

**OFFICIAL RECORD OF PROCEEDINGS**

**Wednesday, 8 June 1994**

**The Council met at half-past Two o'clock**

**PRESENT**

THE PRESIDENT

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

THE CHIEF SECRETARY

THE HONOURABLE MRS ANSON CHAN, C.B.E., J.P.

THE FINANCIAL SECRETARY

THE HONOURABLE SIR NATHANIEL WILLIAM HAMISH MACLEOD, K.B.E., J.P.

THE ATTORNEY GENERAL

THE HONOURABLE JEREMY FELL MATHEWS, C.M.G., J.P.

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

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

THE HONOURABLE HUI YIN-FAT, O.B.E., J.P.

THE HONOURABLE MARTIN LEE CHU-MING, Q.C., J.P.

DR THE HONOURABLE DAVID LI KWOK-PO, O.B.E., LL.D., J.P.

THE HONOURABLE PANG CHUN-HOI, M.B.E.

THE HONOURABLE SZETO WAH

THE HONOURABLE ANDREW WONG WANG-FAT, O.B.E., J.P.

THE HONOURABLE EDWARD HO SING-TIN, O.B.E., J.P.

THE HONOURABLE MARTIN GILBERT BARROW, O.B.E., J.P.

THE HONOURABLE MRS PEGGY LAM, O.B.E., J.P.

THE HONOURABLE MRS MIRIAM LAU KIN-YEE, O.B.E., J.P.

THE HONOURABLE LAU WAH-SUM, O.B.E., J.P.

DR THE HONOURABLE LEONG CHE-HUNG, O.B.E., J.P.

THE HONOURABLE JAMES DAVID MCGREGOR, O.B.E., I.S.O., J.P.

THE HONOURABLE MRS ELSIE TU, C.B.E.

THE HONOURABLE PETER WONG HONG-YUEN, O.B.E., J.P.

THE HONOURABLE ALBERT CHAN WAI-YIP

THE HONOURABLE VINCENT CHENG HOI-CHUEN, O.B.E., J.P.

THE HONOURABLE MOSES CHENG MO-CHI

THE HONOURABLE MARVIN CHEUNG KIN-TUNG, O.B.E., J.P.

THE HONOURABLE CHEUNG MAN-KWONG

THE HONOURABLE CHIM PUI-CHUNG

THE HONOURABLE FREDERICK FUNG KIN-KEE

THE HONOURABLE TIMOTHY HA WING-HO, M.B.E., J.P.

THE HONOURABLE MICHAEL HO MUN-KA

DR THE HONOURABLE HUANG CHEN-YA

THE HONOURABLE SIMON IP SIK-ON, O.B.E., J.P.

DR THE HONOURABLE LAM KUI-CHUN

DR THE HONOURABLE CONRAD LAM KUI-SHING, J.P.

THE HONOURABLE LAU CHIN-SHEK

THE HONOURABLE EMILY LAU WAI-HING

THE HONOURABLE LEE WING-TAT

THE HONOURABLE ERIC LI KA-CHEUNG, J.P.

THE HONOURABLE FRED LI WAH-MING

THE HONOURABLE MAN SAI-CHEONG

THE HONOURABLE STEVEN POON KWOK-LIM

THE HONOURABLE HENRY TANG YING-YEN, J.P.

THE HONOURABLE TIK CHI-YUEN

THE HONOURABLE JAMES TO KUN-SUN

DR THE HONOURABLE SAMUEL WONG PING-WAI, M.B.E., J.P.

DR THE HONOURABLE YEUNG SUM

THE HONOURABLE HOWARD YOUNG, J.P.

THE HONOURABLE ZACHARY WONG WAI-YIN

DR THE HONOURABLE TANG SIU-TONG, J.P.

THE HONOURABLE CHRISTINE LOH KUNG-WAI

THE HONOURABLE ROGER LUK KOON-HOO

THE HONOURABLE ANNA WU HUNG-YUK

THE HONOURABLE ALFRED TSO SHIU-WAI

**ABSENT**

THE HONOURABLE NGAI SHIU-KIT, O.B.E., J.P.

THE HONOURABLE TAM YIU-CHUNG

THE HONOURABLE LAU WONG-FAT, O.B.E., J.P.

THE HONOURABLE RONALD JOSEPH ARCULLI, O.B.E., J.P.

REV THE HONOURABLE FUNG CHI-WOOD

DR THE HONOURABLE PHILIP WONG YU-HONG

THE HONOURABLE JAMES TIEN PEI-CHUN, O.B.E., J.P.

**IN ATTENDANCE**

MR MICHAEL LEUNG MAN-KIN, C.B.E., J.P.  
SECRETARY FOR EDUCATION AND MANPOWER

MR MICHAEL SUEN MING-YEUNG, J.P.  
SECRETARY FOR HOME AFFAIRS

MR ALISTAIR PETER ASPREY, C.B.E., A.E., J.P.  
SECRETARY FOR SECURITY

MRS ELIZABETH WONG CHIEN CHI-LIEN, I.S.O., J.P.  
SECRETARY FOR HEALTH AND WELFARE

MR CHAU TAK-HAY, J.P.  
SECRETARY FOR TRADE AND INDUSTRY

MR JAMES SO YIU-CHO, O.B.E., J.P.  
SECRETARY FOR RECREATION AND CULTURE

MR ANTHONY GORDON EASON, J.P.  
SECRETARY FOR PLANNING, ENVIRONMENT AND LANDS

MR MICHAEL DAVID CARTLAND, J.P.  
SECRETARY FOR FINANCIAL SERVICES

MR NICHOLAS NG WING-FUI, J.P.  
SECRETARY FOR CONSTITUTIONAL AFFAIRS

THE DEPUTY SECRETARY GENERAL  
MR LAW KAM-SANG

**Papers**

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

*Subject*

Subsidiary Legislation	<i>L.N. No.</i>
Gambling (Amendment) (No. 2) Regulation 1994 .....	319/94
Land Registration Fees (Amendment) Regulation 1994 .....	320/94
Land Registration (New Territories) Fees (Amendment) Regulation 1994 .....	321/94
Road Traffic (Registration and Licensing of Vehicles) (Amendment) (No. 3) Regulation 1994.....	322/94
Water Pollution Control (Sewerage) Regulation .....	323/94
Water Pollution Control (General) (Amendment) Regulation 1994 .....	324/94
Declaration of Urban Council Area Order 1994.....	325/94
Declaration of Regional Council Area Order 1994 .....	326/94
Declaration of Constituencies (Urban Council Area) Order 1994 .....	327/94
Declaration of Constituencies (Regional Council Area) Order 1994 .....	328/94
Declaration of Constituencies (Districts) (Amendment) Order 1994 .....	329/94
Declaration of Districts (Amendment) Order 1994 .....	330/94
Immigration (Amendment) (No. 2) Regulation 1994 .....	331/94
Marriage Reform (Fees) (Amendment) Regulation 1994 .....	332/94
Merchant Shipping (Engine Room Watch Ratings) (Amendment) Regulation 1994 .....	333/94

Merchant Shipping (Fees) (Amendment) (No. 2) Regulation 1994 .....	334/94
Merchant Shipping (Navigational Watch Ratings) (Amendment) Regulation 1994 .....	335/94
Merchant Shipping (Liability and Compensation for Oil Pollution) (Compulsory Insurance) (Amendment) Regulation 1994 .....	336/94
Merchant Shipping (Registration) (Fees and Charges) (Amendment) Regulation 1994 .....	337/94
Shipping and Port Control (Amendment) Regulation 1994 .....	338/94
Registration of Persons (Amendment) Regulation 1994 .....	339/94
Births Registration (Special Registers) Ordinance (Amendment of Fifth Schedule) Order 1994 .....	340/94
Census and Statistics (Annual Survey of External Factor Income Flows) Order .....	341/94
Deaths Registration (Special Registers) Ordinance (Amendment of Fourth Schedule) Order 1994 .....	342/94
Marriage Ordinance (Amendment of Second Schedule) Order 1994.....	343/94
Electoral Provisions (Election Petition) (Amendment) Rules 1994.....	344/94
Lands Tribunal Rules .....	345/94
Merchant Shipping (Certificates of Competency as A.B.) (Amendment) Rules 1994.....	346/94
Merchant Shipping (Certificates of Proficiency in Survival Craft) (Amendment) Rules 1994.....	347/94
Merchant Shipping (Safety) (Cargo Ship Safety Equipment Survey) Regulations (Amendment of Schedule 3) Notice 1994 .....	348/94

Merchant Shipping (Safety) (Minimum Safe Manning Certificate) Regulation (Amendment of Schedule 2) Notice 1994 .....	349/94
Specification of Public Office .....	350/94

#### Sessional Papers 1993-94

- No. 87 — Report of the Police Complaints Committee 1993
- No. 88 — Securities and Futures Commission Annual Report 1993-94

#### Address

#### Report of the Police Complaints Committee 1993

MR ANDREW WONG: Mr President, on behalf of the Police Complaints Committee (PCC), may I present the committee's annual report for 1993.

There had been a few changes of key personnel in the committee either during 1993 and shortly thereafter. In November 1993, the Honourable Rosanna WONG, OBE, JP stepped down from the chairmanship and was succeeded by the Honourable Denis CHANG, QC, JP. The Honourable Mrs Peggy LAM, OBE, JP and Honourable MAN Sai-cheong completed their duties as vice-chairmen while Mr Robert C TANG, QC, JP and Mrs Anita CHAN FOK Po-chun, JP completed their tenures as members. Dr the Honourable LAM Kui-shing, JP and myself are appointed as vice-chairmen while Dr John LO Siew-kiung, OBE, JP and Mr Benjamin WONG Pui-tong, JP are appointed as members. Mr Andrew SO Kwok-wing, OBE, JP succeeded Mr Arthur GARCIA as *ex officio* member in his capacity as Commissioner for Administrative Complaints.

On behalf of the committee, I would like to thank all the ex-members of the committee mentioned above including the former chairman, two former vice-chairmen and three former members for their devoted service and valuable contributions to the committee in the past years.

The committee is an independent body, appointed by the Governor, to monitor and review the investigations of complaints made by the public against the police. Investigations are carried out by the Complaints Against Police Office (CAPO) of the Royal Hong Kong Police Force. CAPO's reports, together with the relevant files, are examined by the committee, which is assisted by an independent secretariat. A case is finalized only after the investigation result has been endorsed by the committee.

Mr President, I shall now highlight some of the contents in the committee's report.

During the year under report, the committee has reviewed and endorsed a total of 3 520 complaint cases, embracing a total of 4 812 allegations. These compare with 3 102 and 4 146 respectively in 1992. Of all these, assault, overbearing manner/impoliteness and neglect of duty constituted the bulk of complaints, representing nearly 86.1% of the total complaints. Many complaints of the latter two categories were minor ones, some of which were dealt with by Informal Resolution. "Assault" still constituted the highest proportion of all complaints, that is, 1 654 or 49.0%. 91.2% of the assault complaints were subsequently withdrawn or classified as not pursuable.

With the support of an independent secretariat, the committee has been able to vet in detail each and every complaint case. Arising from these complaints, various forms of legal, disciplinary and internal actions have been taken and advice given against 234 police officers. For the Chinese version of the draft speech, the figure is on the low side. For it is about 160 but in fact it should be 234 police officers. In addition, the committee has proposed a number of reviews of, and changes to, police practices, procedures and instructions. It is hoped that the Commissioner of Police finds the committee's proposals useful in identifying and rectifying areas which lead or might lead to complaints.

The 3 520 complaints received in 1993 should be viewed in the context of at least 3.79 million potential police-public confrontation situations in the year. By confrontation they are not necessarily confrontation but potential confrontation situations. These included 1.21 million persons stopped and checked through the Enhanced Police Operational Nominal Index Computer System (EPONICS), and 2.58 million traffic summonses and tickets issued by the police. The difficult nature of the front-line duties of police work to protect the community should also be borne in mind.

Last year, my colleague the Honourable Mrs Peggy LAM, vice-chairman of the PCC, reported that the Administration had accepted in principle, a number of recommendations to strengthen the existing system. The making of PCC into a statutory body, the interviewing of witnesses, publicity programmes, and so on are being actively pursued. Chapter 7 reports on the progress of these issues.

Moreover, the Administration has recently agreed to the PCC interviewing witnesses of complaint cases. The study on withdrawn and not pursuable cases is also completed. Although strictly speaking it goes beyond the scope of this annual report, I am still delighted to see the positive progress. The chairman of the committee, the Honourable Denis CHANG, will discuss these issues in greater detail at the press conference later this afternoon.



Mr President, finally, on behalf of the committee, I would like to place on record our thanks and appreciation of the co-operation given to the committee by the Commissioner of Police, and in particular, his officers in CAPO.

## Oral Answers to Questions

### Appeal channels for illegal immigrants

1. MR HENRY TANG asked: *In view of the controversy over the recent appeal to the Governor to allow a six-year-old illegal child immigrant to stay in Hong Kong, will the Government inform this Council:*

- (a) of the appeal channels available to an illegal immigrant who is the subject of a removal order;*
- (b) under what circumstances was the authority for final decision delegated from the Governor to the Secretary for Security; and*
- (c) whether consideration would be given to a review of the appeal system?*

SECRETARY FOR SECURITY: Mr President, as regards part (a) of the question, an illegal immigrant, against whom a removal order is made, may lodge a statutory appeal to the Immigration Tribunal under section 53A of the Immigration Ordinance. The Immigration Tribunal is an independent body comprising a panel of lay members, whose task is to review decisions made by the Director of Immigration to remove an illegal immigrant from Hong Kong. If an illegal immigrant still feels aggrieved after the Immigration Tribunal has reached a decision, he may seek judicial review of the tribunal's decision, and/or of the Director of Immigration's decision to issue the removal order.

In addition, an illegal immigrant may lodge a non-statutory appeal with the Governor, to remain in Hong Kong on humanitarian grounds. Since 1980, these appeals have been delegated to the Secretary for Security to decide and reply on the Governor's behalf.

Finally, there exists a review mechanism within the Immigration Department to reconsider any case in the light of any material change in circumstances after a removal order has been issued.

As regards part (b) of the question, under Colonial Regulation 168, any person in Hong Kong has the right to make representations to the Governor on matters of a public or private nature. These include an appeal to the Governor against a departmental decision, so that, in the case of a removal order, an illegal immigrant can appeal to the Governor against the decision of the Director of Immigration.

In March 1980, the then Governor instructed that the then statutory requirement for him to consider and sign all removal orders personally should be reviewed. It was decided, in October 1980, to transfer the responsibility for the consideration and signing of removal orders from the Governor to the Director, or Deputy Director, of Immigration.

With this change in procedure, the Immigration Ordinance would have allowed appeals to the Governor in Council against the Director, or Deputy Director, of Immigration's decision. To prevent overburdening the Executive Council, section 53(8)(b) was added to the Immigration Ordinance specifically to prevent any appeal to the Governor in Council against decisions by the Director, or Deputy Director, of Immigration regarding removal orders. In addition, non-statutory appeals to the Governor were delegated to the Secretary for Security under Colonial Regulation 168.

As regards part (c) of the question, the appeal system was reviewed earlier this year. We concluded that it was not necessary to change the procedures, because anyone against whom a removal order has been made, can lodge a statutory appeal with the Immigration Tribunal and, subsequently, apply for judicial review. In addition, an illegal immigrant can lodge a non-statutory appeal for consideration on humanitarian grounds. We believe there already exist adequate avenues of appeal against decisions of the Director of Immigration to issue removal orders.

MR HENRY TANG (in Cantonese): *Mr President, it was disclosed by Mr Governor that a total of 2 200 illegal child immigrants had been repatriated to China since 1991. Will the Administration inform this Council whether amnesty had been granted to this group of children so that they could remain with their families in Hong Kong on humanitarian grounds since 1991? If so, how many of them; and if not, has the Administration totally disregarded the humanitarian consideration? Or under what circumstances will the Administration consider granting such an amnesty? The case involved the boy HAI Ho-tak is an exceptional one. Will the Administration consider on humanitarian grounds allowing him to come to Hong Kong three years earlier than what the usual practice prescribes because, anyhow, it is provided in the Basic Law that such repatriated children may become Hong Kong permanent residents after 1997?*

PRESIDENT: There are two questions there, Secretary.

SECRETARY FOR SECURITY: Mr President, I do not have details specifically of children illegal immigrants who have been allowed to remain in Hong Kong, but what I can say is that in the last three years the Director of Immigration has, on humanitarian or compassionate grounds, allowed some 260 illegal immigrants to remain in Hong Kong. The Immigration Tribunal has considered

some 860 appeals against the Director of Immigration's decision and has allowed 83 of them, and I have considered about 170 appeals and allowed four of them. So in total about 350 illegal immigrants, during the past three years, have been allowed to remain on compassionate or humanitarian grounds. I do not know how many of these would have been children, but I would guess that the great majority of them would have been either wives or children of Hong Kong residents.

As regards the second part of the question, we do not consider that the six-year-old child to whom Mr TANG referred is an exceptional case. We have had thousands of similar cases and we do not consider that there was anything so exceptional about this case that an exception should be made to the general policy.

MISS CHRISTINE LOH: *Mr President, in section three of the answer, the Secretary tells us that there has been a review of the appeals procedure just earlier on this year. I wonder, with this case of this little boy, HAI Ho-tak, whether the Government intends to review this again since the appeal to the Governor, although the Governor can delegate the power, is actually not an appeal to the Governor at all?*

SECRETARY FOR SECURITY: Mr President, the answer is no, but I should perhaps add that there are very clear guidelines laid down by the Governor as to how appeals to him, of which there would be many thousands a year covering a far greater area than just immigration cases, should be dealt with. If it is an appeal against the Director of Immigration's decision, it would normally be decided and dealt with by me. If there was a subsequent appeal against my decision, that would be referred upwards to the Chief Secretary and so on. Also, if a petitioner raised a very important point of policy or principle, that probably would be referred up to the Governor in any case and I should say that although the Governor does not decide all these cases personally, we do forward a copy of our reply and our decision on all cases to the Governor so he does become aware of them.

MR MARTIN LEE: *Mr President, will the Administration inform this Council whether there is any quota for illegal immigrants to be allowed to remain in Hong Kong every year on humanitarian grounds?*

SECRETARY FOR SECURITY: Mr President, no.

MRS ELSIE TU: *Mr President, since all appeals for this six-year-old child to remain with his parents were turned down, can the Secretary specify what grounds of appeal would have a chance of success and what is the purpose of the*

*public being told that they can appeal to the Governor, when in fact the Governor admits he never sees the cases?*

SECRETARY FOR SECURITY: Mr President, the policy is that we would allow someone to remain where there were exceptionally strong humanitarian or compassionate reasons. These might, for example, relate to the medical condition of the husband, the wife or the children or there may be other extenuating circumstances. But clearly, if the policy which I believe is right and which is generally supported in the community is to remain, these reasons would have to be exceptional. They have to be reasons that do not apply to all or the great majority of the illegal immigrants coming into Hong Kong.

