distinct groups of people. Therefore, it is heartening to hear that there is a plan to establish a working party in about three months' time to look into the need and desirability of a separate piece of legislation for the mentally handicapped. I certainly look forward to the working party's early completion of its task.

I would lastly like to express my concern that there is an inadequate number of psychiatrists in the public sector. As a result of this deficiency, the Legislative Council ad hoc group in studying this Bill, and indeed quite a number of our hon. Colleages, have to accept somewhat reluctuntly the following that is, instead of trained psychiatrists, doctors with three years of general medical experience will be given the responsibility to see patients suspected to be suffering from mental disorder and to make application, if necessary, for the detention in a mental hospital for observation under section 31 of the Bill. The Administration has indicated that adequate psychiatric backup services will be provided to hospitals within a few years. Will the Administration give an assurance as to when this could be achieved so that the work I just mentioned will be handled by personnel trained with the necessary expertise?

Sir, I would like to close by passing a message to the public at large. The incidence of mental illness is ever increasing. I am convinced that it is due to the mounting pressure of society on the people of Hong Kong, be it financial, academic or otherwise. It also has to do with the changing and wrong attitudes towards the value of life. Increasingly inadequate attention is given to family love, unity, human relationship, and the simple and always neglected things in life that build up intimacy among people. It is important for us to stay fit not only physically, but also mentally.

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

4.32 pm

HIS EXCELLENCY THE PRESIDENT: Members might like to take a break at this point.

4.51 pm

HIS EXCELLENCY THE PRESIDENT: The Council will resume.

MR. CHEONG-LEEN: Sir, I am particularly pleased that through the perseverance of the ad hoc group, and its in-depth study of the many representations made by the medical, legal and social work professions, the Bill will now be amended to give better protection to the mentally handicapped. A person suffering only from arrested or incomplete development of mind will not be compulsorily

detained in a mental hospital, unless the patient is certified by two medical practitioners, as defined, to be abnormally aggressive or that his conduct is seriously irresponsible.

I am also glad that the Administration has agreed to set up a working party in three months' time to consider having a separate piece of legislation for the mentally handicapped.

The general public, especially at the district level, do not always find it easy to draw a distinction between the mentally handicapped who are not abnormally aggressive or whose conduct is not seriously irresponsible, from others who are suffering from psychopathic disorders or any other disability of mind which may require treatment in a mental hospital.

The Ordinance, which was first enacted about 30 years ago, has now been revised to improve the manner in which mental patients are to be handled. Those suffering from psychopathic disorders, or any other disorder or disability of mind, associated with abnormally aggressive or seriously irresponsible conduct, can be detained and given medical treatment in a mental hospital in accordance with prescribed procedures and having regard to adequate safeguards for the liberty of the individual.

In regard to the procedures under section 31(1), it is gratifying that the Administration has now agreed that application to detain a patient for observation should be made by a doctor and countersigned only by a judge or magistrate, and not by a Justice of the Peace.

The counter-signature by a judge or magistrate I believe is fully justified, in order to ensure that the legal procedures are complied with, bearing in mind the liberty of the subject is at stake.

Close and co-operative interaction among the police, the medical profession, social workers and the judiciary is of vital importance for the smooth, efficient, and humane enforcement of this Bill.

In regard to the proposed new section 71B where the words 'who appears to him to be' will be substituted by 'whom he reasonably believes to be', I would like to stress that so much will depend on the intelligence and experience of the police officer in question when he has to come to grips with a particular situation. Ordinary legislators like myself find it difficult enough to follow the complexities of this piece of legislation, how much more difficult it will be for the regular policeman on the beat! I would urge the Commissioner of Police to address this matter with the greatest of care and attention.

Since the Administration has advised the ad hoc group that the police will not employ the power under section 71B more often than is necessary, perhaps the Commissioner of Police can consider if it would be practical to have on call at strategic points in the territory a number of police officers who, in addition to

their normal duties, would have had special orientation in the enforcement of this Bill. Providing time permitted, a beat policeman in case of necessity could call upon such trained officers to swiftly give support or assistance on-the-spot.

This specialist orientation would be particularly useful when it comes to entering private premises under warrant in search of escaped mental patients suspected of suffering from a mental disorder and is in need of care and control.

In some countries in eastern Europe, one hears now and then of patients being deliberately consigned to a mental hospital for political or other repressive reasons.

I have looked at the Bill with the possibility of this happening very much in mind. I think that the ad hoc group has recommended as many safeguards for the liberty of the individual consistent with the public interest as is practicable. The legislature will have to monitor the efficacy of the provisions of the Bill in the years ahead.

What is disquieting is the Administration's admission that it will require another four years before there will be sufficient psychiatric service back-up in hospitals for the proper enforcement of the Bill. The legislature should monitor progress by the Administration in this regard, otherwise many provisions in the Bill will be unenforceable due to shortage of professional medical staff.

I believe that with the passage of this amendment Bill, a reasonable balance will have been struck between the protection of the public and the civil rights of the individual.

Sir, I support the Bill.

DR. CHIU: Sir, my medical colleagues are glad to note that most of their comments on the first draft of the Mental Health (Amendment) Bill published in 1986 have been incorporated into the present Bill. Therefore, they have a general feeling that this Bill is a great improvement compared to the last one.

However, many of my colleagues in the medical profession expect me to stress some areas which concern them. These include: the definition of mental disorder, a separate Bill for the mentally handicapped, police power and manpower shortage in mental health service.

Definition of mental disorder

The definition of mental disorder, taken with the agreed Committee stage amendments, is acceptable since the Bill will now apply only to the mentally ill and those mentally handicapped with abnormally aggressive or seriously irresponsible conduct.

Separate Bill for the mentally handicapped

In regard to a separate Bill for the mentally handicapped, the mental profession have no strong feeling for or against the idea. They believe that the number of

mentally handicapped who fall into the ambit of the Bill is relatively small. Sir, what concern them most is whether there will be any better and more adequate services than what we have today after the introduction of a separate Bill.

At present, about 30 to 45 per cent of our psychiatric day hospital places are taken up by the mentally handicapped who do not suffer from any formal psychiatric disorder. Moreover, the number of mentally handicapped patients admitted into various psychiatric hospitals or units for medical treatment due to behavioural problems stands at 300 each year. Some people say that it is the psychiatrists who like to keep the mentally handicapped at mental hospitals. This is not true. On the contrary, psychiatrists have no intention to keep them there, if there are other facilities that can take care of them. Here I would like to emphasise that it is not the psychiatrists but the inadequate facilities for the mentally handicapped that make them stay in hospitals.

Police power

A majority of medical professionals working in the mental health field are in favour of granting the police a power to take a mentally disordered person to a place of safety on the grounds that this is a safeguard for such patients. It is quite unlikely that the police will abuse their power, as it is confined to escorting the person suspected of suffering from mental disorder to the accident and emergency department to receive care from the medical officer. People in the medical field believe that this is a great improvement to the present practice.

Manpower shortage in mental health service

Sir, I like to say a few words on the manpower problem in mental health service. People deem it the duty of the Government to provide adequate and quality medical care to patients who need them.