MR JIMMY MCGREGOR: *Mr President, can the Secretary estimate the number of children living in China at present who have at least one parent living in Hong Kong, as a Hong Kong resident, and with a claim therefore to enter Hong Kong; and how will these children be admitted as immigrants in future?*

SECRETARY FOR SECURITY: Mr President, I would caution that any estimates that I give are very rough. The information we have to work on in making these estimates is imprecise and I certainly would not like to be held to the accuracy of these estimates, but we believe that there are probably over 200 000 children in China who have one parent at least resident in Hong Kong. Not all of these will have the right of abode in Hong Kong after 1997, because that right is constrained in the Basic Law. We believe that somewhere between 75 000 and 100 000 of these children will have right of abode in Hong Kong after 1997, that at least was the best estimate we could make a few years ago. We would expect that a large number of these will come into Hong Kong under the one-way quota which was raised recently from 75 a day to 105 a day, specifically to allow the entry of people who will have right of abode after 1997, to be phased in in the next few years.

### **Piracy within Hong Kong waters**

2. MR EDWARD HO asked: *Will the Government inform this Council:*

- (a) of the number of piracy incidents within Hong Kong waters in the past three years;*
- (b) whether the pirates were from territories outside Hong Kong; and*
- (c) of the measures that are being taken or would be taken to stop these incidents?*

SECRETARY FOR SECURITY: Mr President,

- (a) By definition, piracy cannot occur within territorial waters, so the answer to the first part of the question is none. The number of robberies at sea within Hong Kong waters in the past three years is as follows:

<i>1991</i>	<i>1992</i>	<i>1993</i>	<i>1994 (Jan-May)</i>
10	4	18	3

- (b) We are not able to determine with any certainty where those who committed these robberies came from, since no arrests have been made. However, in the majority of cases the victims reported that the culprits spoke with a mainland accent.
- (c) Within Hong Kong waters, any unlawful act is handled by the police. Special patrols by police launches are mounted every day in waters which are assessed as likely crime areas. Where necessary officers from the Small Boat Unit assist in the interception of suspicious boats. In addition, police have liaison with the Hong Kong and Kowloon Cargo and Tugboats Association to publicize preventative measures which boat owners and operators can take to minimize the risk of being robbed. Since last year a total of 58 mainland residents have been prosecuted for theft and possession of instruments fit for an unlawful purpose.

MR EDWARD HO: *Mr President, I would first like to clarify that the original words I used were "robberies at sea" and I was advised by the Administration that "piracy" was a more appropriate word. (Laughter)*

*Mr President, referring to item (b) of the Secretary's reply to my question, he mentioned that no arrests have been made for robberies at sea and we notice that there were quite a number over the years. Will he inform this Council whether this means that police actions in this area have not been effective and if so, how can that be improved?*

SECRETARY FOR SECURITY: Mr President, I am afraid Mr HO was badly advised, he was not advised by me. *(Laughter)*

It is, of course, only speculation. But as I indicated in the second part of the answer, the suspicion is that many of those committing these crimes were from China and I would speculate that probably most of them left Hong Kong waters very quickly, and returned to China and therefore were outside the jurisdiction and the police could not make any arrests. I think that police effectiveness in this area really has to be judged in terms of prevention as much

as of arrests made after the event, and to put the figures which I have given in context, in recent years the average number of robberies per day in Hong Kong is about 18. So, in the year where we had the largest number of robberies at sea, which was last year, that represents merely one day of robberies occurring throughout the territory. So I believe that the police have been reasonably effective in preventing crimes in general, and robberies in particular at sea and as I have said, they do have patrols and other measures which enable them to exercise, I think, effective crime prevention at sea.

DR LAM KUI-CHUN (in Cantonese): *Mr President, in paragraph (b) of the Secretary's reply, it is said that, in the majority of cases, the culprits spoke with a mainland accent. Will the Government furnish this Council with further information as to how many culprits donned of Chinese military or public security uniforms for the period from 1991 to May this year?*

SECRETARY FOR SECURITY: Mr President, I believe that in all these cases, that is, in all the cases for which I have given figures, the police have no reason to believe in any of these cases that those who committed the crimes were members of the security forces. I do not think any of them were reported to be in uniform but as I have said, no arrests have been made and we cannot say for certain who the people committing these crimes were.

MR CHIM PUI-CHUNG (in Cantonese): *Mr President, the Secretary said in his reply that there were in total 35 cases being reported to the police. I believe that there may be many unreported cases. In view of our proximity to Chinese waters, does the Government see it necessary to seek better communication with Chinese side so that we may be more effective in combating such kind of crimes?*

SECRETARY FOR SECURITY: Mr President, we have very effective liaison, I think, with China in relation to crime. This liaison occurs at many levels as I have explained many times in this Council and it has developed considerably in recent years. When there is any reason or cause to take up these crimes or any other crimes with the Chinese authorities we do so and we believe that we have an effective system for doing so.

MR MARTIN LEE: *Mr President, in the answer where the Secretary said that no arrests were made, could he please inform this Council whether no arrests were made because the culprits had already disappeared from Hong Kong waters when the police arrived or whether they were in fact intercepted by the police but somehow were allowed to leave? And in the latter case, perhaps he could tell us why.*

SECRETARY FOR SECURITY: Mr President, it was certainly not the latter case. As I indicated in answer to a previous supplementary, we can only guess and speculate who these people were and where they came from, but the best guess must be that they left Hong Kong waters very soon after committing the crime and before the police arrived on the scene.

MR WONG WAI-YIN (in Cantonese): *Mr President, the Secretary mentioned in paragraph (c) of his main reply that "special patrols by Police launches are mounted every day in waters which are assessed likely crime areas". Will the Secretary inform us where the areas which are assessed as being likely crime areas are; on what criteria they are assessed to be more prone to piracy; and whether Chinese public security forces have been asked to step up their patrols in waters where piracy was reported?*

SECRETARY FOR SECURITY: Mr President, in my answer I was talking about areas within Hong Kong waters which are under our jurisdiction. It is difficult to be entirely precise about this. Obviously the assessment is made largely on reports of where crimes have taken place in the past. Most of the robberies which have been reported over the last few years have taken place either within the harbour or within the western waters of Hong Kong.

MRS SELINA CHOW (in Cantonese): *Mr President, the Secretary has just mentioned that we have some liaison with the Chinese authorities. Will the Government inform this Council precisely what sort of China-Hong Kong co-operation plans are in place to tackle such cross-border criminal activities at sea and deter such crimes or arrest the culprits?*

SECRETARY FOR SECURITY: Mr President, the police have a very regular liaison with their counterparts in China and in Guangdong, in particular, at several levels as I have explained, and these meetings and the co-operation between them relate mainly to cross-border crime of all types. It involves the exchange of information and intelligence, the following up of individual criminals if they can be identified and the co-operation in terms of measures which can be taken by both sides to prevent criminals crossing the border and committing crimes in one territory from the other, whether these crossings take place on land or at sea. So, there is very regular liaison and co-operation on these matters.

PRESIDENT: Not answered, Mrs CHOW?

MRS SELINA CHOW (in Cantonese): *Mr President, what I am asking are the specific measures or methods adopted, not a series of general measures. Should*

*the Secretary be unable to give me an answer off hand, will he provide a written reply?*

SECRETARY FOR SECURITY: Mr President, I cannot really give specific measures without relating it to a specific crime and here we are talking in general terms about a very large number of crimes.

MR EDWARD HO: *Mr President, will the Secretary inform this Council how many cases of robberies at sea involved either the threat or the use of firearms? If this is a dominant situation, what preventive measures can boat owners take as referred to in the Secretary's last paragraph in reply to my question?*

SECRETARY FOR SECURITY: Mr President, use of firearms or the threat of firearms is certainly not unknown but I would not say it is dominant. I understand that of the incidents that I have mentioned, there were two cases in which witnesses alleged that they were threatened with firearms. In both cases it is believed that these were shotguns, but those are the only cases that we are aware of so I do not think it is possible to say that the use of firearms is very dominant.

Clearly what the police do in advising boat owners is to really advise them what steps they should take, how they should report, the need to report quickly and the sort of circumstances in which they might be making themselves vulnerable to attack, the sort of circumstances they should try to avoid.

### **Plagiarism in tertiary institutions**

3. MISS EMILY LAU asked (in Cantonese): *Regarding the conviction at the High Court of a professor of the Faculty of Medicine of the University of Hong Kong who was adjudged sometime ago in the High Court to have plagiarized the research materials of his colleague, does the Government know:*

- (a) whether internal investigation had been conducted by the University of Hong Kong; if so, when it is completed and whether any difficulties have been encountered;*
- (b) whether the University of Hong Kong will take any disciplinary actions against the professor apart from the court verdict; and*
- (c) whether plagiarism is commonplace among the tertiary institutions in Hong Kong?*



SECRETARY FOR EDUCATION AND MANPOWER: Mr President, the case referred to in the question is a civil suit between three academic staff in the Department of Community Medicine of the University of Hong Kong. The defendant of the case, a Reader at the University, lost a civil suit for infringement of copyright and misuse of confidential information.

The Administration is aware that the university has instigated an internal investigation regarding the case immediately following the judgement of the Court of Appeal. The investigation is still continuing and the university is waiting for the outcome of the investigation before considering whether any further action should be taken.

Regarding the last part of the question, the Administration is aware that tertiary institutions have procedures and guidelines to deal with internal disciplinary issues such as allegations of plagiarism. The Administration has also been informed by the institutions that plagiarism is not commonplace in Hong Kong.

MISS EMILY LAU (in Cantonese): *Mr President, the Government said that the University of Hong Kong had started an internal investigation "immediately" following the judgement of the Court of Appeal. Will the Government inform this Council how many months this investigation has taken? Why has it not been concluded and has the investigation encountered difficulties? Besides, the Government said in its reply that "the Administration has also been informed by the institutions that plagiarism is not commonplace". In other words, it does exist, though not extensively! Will the Government inform this Council how many cases have been reported and what actions have been taken against the plagiarists?*

SECRETARY FOR EDUCATION AND MANPOWER: Mr President, on the first part of the question, the university conducted its internal investigation soon after the decision of the Court of Appeal. I do not know precisely the exact timetable but this is a matter which I can find out from the university if Members so wish.

On the second part of the question, we were advised by the institutions concerned that plagiarism is not commonplace. Clearly we have not yet got any further details concerning the number of cases that might have appeared in the past about this particular practice. Again if Members so wish, we need time to find out more from the institutions concerned.

PRESIDENT: Yes, Miss LAU?

MISS EMILY LAU (in Cantonese): *Mr President, may I ask the Government to reply to this Council two points at a later date? The first point has to do with the question of "time", that is, the Government might have been misled to think that the investigation was conducted "immediately". Actually when was the investigation conducted? How many months has it taken and when will the outcome be available? The second point has to do with the question of "figures" in relation to the total number of such plagiarism cases and what disciplinary actions these people had been taken against?*

SECRETARY FOR EDUCATION AND MANPOWER: Mr President, we certainly need time to find out more from the institutions concerned. I will do so in writing. (Annex I)

MR CHEUNG MAN-KWONG (in Cantonese): *Mr President, plagiarism of other people's academic research in universities is an infringement upon intellectual property. It is also against an educator's professional ethics. Take the case mentioned in the main question as an example. In this case the Court found the Reader in question guilty as charged. Will the Government inform this Council whether the seven subsidized tertiary institutions in the territory "will certainly" discipline persons involved in such kind of practice after the Court has found them guilty, so as to maintain academic integrity and dispel any misconceived belief that a university enjoys autonomy to the extent that the decision of the Court could be overridden, or indeed the decision of the Court could be disregarded?*

PRESIDENT: What is the question, Mr CHEUNG?

MR CHEUNG MAN-KWONG (in Cantonese): *Mr President, my question is, once the Court has found that a charge of plagiarism is substantiated, is it true that all the seven subsidized tertiary institutions "will certainly" discipline the persons in question if they are their staff, in the light of the decision of the Court?*

SECRETARY FOR EDUCATION AND MANPOWER: Mr President, I thought that my main reply had made it clear this is a civil case, not a criminal case. Secondly, the University of Hong Kong in which this case appeared is investigating. There is no question of considering other institutions not involved in this case for examination.

MR HENRY TANG: *Mr President, I would like the Government to confirm that infringement of copyright is not a criminal offence, and if it is not a*

*criminal offence does the Government have any plans to make it a criminal offence and if it already is, why is this case not prosecuted in a court?*

PRESIDENT: Secretary, are you able to answer?

SECRETARY FOR EDUCATION AND MANPOWER: Mr President, this really goes far beyond my particular portfolio. I think that the Government does have policies on copyright protection. I will refer it to the appropriate Secretary to deal with this case.

MR JIMMY MCGREGOR: *Mr President, can the Secretary advise whether plagiarism of research material in the medical profession could be considered professional misconduct with possible penalties applied by the Medical Council? If the answer is in the affirmative, will such action be considered in respect of the case in question?*

SECRETARY FOR EDUCATION AND MANPOWER: Mr President, I think that paragraph (2) of my reply probably covers the point raised by Mr MCGREGOR in that if professional misconduct were found to be the case then the relevant council will take their considerations into account on this particular case.

DR CONRAD LAM (in Cantonese): *Mr President, in order that the universities in Hong Kong will take note of such an immoral and dishonest practice of plagiarism and make an effort to reduce its occurrence, will the Government cut back on the allocation of research funds for any departments found to have such a practice? Since plagiarism saves time and effort, there should be no reason to allocate the same amount of fund to such departments.*

SECRETARY FOR EDUCATION AND MANPOWER: Mr President, I would not wish to jump to conclusions when an investigation is going on in the university on this particular case. I think it would be quite unwise to do so.

MR ANDREW WONG (in Cantonese): *Mr President, can the Government confirm that disciplinary action taken by a university is a matter within the scope of its autonomy, and it is not a matter for the Government, nor the Legislative Council to interfere with?*

SECRETARY FOR EDUCATION AND MANPOWER: Mr President, I confirm that this is a matter for the institutions concerned under the ordinances

and there are adequate powers and duties within the ordinances to govern these cases by the institutions themselves without government interference.

MR ALBERT CHAN (in Cantonese): *Mr President, can the Government confirm that as the subsidies to the universities are provided entirely by the Government, or indeed the taxpayers, the Government is duty-bound to monitor how the resources granted by the taxpayers to the institutions are spent?*

SECRETARY FOR EDUCATION AND MANPOWER: Mr President, again I am afraid Members are jumping to conclusions. There is no indication of any misuse of funds provided by the taxpayer. If there were the Government would certainly take action to investigate.

MISS EMILY LAU (in Cantonese): *Mr President, can the Government promise this Council that a report will be submitted to this Council for Members' perusal as soon as the investigation is completed?*

SECRETARY FOR EDUCATION AND MANPOWER: Mr President, I will pass on this request to the university for consideration.

### **Appointing members to the representative government**

4. MRS PEGGY LAM asked (in Cantonese): *Will the Government inform this Council of the following:*

- (a) *when appointing members of the various tiers of the representative government and advisory bodies, whether the Administration has vetted the integrity and moral character and integrity of those to be appointed, including whether or not they are associated with triads;*
- (b) *whether the Administration would continue to monitor their integrity and moral character during their term of office; and*
- (c) *if after their appointment it is found that they have become associated with triads, whether the Administration would allow them to remain in office until their term expires and what action would the Administration take?*

SECRETARY FOR HOME AFFAIRS: Mr President,

- (a) In appointing persons to various tiers of representative government and advisory bodies concerned. However, other factors such as

their expertise, calibre and integrity are also taken into account. Checks for appointees to various tiers of representative government and those advisory bodies having regular access to classified material are made against the ICAC and police records in respect of convictions, including those relating to triads.

- (b) As we do not vet the integrity and moral character of appointees, the need for active monitoring in these respects does not arise. However, if there are complaints or allegations concerning the moral character and integrity of such appointees, these will be investigated and follow-up action will be taken, as appropriate.
- (c) The Societies Ordinance makes very clear provisions for indictment of offences in connection with triad activities, but “association with triads” is not one of them and it is not in itself an offence. The question of conviction or removal from office as a result of “association with triads”.

MRS PEGGY LAM (in Cantonese): *Mr President, in paragraph (b) of the Secretary's reply, he mentioned that "if there are serious complaints or allegations concerning the moral character and integrity of such appointees, these will be investigated". Will the Secretary inform us whether such complaints have ever been received in the past three years and if the answer is in the affirmative, what are the results of the following investigations?*

SECRETARY FOR HOME AFFAIRS (in Cantonese): Mr President, the Government has not received any complaints of this nature in the past three years.

MR JAMES TO (in Cantonese): *Mr President, it is stipulated in a number of existing local licensing conditions, for example, those in respect of liquor licences and arms licences, that vetting shall be made to determine whether an applicant is a fit and proper person. The vetting includes checks made against whether an applicant has criminal background. And relevant information is facilitated by the Criminal Intelligence Bureau to determine whether the applicant is likely to have been associated with triad activities or with organized crimes. Will the Secretary inform us whether less stringent vetting criteria are adopted when it comes to appointment of members to various tiers of representative government (including the Executive and Legislative Councils) or to advisory bodies, in comparison with the vetting criteria in respect of applicants for liquor licences and arms licences?*

SECRETARY FOR HOME AFFAIRS (in Cantonese): Mr President, I have made quite clear in paragraph (a) of my main reply that “our main

consideration is their suitability having regard to the work of the bodies concerned”, be they councils or advisory bodies. Having said that, it is imperative that the appointing authority must be knowledgeable about the appointees’ expertise, calibre and integrity. However, when it comes to verification of their identity and check against any criminal records, our main concern is about whether or not they have criminal records. Perhaps the Secretary for Security may supplement my reply by elaborating on other relevant aspects.

SECRETARY FOR SECURITY: Mr President, I would not want to draw too many comparisons between people being appointed to, for example, the Legislative Council and people taking out liquor licences, but in general terms the considerations in the Government’s mind would be essentially the same. We would not want to have on those bodies or with those licences people who were involved in criminal activities. Having said that, I would caution against vague phrases like “associated with triads” or “connected with triads”. We do need to avoid guilt by association, guilt by allegation, guilt by innuendo. I dare say that all of us, at one time or another, have perhaps unwittingly been associated with triad members and we cannot have guilt based on that sort of association.

MR JAMES TO (in Cantonese): *Mr President, I would like to follow up the reply furnished by the Secretary for Security. What are the ways and means employed by the Government to steer clear of appointing people who were once closely associated with triad societies or with criminal syndicates to the various tiers of representative government and advisory bodies, on top of checks made against records of convictions (which certainly are clearly recorded and can be easily checked)?*

SECRETARY FOR SECURITY: Mr President, I think the answer I have just given really covers that. As I said, I would caution against use of these vague phrases such as “association with” which really can cover almost anything, from a purely innocent handshake of someone whose background one does not know to active involvement in criminal activities. Clearly in the latter case, yes, we would try to avoid the appointment of such a person.

MR JAMES TO (in Cantonese): *Mr President, the Secretary for Security seems to suggest in his reply that he would only “avoid” such appointment as far as possible, but I am actually asking how to “avoid” such appointment. Is it sufficient just to check whether they have criminal records?*

SECRETARY FOR SECURITY: Mr President, as my colleague said in his main answer, we do take into account integrity. If there were substantiated complaints or allegations which led to serious questioning of somebody’s

integrity, they would be taken into account. I think that is very clear from the main answer.

### **Hong Kong Special Administrative Region passport**

5. MR ERIC LI asked (in Cantonese): *Will the Government inform this Council:*

- (a) *whether measures have been adopted to ensure that the Hong Kong Special Administrative Region Passports obtained by current Hong Kong permanent residents after 1 July 1997 will be recognized and accepted internationally;*
- (b) *if so, what the detailed contents of these measures are; and*
- (c) *when will the relevant measures be implemented and what will be the expenditure involved?*

SECRETARY FOR SECURITY: Mr President, as regards part (a) of the question, we have put proposals to the Chinese through the Joint Liaison Group (JLG) on what steps should be taken to ensure that the Hong Kong Special Administrative Region (SAR) passport will be recognized and accepted internationally.

In August 1992, we put forward proposals to the Chinese to enable holders of the Hong Kong SAR passport to enjoy a high degree of visa-free travel. We are now discussing these proposals in the JLG.

In July 1993, we put forward proposals to the Chinese on eligibility for Hong Kong SAR travel documents, including the Hong Kong SAR passport, and on details of the documents and arrangements for their issue. We have not yet had any discussion with the Chinese on these proposals, but we hope to start such discussions in the near future.

As regards part (b) of the question, as JLG discussions are confidential, I cannot, at this stage, go into greater detail on the content of our proposals.

As regards part (c) of the question, we hope that we will be able to come to an early agreement on arrangements for the issue of the Hong Kong SAR passport and other travel documents. This will, in turn, enable negotiations to take place with third countries on visa-free travel for Hong Kong SAR passport holders. At this preliminary stage, we do not have sufficient details to enable us to calculate the expenditure involved.

MR ERIC LI (in Cantonese): *Mr President, there are only 3 more years left for the transition of the BN(O) and the BDTC passports into the Hong Kong SAR passports before 1997. Many people both in Hong Kong and overseas held that urgent actions must be taken to deal with matters such as those concerning the relevant procedures, method of application as well as active promotion for such passports abroad. Failing to do so, a vacuum or chaos over the recognition of these passports among foreign countries may ensure, and the freedom of movement, so highly treasured by the people in Hong Kong, will be seriously undermined. In order to boost other countries' confidence in the Hong Kong SAR passports, will the Government ask the British Government to take the lead in announcing that Hong Kong passport holders will be able to enjoy visa-free access to the United Kingdom after 1997?*

SECRETARY FOR SECURITY: Mr President, we, I think, had a debate on this at some length this year on 2 February, and as I said then, we have in fact already agreed in the JLG some arrangements for the transition which will, I believe, avoid a vacuum occurring on 1 July 1997.

BN(O) passports which are now being issued will have a validity of 10 years and will therefore continue well beyond 1997 and so indeed will Hong Kong Certificates of Identity (CI). People can have travel documents issued before 1997, which can last up to 10 years beyond that date. So there is no question of all travel documents suddenly becoming invalid on 1 July 1997. We are definitely not going to have that kind of vacuum.

Having said that, I do as I said in that debate in February, agree that this is an important and an urgent matter which we do need to try to sort out with the Chinese in the JLG as soon as possible. We have put forward proposals to that end. We have had some discussions and we hope to have further discussions. It is, I think, an area, particularly in the case of visa-free travel, where the joint involvement of the Chinese and of the British Government is absolutely essential if any substantial progress is to be made. It is really not possible for one side alone to resolve this problem. The BN(O) passport is a British document and clearly the British Government must have a role. The Hong Kong SAR passport will be a Chinese document and the Chinese Government must be involved because inevitably when one comes to discussions with other countries about visa-free access, the questions of returnability and of reciprocity come up and these must be, can only be, answered by the sovereign power who after 1997 will be China.

PRESIDENT: Not answered, Mr LI?

MR ERIC LI (in Cantonese): *Mr President, it is certainly not a matter for China when it comes to the United Kingdom's acceptance of the Hong Kong SAR passport because by that time the permanent residents of Hong Kong will no*



*doubt enjoy the right of freedom of movement in and out of China. What I wish to know is the United Kingdom's attitude towards the passports in question (the United Kingdom's attitude towards such passports has nothing to do with the JLG meetings, I presume) and whether the Government has ever put forward the request as I mentioned to the United Kingdom.*

SECRETARY FOR SECURITY: Mr President, no, not at this stage. I am sure that the British Government will consider sympathetically the case for entry of Hong Kong SAR passport holders but they cannot, nor can any other government, consider this question until they know details of who is eligible for these passports and what is their status in Hong Kong. In particular, are they returnable to Hong Kong? No government without assurances on these points is going to make any commitment about visa-free travel.

MR MARTIN BARROW: *Mr President, the Secretary will recall that it's only two years since Hong Kong itself uplifted an extraordinary range of outdated visa impediments covering certain visitors to Hong Kong. Could he advise how he intends to ensure that in pressing for access for Hong Kong people overseas, he will avoid pressures for reciprocal steps regarding visitors coming to Hong Kong, if visa-free access for Hong Kong people are not initially agreed in certain cases?*

PRESIDENT: The original question went to the SAR passport, Mr BARROW. Does your question go to that as well?

MR MARTIN BARROW: *SAR passport and other passports.*

PRESIDENT: I do not think your question really goes to the main question and answer which deals with the status of the SAR passport. If you would like to rephrase your question you are welcome to try.

MR MARTIN BARROW: *Could the Secretary in all his negotiations ensure that nothing is done which hinders visitors coming to Hong Kong on whatever basis?*

SECRETARY FOR SECURITY: Mr President, I think that what I would say is this; that when we come to consider who we will allow to have visa-free access into Hong Kong, we do of course take into account reciprocity. But that is not by any means the only factor we take into account. We do, at present, accord visa-free access into Hong Kong for visitors from many countries who do not reciprocate with visa-free access for Hong Kong passport holders. I do not see that there is likely to be any change in that policy in the next few years.

DR LEONG CHE-HUNG: *Thank you Mr President. In answering the Honourable Eric LI's supplementary question, the Secretary went to lengths to confirm that the BN(O) and Hong Kong CI would have validity of 10 years. But can the Government inform this Council whether Hong Kong or the United Kingdom Government have actually negotiated with the Chinese Government to ensure that the BN(O) passport and the Hong Kong CI will enjoy the same status as the SAR passport in relation to:*

- (1) entry and residence in Hong Kong after 1997; and*
- (2) recognition and acceptability on an international basis after 1997 when other countries have accepted the Hong Kong SAR passport?*

SECRETARY FOR SECURITY: Mr President, as regards the first part of the question, entry and residence in Hong Kong, the answer is in general terms yes. We have agreed with the Chinese that there will be an endorsement in BN(O) passports and in Hong Kong CIs confirming the holder's right of abode in Hong Kong, so I think that that aspect is very adequately covered.

As regards the question of acceptability of these documents for travel after 1997, I assume that what Dr LEONG is really getting at is their acceptability without visas to enter other countries, and I think as I have said in my main answer and in answer to supplementaries, this is something which we do still need to take up with other countries. We wish to do it jointly with the Chinese. We think we will have much more success if we do it jointly as a co-operative measure. We have put forward proposals to that end. Unilaterally I do not think that it will be possible to achieve a great deal because inevitably, if we were to go it alone, we would not be able to answer the crucial questions of returnability and reciprocity and that is precisely why we do want to do this as a co-operative measure.

DR LEONG CHE-HUNG: *Clarification, Mr President?*

PRESIDENT: Yes.

DR LEONG CHE-HUNG: *The Secretary mentioned that in general principle the BN(O) passport holder will have a right to return to Hong Kong. Does this apply to a person who also carries a Canadian passport?*

PRESIDENT: I think this is really going beyond the scope of the original question and answer, Dr LEONG.

MISS EMILY LAU: *Mr President, to follow up on Dr LEONG's question on the returnability of BN(O) passport holders after 1997; is the Secretary telling this Council that there is already an agreement with the Chinese Government that they will undertake to tell the international community that all BN(O) passport holders will have the right of abode here and can be returned here after 1997? And also can you give us your estimate of the number of months or years that it would take to get the SAR passport to be internationally recognized and accepted?*

PRESIDENT: Secretary, two questions there.

SECRETARY FOR SECURITY: Mr President, I cannot answer the second question, I would not like to hazard a guess. All I would say is that we are doing our best to have discussions and to resolve this problem to agree all details for the issue of Hong Kong SAR passports with the Chinese. At that stage we will be able to approach other countries and try to obtain visa-free travel for them. I do not actually see any problem about having the passport accepted as a travel document. I think the task will be to try to have it accepted for visa-free travel which is very different from simple acceptance.

No, as regards the first part of the question, I do not think I am saying that. I think what I am saying is that we have agreed with the Chinese that those BN(O) passport and CI holders who now have right of abode in Hong Kong can and do have that fact endorsed on their passport or their CI.

MR HOWARD YOUNG (in Cantonese): *Mr President, the Secretary mentioned in his reply just now that he thought that a joint effort between the United Kingdom and China in promoting the Hong Kong SAR passports would greatly enhance the chance for such passports to gain international recognition as well as for holders to enjoy visa-free travel. My question is: Does the Secretary also think that if the United Kingdom takes the lead (as advised by Mr Eric LI) to announce that Hong Kong SAR passport holders will enjoy visa-free access to the United Kingdom; and that the Hong Kong Government likewise announces reciprocal visa-free arrangements for British passport holders in future, this will enhance the chance of international acceptance of such passports? If the same arrangements are suggested to other Commonwealth countries, will the level of acceptability of the passport be enhanced as well?*

SECRETARY FOR SECURITY: Mr President, as I think I indicated in answer to a previous supplementary, this is something which we will certainly pursue. I agree with Mr YOUNG that we do want to get it accepted, particularly by Britain and by Commonwealth countries and this is something that we will certainly pursue as soon as we can. But, really as I also indicated, in order to pursue this effectively with other countries, we must know details of the

passport and eligibility. These are the matters that we need to resolve first with the Chinese and that we are anxious to resolve as quickly as possible. When we have done that we will certainly be taking it up with other countries.

MR ERIC LI (in Cantonese): *Mr President, in his reply to my question, the Secretary mentioned that there were a few matters which the United Kingdom must sort out before accepting the Hong Kong SAR passports. I am surprised to learn that. He also told this Council that he had never raised the issue with the British Government in this regard. If he has never raised the issue, how does he know what exactly the British Government wants? I do want to know clearly whether the Government will truly and clearly consult, in the interests of the Hong Kong people, the British Government, and make it clear to the Hong Kong people what crucial matters need to be resolved first before Hong Kong SAR passport holders can have visa-free access to the United Kingdom?*

SECRETARY FOR SECURITY: Yes, Mr President, I think I do. When we pursue these matters through the JLG, clearly we do consult closely the British Government because after all the JLG is a group which includes the British Government and the Chinese Government, but not specifically the Hong Kong Government.

MISS EMILY LAU: *Mr President, I want to follow up the Secretary's reply to my question about an agreement with China on the BN(O) passport and the Secretary said there is no agreement, but then you go on to say that the Government can endorse in the passport that the holder has a right of abode in Hong Kong. But if there is no agreement how on earth can you put that endorsement on the passport?*

SECRETARY FOR SECURITY: Mr President, I do not recall saying that there was no agreement. I think what I said was, there was not an agreement quite in the terms that Miss LAU put it. There has been an agreement and as I said the nature of that agreement is that those British Dependent Territories Citizen passport, BN(O) passport or CI holders who now have the right of abode in Hong Kong can have that fact stated in their passports or documents.

### **Liability of supplementary card holders**

6. MR PANG CHUN-HOI asked (in Cantonese): *Regarding a recent complaint concerning a supplementary credit card holder who had to bear the legal liability of settling the debt incurred by the main card holder after the cancellation of the supplementary card, will the Government inform this Council whether consideration will be given to providing guidelines to those organizations which place consumers in a very weak bargaining position, such*

*as banks, so that consumers can enter into agreement with these organizations on a more equal footing in getting services?*

SECRETARY FOR TRADE AND INDUSTRY: Mr President, one guiding principle in developing consumer protection measures is to strike a balance between looking after consumer interests and preserving freedom of contract. On the basis of this principle, the Government has introduced legislative measures to protect consumers when they enter into contracts with commercial parties.

The Control of Exemption Clauses Ordinance, enacted in 1990, seeks to control, among other things, the use of exemption clauses by suppliers of goods and services to limit their contractual liabilities towards consumers. It would be up to the court to consider the relative bargaining power of the contracting parties in determining whether an exemption clause is unreasonable and hence should be void.

As a further step to enhance consumer protection, we consider it necessary to introduce more comprehensive legislation to protect consumers from unconscionable contract terms and to redress any imbalance in bargaining power between suppliers and consumers. To achieve this, I introduced the Unconscionable Contracts Bill into this Council on 27 April 1994. Should the bill be enacted as presently drafted, consumers caught by unconscionable contract terms could initiate civil proceedings against suppliers of goods or services, and the court would have the power to rewrite or strike down unconscionable terms in consumer contracts.

Under the Bill, the guidelines for determining unconscionability include first, the relative strengths of the bargaining positions of the consumer and the supplier of goods or services; second, whether the consumer was able to understand the contract terms; and third, whether any unfair tactics were used against the consumer. We hope that the bill will be enacted as soon as possible so as to provide consumers with a legitimate means to relieve themselves from unconscionable contracts.

We believe that these measures will set the ground rules under which both consumers and suppliers would be able to bargain on a more equal basis. These measures will be in addition to existing remedies available under common law on the grounds of equitable principles.

Apart from legislative measures, we believe that efforts to educate consumers are equally important in enhancing their awareness of the need to understand the contract terms before entering into any contract. In this regard, the Consumer Council is doing a good job. It is also currently studying the terms and conditions of credit cards. The results of the study will be published in a few months' time.

MR PANG CHUN-HOI (in Cantonese): *Mr President, can the Secretary inform this Council, before the enactment of the Unconscionable Contracts Bill by this Council and the availability of the outcome of the Consumer Council's study on the terms and conditions of credit cards, whether the Administration will formulate any guidelines so that action can be taken to protect the interests of consumers who have fallen victim to unconscionable contracts?*

SECRETARY FOR TRADE AND INDUSTRY: Mr President, we have no plans to issue any guidelines before the Unconscionable Contracts Bill is enacted and that is why I would urge once again that Members should consider that bill favourably and act upon it as soon as possible.

MR ROGER LUK (in Cantonese): *Mr President, can the Secretary clarify whether the card issuing bank in the case quoted in the main question handled the debt according to the terms and conditions of the contract; and whether the terms and conditions in question fall into the category of those of "unconscionable contracts" mentioned in paragraph 4 of the main reply?*

SECRETARY FOR TRADE AND INDUSTRY: Mr President, I would not like to provide a legal opinion on this particular example. As I said in my main answer, the Unconscionable Contracts Bill does provide certain judicial guidelines to the court for determining unconscionability and in exercising its powers, and in addition to the three guidelines which I mentioned in my main reply, the other two are whether the consumer was required to comply with conditions that were not reasonably necessary for protecting the legitimate interests of the seller and also the amount for which and the circumstances under which the consumer could have acquired identical goods or services from another seller. Beyond those five points, Mr President, I would not like to venture.

DR HUANG CHEN-YA (in Cantonese): *Mr President, can the Secretary inform this Council whether the Administration will consult their legal advisers on this matter, so that this Council, in the course of deliberation of this Bill, will clearly know if this Bill can provide adequate protection to consumers, or perhaps the Administration still has more to do?*

PRESIDENT: Have you got all the questions, Secretary? *(Laughter)*

SECRETARY FOR TRADE AND INDUSTRY: More or less, Mr President. *(Laughter)*

PRESIDENT: Are you able to answer?

SECRETARY FOR TRADE AND INDUSTRY: Mr President, I think after the recent case and the publicity given to it in the media, more people are aware of the dangers and risks of being given supplementary credit cards or accepting them. I am sure that my own wife is one of those who are now aware of the dangers.

No, Mr President, we have not sought legal opinion on the type of advertisements that are being placed to attract consumers to give other people supplementary credit cards. We do not have plans to take action against such advertisements because I would still urge Members to pass the Unconscionable Contracts Bill as soon as possible, and having done that of course consumers would have better protection under the law.

DR HUANG CHEN-YA (in Cantonese): *Mr President, can the Secretary inform this Council whether the Administration will consult their legal advisers on this matter, so that this Council, in the course of deliberation of this Bill, will clearly know if this Bill can provide adequate protection to consumers, or perhaps the Administration still has more to do?*

PRESIDENT: Are you able to answer Secretary? I think there is a difference between that question and a question which seeks to obtain an expression of an opinion or the solution of an abstract legal question under Standing Orders. I think Dr HUANG is asking whether, for the purpose of facilitating the consideration of the bill, an opinion will be obtained. Is that the question, Dr HUANG?

DR HUANG CHEN-YA: *Yes.*

SECRETARY FOR TRADE AND INDUSTRY: Mr President, since it is the wish of the Honourable Member, we will seek such a legal opinion.

### **Written Answers to Questions**

#### **Admission criteria of the Hong Kong Institute of Education**

7. MR CHEUNG MAN-KWONG asked (in Chinese): *Will the Government inform this Council of the following:*

- (a) *the existing admission requirements and entry qualifications of the Hong Kong Institute of Education;*

- (b) *whether the entry qualifications are the same as those of the four former Colleges of Education, allowing the combination of the Hong Kong Certificate of Education Examination results obtained by applicants in one or more sittings to count for qualifying purposes;*
- (c) *if the admission criteria of the four former Colleges of Education are adopted, whether the requirements of the conversion degree courses to be offered in the future can be met; and*
- (d) *how to ensure that the admission requirements and entry qualifications adopted at present will not cause a decline in the quality of teachers in the future?*

SECRETARY FOR EDUCATION AND MANPOWER: Mr President,

- (a) For the academic year commencing in September 1994, the Hong Kong Institute of Education (HKIEd) will be offering full-time Certificate in Education courses of two or three years in duration. The two-year courses are intended for Secondary VII leavers who should:
  - (i) have obtained grade E or above in at least two subjects in the Hong Kong Advanced Level Examination or equivalent; and
  - (ii) have obtained, in not more than two sittings, grade E or above in at least six subjects including Chinese Language and English Language (Syllabus A or Syllabus B) at the Hong Kong Certificate of Education Examination (HKCEE), of which at least four subjects should have been obtained in one sitting; or equivalent.

In addition, a higher English language requirement is stipulated for candidates wishing to teach in English.

The three-year courses are intended for Secondary V leavers who should have obtained the qualifications stipulated in para (ii) above. In addition, they are required to score 11 or more points in at least six subjects at the HKCEE.

- (b) The admission criteria adopted by the HKIEd in the 1994 admission exercise are the same as those used by the four colleges of education in 1993.
- (c) The HKIEd will be shortly reviewing the existing admission criteria and consider what adjustments should be made to upgrade the entry requirement to an all Secondary VII entry and link up with the



introduction of a degree programme in the near future. Included in this review will be an assessment of how the existing Certificate in Education courses can count towards the degree programme.

- (d) The present entry requirements were recently introduced in September 1993 and students so admitted have yet to complete their first year of training in the Colleges of Education. Nevertheless, their performance is being monitored. A continuous assessment is in place to ensure that trainee teachers must reach an acceptable level of achievement in academic studies and practical teaching before they are allowed to graduate. In taking over the Colleges of Education in September 1994, the HKIEd is committed not only to maintaining but also upgrading the quality of teacher education (see paragraph (c) above).