At the beginning of 1987, there were 3 987 psychiatric beds constituting 16.2 per cent of all hospital beds in Hong Kong. However, the quality of care for the mentally ill is not up to the expectation of the medical profession. As far as psychiatric service is concerned, the doctor-to-bed ratio recommended by the Medical Development Advisory Committee (MDAC) is 1:20 for acute beds and 1:80 for chronic beds but the actual ratio is 1:100 in general.

The reason why this recommendation of the MDAC cannot be translated into action is that on the one hand, we experience slow growth in the manpower of psychiatric services, while on the other hand, the demand for psychiatric services is rising. Taking the Castle Peak Hospital as an example, at the beginning of 1987, the number of in-patients stood at 2 403, representing an occupancy rate as high as 106 per cent.

According to the information provided by the Health and Welfare Branch, there are a total of 57 fully qualified psychiatrists in Hong Kong, 27 in the government mental health service and 30 in private sector. Although there are 69 doctors working in the mental health service gaining clinical experience in the

diagnosis and treatment of mental disorder, only 34 have indicated their interest in obtaining a specialist qualification in psychiatry. The unpopularity of the psychiatry specialty further hampers the manpower supply in mental health service.

Psychiatric care is very labour intensive. It depends a lot on a person-to-person relationship. Worse still, the increasing forensic duties constitute an additional burden.

Needless to say, an undesirable doctor-to-patient ratio and a heavy workload adversely affect the quality and the effectiveness of care to a large extent. Unfortunately, we are facing a rapid turnover rate and a shortage of government medical staff in general, and psychiatrists in particular.

Unless more incentives such as better training opportunities, working condition and promotion prospects can be made in this area, senior posts in public hospitals and the mental health service will soon be left unfilled because of a lack of experienced staff.

Therefore, ways to recruit and retain doctors, including psychiatrists, in the public service as a whole should be seriously considered.

Sir, with these remarks, I support the motion.

MR. HUI: Sir, the enactment of law must always serve the ultimate purpose of maintaining order, peace and social well-being of a society. Hong Kong takes pride in its effective legal system which quarantees public interest while protecting the rights of the individual, that is the right to freedom and security of persons. In supporting the Bill in motion, which has undergone extensive amendment during the past year, I wish to pinpoint only a few provisions which still remain restrictive to the personal liberty of mental patients.

Under the Bill, the power given to the police to remove anyone seemingly suffering from mental disorder to a place of safety still gives cause for concern. For a police officer to decide on a person's state of mind, albeit he had reasons to support him, not only over estimates his ability to judge, but also undermines the argument advanced by the Administration that the detention of mental patients is essentially a matter of medical opinion. Section 71B(1) of the Bill, as it now stands, will still be subject to abuse by the police. By giving the police the power of arbitrary arrest, the Bill carries an ominous threat to human rights and personal liberty that may develop into draconian actions of the police in times of crisis. Since social workers are bounded by our professional ethics to protect the community against practices and conditions harmful to human welfare, it is my responsibility to speak up for the repealing of section 71B of the Bill. If, however, this section must remain, I would espouse the Bar Association's stance that the police's right of entry be restricted to public places. In the case of a person who appears to be in immediate need of care and control being found in his own abode, entry into his premiese by the police should be made in the

presence of a medical practitioner with three years' experience in psychiatric service, a social worker or a community psychiatric nurse. Furthermore, the police officer exercising the power ought to be an inspector in rank, in order to safeguard against the subjective and untrained reactions on the part of a police constable to complicated situations.

Still on the question of objective assessment, the social work circle demurs to the provision for the Director of Social Welfare to act as the applicant for guardianship as well as the interim guardian for mental patients. While acknowledging the explanation given by the Administration, we object to the 'judge and jury' principle and prefer a second opinion to be given by the district court to the obstrusive guardianship initiated and granted by the Director of Social Welfare. There are adequate legislative precedents, such as the Guardianship of Minors Ordinance, which empower the court to approve guardianship applications. The district court, being the approving authority, can always conduct special hearings for these guardianship cases which are seldom a matter of urgency. Indeed, we need to be convinced why the district court cannot approve guardianship for mental patients. To ensure that justice is seen to be done, it is also recommended that the two medical practitioners making the application for guardianship should represent different institutions.

Sir, I wish to elaborate on institutionalisation for mental patients, which somehow strikes me as the essence of the Bill. While appreciating the intention of the law drafters to protect the public from dangerous behaviours of mentally diordered persons, it must be stressed that most psychiatric patients do not require hospitalisation. From the social work point of view, attempts to segregate them from the community will only result in isolation which hampers social rehabilitation. Viewed in this light, the Bill rests too much decisionmaking power in the medical personnel, although the care of the mentally ill should adopt a hoslistic approach by which social integration, occupational therapy, psychotherapy should carry as much weight as medical treatment. Therefore, the provision of a wide range of caring and therapeutic services outside the hospital such as community psychiatric nursing service, halfway houses, vocational training, sheltered workshops, compassionate housing and social clubs are essential support services that can provide long-term solutions to the care of the mentally ill.

Without these supporting or support rehabilitation services, Sir, reviews to be carried out by the Mental Health Review Tribunal will only become superficial exercises that leave discharged mental patients out in the cold. I would, therefore, suggest that the relevant OMELCO standing panels should continue to monitor and review the existing mental health service delivery system and to oversee the implementation of this Bill. The low priority presently awarded to psychiatric services, coupled with the short supply of psychiatrists, has accounted for the Administration's reluctance to consent to the early implementation of the Bill, which is still subject to available resources. Indeed, the enactment of the

Mental Health (Amendment) Bill 1987 comes at an inopportune time when social welfare is hard hit by manpower shortages brought about by the lack of long-term manpower planning and the current brain drain. Under the present circumstances, it is difficult to foresee how the target set by the Social Welfare Department to recruit the 50 social workers required for implementing the Bill could be reached. I would, therefore, urge the Administration to make a firm commitment to providing the much-needed psychiatric services and to consider tapping the resources of private psychiatric practitioners. In addition, the Government must provide the necessary training in mental health for social workers concerned to acquire adequate knowledge and experience for the effective delivery of services. Short of full financial backing and concrete plans of action, it will be many years before Hong Kong's social rehabilitation programmes can successfully reintegrate mental patients into the community where they can live as normal human beings.

In closing, Sir, I must acknowledge the open attitude with which the Administration accepts suggestions and comments made by members of the public, and the deference it has shown towards recommendations made by the Legislative Council ad hoc group to study the Bill. This consultation exercise has set an excellent example of an open government for Hong Kong. However, it has been said that the Administration is often slow in acting on promises made for policy changes. Let's hope that for once, the Mental Health (Amendment) Bill 1987 will be spared this agony of moving at a snail's pace in our attempt to improve the care for the mentally ill.

Sir, with these remarks, I support the motion.

MR. MARTIN LEE: Sir, on any view, this is an extremely complicated piece of legislation. And indeed, every time I looked at it, I needed a long time to tune in.

I would, therefore, like to express my deep admiration for the very able chairmanship or is it chairmanship of the ad hoc group by the hon. Rosanna TAM, who has shown great patience and understanding throughout the many meetings of the ad hoc group. I would also like to thank the Secretary for Health and Welfare for his reasonable attitude in accepting the many points raised by the ad hoc group. This is a piece of caring legislation, and I think Members would not disagree with me if I were to describe the Secretary as a caring parent in dealing with many of the problems raised by the ad hoc group.