### **Tax concessions**

8. DR HUANG CHEN-YA asked (in Chinese): *In the 1992-93 and 1993-94 Budgets, a number of tax concession measures (for example the abolition of entertainment tax on cinema tickets and of duties on soft drinks and cosmetics) were proposed and undertakings were given by the industries concerned that the benefits from these measures would be passed on to consumers. Will the Government inform this Council whether there is evidence to show that these undertakings have been honoured?*

SECRETARY FOR THE TREASURY: Mr President, following the abolition of the duty on soft drinks in the 1992-93 Budget, the Customs and Excise Department conducted three surveys for the quarters ending March 1992, September 1992 and December 1992 on movements in retail prices of soft drinks. The first survey found that prices had, on average, dropped by 7.2% at the wholesale level and 4.5% at the retail level. This meant that 96.7% of the benefit arising from the tax concession was passed on at the wholesale level and 66.5% at the retail level. The second and third surveys indicated that both at the wholesale and the retail level, the price reduction lasted for at least nine months.

The Consumer Council conducted a similar price survey in 1992, which confirmed the survey results obtained by the Customs and Excise Department that retail prices of soft drinks at major retail outlets during the quarter ending September 1992 had stabilized at the reduced levels. To avoid distortions in the survey results, special prices offered at promotional sales were not taken into account in any of the above surveys.

In announcing the abolition of entertainment tax on cinema tickets in the 1992-93 Budget, the Financial Secretary *said* that the two largest cinema operators had undertaken not to increase ticket prices in the following year so

that consumers could enjoy the benefit of the tax concession. In line with this undertaking, admission charges remained unchanged until June 1993.

Following the abolition of the duty on cosmetics in the 1993-94 Budget, the Fragrance and Beauty Products Importers' and Distributors' Association conducted a survey among its members in March 1993 on the impact of the tax concession on retail prices. The survey showed that most cosmetic products available in the local market would have a price reduction of 10%-12% between March and May 1993. Thus, the industry claimed to have lived up to their earlier undertaking to pass on the benefit of the abolished duty to consumers.

### **Drinking water in Hong Kong**

9. DR HUANG CHEN-YA asked (in Chinese): *Will the Government inform this Council whether:*

- (a) *tests are conducted on the drinking water in Hong Kong to determine whether it is polluted by toxic organic or inorganic chemicals and pesticides; if so, what pollutants fall within the scope of these tests;*
- (b) *any of these pollutants have been detected in the drinking water within the past three years; if so, what they are; and*
- (c) *these pollutants have exceeded the acceptable level at any time within the same period and, if so, by how much?*

SECRETARY FOR WORKS: Mr President,

- (a) Yes, the Water Supplies Department carries out extensive quality monitoring of treated water supply in Hong Kong on an on-going basis in accordance with the recommendations laid down in the 1984 edition of the Guideline Values for Drinking Water Quality of the World Health Organization (WHO). The scope of monitoring includes 18 organic and nine inorganic constituents which are considered of health significance by the WHO. The organic determinants cover pesticides, chlorinated hydrocarbons, polycyclic aromatic hydrocarbons and phenolic compounds, while inorganic determinants are mainly heavy metals, such as lead and cadmium.
- (b) and (c)

In the past three years, most of our monitoring records indicated that our drinking water was essentially free from such pollutants; the quantity being so small that it was below the detection limits of the sensitive analytical techniques and instruments. In records

where some traces of pollutants were discovered, the quantities measured were consistently well below the relevant WHO's Guideline Values for Drinking Water Quality.

### **Admission requirements of the Hong Kong Technical Colleges**

10. MR CHEUNG MAN-KWONG asked (in Chinese): *Will the Government inform this Council whether:*

- (a) *the admission requirements and entry qualifications of the Hong Kong Technical Colleges have stipulated that a candidate's attainment in "Chinese Language" in the Hong Kong Certificate of Education Examination must be at grade "E" or above; if not, what the reasons are; and*
- (b) *in formulating the current admission requirements and entry qualifications, had consideration been given to meeting the entry requirements of the courses offered by the two Polytechnics or other tertiary institutions?*

SECRETARY FOR EDUCATION AND MANPOWER: Mr President,

- (a) In setting the admission requirements and entry qualifications, the two Hong Kong Technical Colleges only consider those subjects which have direct relevance to the courses under application. As the medium of instruction in the two Technical Colleges is English, the attainment of a "E" grade in Chinese Language is not at present stipulated as a prerequisite for entry into technical college courses. However, a pass at Grade E or above in Chinese Language at the Hong Kong Certificate of Education Examination could enhance the candidates' opportunity of being accepted. In the light of changing language needs, including the future employment for their graduates, the Technical College Academic Board will consider in the near future if Chinese should become an essential entry subject.
- (b) The Technical Colleges under the Vocational Training Council are free to formulate their own admission requirements, though in practice the criteria adopted by them are broadly similar to those set by the two polytechnics. Representatives of the two polytechnics and other tertiary institutions sit on the Committee on Technical Education of the Vocational Training Council, which is tasked to approve, among other things, entry requirements for the Technical Colleges. The committee is therefore well placed to consider the merits of further changes to make the set of admission requirements more consistent with those of the polytechnics.

### Northwest New Territories Railway

11. DR TANG SIU-TONG asked (in Chinese): *In his reply to the motion debate on the "Early Construction of the Northwest New Territories Railway" on 9 March this year, the Secretary for Transport said that a policy steer and approval was expected to be obtained within three months. Will the Government inform this Council of the following:*

- (a) whether a decision has been made on the construction of the Northwest New Territories Railway; if so, what the detailed alignment of the said railway and the proposed schedule for the project will be;*
- (b) whether the Government has, in planning the development of the Northwest New Territories Railway, reached any agreement with the Chinese side on the arrangements for railway extension links to facilitate the smooth flow of cross-border passenger and freight traffic; and*
- (c) in planning the development of the Northwest New Territories Railway, whether the Government has given consideration to linking it with Container Terminals 10 and 11 which will be built soon in order to meet the demand of freight transport?*

SECRETARY FOR TRANSPORT: Mr President, a decision on the Northwest New Territories Railway cannot be made until the Railway Development Strategy has been finalized. This is fast nearing completion and envisages a rail-link in the Western Corridor as a strategic infrastructural project. The likely alignment is through the northwest New Territories from the border to the urban area via Kam Tin and with a spur line to Tin Shui Wai and linking North Tuen Mun. Once a decision on the railway is taken, we will carry out engineering studies to confirm the detailed alignment. The target date is to commission this new railway system by 2001 but we will explore all practical means to accelerate this.

In the course of the Railway Development Study, our study team had a series of exchanges with the Chinese railway authorities on railway development in both China and Hong Kong. We have kept the Chinese side informed of the study findings and will seek to discuss with them again once the Railway Development Strategy has been finalized. Such dialogue is essential to ensure that our respective plans for railway projects complement each other.

As regards rail connections to Container Terminals 10 and 11, a second Port Rail Line to serve the future container port on Lantau has indeed been identified in the Railway Development Study as a long-term project. This will require further in-depth study at a later date.

**Rejection of application from blind people for current account**

12. MR WONG WAI-YIN asked (in Chinese): *Will the Government inform this Council whether it is aware of certain licensed banks in Hong Kong rejecting the applications of some blind people for opening a current account and automatic teller machine cards; if so, whether it has requested these banks to explain the reasons for rejecting such applications and whether it will require them to provide these services to the blind?*

SECRETARY FOR FINANCIAL SERVICES: Mr President, the Hong Kong Monetary Authority had received some complaints against certain banks in relation to refusal to provide current account and automatic teller machine services to the sight impaired. It is understood that one of the primary reasons for certain banks not providing these services is for the protection of sight-impaired customers who are exposed to potential risks arising from miscommunication and misunderstanding. Such customers are also relatively more vulnerable to the risk of fraudulent attempts by other parties.

Members will appreciate that the use of such services necessarily entails some risks and liabilities both for the customers and the banks. It is prudent for banks to ensure that potential customers are fully aware of such risks and the possible damage that can be caused by miscommunication or misunderstanding.

On the general issue of accessibility to banking services for the sight impaired, the Hong Kong Association of Banks (HKAB) has taken positive steps to improve the situation in recent years. In 1992, HKAB issued a best practice guide to its members which set out recommended procedures in relation to provision of services to the sight impaired. This was supplemented by two further guidelines issued in January and December 1993. The last of these was drawn up in consultation with the Hong Kong Association of the Blind. Basically, such guidelines encourage banks to make available general banking facilities to the sight impaired on the same terms and conditions as for the ordinary customer provided that they fully understand their obligations, responsibilities and liabilities in connection with the use of such services. HKAB has also been in touch with the Hong Kong Association of the Blind with a view to considering if further initiatives to improve accessibility to banking services for the sight impaired could be introduced.

Given that HKAB has already established a dialogue with the Hong Kong Association of the Blind to consider the matter, the Government does not see the need for it to interfere.

**Construction of public housing estates**

13. MR LEE WING-TAT asked (in Chinese): *During the briefing entitled "Financial Arrangements of the Government with the Housing Authority" held*

on 9 May 1994, the Secretary for the Treasury indicated that the Government had invested \$200 billion in the construction of public housing estates. Will the Government give a detailed breakdown of the contents and items of this expenditure?

SECRETARY FOR THE TREASURY: Mr President, during the briefing entitled "Review of the Financial Arrangements between the Government and the Housing Authority" on 9 May 1994, the Secretary for the Treasury indicated that the Government had invested over \$200 billion at today's prices in public housing development.

In the published accounts of the Housing Authority for the financial year 1992-93, the Government's contribution to domestic housing and non-domestic equity is listed as follows:

	<i>\$ Billions</i>
Permanent capital as at 1 April 1988	16.28
Additional capital injections since 1988	10.00
Contributions to domestic housing	
Interest-free loans to 31.3.1976	0.26
Interest foregone 1.4.1976-31.3.1988	2.50
Land revaluation surplus to 31.3.1973	0.11
Transfer value of government-built estates and quarters	1.21
Value of land provided by Government since 1.4.1973	66.22
HOS unsold flats at 31.3.1988 transferred to HA	0.83
Excess of full market value of land over land cost	18.06
Premium received after expiry of 10-year alienation restriction (rounded to nil)	-
	-----
Sub-total	89.19
Non-domestic equity	10.41
	-----
TOTAL	125.88
	=====

All the above figures represent the historical value of the Government's investments up to 31 March 1993. Together with the value of additional land for public housing provided in 1993-94, the total investment at present value is estimated to be well over \$200 billion.

### **Utilization of classrooms in the Hong Kong Polytechnic**

14. MISS EMILY LAU asked: *In view of public reports that classrooms in the Hong Kong Polytechnic are under-utilized, will the Administration inform this Council whether:*

- (a) the University and Polytechnic Grants Committee is aware of such a problem and whether the allegations will be investigated;*
- (b) a large number of scheduled teaching classes have been cancelled; and*
- (c) there are plans for further expansion of the Hong Kong Polytechnic?*

SECRETARY FOR EDUCATION AND MANPOWER: Mr President, the Administration is advised by the University and Polytechnic Grants Committee (UPGC) that the committee does not consider that there is any problem of under-utilization of classrooms in the Hong Kong Polytechnic, and therefore there is no need for any investigation to be conducted.

The UPGC-funded institutions are required to undertake space utilization surveys at least once every three years, that is, once during each triennium, to give an overview of the use of existing buildings and report the results to the UPGC. The Hong Kong Polytechnic accordingly conducted such a survey in November 1992 and submitted its report on the survey to the UPGC in March 1993. The UPGC noted then that the usage of general teaching areas (that is, classrooms, lecture theatres, and so on) was well above the minimum space utilization requirements laid down by the Committee.

The Administration understands that, for internal monitoring and reporting purposes, the Polytechnic conducted a further space utilization survey in November 1993. According to the results of this more recent survey, the usage of the general teaching areas was roughly the same as in the previous survey. As part of the survey procedures, departments at the Polytechnic are required to report on the cancellation of classes during the survey period. 236 hours of daytime classes and 79 hours of evening classes were reported by departments as having been cancelled. The hours cancelled in the daytime represent about 6% of the total hours timetabled during the survey period. The UPGC understands from the polytechnic that in most cases the cancelled classes were re-scheduled and made up at a later date.

The UPGC is in the process of undertaking a comprehensive review of the space and accommodation of the seven UPGC-funded institutions in the context of its review of the development of higher education 1991-2001. The review aims, inter alia, to enable the committee to have a better understanding of the provision of space and accommodation in the UPGC-funded institutions and to make recommendations regarding future provision. The Administration understands that the Hong Kong Polytechnic has plans to expand its campus facilities. These will be examined in the light of the results of the UPGC's review.

### **Reserved school sites used for other purposes**

15. MR FRED LI asked (in Chinese): *In view of the recent release by the Education Department of sites in a number of public housing estates and Home Ownership Scheme estates throughout Hong Kong, which were originally reserved for building primary and secondary schools, to the Housing Authority for the construction of additional Home Ownership Scheme flats, will the Government inform this Council of the following:*

- (a) the reasons for the Education Department to release such sites; the number of sites released by the Department and transferred to other departments for development in the past three years, their locations and the reasons for the release of individual sites;*
- (b) whether the Education Department would periodically review the continued need for and suitability of the sites which were reserved for building school premises;*
- (c) if the reserved sites no longer conform to the existing standards for building school premises, whether the Education Department would, in response to the strong requests of residents and after confirming the continued need for school premises, consider selecting alternative suitable locations for building school premises; and whether the Education Department has any long-term solutions to tackle similar problems; and*
- (d) if the alternative locations would cause inconvenience to students going to school because of their remoteness, what solutions does the Education Department have?*

SECRETARY FOR EDUCATION AND MANPOWER: Mr President,

- (a) No sites reserved for the construction of schools including those reserved in public housing estates or home ownership scheme estates are released by the Education Department unless:



- (i) as a result of demographic changes, the need for additional school places for which the sites were originally reserved no longer exists; and/or
- (ii) the sites are too small to meet the modern school design standards; and/or
- (iii) on further investigation, there are physical constraints, rendering the sites unsuitable.

In accordance with the above criteria, a total of 27 school sites have been released during the past three years, see details at annex.

- (b) Yes. From time to time the Education Department conducts a review on the stock of sites reserved for schools including their continued need and suitability.
- (c) As implicit from paragraph (a) above, before a site is released, the Education Department ensures that another site is available to meet the demand for additional school places, that is, if there is such demand. Where such additional demand relates to primary school places, the department will, in the final selection of an alternative site, take into consideration the views of the residents concerned, in addition to such other factors as location, size and environment.
- (d) For the purpose of primary school provision, the territory is divided into 72 school zones which are much smaller than the administrative districts. Within each zone, schools are provided close to population centres. The question of remoteness and hence inconvenience to school children does not, therefore, arise.

Regarding secondary schools places, they are provided on a territory-wide basis. In building new secondary schools, consideration is always given to siting them in districts where there is a shortfall of places and locations close to public transport facilities.

Annex

#### School sites released in the past three years

1992

No sites released.

1993

*A) Secondary school sites*

	<i>District</i>	<i>Area (m<sup>2</sup>)</i>	<i>Remarks</i>
1.	Central and Western	4 500	Too small
2.	Eastern	3 800	Too small and difficult site
3.	Eastern	3 400	Too small and difficult site
4.	Yau Tsim	3 200	A historical monument on site
5.	Sham Shui Po	3 800	Too small
6.	Kwun Tong	6 500	Difficult site
7.	Kwai Tsing	10 600	Difficult site

*B) Primary school sites*

	<i>District</i>	<i>Area (m<sup>2</sup>)</i>	<i>Remarks</i>
8.	Eastern	2 500	Too small
9.	Yau Tsim	900	Too small
10.	Sham Shui Po	3 400	Too small
11.	Kwun Tong	2 000	Too small
12.	Tsuen Wan	2 300	Too small
13.	Yuen Long	3 200	Too small
14.	North	3 700	Too small

1994

*A) Primary school sites*

	<i>District</i>	<i>Area (m<sup>2</sup>)</i>	<i>Remarks</i>
1.	Eastern	2 800	Too small
2.	Southern	3 500	Too small
3.	Kwun Tong	4 900	Too small
4.	Kwun Tong	3 300	Too small
5.	Kwun Tong	4 300	Too small
6.	Wong Tai Sin	5 300	Not required
7.	Wong Tai Sin	4 200	Too small

*B) Secondary school sites*

	<i>District</i>	<i>Area (m<sup>2</sup>)</i>	<i>Remarks</i>
8.	Kwun Tong	3 900	Too small
9.	Wong Tai Sin	6 800	Not required
10.	Sha Tin	5 000	Not required

*C) Special school sites*

	<i>District</i>	<i>Area (m<sup>2</sup>)</i>	<i>Remarks</i>
11.	Kwun Tong	2 000	Too small
12.	Kwun Tong	2 100	Too small
13.	Sha Tin	2 000	Not required

**Yuen Long Southern By-pass**

16. MR WONG WAI-YIN asked (in Chinese): *As the Yuen Long Southern By-pass will contribute greatly to improving traffic flow in Yuen Long Town, will the Government inform this Council whether the project can be completed in August this year as scheduled; if not, what are the reasons for the delay, when*

*it will be completed; and whether the contractors will be held liable if they are responsible for the delay?*

SECRETARY FOR TRANSPORT: Mr President, the contractual completion date for the Yuen Long Southern Bypass is 15 August 1994. However, there has been some slippage and indications are that the project cannot be completed and opened to traffic until the end of September. Highways Department will continue to monitor progress and the performance of the contractor.

Part of the delay is attributable to bad weather last year. For this reason, some extension of time for the completion of the contract would be justified. Should Highways Department consider that delay has also been caused by slack performance on the part of the contractor, he will be held liable for liquidated damages which will be imposed.

### **Driving-offence points system**

17. MRS MIRIAM LAU asked (in Chinese): *Under the Road Traffic (Driving-offence Points) Ordinance, a person driving in excess of speed limits on a road may incur driving-offence points. This however does not apply to the same offence committed within a tunnel areas. As driving in excess of speed limits on a road is as dangerous as within a tunnel area, will the Government inform this Council why a more lenient standard is adopted in respect of tunnel areas; and whether consideration will be given to introducing legislation to implement the driving-offence points system within tunnel areas?*

SECRETARY FOR TRANSPORT: Mr President, speeding is an offence under the Road Traffic Ordinance (Cap. 374) and the Road Traffic (Driving-offence Points) Ordinance (Cap. 375). Drivers on conviction are liable to a fine of \$4,000 and, in addition, can be penalized by either three, five or eight driving-offence points (DOPs), depending on the speed in excess of that allowed.

There is separate legislation to deal with speeding in government and private tunnels. Under the provisions of the Road Tunnels (Government) Ordinance (Cap. 368), any person who contravenes a speeding offence in a Government tunnel is liable on first conviction to a fine of \$5,000 and to imprisonment for three months and on second or subsequent convictions to a fine of \$10,000 and to imprisonment for six months. As regards a speeding offence in a private tunnel, a convicted motorist is liable to a fine of \$2,000 under its respective by-laws. In addition the police may prosecute motorists for dangerous driving if they exceed tunnel speed limits.