The Bar Committee too, has made many valuable suggestions to the ad hoc group, as it was concerned that some of the provisions of this Bill might infringe on civil liberties. Sir, in recent years, that is, after I ceased to be its chairman in 1983, the Bar Committee has taken on the role of the defender of civil liberties, and I hope that it will continue to play this very important role during these sensitive times.

Many of the bar's suggestions have been adoped by the ad hoc group and also the Administration. My hon. Colleague the hon. Rosanna TAM has already mentioned them in her very lucid speech and they relate to the following:

(*a*) First, the new section 71B will impose an objective test on a police officer in his decision whether a person found in any place is suffering from mental disorder and to be in immediate need of care and control by the use of the words 'whom he reasonably believes to be', and not the original subjective test by the use of the words: 'who appears to him to be';

(*b*) secondly, section 71B(5) now makes it plain that subsection (1) does not confer an additional power on a police officer to enter private premises to remove a person suffering from mental disorder to a place of safety and therefore he can only enter private premises when he is invited to do so; and

(*c*) thirdly, an application for a mental patient's detention under the amended section 31 can only be made to a district judge or a magistrate but not to a Justice of the Peace.

These are clearly good improvements to the Bill.

But one important point taken by the Bar Committee has still not been satisfactorily resolved. And that relates to the right of a person believed to be suffering from mental disorder to be heard by a judge or magistrate before he is detained in a mental hospital under section 31. As the Bar Committee put it: 'it is important to presume' the civil rights and freedoms of every individual in this territory irrespective of his afflication with any particular type of disability.'

Indeed, this point had caused great concern to members of the ad hoc group as well as other Members of this Council. According to the record of the in-house meeting held on Friday, 3 June 1988 'some Members felt in order to safeguard human rights. it was essential for a person to be heard by a magistrate/judge before he was deprived of his liberty. However, some Members felt that it might give rise to practical difficulties and such an additional safeguard could cause delays in providing timely medical treatment to the patient. After further deliberation, Members agreed that bearing in mind possible practical difficulties which the Administration would have to sort out, the ad hoc group's recommendation that a person suspected to be a mental patient should be given the right to be heard before being detained in a mental hospital under section 31 should be supported in principle.'

I have consulted the Bar Committee further on the compromise as mentioned by the hon. Rosanna TAM; and it is still of the view, which I share that this is not a satisfactory compromise, because it is discriminatory against a class of people who are thought to be suffering from mental disorder, so that the principle that no person be deprived of his liberty without a court order will not apply to them, even though it applies to all accused persons alleged to have committed serious criminal offences like murder or rape. In this context,

may I quote a very famous line: 'It is a rule as old as the law, and never more to be respected than now, that no one shall be personally bound until he has had his day in court.' by Stephen J. FIELD in 1873.

Sir, this is a particularly apt reminder for us as we approach 1997.

In the circumstances, I have to decide whether to vote against this Bill on principle or to give my qualified support to it. I bear in mind that, overall, this is a very useful piece of legislation for Hong Kong; that it has taken much time and trouble to reach this stage; and that any further delay may mean that it cannot be passed during the current session. I, therefore, decide with reluctance, to give it my qualified support. Sir, I understand that the Administration will provide a safeguard by way of subsidiary legislation in stipulating in the requisite prescribed form that the doctor concerned shall inform the patient of his right to be brought before a judge or magistrate. But this is not good enough; for such a proposal is not likely to be effective because the patient may be a mentally retarded person or indeed, he may even be insane. It would then be pointless for the doctor to put such a question to him. As an additional safeguard, and in order to make the present proposal meaningful, I suggest that the relevant question be only put to the patient in the presence of a relative, or if such a relative cannot be found (for example, as in the case of a street sleeper) then in the presence of a social worker; and that this be catered for in the prescribed form.

Sir, my proposal will not only ensure that the right to be heard can be safeguarded in the interest of the patient, but it will also afford protection to the doctor concerned because he will have a witness who is of sound mind to back him up if there be a subsequent dispute that the question has not been asked of the patient.

Sir, may I take another suggestion. If Members of this Council have found this Bill to be difficult, and, as the hon. Hilton CHEONG-LEEN has said, policemen on the beat will also find it very difficult to understand, then surely the same applies for the unfortunate parents of children who might be mentally retarded or even suffering from a mental disorder. So may I suggest that the Administration should give serious consideration to compiling a little booklet for the use of these parents in case a policeman were to knock on their door and say, 'Sorry, there is a complaint about your child who might be suffering from some mental disorder and so I must take the child away from you.' With the assistance of the booklet, at least a parent would know what to do in these circumstances.

Finally, I believe that it is my duty to point out to this Council and the Administration that when this Bill is passed into law, a police officer may still not be able to enter the private premises of a person lawfully in order to stop him from committing suicide inside his own flat, if he happens to be alone and will not invite the policemen to enter. This is so because all the powers of a police officer in Hong Kong are statutory; and under section 71B(5) of the Bill, it will be made perfectly plain that subsection (1) will not confer on any police

officer the right to enter any premises. And there is no other statutory power which would allow a policeman to enter another person's private premises without invitation or warrant in order to prevent that person not from committing in an offence, but from committing suicide, which is not an offence under our law.

In this connection, it is pertinent to note that a police officer in England had, before the law was codified not so long ago, certain powers conferred by the Common Law to enter private premises without a warrant in order to save life or limb, or to prevent a breach of the peace. But this is at least a draft whether police officers in Hong Kong enjoy these Common Law powers. For there is a strong and respectable body of legal opinion in Hong Kong, both from academics and practising lawyers, that there is a distinction between police officers in England and their counterparts in Hong Kong because the former were the creatures of the Common Law and, therefore, enjoy these Common Law powers: whereas the latter are creatures of statute and, therefore, only enjoy statutory powers.

Sir, I have been referred to section 10 of the Police Force Ordinance which provides (inter alia) that 'The duties of the police force shall be to take lawful measures for...(*c*) preventing injury to life and property'.

The important words are 'to take lawful measures'. And herein lies the problem, for a Hong Kong police officer cannot point to any statutory power which would permit him to enter a private property to save life or limb, laudable though that conduct may be.

I, therefore, hope that the Administration will look further into this aspect, as I believe that we would be failing in our statutory duties to enter private premises without warrant and without invitation in order to stop a person from killing himself.

Sir, with these reservations and those so eloquently mentioned by the hon. HUI Yin-fat, I support the motion.

SECRETARY FOR HEALTH AND WELFARE: Sir, first of all, I would like to thank Mrs. Rosanna TAM and the other members of the ad hoc group for the great deal of hard work which they have put into the examination of this very important Bill. We have a series of very productive meetings with the ad hoc group and I am sure that as a result of their work, this Bill has been considerably improved.

Several Members have referred to the controversial nature of this Bill. This is undoubtedly and in my view, inevitably true. The Mental Health Ordinance provides for the placing of restrictions on the freedom of movement of unfortunate people who suffer from various forms of mental disorder; these restrictions are necessary in the interests of the patients themselves, and in some cases of the community as a whole. Such legislation, therefore, represents a

compromise between the need to restrict the activities of such people and the need to respect their civil liberties. Views differ on the nature of this compromise and much of our discussion with the ad hoc group has been concerned with arriving at a satisfactory solution to various problems of this kind. I believe that the outcome is a marked improvement over the present provisions of the Mental Health Ordinance.