The Honourable Mrs Miriam LAU is right that speeding in tunnels does not incur DOPs. This is an anomaly and I thank her for pointing this out. There is no reason why speeding in tunnels should not attract DOPs and, thus, serve as

a further deterrent. The Administration will see how this can be best achieved and take the necessary steps to amend the law. We will, in the same exercise, iron out other discrepancies so that, for example, the same levels of fine are imposed upon like offences.

### **Trading fund management scheme**

18. MR FREDERICK FUNG asked (in Chinese): *At present, the Government has introduced the trading fund management scheme to the Land Registry and the Companies Registry. It also plans to introduce this concept to other departments, including the Post Office, the Office of Telecommunications Authority, the Drainage Services Department, the Water Supplies Department, the Marine Department and the Electrical and Mechanical Services Department. Will the Government inform this Council of the respective capital injection to these departments?*

SECRETARY FOR THE TREASURY: Mr President, of those identified as candidates for trading fund operations, I can at this stage give a substantive reply only in respect of the Drainage Services Department (DSD).

On 4 February, Finance Committee approved an initial capital injection of \$6,800 million from the Capital Investment Fund into the DSD's Sewage Services Trading Fund, to help finance the High Priority Programme of the sewage strategy. Subject to approval by the Legislative Council of the necessary legislation, we shall recover the operating costs of sewage services through sewage charges. We are not contemplating further capital injections at this stage.

The Electrical and Mechanical Services Department (EMSD) is moving towards increased commercialization in its operations. Like the Companies Registry and the Land Registry, EMSD may need an upfront injection of capital in the early years of a Trading Fund operation to meet its cash flow requirements. In that case, we would consider granting EMSD a loan rather than an equity injection from the Capital Investment Fund. We have, however, not yet reached any firm conclusions on timing or the amount required.

Plans for the Post Office, Office of the Telecommunications Authority, Marine Department and Water Supplies Department are all at early stages of development. It is too early to say whether these departments will operate trading funds, or the amount of capital injection they may require. As with the other cases I have mentioned, however, any proposed capital injection will require Finance Committee approval.

## **Accreditation of universities in Hong Kong and China**

19. MR ERIC LI asked (in Chinese): *As the academic, professional and technical interchanges between Hong Kong and China are becoming more frequent, and such activities involve recognition of the academic or professional qualifications of the participants, will the Government inform this Council:*

- (a) of the number of occasions the Hong Kong Council for Academic Accreditation (HKCAA) has been invited to appraise the academic standards of the universities in China since its establishment; and what the results were; and*
- (b) if it has not been invited, what measures the HKCAA will take; for example, will it take the initiative to invite the education authority in China to discuss the accreditation of the academic standards of universities in Hong Kong and China, and the recognition of the degrees or diplomas granted on a reciprocal basis?*

SECRETARY FOR EDUCATION AND MANPOWER: Mr President, the Hong Kong Council for Academic Accreditation (HKCAA) was set up under the HKCAA Ordinance (Cap. 1150) as Hong Kong's independent accrediting authority. Its prime responsibility is to undertake academic accreditation in relation to non-self-accrediting tertiary institutions in Hong Kong. It is not intended that the Council should accredit academic courses offered by institutions outside Hong Kong.

Nevertheless, the HKCAA maintains regular liaison with educational authorities in China including the State Education Commission and the Academic Degrees Committee of the State Council. The latter is the body responsible for the approval of graduate programmes in the universities in China. The HKCAA has visited these authorities and selected tertiary institutions in China. The Council has also been invited to a number of seminars and meetings on the evaluation of quality in higher education.

Senior officials from the State Education Commission and the Academic Degrees Committee have also visited the HKCAA and taken part in a HKCAA seminar held in Hong Kong in 1993. These activities have enhanced mutual understanding and facilitated exchange of information on academic standards.

## **Statement**

### **Land supply and property prices**

SECRETARY FOR PLANNING, ENVIRONMENT AND LANDS: Mr President, during the Budget debate earlier this year, there was general agreement that rapid increases in property prices was one of the most important

issues facing the community. Accordingly, the Administration established an interdepartmental Task Force in mid-April to study the problem urgently. Today, I am able to announce a comprehensive package of measures to deal with it.

*The principles*

May I start by setting out the main principles and factors which have underpinned the study and then outline the key recommendations.

First, we recognize that housing is a basic necessity affecting people's livelihood and social stability. But it is also a traditional form of investment for those with the means. The interests of aspiring home buyers do not necessarily always coincide with those of investors and home owners. While the former may wish to see prices coming down, the latter would not like to see any depreciation of their assets. The problem we have today is as much about meeting the aspirations of an increasingly more affluent community as ensuring adequacy of shelter.

Second, there should be no doubt about the economic significance of the property market. Not only is private sector property development a key component of the gross domestic product, but the property market is also inextricably linked to the banking sector and the stock market. While the multiplier effect of a sharp downturn cannot be easily quantified, it would be dangerous to under-estimate it.

Third, the property market is sensitive to factors which are extraneous to Hong Kong and beyond our control. The drop in private housing supply in 1992 and 1993, for example, can be traced back to investor caution back in 1989 and 1990 for reasons which need no elaboration. Similarly, the current trend of rising interest rates is lowering the temperature of the property market.

Fourth, the underlying spirit of a free market is fair competition. Where market imperfections or distortions threaten fair competition, it is incumbent upon the Government to look for ways to rectify the situation. The objective of any government intervention should be to ensure fair competition for all on a level playing field.

Fifth, as I have said in this Council many times before, and as I shall no doubt repeat again, in a free market economy the market determines prices, not the Government. Though they may not realize it, by withholding their decisions to buy, potential home buyers have depressed prices by 10% to 15% since March this year. It is therefore within their power to control demand which is half of the equation for determining prices. The Government does not, and will not, seek to control price levels directly.

Sixth, it suits some people to press the line that property prices in Hong Kong can only rise because land supply is limited. Let me emphasize: there is no shortage of land supply in the foreseeable future and, like any other product under free trading, property prices should not be allowed to defy the market forces of supply and demand. We have recently seen prices softening in response to a weakening demand. Increases in supply will have the same effect in the longer term. Potential home buyers must judge for themselves whether to enter the market now, based on their housing need and affordability and a sensible assessment of future supply and likely price response.

As a responsive and responsible government, we must address public concern about property prices, but at the same time adopt measures which will not damage the economy. Finding the right balance between competing interests and conflicting views of the imperatives in the community, determining the dosage which will moderate prices but not cause a drastic downturn, and predicting the reactions of a largely sentiment-driven and volatile market is a tall order. The risks involved call for a prudent and incremental approach. We do not believe that drastic, hard-hitting measures would be appropriate at this stage.

#### *Tackling speculation*

The Task Force has made recommendations in four areas, dealing with both the short and long terms. The overall objective is to achieve a better match between supply and demand. But because it takes time to increase supply, we will in the meantime seek to:

- (a) dampen speculative demand so that more flats will become directly available to home buyers; and
- (b) strengthen the position of the home buyer in terms of orderly market practices, and the quality and accessibility of information on future supply and the market situation.

The Task Force has considered a range of measures to deal with speculation, including punitive fiscal measures. As a first step, we propose to tighten control over the pre-sale of uncompleted flats, because this tends to attract speculators and because prices of pre-sale flats tend to set the tone of the market. We will modify the Consent Scheme, which governs the terms of pre-sale:

- first, to reduce the quota for private sales from 50% to 10%. Based on the number of flats for which consent was given last year, this measure could release up to 10 000 additional new flats for public sale. Maintaining a residual 10% is considered a reasonable balance between the interests of the buyers and developers;



- second, to prohibit re-sale before assignment. Making buyers who are not end users, hold onto property longer will increase the risk for speculators;
- third, to reduce the period of forward sales to not more than nine months before assignment, which is normally about three months after the occupation permit is issued. This will reduce the scope for speculation and circumvention of the re-sale prohibition;
- fourth, to increase the initial deposit from 5% to 10%. This will increase the cost of speculation, but should not pose an undue burden on genuine home buyers who have to meet 30% of the purchase price under existing mortgage lending policy in any case;
- fifth, to raise the amount of forfeiture from 3% to 5% of the purchase price if a buyer fails to complete the deal, or enters into a cancellation agreement with the developer. This is also meant to discourage speculation and sub-selling;
- sixth, to discourage speculation in carparking spaces, no forward sale of carparking spaces will be allowed unless they are sold with the residential units;
- finally, to extend the Consent Scheme to redevelopment schemes which involve substantive lease modifications or land exchanges in respect of residential accommodation. This will bring more new projects under control as regards the pre-sale of uncompleted flats.

These new measures cannot apply retrospectively to developments for which consent has already been given. However, I would urge developers to adopt these arrangements, on a voluntary basis, in all pre-sales as from today, where commitments have not actually been entered into. This would be a welcome indication of their support.

In the area of consumer protection, the Task Force welcomes the proposals of the Law Reform Commission on sales description on uncompleted flats, which are currently under public consultation. In addition, the Task Force proposes that the date of completion in the Sale and Purchase Agreement should be redefined as the date of assignment, so that buyers will have greater certainty over when they can take possession of their property. At present, home buyers have no recourse against the developer once the occupation permit is issued even though the flats cannot yet be individually assigned because the developer has not fully complied with the lease conditions.

The Task Force also supports the emerging recommendation of the Working Group on Estate Agents to establish a statutory authority to license and regulate the conduct and practices of estate agents, in particular, requiring them to declare their interest in any property transaction to their client. With proper

monitoring and enforcement, this should help stamp out unscrupulous practices in property transactions at this level.

In addition, the Task Force recommends that the Consumer Council should publish comprehensive information, on a regular basis, on the property market situation, details of pre-sale flats, and future supply; and also publicize illegal and unscrupulous market practices so that consumers will not unwittingly fall victim to them.

These short-term measures are deliberately pitched on the side of moderation. No doubt there will be different views as to whether they are too much or too little. But, we wish to see their effect before deciding whether to exert further pressure on speculators. The Administration will continue to examine legislative measures, including the possibility of legislating for the pre-sale of uncompleted flats to replace the Consent Scheme, and prepare for the need to introduce more severe measures, if excessive speculation continues. Punitive stamp duty on short-term resale transactions and financial penalties on the hoarding of vacant flats are the sort of measures that could well be considered.

#### *Increasing supply*

There is general agreement that the longer-term solution to the problem of property prices lies in increasing housing supply to meet the growing demand from a larger and more affluent population. In determining the amount of additional supply, the Task Force has taken account of projected increases in new households and additional demand which springs from aspirations for improvement in living conditions and for investment opportunities. Because of the lead time for housing construction, the Task Force has taken a medium-term perspective by aiming for a total of 45 000 to 60 000 additional flats before the year 2001, or an average of 7 500 to 10 000 flats each year over six years. The year 2001 is the final year of the current Long Term Housing Strategy.

Within the minimum target of 45 000 flats, the aim is to produce 20 000 public housing units, including both rental and home ownership flats, 10 000 Sandwich Class Housing flats and 15 000 private domestic flats. In these figures we have not counted the Housing Authority's own efforts to provide up to 13 000 flats on "infill" sites. We are also aware of the Authority's wish to aim for higher targets. There are, however, land supply, infrastructural support, lead time and construction industry capacity constraints to be considered, as well as a need to maintain a balance between public and private production. Nevertheless, we will work with the Authority on these problems, and consider, among other things, whether the Long Term Housing Strategy should be rolled forward.

To meet the 45 000 to 60 000 flat commitment, the Task Force has earmarked up to 70 hectares of land in Hong Kong, Kowloon and the New Territories to be used for residential development, of which up to 15 hectares

are proposed to be allocated in 1994-95, subject to the agreement of the Land Commission. The Administration will continue to monitor demand and supply, and seek the allocation of the remaining 55 hectares over the next two years as and when appropriate, again subject to agreement by the Land Commission. In this connection, the Task Force notes that agreement with the Chinese side over airport financing would make available 24 000 flats along the Airport Railway between 1997 and 2001, and would therefore also be a welcome contribution to the solution.

To enable the Administration to respond more flexibly and effectively to further demand, in excess of currently projected levels, the Task Force has also proposed that a land reserve of up to 50 hectares should be built up, to be allocated when necessary, and that a margin for growth should be allowed for in the design of infrastructure.

To bring forward development of the potential housing sites, the Administration will accelerate infrastructural development and traffic improvement works. For example, the planning and development of the Tin Shui Wai Reserve Zone, with a total area of 180 hectares, will be expedited to allow population intake to begin when Route 3 (Country Park Section) comes into operation by the end of 1998. Other infrastructural works, such as road improvements, will be entrusted to private developers.

To increase supply in the shorter term, the Task Force has proposed a range of measures, for example:

- establishing a high-level interdepartmental Project Action Team to “fast track” major housing projects which would produce a large number of flats, say about 1 000;
- considering, on a case by case basis, the possibility of increasing the density of development of projects already in the pipeline, where the infrastructure can cope with a larger population;
- arranging for the early pre-sale of the first batch of 10 000 Sandwich Class Housing flats, beginning in 1994, so that eligible families will be assured of a permanent home as soon as possible; and
- streamlining and speeding up the planning, development and redevelopment processes.

In the course of its deliberations, the Task Force has also identified some weaknesses in the present systems of project monitoring and has recommended improvements. For example, to ensure better forecasts of demand and supply, a more co-ordinated information system will be established which will provide for data sharing, that is on land supply and projects, among the Planning, Lands, Buildings, and Rating and Valuation Departments.

It is difficult to quantify the additional output from all these efforts, but we expect housing supply to increase gradually from this year onwards. The forecast supply of private domestic flats for 1994 is about 33 000 units, 20% more than 1993. Indications are that this is a reliable estimate. With “fast tracking”, we expect supply to continue to build up in subsequent years.

#### *Land disposal*

As regards land disposal, as we have already announced, we will be reviewing the arrangements for the conduct of land auctions in the light of recent experience to ensure that the principle of fair and genuine competition which underpins the system of land auctions is not impaired. To increase transparency, we have decided to invite three reputable and experienced members of the community to become involved in the review. The review will be completed before the next auction at the end of July.

#### *Conclusion*

In conclusion, the Task Force has made wide-ranging recommendations which will be vigorously followed up to ensure that the package will achieve results. A subcommittee will be appointed under the Land and Building Advisory Committee to advise on implementation and monitor progress. The subcommittee will consist of representatives of the relevant professions and other interested parties.

Furthermore, to give housing the priority and undivided attention which it deserves, we will be seeking the creation of a new post of Secretary for Housing. The officer will have overall responsibility for the planning, development, co-ordination and monitoring of both public and private housing policies and programmes in Hong Kong. His or her appointment will not in any way erode or interfere with the autonomy of the Housing Authority or duplicate the functions of its chairman. But it demonstrates our determination to give the housing issue, which is one of the community's main concerns, more focused attention at the highest level in the Administration. It will also ensure that the Task Force's longer-term recommendations bear fruit.

The Task Force has concentrated on the problems of residential property prices in its work so far. We will now turn our attention to commercial property.

As I have said, some may see our package of measures as not tough enough, others will see it as too interventionist. We believe it strikes a fair balance at this stage. No one, however, should under-rate our determination to keep the problem under close scrutiny and come back with further measures should the situation require.

PRESIDENT: I think Members are aware that no debate may arise on the statement but short questions may be put, at my discretion, for the purpose of elucidating the statement.

MISS EMILY LAU: *Mr President, will the Secretary inform this Council what criteria, milestones and other indicators will be used in terms of property prices to judge whether your comprehensive package of measures are achieving the desired results? And will you also please state specifically what are the desired results that you want to achieve?*

SECRETARY FOR PLANNING, ENVIRONMENT AND LANDS: Mr President, a great deal of the detail on the matters to which the Honourable Member has referred is contained in the report of the Task Force which is being distributed this afternoon, so I believe that rather than go into detail on those particular matters at this stage, I would leave Members to study the report. But briefly, there are of course a number of factors which indicate whether supply and demand are close to matching and if they are not, whether speculation is active in the market.

For example, the rate at which property changes hands; the number of vacancies in the market at any time; and of course, without specific reference to dollars, the rate at which prices are increasing or falling. So these are the sort of factors that we are looking for. In those terms it is not possible to give a book answer to the question: "What is the actual target of the measures?" Of course we will wish to see response in the market, response in prices and response from the community, to the results of our measures.

MR LEE WING-TAT (in Cantonese): *Mr President, in his reply in the Budget debate on 30 March, the Financial Secretary said that the measures to be adopted aimed at starting a downward trend in prices. May the Government elucidate whether the series of measures as proposed by Mr EASON are still designed to head towards the goals as pronounced by the Financial Secretary on 30 March? Does the Secretary anticipate that it will be a persistent and lasting action? With regard to the factors as mentioned by Mr EASON, has the affordability of the middle class been taken into account?*

SECRETARY FOR PLANNING, ENVIRONMENT AND LANDS: Mr President, Members will be aware that prices have moderated since March by around 10% to 15%. We do feel that the measures that we are now proposing to introduce will have a continuing effect on the moderation of prices. We do not wish, however, to see measures introduced cause a major deterioration in the market situation. I can confirm that the question of affordability has been taken into account, amongst other factors, in the Task Force's deliberations.

MR EDWARD HO (in Cantonese): *Mr President, matters relating to planning, environment and lands all bear a direct link with housing supply and now fall within the jurisdiction of the Secretary of Planning, Environment and Lands. If the newly-created Secretary for Housing does not deal with planning, environment and lands, how is he or she going to achieve anything on housing supply?*

SECRETARY FOR PLANNING, ENVIRONMENT AND LANDS: Mr President, there is a sort of concept behind that question which suggests that policy secretaries have to have dominance, one over the other, to produce results, and have to be able to achieve everything within the narrow confines of their own activities. I think that Members would be considerably surprised — although it is a pity that I have to say that — to understand the degree of co-operation and co-ordination which policy secretaries manage to achieve one between the other in the implementation of the Administration's policies. I have no reason to believe that the Secretary for Housing will have any difficulty in achieving the same results.

PRESIDENT: We have got five more Members wanting to ask questions and I am going to have to stop there.

MR FREDERICK FUNG (in Cantonese): *Mr President, the Secretary said in his statement that property prices had fallen during the period from March to June by 10% to 20%. The drop was probably stemmed from the fact that people have been waiting to see what proposals the Secretary would be announcing today. The recent land auction has demonstrated the developers' ability to rig land prices by making relatively concerted efforts. We have reasons to believe that developers or speculators have kept a low profile in the past nine months and waited for the proposals announced today. Therefore, the moderation of property prices only mirrors the wait-and-see attitude, instead of a real cooling down in the market. Will the Secretary inform this Council whether he has any targets in mind as to the degree of price moderation that can be achieved with the implementation of the proposed measures, say, a further drop of 10% or 20%, or he has no such idea at all?*

SECRETARY FOR PLANNING, ENVIRONMENT AND LANDS: Mr President, I think we have to remember that, yes, suppliers are influential in the market, and yes, buyers are influential in the market. The Government is involved in the market by the supply of land. The market is affected by external factors. External factors and indeed many internal factors are unpredictable:

- (a) as to when they will occur, and

(b) as to what effect they will have on the market.

I believe that it would be foolish for us to try to establish quantitative percentage targets of what we want to achieve in the way of rises or falls in flat prices, just as we would be foolish, in our open market economy, to try to set prices. These are not the principal factors. There are many factors, and as I say, I believe that if Members will study the Task Force's report, they will get a better insight as to the Task Force's approach to the question of measuring the effect of measures that it might introduce. And we will be looking at all these factors as time passes and making our assessment as we go along.

MR CHEUNG MAN-KWONG (in Cantonese): *Mr President, the proposals contained in the statement made by Mr EASON are toothless. The property prices may surge immediately after the statement is made. However, Mr EASON has provided some room for manoeuvre by adding in the statement that the Government will take other measures to curb property prices in the event that the measures as proposed today turn out to be ineffective. May the Government elaborate what these further measures are? Will legislative, fiscal and taxation measures be included, such as the imposition of stamp duty on resale transaction or capital gains tax?*

SECRETARY FOR PLANNING, ENVIRONMENT AND LANDS: Mr President, we will not be considering a capital gains tax. I think this Council itself has said that we should not do so. I did, in my speech, refer to some measures which were examples of the sort of measures that we could consider. These are punitive penalties on re-sale and also on flat hoarding, and we will be considering these further.

I would also like to make the point, which I believe it is worth making in response to that question, that not only does the Administration have responsibilities in terms of devising measures which will affect the market, but those who are knowledgeable about the market situation and indeed those who are not so knowledgeable but who make public statements, should bear in mind the effect of saying, without basis of fact, that they do not believe our measures will work. That sort of comment will in itself be taken into consideration by the community. Such statements, therefore, should be made with great caution.

MRS SELINA CHOW (in Cantonese): *Mr President, the Liberal Party whole heartedly believe that while mild measures may not necessarily be ineffective, radical measures are bound to be imprudent and will bring about some repercussions. I believe that the community is, after all, very concerned with the effectiveness of these measures and their effectiveness has to be determined by both the market and the public. In view of the fact that we are so concerned with the effectiveness of the Government's short-term and long-term measures, can the Secretary inform this Council whether he is prepared to brief this*

*Council in the coming months on whether any desired results have been achieved with the implementation of the Task Force's proposals, even if he may not have a quantitative target in his mind about the degree to which property prices are to be driven down? However, one thing is sure that there is a distinction between effectiveness and ineffectiveness, is he prepared to report to this Council on the degree of the desired results that have been achieved?*

SECRETARY FOR PLANNING, ENVIRONMENT AND LANDS: Mr President, I can confirm that we would be more than willing to take advantage of the many opportunities which come to us to brief Members of this Council on the development and effectiveness of our policies. I do not think it is necessary, however, for me to say that we will do it in six months or more or less, but we certainly undertake to do it.

DR HUANG CHEN-YA (in Cantonese): *Mr President, Mr EASON has just mentioned that more stringent measures will only be considered at a later stage. If it is so unfortunate that property prices soar from today onwards and keep climbing up within the coming weeks as predicted by Mr CHEUNG Man-kwong, will the Government then introduce the more stringent measures? Will the Government inform this Council, first, how much time will it take before the Government can ascertain that the existing measures are either ineffective or not effective enough; second, under what circumstances will the Government adopt more stringent measures; third, will the Government, in the meantime, spare no efforts in devising stringent measures and introduce them immediately when the circumstances warrant?*

SECRETARY FOR PLANNING, ENVIRONMENT AND LANDS: Mr President, I am not going to put a time on this because as has already been remarked by one Member, the community has been waiting for the results of the Task Force's work to make decisions. I do not believe that it is appropriate for me to say that in six months' time I am going to make another announcement, so that everybody sits around waiting for that. I believe that would be in itself an unwarranted intervention in the market which we should certainly wish to avoid.

Furthermore, the question of further measures is for the future and is for consideration in the light of events which will follow. We are not prejudging this. We do believe that our measures will have an effect, and in the circumstances I do not wish to get drawn into a discussion on the further measures. We believe at this stage that they will not prove necessary.

MR HOWARD YOUNG: *Mr President, I think it is correct that we should always remember we need to uphold the principles of a market economy and if people think that administrative measures can aim at some target figure, then*



*you should either admit that you do not believe in market economies and want planned economies or maybe read some "O" Level Economics textbooks — if you are not stretched for time, maybe "A" Level Economics — to understand this.*

*Mr President, I would like the Secretary to clarify some of the measures on pre-sales. He mentioned forfeiture, increasing deposits and also the selling of car parks. Did he say that these measures would come into effect for all new developments where consent is given from today onwards? Or did he mean that they should commence today for anything that is sold from today onwards where consent has been approved already? Or did he mean they should even commence or be applicable to properties which have been sold over the last few months but which have not been completed? I could not quite understand why he said these measures would commence and yet on the other hand he is calling for developers to voluntarily adopt some measures as from today. I was not quite sure what particular part he was referring to.*

SECRETARY FOR PLANNING, ENVIRONMENT AND LANDS: Mr President, yes, if it was not clear, I will try and make it clearer. Where consent has not yet been given, then the measures to tighten up the Consent Scheme will be applied, in other words, to projects for which consent is provided from now on. We cannot, however, impose new consent conditions on projects which are already the subject of consent and in those cases we are inviting developers, where their projects are not subject to existing commitments, to consider applying the tighter measures which we propose to apply to new projects. I did also say, for further clarification, that we propose to extend the application of the Consent Scheme to modifications and exchanges which will produce significant amounts of residential flats.

## **Motion**

### **FACTORIES AND INDUSTRIAL UNDERTAKINGS ORDINANCE**

SECRETARY FOR EDUCATION AND MANPOWER moved the following motion:

“That the Factories and Industrial Undertakings (Safety Officers and Safety Supervisors) (Amendment) (No. 2) Regulation 1994, made by the Commissioner for Labour on 23 May 1994, be approved.”

He said: Mr President, I move the motion standing in my name in the Order Paper.

Under section 7(1) of the Factories and Industrial Undertakings Ordinance, the Commissioner for Labour is empowered to make regulations to ensure the safety and health of employees in industrial undertakings including

construction sites. The Factories and Industrial Undertakings (Safety Officers and Safety Supervisors) (Amendment) (No. 2) Regulation was made by the Commissioner for Labour on 23 May 1994. In accordance with section 7(3) of the principal Ordinance, I now move that the amendment regulation be approved by this Council.

Under the Factories and Industrial Undertakings (Safety Officers and Safety Supervisors) Regulations, it is mandatory for a contractor of construction sites to employ a full-time safety officer if he employs 200 or more persons in one or more of his construction sites, and to appoint a safety supervisor for each site employing 20 or more persons.

However, the accident rate of the construction industry still stands at an unacceptably high level in recent years. To further improve the safety standards of these sites, we now propose that contractors employing over 100 workers in total in one or more sites must employ a full-time safety officer.

In addition, as the accident rate of the shipbuilding and ship-repairing industry is the highest among manufacturing industries, we propose that a shipyard proprietor should also be required to employ a full-time safety officer if he employs a total of 100 or more persons in his shipyard, and to appoint a safety supervisor for every shipyard employing 20 workers or more.

According to our estimate, about 70 medium-sized contractors and eight shipyards will need to employ full-time safety officers as a result of these regulations. As at 1 June 1994, there were a total of 955 registered safety officers. About 440 of them are serving safety officers and factory inspectors. The Hong Kong Polytechnic, the Construction Industry Training Authority and the City Polytechnic of Hong Kong are now running safety officer training courses for about 240 students annually. There should therefore be sufficient supply of registered safety officers to meet the additional demand.

However, some Members of this Council are concerned that there might not be sufficient safety officers in the market upon the introduction of this Regulation. The Hong Kong Construction Association has also expressed similar concern. To allay these concerns, we have asked the Construction Industry Training Authority to offer intensive part-time day release courses to train up more safety officers. The Labour Department will also offer help to any contractors facing difficulties in recruiting safety officers.

In addition, we have recently expanded the list of “specified examining bodies” under the Third Schedule to the Regulation which stipulates the qualification for registration as safety officers. Under this new arrangement, people holding relevant qualifications awarded by Commonwealth universities and polytechnics may also register as safety officers locally. This will further increase the supply of qualified safety officers in the market.

In the interest of industrial safety, we are most anxious to implement these measures quickly. However, Members have also asked for a longer grace period for proprietors and contractors to recruit sufficient qualified staff. We have now agreed that the commencement date of the amendment regulation should be extended to 12 months, from the original proposal of six months.

Mr President, I beg to move.

*Question on the motion proposed.*

MR MICHAEL HO (in Cantonese): Mr President, this Council set up a subcommittee of which I am the Chairman for this particular amendment Regulation.

The subcommittee called a number of meetings in which detailed studies were conducted. We discussed the suggestions and requests put forward by the Hong Kong Construction Association in its letter to the Government on 29 April this year and agreed on the following items:

Firstly, contractors should recruit safety officers through the normal channels and the Labour Department will actively provide assistance should any difficulties arise.

Secondly, with regard to the prosecution of offenders, the Administration has assured Members that no prosecution would be instigated frivolously and that the Commissioner for Labour will consider the merits of a case on the basis of the actual situation.

Thirdly, as to the suggestion to defer the commencement date, the Administration initially maintained that it would be inappropriate if we allow the Commissioner for Labour to stipulate flexible arrangements for the commencement date of the Regulation. It is because if we should allow the Commissioner to do so, employers and employees will be confronted by uncertainties in the transitional period arising out of an indefinite commencement date. Controversy will also arise in respect of the flexible arrangement in future upon the Regulation taking effect.

The subcommittee and the Government finally reached a consensus. It was agreed that the Regulation shall come into force 12 months after its passing, so that proprietors and contractors could have sufficient time to make appropriate arrangements. The construction industry can also make use of this period to recruit the 40 registered safety officers graduating from the City Polytechnic in November this year. Personally speaking, I hope that the employers concerned will recruit safety officers as early as possible during this 12-month transitional period, thereby bringing improvements to safety on construction sites.

With these remarks, Mr President, I recommend this amendment Regulation to Members.

MR ERIC LI (in Cantonese): Mr President, in the course of discussion of this motion, I have repeatedly stated that a market where only a few hundred qualified persons are available for employment may not be regarded as a large free market of labour, particularly when many of these qualified persons are currently holding some other offices, such as senior executives. They may not be willing to serve as a safety officer. Another point is that the Factories and Industrial Undertakings Ordinance provides for a ratio between the number of employees and the number of safety officers required. As a matter of fact, many companies employ more safety officers than statutorily required. Therefore, the Administration cannot simply look at the figure and claim that there is a sufficient supply of qualified persons. When there is actually only a supply of a few hundred in the market, chances are slim that building contractors are able to employ suitable safety officers; they would be just like looking for a needle in a haystack.

After I expressed my concerns, the Government has made so many positive responses that at last I feel that I should support this motion. Despite my support of this motion, I also wish to go on record in no uncertain terms that I have mentioned some factors that, I think, the Government must take into account before initiating proceedings against building contractors, as the convener of the Bills Committee has mentioned just now. Quite a number of Members (including myself) hold the view that if a building contractor has offered a reasonable salary and has actively sought the Labour Department's assistance in identifying suitable candidates to fill the safety officer posts but to no avail, then, on account of this, no prosecution should be taken out on him. We understand that the Government has pledged to take into account these factors but only that they cannot write into the legislation any guarantee of not conducting a prosecution against such building contractors. Since these factors have been mentioned at the meetings of the Bills Committee, I hope that it would be clearly put down on the minutes of meeting that the Administration will bear in mind these pledges they made in public if and when they consider instituting proceedings against the relevant building contractors.

Mr President, with these remarks, I support the motion.

MR HOWARD YOUNG: Mr President, all of us are most concerned about safety at work and in particular about workers' safety in Hong Kong. Whilst catering for the needs of the community we, as legislators, must also ensure that whatever measures we introduce are feasible and can be implemented effectively.

The Factories and Industrial Undertakings (Safety Officers and Supervisors) (Amendment) (No. 2) Regulation 1994, aims to improve workers' safety at construction sites and in shipyards. The amendment proposes to make it mandatory for a contractor employing over an aggregate of 100 workers in all his construction sites to employ a full-time safety officer. The present position is that he need only do so if he employs 200 or more workers.

This amendment has the support of the Hong Kong Construction Association (HKCA), although right from the beginning the HKCA had reservations about whether there were enough safety officers available. And I think the Secretary, in his opening address, did give some assurances on that point.

The HKCA's concern was in two respects. One, whether there were enough safety officers to meet the strict legal requirement and two, whether there were enough safety officers available to effectively implement safety measures.

Mr President, a contractor with 500 workers would comply with the new law by employing one safety officer only, but in practical terms he may feel he needs two or even three safety officers. This concern brought detailed discussions between my colleague, Mr Ronald ARCULLI, and his constituents, the HKCA, on the one hand and the Administration on the other. Mr ARCULLI also had discussions with other Members of this Council, including some of those who have spoken before me.

In the end, the Administration and Members of this Council took a positive step to alleviate the concerns of the HKCA by agreeing to extend the commencement date of the amendment from six months to 12 months, as from the passing by this Council of such amendment.

The HKCA appreciates this step and on its part the HKCA has written to the Administration setting out the following pro-active measures:

- (a) The HKCA has requested the special employment unit of the Labour Department to assist contractors in employing safety officers;
- (b) The HKCA will approach the Construction Industry Training Authority and the City Polytechnic to organize more courses for safety officers and to accelerate output;
- (c) The HKCA will encourage contractors to sponsor their staff to attend safety officer courses as well as to take up the career of a safety officer; and

- (d) The HKCA will issue a good practice guide on employment and career advancement of safety officers for the reference of contractors.

The HKCA will recommend that contractors implement the above immediately.

Mr President, this is but one example of how frank discussions can bring about a result satisfactory to all concerned. Together the Administration and the HKCA can improve safety within the construction industry. However, we must remember that safety is a concern for all of us. This includes the Government, the employers and the employees. Only, and only when we work together will we improve Hong Kong's safety record, not just in the construction industry but in all trades.

Mr President, Mr ARCULLI, who is not here today, has asked me to say that he endorses everything I have just said.

MR LAU CHIN-SHEK (in Cantonese): Mr President, it is well known that the construction industry is the worst industry in having the most industrial accidents. In improving the safety of construction sites effectively, the role played by safety officers is very important.

The problem we are facing now is not merely that the many small construction sites have no safety officers to supervise site safety. There is another aspect, I believe, that warrants our concern, and that is the fact that the operational role played by safety officers has not yet been fully recognized by employers. Mr Eric LI and Mr Howard YOUNG have said, and I quote "money is offered but no one takes up the job" and "not enough people available to be employed". And I believe these are the main recruitment difficulties. In fact, many contractors and employers are extremely unwilling to employ safety officers, thinking that having safety officers would only hinder the progress of works. To put it bluntly, it would "stand in the way of money-making". People are forced to employ safety officers because of the requirements under the law. Quite a number of safety officers often have the feeling that they are doing "a thankless job" as they do not have the recognition and support of their employers in respect of their work, and they would even find that they are made to become the "scapegoats" in case accidents occur!

Therefore, if there is neither sufficient legislative protection nor empowerment, if the necessary recognition by employers is absent, then it will not be the case that having more safety officers will mean that the poor construction site safety can be effectively improved. I think whilst the number is to be increased, it is also necessary for the Administration to make an overall review of the role of safety officers. The review should cover amendment of the law to give safety officers more statutory powers, or even consider the requirement that safety officers should not be directly employed by contractors

but should work contractually to supervise work safety independently. This will give safety officers the autonomous power to carry out their supervision of work safety. I also call on all the contractors of Hong Kong to give positive recognition and attach importance to the role of safety officers, so as to enable them to carry out the work of improving safety.

Mr President, with these remarks, I hope that the parties concerned will consider my views seriously. Thank you.

Howard YOUNG: Mr President, I think I have just been misquoted. I would like to clarify.

President: Yes, if you have been misquoted.

MR HOWARD YOUNG (in Cantonese): Mr President, I have just checked the draft of my speech again. I did not say, as what Mr LAU Chin-shek quoted, that “contractors were unable to recruit workers even though they have got the monty”. Perhaps it was mentioned by another Member. However, I did say that the HKCA had pointed out the contractors’ willingness to their own employees to attend safety officer courses and to encourage them to take up the job of Safety Officer.

SECRETARY FOR EDUCATION AND MANPOWER: Mr President, I would like to thank Members who have helped us to examine this regulation and to offer us a very constructive suggestion. I am most grateful to Members for their positive views on this important issue of industrial safety. I also thank the HKCA for their positive response to this matter. Equally I agree with Mr LAU that we should also look at the role of safety officers to ensure that their role is respected, is important and is supported by all.

Thank you, Mr President.

*Question on the motion put and agreed to.*

### **First Reading of Bill**

#### **SMOKING (PUBLIC HEALTH) (AMENDMENT) BILL 1994**

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

## Second Reading of Bills

### **SMOKING (PUBLIC HEALTH) (AMENDMENT) BILL 1994**

THE SECRETARY FOR HEALTH AND WELFARE moved the Second Reading of: “A Bill to amend the Smoking (Public Health) Ordinance.”

She said: Mr President, I move that the Smoking (Public Health) (Amendment) Bill 1994 be read the Second time.

It is the Government’s policy to discourage smoking. This Bill is a step forward in our progressive approach towards promoting a healthy community. The Bill proposes four areas of change.

When dining out, most people like to enjoy a smoke-free environment. The first proposed change is to require the manager of a restaurant to place a sign in a prominent location in the restaurant and visible from outside the restaurant indicating whether they provide a no-smoking area. The purpose is to allow customers to make an informed choice of which dining place to patronize and enjoy their meal.

We recognize that some restaurants may experience difficulty in setting aside a no-smoking area, due either to design constraints or customers’ preference. We therefore leave the choice to them. However, we hope that most managers will voluntarily join the growing number of restaurants which are already wholly or partly smoke-free.

The second proposal extends the existing health warning requirement and advertising restrictions on cigarettes to other tobacco products intended for sale locally. This is to advise their users that smoking these tobacco products is also hazardous.

The third area of change prohibits the sale and the giving, as part of a promotional exercise, of any tobacco product to persons under the age of 18. Retailers will not be allowed to sell tobacco products to minors and if they are in doubt as to the purchaser’s age, they can ask for age identification.

Preventing young people from smoking is the central theme of our antismoking policy since smoking almost always starts during the teenage years. Preventing youngsters from smoking will spare them the pain of ill health and trying to kick the habit later.

To support this measure and to give backing to retailers to refuse sale to minors, our fourth proposal requires tobacco retailers to put up a sign stating that selling tobacco products to minors is prohibited. This measure ensures that minors are made fully aware of the law and they should not attempt to buy tobacco products.



Mr President, if the Bill is enacted, I propose to allow a reasonable lead time for affected parties to carry out preparatory work to implement the new measures. As different grace periods will be needed for different requirements, the various provisions of the Bill will come into operation on different dates.

I am gratified to see that Honourable Members of this Council have already taken a lead in making these chambers smoke-free. I hope this will serve as an example to the rest of the community and I look forward to Honourable Members' further support for the proposals in the Bill.

However, legislation alone will not achieve the purpose of discouraging smoking among young people. Community awareness of the purpose behind this Bill and the full backing of our young people would be necessary in order to achieve effective enforcement. To this end, we will be organizing a series of public education events in the forthcoming months to publicize the aims of the Bill and to seek the community's endorsement.