Dr. HO Kam-fai and other Members have expressed concern about the inclusion in this Ordinance of provisions relating to the mentally handicapped and the ad hoc group recommended that separate legislation should be provided for this purpose. I can confirm that the Secretary for Education and Manpower is already taking steps to set up a working group to examine this issue and hopes to be able to resolve the rather complex problems involved and reach a conclusion within the next 18 months.

Mrs. TAM has described the various amendments which we have agreed with the ad hoc group and which she will move in Committee, and I will not go into details on these points. I shall also be moving a number of amendments in Committee, mostly of a technical nature.

I would now like to comment briefly on a few more general points which have emerged in the course of our discussions on the Bill.

This Bill introduces the concept of guardianship for mentally handicapped persons who are over 18 years of age and are, therefore, outside the jurisdiction of the Protection of Women and Juveniles Ordinance. This is a new concept in Hong Kong and some Members have expressed concern about some of the procedures involved. Mr. HUI has suggested that the court and not the Director of Social Welfare should make the final decison concerning the need for guardianship. Mrs. TAM, however, made it clear in her speech that the Director of Social Welfare is best placed to decide upon such matters and that adequate safeguards exist to the district court and the mental health review tribunal for appeals against the continuation of guardianship in cases where the existing arrangements are for some reason unsatisfactory. The Director of Social Welfare will act when necessary as guardian of last resort but I would like to emphasise that the essence of the system is one of care and protection for the person placed under guardianship and in normal circumstances, this would best be provided by a relative or a caring person known to the patient. When the director has to act as guardian of last resort, it is the intention that such arrangements should be of an interim nature only, until a suitable alternative guardian can be found.

The ad hoc group was concerned about the need to provide for supervision of the financial affairs of the mentally incapacitated and I would like to assure the Council that adequate statutory provisions for this purpose do, in fact, exist both in part II of the Mental Health Ordinance and in section 12(4) of the Supreme Court Ordinance.

Another point of concern related to potential difficulties when consent is required to medical treatment of mentally handicapped adults. I am pleased to say that the Medical and Health Department has agreed to introduce a standard form on which the guardians of mentally handicapped persons can indicate their agreement to medical treatment, including operations, being carried out when necessary.

Clearly, one of the most controversial parts of the Bill is the new section 71B which gives powers to the police to remove mentally disturbed people to hospital for examination by a doctor.

Some Members were particularly concerned that this provision might give the police powers to enter domestic premises to remove a suspected mental patient. I would like to emphasise that no new powers of entry are conferred on the police under this Bill. A police officer may only enter premises under existing powers. The provisions in section 71B are considered necessary to allow police officers to take action to provide immediate care or control of a person when necessary, either in his own interest or that of other people. The powers under this section are strictly limited to the transfer of a patient to an accident and emergency department where he will receive proper medical treatment and be subject to a professional assessment of his mental condition. The patient can be detained for this purpose for not more than 24 hours, unless further action is taken under other provisions in the Ordinance.

I have noted Mr. Martin LEE's reservations in connection with the right of a person believed to be suffering from mental disorder to be heard by a judge or magistrate and his suggestion that the question of whether he wishes to exercise this right should be put to him in the presence either of a relative or a social worker. We shall certainly give careful consideration to this suggestion.

Mr. Martin LEE also raised the question of whether the police have the power to enter private premises to prevent someone from committing suicide if he is not willing to admit them. This point, I think, is not strictly relevant to this Bill, but I will certainly refer Mr. LEE's view to the Commissioner of Police and the Attorney General's Chambers.

The ad hoc group felt that suspected mental patients should be taken to the accident and emergency departments of hospitals where there is a full psychiatric back-up service. While this is a desirable aim, the current availability of psychiatric doctors makes it unattainable at present. The Director of Medical and Health Services has indicated that it may be achievable in about four years time. In the interim period, and within the limits of available manpower resources, the Medical and Health Department will do its best to ensure that all such patients are seen by doctors who have worked for three years or more in an accident any emergency department.

Finally, I would like to say a few words in relation to the medical opinions required for the purposes of sections 32,33, and 36 of the amended Ordinance. These sections provide for the necessary medical opinions to be given by a

practitioner approved for this purpose by the Director of Medical and Health Services, a doctor who has special experience in the diagnosis or treatment of mental disorder. The intention is that an approved practitioner in this context shall be a doctor who has worked for not less than three years in the psychiatric service of the Medical and Health Department. At a later date when the supply of psychiatrists has improved, we hope to revise this criterion.

Some concern has been expressed about the current shortage of manpower in the Social Welfare Department and the constraints that this may impose on the implementation of the new guardianship provisions. The ad hoc group were very keen to see these provisions brought into force as quickly as possible and it has now been agreed to bring them into effect as soon as the regulation can be passed, although full implementation may not be possible until more staff resources are available. Mr. Y.F. HUI has urged the adoption of a more holistic approach to caring for the mentally ill and the need for more non-institutional support services. I can assure him that the provision of such services is entirely consistent with government policy of providing more care for psychiatric patients outside mental institutions. The provision of day places in psychiatric hospitals and home based community nursing services is part of a general effort to treat patients within the community wherever possible. A further element in this approach is the half way house programme to which the Government is fully committed.

Dr. CHIU has raised the question of the supply of psychiatrists in the government sector. He has pointed out that for various reasons psychiatry is not a popular discipline among doctors. Since doctors are able to choose their own specialities, it is difficult to be precise about future supply but steps are bing taken to make a career in psychiatry more attractive, medical students are now more exposed to psychiatry in their training in order to create more interest in the subject, and I understand that doctors in the psychiatric service have a relatively better chance of being selected for post-graduate training and promotion to a higher grade. In addition, it is expected that more psychiatrists will become available as the supply of medical graduates generally increases in the next five years.

Sir, after a great deal of discussion we have achieved an amending Bill which has the general support of Members of this Council. I am confident that the new and amending provisions will provide a greatly improved legal framework for helping those unfortunate people who suffer from mental illness and mental retardation.

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).

TRADE UNIONS (AMENDMENT) BILL 1988

Resumption of debate on Second Reading which was moved 8 June 1988

Question proposed.

MR. TAM (in Cantonese): Sir, under section 34 of the Trade Unions Ordinance, the funds of a registered trade union are not allowed to be applied either directly or indirectly for any political purpose or to be paid or transferred to any person on group in furtherance of any political purpose. In other words, under this section, trade unions cannot participate in political activities through the use of their funds. This is to prevent the politicalisation of trade unions. Under the Trade Union (Amendment) Bill 1988, restrictions on trade union participating in political activities have been relaxed. Henceforth, through secret ballot at the general meeting or meeting of representatives and after gaining majority support, the trade unions can establish an electoral fund or approve expenses for election activities. I have just pointed out that this is only relaxation to a certain degree. By saying that trade union fund can now be deployed for political activities, it only means elections of district boards, Urban Council, Regional Council and Legislative Council. There are still restrictions regarding other political activities.

I support the amendment Bill presented by the Administration for the following reasons:

First, trade unions are set up to promote the welfare of its members and to fight for their rights. To achieve the objectives, the trade union will have to make effort in different ways. One of the avenues is political participation. We have no reason to deprive them of their right to promote the welfare and rights of their members through political participation. The amendment Bill does nothing more than to give the trade unions a right that they should have long been entitled to. In fact, I share the views of the United Kingdom Government in amending their trade union legislation in 1913.

Second, with the development of social form, the society of Hong Kong is now taking a much more liberal attitude towards political participation. We hope that it will lead to democratisation. In the process of democratisation, trade unions, in fact, have played a part; for instance, in the functional constituency elections to the Legislative Council in 1985, the labour sector took up two seats. Trade Unions can elect members to the Legislative Council. Besides, there are representatives of trade unions in district board elections as well. This being the case, if trade unions are not allowed to establish an electoral fund or to allocate their funds for election expenses, it will not keep abreast with society and inco-ordination will surface. Inco-ordination arises from the fact that on the one hand, trade unions are allowed to take part in elections, but on the other hand, they are restricted in their actual electioneering. This is rather absurd.

Third, the amendment Bill has provided flexibility so that trade unions can really participate in election activities. However, at the same time, it also provides effective checks to prevent an abuse of this right. This can be clearly seen in clause 5 of the Bill.

Lastly, Sir, I believe the trade unions will treasure this right. At the same time, I firmly believe that they will exercise this right cautiously and careful arrangement regarding election will be made.

Sir, with these remarks, I support the motion.

MR. ANDREW WONG (in Cantonese): Sir, I think I am the only Councillor who has much reservations on the Trade Unions (Amendment) Bill 1988. Originally I could have raised a number of amendments to amend the Bill, but I would have to make too many amendments. If all these amendments are adopted, they will go against the spirit of the amendment Bill. And it seems to me that if we would like to amend the provisions of the Bill, I may not stand the chance to win. Nevertheless, I will still like to air my views against the Trade Unions (Amendment) Bill 1988 so that these views will be recorded for future review, especially when the problem of politicisation of trade union becomes more and more serious.

Sir, on the 8 June 1988, when the Secretary for Education and Manpower moved the Second Reading of the Bill, he stated clearly the purpose of the Bill. The problem arose from 1985 when we first had election to the Legislative Council. Among the 24 functional constituencies, we have two coming from the labour constituency and we decided to adopt the electoral format of one vote per union and so trade unions would have to decide on the candidates which they would like to nominate or support. But section 34 of the Ordinance already stated that the funds of a registered trade union are not allowed to be applied either directly or indireclty for any political purpose or transferred to any person for political purpose, but the Government stated that private donation received by candidates of the Legislative Council election would not be restricted. Later, the trade unions also suggested further lifting of the restrictions so that the trade unions can use their funds to support the candidates to run for district board, Urban Council, Regional Council and Legislative Council elections. That is why we now have the Trade Unions (Amendment) Bill 1988 before us.

But I cannot accept at least two points raised by the Administration in amending the Bill. First of all, within the three-tier system, what is the extent of relaxation in respect of the use of trade union funds? The problem arose because the trade unions are now turned into a voter, so we must ask the trade union to use money and to decide which candidate they would support. So I think it would be adequate to include Legislative Council elections, but not district board, Urban Council and Regional Council elections. I think we can allow the trade unions to support the candidates running for the Legislative Council election but not for other political purposes.

Secondly, if we talk about political purposes, what is its definition? How far should we go? Can we allow people to donate money to support a certain candidate or should we just let them have a consultative meeting and let the members decide for themselves what candidates whey would like to support? Or, should we just allow the general meeting to decide on the nominees? Or even perhaps, we should ask all the trade unions to sit together and if they have several candidates perhaps, they can pool funds and also convene meetings or general consultative meetings so that the candidates can explain their platform to other trade unions to get their support. So I think we should only allow them to have these consultative meetings and to decide on the candidates, and we should not allow them to use the money to support candidates for running an election campaign. And during the consultative meetings, we can allow the candidates to express their platform and equality should be guaranteed. I think the problem is very serious but, of course, I understand that there are reasons to support the amendment Bill, but I do not think I can accept it. First of all, this is a problem faced by trade unions, obviously because of section 34 of the Trade Unions Ordinance. But what I propose will solve this problem.

And the second argument is that perhaps we can give equal footing to the trade unions and we should treat them just like other registered organisations, but I cannot accept this argument. If we can accept it, then we would not need section 34. So it seems that we are doing things to adapt to a new situation and I do not think this is an approach we should take.

I would like to talk about politicisation of trade unions. Basically some weaker trade unions will be unfairly treated and it is also likely that once a trade union engages in election they will forget their duties and responsibilities.

The third problem is even more serious. If we allow them to decide on the candidates, they would tend to support by a majority, and we will be creating division among the trade union members. As a result, some may withdraw from the unions and in the interest of development of trade unions. On 9 December 1987 when we talked about Illegal Practices and Corruption (Amendment) Bill 1987, I already brought out these problems. I said that if certain trade unions are already political in nature, they should state this clearly in their articles. Moreover, we should also consider comprehensively whether there are any organisations in the community which are basically not suitable for engaging in any political activities. These include trade unions, mutual aid committees and owners corporations that I mentioned last time. But since this is a comprehensive problem and when we discussed the Corruption and Illegal Practices (Amendment) Bill 1987, I also supported the Bill. So I think we should consider the politicisation problem very carefully. As Mr. TAM has already mentioned, we will still retain section 34 under which trade unions are not allowed to use their funds directly or indirectly for political purposes. Sections 33(*a*) and 33(*b*) are exceptions. Moreover, section 33(*a*) allows the establishment of an electoral fund, but the pre-requisite for its establishment is very harsh requiring over

50 per cent of support from members. Section 33(*b*) also states that the use of the fund for election purposes must seek approval at an annual general meeting with full attendance of members and with over 50 per cent of support from those present.

I would not be voting against the Bill, but I urge the Government to conduct a comprehensive review on the political participation by various local organisations so that we can have a smoother development of political system in Hong Kong.

SECRETARY FOR EDUCATION AND MANPOWER: Sir, I would like to thank Mr. TAM and Mr. Andrew WONG for their comments on the Bill.

I am grateful to Mr. TAM for his support. It is significant to note that the Bill has the support of trade unions. Mr. TAM is correct in pointing out that the amendments will enable trade unions to participate fully in electoral activities. I would like also to thank him for his remarks on the provisions in the Bill regarding flexibility.

I am also grateful, Sir, to Mr. WONG for not moving any amendments later on. As regards his other comments, I would like to reiterate that the purpose of the Bill is to remove the anomaly for trade unions which are the only registered organisations now prevented by law from using their funds for electoral purposes in district board, Urban Council, Regional Council and Legislative Council elections. We consider it appropriate to allow trade unions to do so particularly as we have been actively encouraging the development of representative government. We do not think that the proposed amendments will politicise trade unions as the prohibition against the use of union funds for other political purposes is still maintained.

As to the question whether it is a proper function of a trade union to support electoral activities, I think this should best be left to the union itself to decide. New section 33A, therefore, provides for members of the union to decide by secret ballot. There are other safeguards too and I do not wish in particular to repeat them here, but obviously there are a few of them which should work very well.