*Bill referred to the House Committee pursuant to Standing Order 42(3A).*

#### **AMUSEMENT RIDES (SAFETY) BILL**

##### **Resumption of debate on Second Reading which was moved on 9 March 1994**

*Question on the Second Reading of the Bill 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).*

#### **ELECTORAL PROVISIONS (MISCELLANEOUS AMENDMENT) (NO. 2) BILL 1994**

##### **Resumption of debate on Second Reading which was moved on 18 May 1994**

*Question on the Second Reading of the Bill 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).*

**Committee Stage of Bills**

Council went into Committee.

**AMUSEMENT RIDES (SAFETY) BILL**

Clauses 1 to 10, 12, 14 to 16, 18, 19, 21 to 34, 36, 38 to 46 and 48 to 53 were agreed to.

Clauses 11, 13, 17, 20, 35, 37 and 47

SECRETARY FOR RECREATION AND CULTURE: Mr Chairman, I move that the clauses specified in the Chinese Bill be amended as set out in the paper circulated to Members. They are minor drafting amendments to the Chinese Bill, the purpose of which is to make the Chinese text much clearer and easier to understand. I beg to move.

*Proposed amendments***Clause 11**

That clause 11(4) be amended, by deleting “安裝” and substituting “改裝” .

**Clause 13**

That clause 13(2) be amended, by adding “或警務人員” after “署長” .

**Clause 17**

That clause 17 be amended, by deleting “均” .

**Clause 20**

That clause 20(1)(a) be amended, by deleting “報上” and substituting “提拱” .

**Clause 35**

That clause 35(2) be amended, by deleting “均” .

**Clause 37**

That clause 37(1) be amended, by deleting “開始” and substituting “展開” .

**Clause 47**

That clause 47(1) be amended, in the Chinese text, by deleting paragraph (j) and substituting—

“(j) 就本條例而言何謂對機動遊戲機作重大改裝；”。

*Question on the amendments proposed, put and agreed to.*

*Question on clauses 11, 13, 17, 20, 35, 37 and 47, as amended, proposed, put and agreed to.*

**ELECTORAL PROVISIONS (MISCELLANEOUS AMENDMENT) (NO. 2) BILL  
1994**

Clauses 1, 3, 5 to 11 were agreed to.

Clauses 2 and 4

SECRETARY FOR CONSTITUTIONAL AFFAIRS: Mr Chairman, I move that clauses 2 and 4 of the Bill be amended as set out under my name in the paper circulated to Members.

These amendments have taken into account suggestions made by the House Committee, and are intended to perfect the drafting of the Bill so as to put beyond doubt the policy intention.

Mr Chairman, I beg to move.

*Proposed amendments*

**Clause 2**

That clause 2 be amended—

(a) by deleting paragraph (b)(ii) and substituting -

“(ii) in paragraph (a), by adding “subject to subsection (2),” before “he”;

(b) in paragraph (c), by deleting “subsection (1) if” and substituting “subsection (1)(a) if the registration officer has reason to believe that”.

**Clause 4**

That clause 4 be amended, by deleting “he has reason to believe that”.

*Question on the amendments proposed, put and agreed to.*

*Question on clause 2 and 4, as amended, proposed, put and agreed to.*

Council then resumed.

**Third Reading of Bills**

THE ATTORNEY GENERAL reported that the

**AMUSEMENT RIDES (SAFETY) BILL and****ELECTORAL PROVISIONS (MISCELLANEOUS AMENDMENT) (NO. 2) BILL  
1994**

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

*Question on the Third Reading of the Bills proposed, put and agreed to.*

Bills read the Third time and passed.

**Members' Motions**

PRESIDENT: I have accepted the recommendations of the House Committee as to time limits on speeches for the motion debates and Members were informed by circular on 4 June. The movers of the motions will have 15 minutes for their speeches including their replies; other Members will have seven minutes for their speeches. Under Standing Order 27A, I am required to direct any Member speaking in excess of the specified time to discontinue his speech.

**DEVELOPMENT OF HIGHER EDUCATION**

MR TIK CHI-YUEN moved the following motion:

“That, in view of the concern about the future development of, and the monitoring system and the determination of tuition fees for higher education in Hong Kong, this Council urges the Government:

- (a) in actively pursuing the establishment of centres of academic excellence within tertiary institutions, to give consideration to a

balanced development of various academic subjects and ensure its compatibility with development of basic education;

- (b) to review the structure, functions and terms of reference of the University and Polytechnic Grants Committee in the light of Hong Kong's future development; and
- (c) to freeze the existing level of tuition fees, and undertake a comprehensive review of the policies on the determination of tuition fees for higher education and the provision of grants and loans to students.”

MR TIK CHI-YUEN (in Cantonese): Mr President, the number of student places in Hong Kong's tertiary institutions has risen sharply in recent years. It is expected that six out of every 10 matriculants this year will be admitted into local tertiary institutions' degree courses. The decision made by the Government in 1989 to speed up the expansion of student places in local tertiary institutions was a rash decision. The consideration behind it was political. The primary intention was to reassure the population. The decision was made without consultation or careful planning. This subsequently led to the Government's abrupt decision, again for political reasons, to cut back on the tertiary institutions' student places, to the chagrin and bewilderment of these institutions. The “student places incident” points up the absence of good planning and of a long-term higher education development strategy.

In November last year, the University and Polytechnic Grants Committee (UPGC) published its interim review report on higher education. One concept expounded in the report is the establishment of “centres of excellence” in the tertiary institutions. The interim report is undoubtedly helpful to all sectors as regards the discussion and formulation of future development plans for higher education in Hong Kong.

The following issues with a bearing on the development of higher education have aroused keen interest in recent years:

- (1) UPGC's role and its relationship with tertiary institutions

UPGC's terms of reference have been expanded since 1980. UPGC has become a body that provides the Government with a policy on higher education. It has become, in other words, Hong Kong's policy committee on higher education and an intermediary between the Government and the tertiary institutions. The adverse comments that have been made about UPGC are that it lacks initiative in its traditional operations; that its policy-making process is not open to the public; that there is a lack of communication between it and the tertiary institutions; and that its members are not sufficiently representative of the public.

(2) Inadequate funding for education

In the Government's budget for the coming year, expenditure on education accounts for 20.9% of total public expenditure. In monetary terms, it is about 6.5% higher compared with last year. However, it equals only 3% of GDP. This is a low ratio compared with the other three Little Dragons in Asia and compared with many European and American countries. Clearly, the most basic problem affecting education in Hong Kong is inadequate funding (meaning inadequate funding for higher education, for basic education and for pre-primary education) and not uneven distribution of resources for education.

(3) Flawed planning

While developing higher education, the Government used to neglect proper co-ordination between basic education and the matriculation courses. As a result, in 1992, when the Government wanted to cut back on the number of student places in the tertiary institutions, many planning and management problems arose.

(4) Problems with tertiary institutions' tuition fees, the financial grants programme and the student loan programme

In the early 1980s, the tuition fees for degree courses at the University of Hong Kong and the Chinese University of Hong Kong equalled only 4% to 6% of costs. In 1986, the Director of Audit suggested that all tertiary institutions should go back to the 12% cost recovery rate set in 1973 and charge tuition fees accordingly. In 1991, for no known reason, the Government suggested that a higher cost recovery rate of 18% should be used.

How was this 18% cost recovery rate arrived at? Would the financial grants programme and student loan programme practically ensure equal higher education opportunities? The Government has never answered these two key questions after all these years. So all sectors of the community cannot help but question the Government's policy on higher education.

Mr President, the Meeting Point has the following comments and suggestions to make concerning the various issues referred to above:

(1) Take active steps to set up "centres of excellence"

UPGC says in its interim report that it will help all of Hong Kong's tertiary institutions to become regional centres of excellence. It urges these institutions to operate certain elite programmes by way of components of the proposed centres of excellence. UPGC is to

be commended for setting such a direction for higher education development and for laying down such a positive funding policy responsive to the needs of the community.

UPGC estimates that the centres of excellence will need extra funding and that this will require an increase of between 5% and 10% in the current funding level for the tertiary institutions. This means an extra funding of \$400 million to \$800 million in money-of-the-day terms. In principle, these centres of excellence are to be set up through a greater emphasis on research, for which the tertiary institutions will be given the necessary incentive. Therefore, the Government must make extra resources available. It should not mix up funding for research with funding for the current operations of the tertiary institutions. Still less should it squeeze the resources for secondary education and primary education.

The idea of setting up centres of excellence is no more than an amorphously conceived idea in UPGC's interim report. I think that UPGC should go a step farther and explain to the public how the idea will be put into practice and what the time frame will be like. Another question is whether the tertiary institutions themselves will be fully consulted. Such consultation will enable their views to be heard and signify respect for their academic autonomy.

UPGC proposes that Hong Kong should remain a leader of industry and commerce *vis a vis* China and the Pacific rim. Therefore, the proposed centres of excellence will probably have to put a heavier research emphasis on new technologies useful to Hong Kong's industry and commerce. We think that the centres of excellence should additionally be a driving force for research on humanities. There will then be a better balance in the development of learning in Hong Kong.

(2) Review UPGC's organizational structure, functions and terms of reference

UPGC is not a statutory body. It is not subordinate to any government department. Nor is it accountable even to the Executive Council. This ensures that higher education in Hong Kong will not be affected by changes in government policy. We think that UPGC must keep its immunity from government interference, which is its special characteristic. At the same time, we find that UPGC's role should be adjusted somewhat to cope with the following developments:

- (i) Growing academic exchange between China and Hong Kong; and

- (ii) UPGC's switching to a more active role where it will encourage the tertiary institutions to put a greater emphasis on research while at the same time respecting their academic autonomy.

We have the following suggestions to make concerning UPGC's development:

#### *Membership*

About half of UPGC's members are overseas scholars. At the beginning, all its members were from the United Kingdom. Later, scholars from Canada, Australia and the United States were added, all of them being well-known scholars. In 1981, with an expansion of the scope of its work, UPGC became an advisory body on Hong Kong's education policy. Since then, UPGC has added more and more members who are local scholars or members of the local business community. The participation of overseas scholars gives Hong Kong's higher education an international exposure and helps to ensure that it meets international standards. Therefore, we think that the invitation of overseas scholars to sit on UPGC should continue.

Academic exchange is growing busier between China and Hong Kong. Hong Kong's tertiary institutions are offering new courses on the China market and on trade and commerce in China. More undergraduate and graduate students are coming from China to study in Hong Kong. Therefore, it is necessary to add to UPGC's membership a representative scholar who is familiar with the China scene and also to add more local scholars. This will enable UPGC to cope better with the transitional changes in 1997.

#### *Contacts with individual institutions*

At the higher education policy level, the roles of the individual institutions are now completely passive; they now only report to UPGC or are accountable to it. There have been instances of lack of co-ordination between UPGC and the individual institutions, for instance, on the question of student places. As its role becomes more active, UPGC should put a heavier emphasis on working closely and communicating properly with the individual institutions when there are problems to be solved. In particular, UPGC should consult carefully and fully with the individual institutions before putting the idea of centres of excellence into practice.



*Transparency*

UPGC should make its operations more transparent. The individual institutions will then be able to participate more actively in its decision-making. The publication of UPGC's interim report and the invitation of public comments thereon are welcome initial steps. I hope that UPGC will widely consult the public again before it prepares its draft plan on how to implement the report's recommendations.

(3) Review tertiary institutions' tuition fee, student loan and financial grants policies

*Freeze tuition fees at their current levels*

In 1991, the Government announced that it would raise the tertiary institutions' tuition fees step by step until an 18% cost recovery rate was reached in 1997. In other words, it said that tuition fees would be raised from \$17,000 in 1993 to \$41,000-plus in 1997, up nearly 150% over a five-year period. The 18% cost recovery rate is high compared with other developed countries in Asia. Besides, the Government has never given a reasonable explanation as to why tuition fees should equal a cost recovery rate of 18%. Therefore, the Government should freeze tuition fees at their current levels. Meanwhile, it should conduct a fresh review as to how much the increase in tuition fees should be.

*Introduce a low-interest student loan programme and do away with the means test*

To the community, higher education is an expensive investment. The trend is towards a universal student loan programme which financially enables students to receive higher education. A local scholar has noted that, in Sweden and the United Kingdom, 70% to 90% of all tertiary institution students are eligible for government loans. Now let us look at Hong Kong. According to UPGC statistics, about 60% of all students received financial grants in the early 1980s; the proportion then fell gradually until it stood at about 30% in recent years. Clearly, the existing student loan and financial grants programmes are catering for only a small number of students.

In 1992, the Joint Committee on Government Grants suggested that all students of tertiary institutions should be eligible for bank loans with the Government acting as the guarantor or that a student loan fund should be set up to help students in need. The scheme as suggested would do away with the means test. When a person was in default on a student loan, the Government should pay the amount

due. The student loan ceiling should be set at \$20,000 and that the interest rate should be lower than the prime rate.

I think that the Government should quickly approve a programme of “non-means-tested, low-interest student loans”. It will be helpful to the students who are not eligible for benefits under the existing student grants and loan programmes. It will enable and encourage students to do some of the things which are helpful to studies but which they cannot afford to do with the money received from the existing programmes which do not provide for expenditure on items like buying a computer, living in a private hostel and doing some travels.

Mr President, the future development of higher education is a topic of great interest to the community. I urge the Government to be responsive to the social changes which have occurred, to take active steps to set up centres of excellence in the tertiary institutions and to review UPGC’s organizational structure, functions and terms of reference in light of the future development needs of higher education.

In addition, the Government should freeze tuition fees at their current levels and meanwhile undertake a comprehensive review of the policies on the determination of tuition fees for higher education and on the provision of grants and loans to students so that students in need will be given reasonable assistance.

Mr President, with these remarks, I move the motion.

*Question on the motion proposed.*

THE PRESIDENT’S DEPUTY, MRS ELSIE TU, took the Chair.

DR SAMUEL WONG: Madam Deputy, in reviewing the future development of higher education in Hong Kong, including its monitoring and fees, it is necessary to keep in view the *status quo*. This has depended on the role of the University and Polytechnic Grants Committee (UPGC) which has included maintaining academic freedom from government intervention. The general acceptance of the Education Commission Report No. 3, which has resulted in what many people refer to as a great leap forward, is happily a substantially successful one.

The relatively recent integration of Hong Kong with the hinterland has raised the possibility of Hong Kong’s institutions serving the hinterland, as well as inevitable competition with other newer institutions over the border, over which, at present, we still have the edge.

We therefore need to ask ourselves some questions: Do we really want to change the *status quo* and in so doing possibly undermine academic freedom in Hong Kong? Do we really want to question the substantial achievement of the higher education field since 1988, just when the major development is more or less complete and a period of consolidation due? Do we really want to undermine our advantages over competing institutions over the border? Clearly I recommend caution.

In the light of this, I will now consider the three aspects of the motion. First, that centres of academic excellence should be balanced. In my view, this conflicts with the concept of such centres. They cannot be preordained. They can depend on resources, specializations of staff and students, tendency of a science park, and choices between conflicting requirements at the time.

As the UPGC interim report says, what we hope to foster within our institutions is a number of excellent groups of direct interest to Hong Kong industry, commerce and culture. Some imbalance may be inevitable but is in any case irrelevant. If any institution has the good fortune to experience the coming together of all the excellent qualities necessary to develop such a group, it should not be inhibited by having to review the balance with other work.

As to the structure, functions and terms of reference of the UPGC, I cannot think of a more inappropriate time to review them. It would be most unwise now to change the *status quo*. The UPGC is in the middle of preparing a final report and is seeking consultation in so doing and a period of consolidation is soon coming when developments can be much better assessed.

Finally, I can see no advantage in freezing fees. The investments in the future are not only by the Government but also by the students themselves. It is their future. Furthermore, it has been the policy for decades that no students shall be denied higher education because of failure to raise the necessary funds. Funds are always forthcoming. If not, I hope the Secretary will take note.

To superimpose a freeze on an existing, working and successful system could do nothing but harm. In Hong Kong we let the market forces prevail and this should be no exception. To conclude, I fully support the UPGC in recommending that Hong Kong's higher education should be the best and we should beware of any attempt at a cultural revolution to denigrate the excellence of our learning.

Madam Deputy, with these remarks, I oppose the motion.

MR CHEUNG MAN-KWONG (in Cantonese): Madam Deputy, today I will concentrate on discussing two important subjects, that is, tuition fees for higher education and the interests of academic staff in tertiary institutions. As regards the other parts of the motion, including centres of academic excellence and the structure and development of the University and Polytechnic Grants Committee

(UPGC), Mr Albert CHAN and Mr Michael HO of the United Democrats of Hong Kong will respectively speak on them.

Madam Deputy, I will first speak on the tuition fees for higher education. A number of students of tertiary institutions are petitioning outside this Council today. I believe some of them are also sitting in this Chamber now. What they oppose is the Administration's policy of increasing tuition fee at a rate far exceeding that of inflation. It is really not difficult to understand their opposition. How many people can afford an increase of \$7,000 in the first year accumulating to \$30,000 in the fifth? Such a rate of increase verges on madness. Such an increase is anything but modest no matter what arguments the Administration has brought up as explanation, and no matter what criteria it has drawn on for justification. Nor can it be turned into a reasonable policy by any polishing. The increase in tuition fees and the rise in property prices just make a wonderful pair.

The crux of this problem of pegging tertiary education tuition fees to costs is two-fold. Firstly, it is unknown why tuition fees should be fixed at 18% of the costs. Secondly, as students are not allowed to take part in the formulation of the costing of higher education, they have no say in what cost items are to be pegged to the tuition fees, how they are pegged and so on. Moreover, in view of the expansion of tertiary education places, and the development of centres of academic excellence which may require an additional \$400 million to \$800 million in each of the coming years, it is expected that the costs will rise continually. Even if the cost recovery rate is maintained at 18%, the rate increase will still be far above the inflation rate. In these circumstances, the Administration's commitments towards the rapid expansion of higher education have in fact been shifted swiftly onto the students. This is utterly unfair to the students.

So far, the Administration has still only one method, that is, the provision of grants and loans, to offset the negative effects of the substantial increase in tuition fees. But in 1993 wherein tuition fees have increased by 46.6%, only 40% of the students have been given grants. It reflects that the criteria employed in the examination of applications are still very stringent. Madam Deputy, what I am concerned about is the remaining 60% of students in Hong Kong who are not eligible for grants, especially those who are only marginally ineligible. Without any grants, these students have no alternatives but to take an excessive amount of part-time jobs. The Administration has time and again emphasized that the current policy has already ensured that no student will be denied access to higher education because of financial difficulties. However, does it not defeat the Administration's principle of encouraging students to take part in campus and social affairs if the students, because of financial reasons, have to take part-time jobs and sacrifice the time for studying and the opportunities to take part in various kinds of activities?

Therefore, I now put forward five demands concerning the policy of tuition fees for higher education: (1) to freeze immediately the proposed increase of tuition fees for higher education and to a review the cost recovery policy; (2) to consult the public extensively in order to determine a reasonable and acceptable tuition fees level; (3) to set up an organization similar in nature to a users' committee in order to enhance the transparency and accountability as far as the expenditures of tertiary institutions are concerned; (4) to review the amount of assistance and the criteria of eligibility under the Local Student Financial Assistance Scheme, especially where marginal cases are concerned; (5) to actively consider expanding the avenues for loans such as the provision of a non-means-tested low interest capped loan.