Sir, Mr. WONG has also suggested tightening up controls on the use of funds by other organisations for electoral purposes. We do not agree because to do so would not be in line with the development of representative government.

We have previously, Sir, considered Mr. WONG's other points on limiting the scope of the amendments to only Legislative Council elections and allowing trade unions to make specific donations to candidates only. We have concluded previously also that it is only fair to allow trade unions to do what other organisations can do. Partial lifting of the present restrictions is neither equitable nor reasonable.

Sir, I would like to point out again that the Bill seeks mainly to put trade unions on an equal footing with other organisations regarding the use of funds for electoral purposes. I, therefore, commend the Bill to this Council for approval.

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.

INTERPRETATION AND GENERAL CLAUSES (AMENDMENT) BILL 1988

Clauses 1 and 2 were agreed to.

AUDIT (AMENDMENT) BILL 1988

Clauses 1 to 3 were agreed to.

MENTAL HEALTH (AMENDMENT) BILL 1987

Clauses 3,5,8 to 16,18,19.21,23 to 27,29 and 30 were agreed to.

Clauses 1,17 and 20

SECRETARY FOR HEALTH AND WELFARE: Sir, I move that the clauses specified be amended as set out in the paper circulated to Members. Clause 1 is a technical amendment changing the date of the Bill to '1988'. Amendment to clause 17 deletes the word 'be detained' for new section 50(*b*). These are superfluous. Amendment to clause 20 inserts the words 'to a mental hospital' to a new section 52B(2) which have been omitted. The purpose of this section is to enable a person who is mentally disordered to be transferred from the Correctional Services Department psychiatic centre at Siu Lam to a mental hospital.

Proposed amendments

Clause 1

That clause 1(1) be amended, by deleting '1987' and substituting the following—

'1988'.

Clause 17

That clause 17 be amended, in new section 50(*b*) by deleting 'be detained'.

Clause 20

That clause 20 be amended, in new section 52B(2) by inserting after the words 'psychiatric Centre' the following—

'to a mental hospital'.

Question on the amendments proposed, put and agreed to.

Question on clauses 1,17 and 20, as amended, proposed, put and agreed to.

Clauses 2,4 and 7

MRS. TAM: Sir, I move that the clauses specified be amended as set out in the paper circulated to Members.

The amendment to clause 2(*b*) deals with the concern that the mentally handicapped, who are without abnormally aggressive or seriously irresponsible conduct, are labelled together with the mentally ill, who suffer from psychopathic disorder or other disorder or disability of mind. The deletion from the Bill of the term mental impairment which is defined as a state of mind which is associated with aggressive or irresponsible conduct will remove the unnecessary misunderstanding.

The amendment to clause 4 recognises the need to protect the interest of patients who are liable to be committed to detention in a mental hospital. The action of applying for an order for the detention of a patient and of making the order itself involves important decisions affecting the freedom of individuals and which will have serious implications on their future lives. The ad hoc group studying the Bill considers that the safeguards provided in the Bill do not go far enough and has proposed further restrictions. The present amendment will ensure that the application for an order for detention is founded on the opinion of a registered medical practitioner who has examined the patient within the previous seven days, rather than 14 days as in the Bill.

The amendment also limits the authority to make such orders to only district judges and magistrates and requires them to see the patient if the patient so requests. The doctor who signs the medical opinion will be required to ask the patient whether or not he wishes to see a judge or magistrate before the decision is made. In this context, the certificate mentioned in the proposed new subsection 3(*b*) to section 31 will be an integral part of the form containing the medical opinion. This form will be prescribed in the subsidiary legislation which will follow enactment of the Bill. The form will be subject to Legislative Council supervision. A further amendment is that the powers of justices of the peace under section 31 have been deleted. Since judicial officers are in a better position to conduct hearings, the amendment will improve the safeguards for the interest of the patients concerned.

The amendment to clause 7(*c*) further underlines the view that the mentally handicapped should be dealt with separately from the mentally ill. The ad hoc group considers that persons suffering only from arrested or incompleted development of mind, that is the mentally handicapped, should not be liable to long-term detention in a mental hospital. The present amendment, spelling out the type of patients liable to be detained to which a detention order may apply, will ensure that those who are without aggressive or irresponsible conduct will not be liable to detention.

Sir, with these remarks, I beg to move.

Proposed amendments

Clause 2

That clause 2(*b*) be amended—

(*a*) In sub-paragraph (v) by deleting '(including mental impairment)' in the definition of 'mental disorder'; and

(*b*) by deleting sub-paragraph (vi).

Clause 4

That clause 4 be amended—

(*a*) In paragraph (*a*)—

(i) in new subsections (1) and (1B) by deleting', magistrate or justice of the peace' and substituting the following—

'or magistrate';

(ii) in new subsections (1A) by deleting '14' and substituting the following—

'7';

(*b*) by deleting paragraph (*c*) and substituting the following—

'(*c*) by deleting subsection (3) and substituting the following—

"(3) Where the patient has requested to see the District Judge or magistrate before such Judge or magistrate determines whether or not to make an order under subsection (1B)—

(*a*) the District Judge or magistrate shall not make the order until he has seen the patient; and

(*b*) a certificate by the registered medical practitioner who furnished the opinion for the purposes of subsection (1A) as to whether or not the patient has made such a request shall be sufficient evidence of the fact thereof.".".

Clause 7

That clause 7(*c*) be amended, by inserting after new subsection (4) the following—

'(5) This section—

(*a*) applies to a patient who suffers from mental illness or psychopathic disorder; and

(*b*) applies to a patient other than a patient referred to in paragraph (*a*) only where the 2 medical practitioners referred to in subsection (1) are, in addition to being of the opinion described in that subsection, also of the opinion that the patient is abnormally aggressive or that his conduct is seriously irresponsible.'.

Question on the amendments proposed, put and agreed to.

Question on clauses 2, 4 and 7, as amended, proposed, put and agreed to.

Clause 6

MRS. TAM: Sir, I move that clause 6 be amended as set out in the paper circulated under my name to Members. This amendment answers the criticism that the power of the Director of Social Welfare may be abused since the Bill empowers the director both to accept guardianship applications and to appoint himself as the guardian. The amendment retains the benefit of such an arrangement, in that the Director of Social Welfare is best placed to decide on the suitability of the nominated guardian. What it achieves is the assurance that the director will only act as the guardian of last resort in cases where the guardian named in the guardianship application is found to be not suitable.

A further amendment to clause 6 which allows the guardianship application to be amended with the consent of the Director of Social Welfare within 14 days prevents the director from consenting to substantial amendments. This will ensure that no change of substance is allowed, but inaccuracies such as typing or clerical errors may be corrected.

Sir, with these remarks, I beg to move.

Proposed amendment

Clause 6

That clause 6 be amended—

(*a*) In new section 33 by adding the following subsection—

'(6) Where a guardianship application names a person other than the Director of Social Welfare as the guardian and the Director determines not to accept that person as the guardian the Director may appoint himself to be the guardian and, if he does so, shall notify the applicant accordingly.';

(*b*) in new section 34—

(i) in subsection (1) by inserting after 'accepted by him' the following—

',or he appoints himself to be the guardian under section 33(6),';

(ii) in subsection (3) by inserting the following proviso—

'Provided that the Director shall not consent to an amendment which in his opinion has the effect of making a change of substance to any medical opinion.'.

Question on the amendment proposed, put and agreed to.

SECRETARY FOR HEALTH AND WELFARE: Sir, I move that the clause 6 be further amended as set out under my name in the paper circulated to Members, by deleting the words 'hospital by virtue of an application' and substituting the words 'mental hospital' in new section 35(4)(*a*). The power to transfer in this provision is applicable to a patient already liable to detention in a mental hospital. The reference to the method of application concerned is, therefore, unnecessary.

Proposed amendment

Clause 6

That clause 6 be amended, in new section 35(4)(*a*) by deleting 'hospital by virtue of an application' and substituting the following—

'mental hospital'.

Question on the amendment proposed, put and agreed to.

Question on clause 6, as amended, proposed, put and agreed to.

6.00 pm

HIS EXCELLENCY THE PRESIDENT: I must now interrupt the business of the Council. Since the Council is in Committee, the Council should resume and then adjourn.

CHIEF SECRETARY: Sir, with your consent, I move that Standing Order 8(2) be suspended so as to allow the Council's business this afternoon to be concluded.

Question proposed, put and agreed to.

Clause 22

MRS. TAM: Sir, I move that clause 22 be amended as set out in the paper circulated under my name to Members. This amendment gives effect to the ad hoc group recommendation that the mental health review tribunal should comprise a member who has knowledge and experience of social work. it recognises the fact that the social aspects of a case, such as a patient's family background, his living environment and its impact on the patient, have a bearing on the tribunal's decision.

Sir, with these remarks, I beg to move.

Proposed amendment

Clause 22

That clause 22 be amended, in the new section 59A—

(*a*) by inserting after new subsection (2)(*b*) the following—

'(*ba*) persons (referred to in this Part as 'the social work members') appointed by the Governor who have such experience and knowledge of social work as the Governor considers suitable.';

(*b*) in subsection (2)(*c*) by deleting 'social work,'

(*c*) in subsection (5)—

(i) by inserting after paragraph (*a*) the following—

'(*aa*) one or more shall be appointed from the social work members'; and

(ii) in paragraph (*b*) by deleting 'not medical members' and substituting the following—

'neither medical members nor social work members'.

(*d*) in subsection (6) by deleting '2' and substituting the following—

'3'; and

(*e*) by inserting after new subsection (8) the following—

'(9) The persons recommended to the Governor by the Director of Medical and Health Services under subsection (2)(*b*) shall be persons who, in the opinion of the Director, have relevant experience in psychiatry.'.

Question on the amendments proposed, put and agreed to.

Clause 22

SECRETARY FOR HEALTH AND WELFARE: Sir, I move that clause 22 be further amended as set out under my name in the paper circulated to Members. The purpose of this amendment is to allow the mental health review tribunal a degree of flexibility to hear an appeal earlier than the 12-month period stipulated in new section 59B(5) should special circumstances warrant such a necessity. Given this flexibility is no longer a requirement to enable the tribunal to postpone a hearing until the expiration of 12 months from the previous hearing as provided under new section 59G(2)(*a*), this section is accordingly deleted. Sir, I beg to move.

Proposed amendment

Clause 22

That clause 22 be amended—

(*a*) In new section 59B(5) by deleting 'No' and substituting the following—

'Except with the leave of the Tribunal, no';

(*b*) in new section 59G(2) by deleting paragraph (*a*).

Question on the amendments proposed, put and agreed to.

Question on clause 22, as amended, proposed, put and agreed to.

Clause 28

SECRETARY FOR HEALTH AND WELFARE: Sir, I move that clause 28 be amended as set out in the paper circulated to Members. This amendment refers to the term 'care and control' in new section 71A and 71B of the Bill. The present wording requires that the person who is believed to be suffering from mental disorder must be in need of both care and control before he can be taken to a place of

safety. This would preclude people who need care but not necessarily control from receiving the attention which they require in their own interests. The amendment rectifies this by making the provision applicable to persons requiring either care or control.

Sir, I beg to move.

Proposed amendment

Clause 28

That clause 28 be amended—

(*a*) In new section 71A(2)(*b*) by deleting 'care and control' and substituting the following—

'care or control';

(*b*) in new section 71B(1) by deleting 'care and control' and substituting the following—

'care or control'.

Question on the amendments proposed, put and agreed to.

MRS. TAM: Sir, I move that clause 28 be further amended as set out in the paper circulated under my name to Members. This amendment puts a greater restraint on the circumstances under which a police officer can exercise his power of removing a person to a place of safety, and emphasises that the relevant section does not confer upon any police officer a right to enter premises. A great deal of concern has been expressed about the possibility of abuse arising from the Bill's provision that 'if a police finds in any place a person who appears to him to be suffering from mental disorder...'. To provide better safeguard against any possibility of the police abuse, the amendment imposes greater discipline on the part of the police and replaces 'who appears to him to be' with 'whom he reasonably believes to be'.

The amendment also provides an assurance that the Bill will not open up an opportunity for police abuse of power through the confirmation that the Bill does not confer the right of entry to the police. This amendment hopefully will ease the mind of those who are concerned about the Bill's effect on police powers.

Sir, with these remarks, I beg to move.

Proposed amendment

Clause 28

That clause 28 be amended, in new section 71B—

(*a*) in subsection (1) by deleting 'who appears to him to be' and substituting the following—

'whom he reasonably believes to be';

(*b*) by adding the following subsection—

'(5) Nothing in subsection (1) shall confer upon any police officer a right to enter upon any premises.'.

Question on the amendments proposed, put and agreed to.

Question on clause 28, as amended, proposed, put and agreed to.

New clause 2A. Amendment of section 5.

New clause 29A. Substitution of 'Hong Kong' for 'the Colony'.

Clauses read the First time and ordered to be set down for Second Reading pursuant to Standing Order 46(6).

SECRETARY FOR HEALTH AND WELFARE: In accordance with Standing Order 46(6) I move that new clauses 2A and 29A as set out in the paper circulated to Members be read the Second time. Clause 2A amends section 5(2) of the principal Ordinance to remove the reference to the category of temporary patients which will not longer exist on the enactment of this Bill. Clause 29A is a technical amendment to substitute the word 'Hong Kong' for the word 'the Colony' wherever they occur. Sir, I beg to move.

Question proposed, put and agreed to.

Clauses read the Second time.

SECRETARY FOR HEALTH AND WELFARE: I move that new clauses 2A and 29A be added to the Bill.

Proposed addition

New clause 2A

That the Bill be amended, by inserting after clause 2 the following—

'Amendment of section 5.

2A. Section 5(2) of the principal Ordinance is amended by deleting from 'and the application' to 'during that period'.

New clause 29A

That the Bill be amended, by inserting after clause 29 the following—

'Substitution of "Hong Kong" for "the Colony".

29A. The principal Ordinance is amended in sections 9, 22, 23 and 44 by deleting "the Colony" wherever it occurs and substituting the following—

"Hong Kong".'.

Question on the addition of the new clauses proposed, put and agreed to.

New clause 27A

Clause read the First time and ordered to be set down for Second Reading pursuant to Standing Order 46(6).

MRS. TAM: Sir, in accordance with Standing Order 46(6) I move that new clause 27A as set out in the paper circulated to Members be read the Second time. This amendment deletes Justices of the Peace from the process of making detention orders, thus achieving the effect of involving only judicial officers, who have the experience and are, therefore, in a better position to conduct hearings.

Sir, with these remarks, I beg to move.

Question proposed, put and agreed to.

Clause read the Second time.

MRS. TAM: Sir, I move that new clause 27A be added to the Bill.

Proposed addition

New clause 27A

That the Bill be amended, by inserting after clause 27 the following—

'Amendment of section 71. **27A.** Section 71 of the principal Ordinance is amended by deleting "a magistrate and a justice of the peace" and substituting the following—

"a District Judge and a magistrate" '.

Question on the additon of the new clause proposed, put and agreed to.

TRADE UNIONS (AMENDMENT) BILL 1988

Clauses 1 to 8 were agreed to.

Council then resumed.

Third Reading of Bills

THE ATTORNEY GENERAL reported that the

INTERPRETATION AND GENERAL CLAUSES (AMENDMENT) BILL 1988

AUDIT (AMENDMENT) BILL 1988 and the

TRADE UNIONS (AMENDMENT) BILL 1988

had passed through Committee without amendment, and the

MENTAL HEALTH (AMENDMENT) BILL 1987

had passed through Committee with amendments. He moved the Third Reading of the Bills.

Question on the Bills proposed, put and agreed to.

Bills read the Third time and passed.

Private Bill

First Reading of Bill

RAINIER INTERNATIONAL BANK (TRANSFER OF HONG KONG UNDERTAKING) BILL 1988

Bill read the First time and ordered to be set down for Second Reading pursuant to Standing Order 41(3).

Second Reading of Bill

RAINIER INTERNATIONAL BANK (TRANSFER OF HONG KONG UNDERTAKING) BILL 1988

MR. DAVID LI moved the Second Reading of: 'A Bill to provide for the vesting in The Daiwa Bank, Limited of the Hong Kong undertaking of Rainier International Bank; and for other related purposes'.

He said: Sir, the Bill which I introduce today is, I believe, technical in nature and uncontroversial. I am pleased to report the Bill has been approved by the Government and has been advertised the requisite number of times in the Chinese and English press and in the Government Gazette. I, therefore, move that the Bill be read a Second time.

It is necessary to have this private Bill to assist implementation of a conditional sale and purchase agreement dated 27 April 1988 made between Rainier International Bank and The Daiwa Bank Limited for the acquisition by The Daiwa Bank Limited of the Hong Kong undertaking of Rainier International Bank's nine Hong Kong branches.

Under Hong Kong law, an agreement to sell a banking business would be extremely difficult to implement without enabling legislation. For example, the individual agreement of each of over 30 000 current and deposit account holders would be required. The Bill clarifies a number of such matters and affords certainty to the bank and its customers in Hong Kong.

Members may be reassured that no stamp duty will be saved by this Bill. Both Rainier International Bank and The Daiwa Bank Limited will ensure that the stamp duty position under this Bill shall be precisely the same as if no legislation had been passed.

Sir, I believe this Bill to be uncontroversial and welcome in that it shows Hong Kong to be the most responsible in affording certainty of operation to financial institutions and customers alike. Sir, I, therefore, move that debate on this Bill be adjourned.

Question on adjournment proposed, put and agreed to.

Adjournment and next sitting

HIS EXCELLENCY THE PRESIDENT: In accordance with Standing Orders I now adjourn the Council until 2.30 pm on Wednesday, 29 June 1988.

Adjourned accordingly at eleven minutes past Six 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.

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WRITTEN ANSWERS

Annex I

Written answer by the Secretary for Security to Dr. HO's supplementary question to Question 4

I am afraid it would have been very difficult to research all the 62 cases and we therefore asked the police to focus on the convictions which were set out in the appendix to that answer. This reveals that, of the 10 persons who were convicted in 1986 and 1987 for sexually abusing mentally handicapped women, only one was on the staff of a mental institution. He was sentenced in 1987 to nine months' imprisonment for unlawful sexual intercourse with a defective. The appendix shows that this sentence was at the higher end of a scale ranging from probation to 12 months, but was not particularly severe.

Although I think it might be risky to draw too many conclusions from such a small base, it does appear that very few sexual assaults are committed by staff of institutions which care for the mentally handicapped.

Annex II

Written answer by the Secretary for Security to Mr. LAI's supplementary question to Question 4

In the circumstances suggested by Mr. LAI the first step would be for a social worker from the Social Welfare Department to counsel the mentally handicapped girl and her parents to help them decide what to do about the pregnancy. Where necessary, psychological counselling would be arranged. If the girl decided to terminate her pregnancy, she would be referred to a government hospital or to the Family Planning Association. Section 47A of the Offences Against the Person Ordinance provides that a pregnancy may be terminated if two registered medical practitioners are of the opinion that (*a*) continuance of the pregnancy would involve risk to the life of the pregnant woman or risk of injury to her physical or mental health, greater than if the pregnancy were terminated; or (*b*) there is a substantial risk that, if the child were born, it would be seriously handicapped.

Section 47A also provides that where a woman has been sexually assaulted and has reported to the police within three months, a medical practitioner may presume that continuance of the pregnancy would involve risk of injury to her physical or mental health greater than if the pregnancy were terminated.

WRITTEN ANSWERS—*Continued*

If the girl decides to have her baby and to keep it, the Social Welfare Department will provide financial help, if necessary, and advice on how to look after the child. If the girl and her parents decide not to keep the baby, the baby may be eligible for adoption.

In cases where a mentally-handicapped girl is incapable of deciding whether or not her pregnancy should be terminated and has no responsible relative, the provisions of section 47A of the Offences Against the Person Ordinance described above would apply. The pregnancy can be terminated if two doctors believe that there is risk to the mother or the baby.

Annex III

Written answer by the Secretary for Health and Welfare to Dr. CHIU's supplementary question to Question 5

The Director of Medical and Health Services has confirmed that such referrals are indeed possible under the present system. Decisions on whether to refer are normally made by the attending physicians, having regard to factors such as convenience to patients, availability of the relevant specialty and the expertise of the specialist concerned. Furthermore, I understand that patients are at liberty to request such referrals if they so wish.

Annex IV

Written answer by the Chief Secretary to Mr. SZETO's supplementary question to Question 7

I undertook to let you have more information on the district boards' plans to discuss the draft Basic Law. The information is as follows:

(*a*) as of today, one district board (Islands) has discussed the draft Basic Law at its formal meeting, and seven district boards (Eastern, Kowloon City, Kwai Tsing, Sham Shui Po, Southern, Yau Tsim and Sha Tin) have held either working group meetings or informal meetings to discuss the draft;

(*b*) three district boards (Central and Western, Mong Kok and Tsuen Wan) have indicated that they would discuss the draft at formal meetings, and one district board (Sai Kung) has indicated that it would hold an informal meeting;

WRITTEN ANSWERS—*Continued*

(*c*) six district boards (Wong Tai Sin, Kwun Tong, North, Tai Po, Tuen Mun and Yuen Long) remain undecided; and

(*d*) only one district board (Wan Chai) has decided that it would not discuss the draft.

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