I would now like to turn to the procedural problems concerning the renewal of contracts for and dismissal of academic staff in tertiary institutions. Recently, there have been a number of cases of dispute concerning the termination of contracts of academic staff in tertiary institutions, showing that the existing appointment system of our tertiary institutions still has room for review. In view of the upgrading of a number of post-secondary institutions, and UPGC's change of its traditional way of funding which introduces the determination of the level of funding according to the research performances of individual institutions, it is only incidental that tertiary institutions will have commensurably higher requirements in the appointment of and renewal of contracts for academic staff. In fact, with the upgrading of the institutions, future developments will surely dictate a higher quality of the teaching staff. The crux of the matter is that sufficient time should be given to the academic staff so that they can make an effort to adapt to and attain the institutions' standards by improving their qualifications and research quality. By so doing, we can prevent an apprehensive atmosphere from arising among the academic staff and avoid giving rise to any personnel disputes and conflicts.

Therefore, all subsidized tertiary institutions should formulate a rational and sufficiently transparent mechanism for renewal of contracts. It should enable staff members who are not given renewal of contracts to know clearly the reasons of the non-renewal, and issue at an early stage any verbal or written notices to those whose performances are found to be unsatisfactory, so that they will have a chance to make improvements. At the same time, the institutions should also set up an effective system for communication and monitoring, thereby giving the staff member concerned a chance to explain, as well as ensuring that the staff will not be working under the fear of possible dismissal or termination of contract in an atmosphere of "white terror" or "black box operation" which may otherwise seriously affect staff morale.

With these remarks, Madam Deputy, I support Mr TIK Chi-yuen's motion.

MR HENRY TANG (in Cantonese): Madam Deputy, first I have to declare interest. I am presently a member of the University and Polytechnic Grants Committee (UPGC).

In recent years, the tertiary education of Hong Kong has made certain progress in “quantitative” terms. Entering the 21st Century, in view of the rapid development in science and technology as well as the economy, tertiary education should also stride forward in “qualitative” terms.

In the recently published Interim Report on the review of the development of higher education, the centres of excellence proposed by the UPGC is one of the steps towards the target.

The objective of setting up centres of excellence is to enable every institution to develop its key subjects to their highest standard. Since the history and development of individual institutions are different from one another, the institution *per se* knows best which are its key subjects. Based on the general principle of academic freedom, I hold that every institution should have freedom of development and choice.

Higher education in Hong Kong has long been structured in favour of teaching, while postgraduate education only constitutes a minor proportion. But the centres of excellence are more research-based. I hope that in the future these centres can expand outwards, be able to influence and even to boost teaching, so as to benefit other departments in terms of teaching and research.

The UPGC estimated that the recurrent cost of the centres of excellence would increase by about \$400 million to \$800 million per year. I think that the centres should seek separate funding from the Government, so that the funding for tertiary, and especially basic education would not be affected.

If the centres can be successfully established, I believe that, on the one hand, more qualified manpower can be trained for the territory to the benefit of local economic development; on the other hand, there can be a catalytic effect on other departments of the institutions in terms of teaching and research. Thus I support the setting up of the centres of excellence.

The second item of today’s debate is to review the University and Polytechnic Grants Committee. In light of the changing social, economic and political situations in Hong Kong, I agree that the various aspects of the UPGC be reviewed. However, in the course of reviewing, the authorities concerned should not forget that under the general principle of academic freedom, there is a need for such a body as the UPGC to exist.

At present, the funding for the tertiary institutions mainly comes from the Government. But to avoid the Government controlling the tertiary institutions through appropriation of public funds, and to make sure the institutions have enough academic freedom, the UPGC has a very important role to play in the

allocation of public funds to various usages. As a matter of fact, bodies such as the UPGC are also widely established in a number of Commonwealth and non-Commonwealth countries, which shows that such organizations have their value of existence.

As I have just mentioned, because of the changing economic and political situations in Hong Kong, there should also be some variations in the UPGC membership. I think that what is most pressing at present is to recruit some Chinese scholars, who are familiar with the situations in China and Hong Kong into the UPGC.

Half of the existing UPGC members are scholars from abroad. As Hong Kong is an international city, it is understandable and necessary that UPGC members should come from different parts of the world, but scholars from China are conspicuous by their absence. When entering the later part of the transition period, there will certainly be more exchange between the educational sectors of Hong Kong and China. And since China has strong research capacity and lots of talents, especially in the research on basic science subjects, if both China and Hong Kong can further co-operate in the policy area of higher education, I believe that the effect will be phenomenal.

The rate of increase in tertiary tuition fees is another matter of public concern. Under the principle of “those who can pay, pay more”, it is acceptable that the Government recovers 18% of the tertiary education cost.

We can take reference from other countries' recovery rates relating to higher education cost: in the United Kingdom, the average is 27%, Australia 20%, Singapore 18%. Thus the rate of 18% in Hong Kong is reasonable.

However, one problem is that the Government has to achieve that goal by the year 1997-98. Therefore, right from the year 1993-94, increase in tertiary tuition fees got off to a frightening start with a rate far above the inflation rate. In view of the enormous rate of increase, I am afraid that those originally able to afford the fees will also become helpless. In fact, the UPGC has never assented to such an increase rate for the fees.

I think the Government should review its goal of attaining the cost recovery rate of 18% by the year 1997-98. Actually, the Government has no adequate grounds for achieving the goal by that year.

At the time when the tuition fees are being increased drastically, although financial assistance for university students has also increased, according to statistics, at present only 40% of the students are able to receive grants and loans at the same time. When the tuition fees are not so high, they may be able to earn money by other means to pay for the fees. But with the exorbitant tuition fees, whether they can still continue their studies is indeed a matter of concern. I deem that it is absolutely unacceptable if a student is unable to pursue his studies because of the fees increase.

The reason why some of the students receive no financial assistance or less than sufficient assistance is probably related to the low ceiling concerning the amount of liquid assets and real property owned by the applicants which is set by the Government. Although the ceiling has been raised from \$240,000 to \$320,000, the latter is after all not a huge sum, and the applicants can easily exceed the limit.

The Liberal party's principle is that those who are eligible should not be denied tertiary education because of financial reasons. We request the Government to review afresh the pace of cost recovery and the whole financial assistance scheme.

We, the Liberal Party, support the motion of Mr TIK Chi-yuen.

MR MAN SAI-CHEONG (in Cantonese): Madam Deputy, all along the principle applied by the Government concerning the development of higher education or indeed the entire tertiary, secondary and primary education can be summed up as sheerly "utilitarian". Leaving aside for a moment the development of our tertiary education under the colonial government's misconceived guidelines in the past, one need not look further than the tertiary expansion policy pioneered single-handedly by the then Governor Sir David WILSON in 1989 to find that the Government's education policy was entirely geared to the demand for manpower by the business sector. How can we then expect any educational ideals to be promoted on such a utilitarian ground? How can we expect that school education our children receive is oriented towards improving people's qualities and bringing enlightenment to them? The Government only looks at "social needs" and "quality talents" from an economic point of view. For the Government, the term "social needs" is simply equal to training a group of administrators and professionals whereas "quality talents" refers to people who would be capable of taking up senior posts. Such narrow-minded and shortsighted concepts upon which our education policy is built are deplorable in the eyes of the educators. People are concerned about the proposal of setting up centres of academic excellence in tertiary institutions as advocated by the University and Polytechnic Grants Committee (UPGC), as well as about whether it is possible for tertiary institutions to achieve a balanced development of various academic subjects. What is worrying, above all, is that it is by no means easy for our primary and secondary education with deep-rooted problems as signified by its haphazard policy of medium of instruction to be brought in line with the rapid development of higher education in terms of both quality and quantity.

In its interim report published in last November, the UPGC stated that its proposal of setting up centres of academic excellence in tertiary institutions is made on the assumption that Hong Kong is to maintain a leading position in the commercial and industrial development of China and the Pacific rim. Such an assumption is certainly in line with the long-held view of the Government with regard to its education policy that our higher education has no other important



objective than serving the interest of the business sector. Although the idea of establishing the centres of academic excellence is still a crude and almost empty concept for which the UPGC should make available more details to the public, it is anticipated that, in view of the Government's views on education, the centres of academic excellence will focus their attention only on the promotion of academic subjects related with industry, commerce and technology, and if so, this will deal a heavy blow to the struggling humanities.

If we really think that education is a means of enlightening people, improving their qualities and nurturing fine and excellent citizens, then the Government must re-adjust the direction in which the centres of academic excellence are to be developed in such a way that tertiary institutions will not turn into "money-making machines" which churn out "milch cows" If not; it will bring disgrace to our tertiary education on the one hand, and bring no improvement to the quality of the people on the other. To re-adjust the direction, we must first of all define the objectives of tertiary education. This most fundamental question must be tackled in the first place before we can engage in any fruitful discussions about how the right balance can be struck between the development of academic subjects and that of humanities offered by tertiary institutions.

In redefining the objectives of tertiary education and the role to be played by the centres of academic excellence, we should also study ways as to how to tie primary and secondary education in with the development of higher education.

The ill effects of the expansion of tertiary education in 1989 have gradually emerged. Most of the students who continue their studies in tertiary institutions are not up to standard in terms of their language proficiency. Meanwhile, the pace of reform in basic education cannot keep up with the development in higher education. Among the various long-standing ills in secondary and primary education, the most pressing one is the question of teaching medium. Unfortunately the Education Department has been wavering in its language policy and has allowed secondary schools to choose either English or Chinese as their medium of instruction. As it is explicitly pointed out in a review published by a working group set up by the Education Department in December 1988, most students learn more effectively through their mother tongue instead of through English and that mixed-code teaching would hamper learning. But the Government has been reluctant to promote mother tongue teaching in all schools. Some people think that the popularity of electronic media and comics has to be blamed for the loss of interest in language learning among students. The fact, however, is that students lose interest in language learning simply because of the Government's erratic language policy and this has driven them to look for pleasures beyond the realm of language learning. The Education Department deserves a credit for the part it plays in bringing about a boom in the comics and electronic media business and their subsequent boost to the gross domestic product. The Government must face squarely the problem of teaching medium in basic education before it is too late.

Otherwise, not only will higher education become an utter failure, but there will also be difficulty in improving secondary and primary education. If the Government still shows no enthusiasm towards the implementation of mother tongue teaching, I am sure the centres of academic excellence proposed by the UPGC will not be able to produce any concrete achievements.

With the above in mind, I think the Government should recognize the importance of mother tongue teaching and should remedy the old ills in our basic education, with an aim of ensuring that secondary and primary education is compatible with the development of tertiary education. It should also set new objectives for our tertiary education and re-adjust the direction in which the centres of academic excellence should follow so that humanities will continue to form very much part of our tertiary education and that tertiary education will continue to offer something more than just technical training.

MR MICHAEL HO (in Cantonese): Madam Deputy, the future development of higher education in Hong Kong should be adjusted in line with social changes. The University and Polytechnic Grants Committee (UPGC), as a planning and co-ordinating organization which is responsible for the management of tertiary institutions' fund allocation and an adviser to the Government on higher education, should make appropriate adjustments to cope with social changes but not move in a rut.

As the public are more aware of their role of monitoring public expenses, it is natural that the Government will be more concerned about the quality and cost-effectiveness of the tertiary institutions. But the crux of the matter is that the UPGC has all along been operating behind closed doors and it often lacks transparency in its formulation of tertiary education policies. Obviously, its consultation base is not wide enough and there is insufficient communication with the tertiary institutions. Here is an example. The number of tertiary places began to soar rapidly in 1989. Yet it was not until 1992 that the UPGC put forward its amendment proposal which abruptly sought to cut the number of places. As a consequence, tertiary institutions were required to return the \$590 million recurrent expenditure already approved for three academic years to the Government. The tertiary institutions were then at a loss as to what to do and, without the funding, they had difficulties in recruiting the necessary staff. This exemplifies that there is much room for improvement in respect of the communication between the UPGC and the tertiary institutions and the UPGC's assessment of the tertiary institutions' manpower planning and development potential.

In spite of this, we are glad to see some improvements in the way the UPGC goes about its work. In preparing its recently published interim report on higher education, the UPGC has accepted public views and extended the period of consultation to enable an extensive consultation to be conducted. It has also undertaken to distribute consultation papers to lecturers of tertiary institutions and to consult the business and industrial sector. We all hope that the

UPGC will further open up its consultation channels at various levels. In doing so, it will not undermine the autonomy of the tertiary institutions in terms of academic matters but will, on the contrary, enhance the transparency of its operation and the legitimacy of its proposals.

It comes to my knowledge that the UPGC is going to reorganize its structure by dissolving the existing sub-groups responsible for individual institutions and to replace them there will be three working groups which will jointly oversee the development of the seven tertiary institutions. The area to be monitored include the development direction, education quality, resources and self-assessment mechanism of the institutions. This is a welcome development. Such a reorganization allows overall reviews on the development of individual institutions by different working groups in a co-ordinated way on the one hand and does not undermine the academic autonomy of each institution on the other. However, the crux of the matter still lies in whether the working groups are transparent enough or not. To set up these working groups, it is imperative that the UPGC establishes an effective liaison network to enhance its communication with individual institutions. This is particularly important in consideration of the fact that the UPGC's fund allocation policy is going to undergo a change whereby the amount of allocation to individual institutions would be determined on the basis of their performance. In view of this, it is necessary for the UPGC to lay down clear-cut assessment criteria and requirements in respect of the institutions' performance. It should also play an active role in liaison and communication to ensure that UPGC-funded institutions could receive clear messages from, and establish an effective communication network with, the UPGC. This will help avoid a lack of communication which may lead to problems like bitter competition for resources among the institutions.

Mr President, the last point I would like to put forward is a balanced composition of UPGC members, that is, a balanced ratio between local and international academics. At present, about half of the 17 members on the committee are locals. To maintain the UPGC's international reputation and standing, it is necessary to maintain the existing practice of inviting foreign academics to serve on the committee. But given the social changes, we have to review and strengthen local academics' participation so that the UPGC could perform its functions to the fullest by achieving the dual purposes of maintaining its international standing and catering for the special needs of Hong Kong.

As the representative of the Health Care Functional Constituency in this Council, I earnestly hope that the UPGC can play a more active role as a consultative body on education policies and would offer some forward-looking views to the Government for its deliberation on the introduction of degree programmes in, among others, nursing, physiotherapy, occupational therapy and radiotherapy.

Madam Deputy, with these remarks, I support the motion.

THE PRESIDENT resumed the Chair.

DR TANG SIU-TONG (in Cantonese): Mr President, the motion today encompasses a fairly broad range of issues. I only wish to concentrate my remarks on the tuition fees of tertiary institutions.

The Government is going to increase the tuition fees of tertiary institutions substantially in the next few years. The tuition fees this academic year for a degree course is \$17,000 per annum. It will go up by 41% next year and by the academic year 1997-98, the tuition fees will be raised to \$41,710, or a 141% increase over that of this year. The Government explained that the reasons for increasing the tuition fees are to prevent resources from being misused and to recover 18% of the cost, a fairly moderate percentage, in the Government's point of view, when compared with other countries. It is absolutely right to ensure that resources would not be misused but there must be fair and explicit criteria to define "misuse". Can the Government inform this Council what are the criteria? What are the statistics and incidents which have led the Government to come to the view that there were cases in which educational resources had been misused? Was it in fact the students or the institutions themselves that had misused the resources?

Housing, health care and education are services indispensable to people's livelihood. A sound and comprehensive housing policy can solve people's housing problems and help them live in peace and work with sufficient contentment; low-cost public health services can take good care of the health of the public whereas universal education, a crucial factor in social development, can improve people's educational levels and nurture talents for society. No amount of training for educational purposes would be considered too much. Statistical data shows that in Hong Kong, there are only 1 140 tertiary places for every 100 000 people, a ratio far lower than that in other advanced and industrialized countries.

In 1989, in response to the serious brain drain problem and in order to equip Hong Kong to be the future financial centre of South China, the former Governor, Sir David WILSON, put forward a plan to expand vigorously the degree programmes offered by tertiary institutions. At that time, students doing first-year degree courses only accounted for 7% of the student population in the right age group. Under the plan, by 1997, according to the Government's projection, 18% of students in the right age group will be offered tertiary places. Sir David WILSON's higher education expansion plan is of great import. Yet, that the Government increasing tuition fees substantially now on the ground of forestalling any misuse of resources is certainly going against Sir David WILSON's far-sighted policy.

It is imperative that the Government, in expanding higher education, must increase the funding for education. In recent years, the Government has increased the funding for tertiary institutions but, at the same time, reduced its

investment in primary, secondary and adult education. This has caused general discontent among the education profession. On the surface, it may look like an unbalanced allocation of resources on the part of the Government but it is indeed a question of inadequate allocation of resources. The Government's annual expenditure on education accounts for only 3% of the gross domestic product (GDP). This percentage compares poorly with that of other countries. Meanwhile, the Government has lately been promoting the concepts of "those who can pay, pay more" and "cost recovery" in the context of various kinds of public services. This has stirred up strong public resentment. Now tuition fees for tertiary institutions are linked to cost. Though tuition fees are pegged at 18%, the cost is bound to increase as a result of the rising inflation and hence tuition fees will be pushed up progressively. This will certainly place heavy financial burden on the less well-off students. Students with financial hardships can surely apply for financial assistance. Yet the grants and loans, however, fail to meet the needs in most cases. Besides, the calculation method adopted in the assistance scheme still leaves a lot to be desired and closes the door to many students in need and those who have a borderline case in terms of eligibility.

"Education for all without discrimination" is the guiding spirit of education. But what the Government has done can be said as "no money, no education". Should the Government's policy not be rectified, the days will come when higher education would be available exclusively to the rich; and to the poor, "education for all without discrimination" will come to a full stop.

In making the decision to recover 18% of the cost, the Government should first see whether the expenses incurred by tertiary institutions are justified and whether there is any room to reduce expenditure. It is not proper if the Government has not done so and then recklessly proceeds to link tuition fees to the cost. All long, the Government has emphasized that it has been its established policy to obviate the need for students receiving tertiary education to pay tuition fees out of their pockets and that tuition fees should be paid by their parents. However, the reality is that over 40% of students receiving tertiary education have part-time jobs. Of course we do not rule out the possibility that some of them are not doing part-time jobs to pay for their tuition fees. But the fact remains that so many students taking part-time jobs indeed indicates that the financial situation of the families of many students are not as robust as the Government thinks. I understand that it is necessary for the Government to increase tuition fees for tertiary institutions to a reasonable level. But it must ensure that no students from the lower to middle income families would consequently give up their studies due to the unaffordable tuition fees. I think the Government should raise considerably the amount of low-interest loan made available to higher education students coming from lower to middle income families so that, least of all, they can have the financial means to complete their higher education without having to take part-time jobs.

Mr President, with these remarks, I support the motion.

MR ALBERT CHAN (in Cantonese): Mr President, my speech today will focus on the UPGC's Interim Report on Higher Education presented earlier. It is a blueprint for the development of higher education in Hong Kong into the next century and it will have far-reaching repercussions. I want to discuss two particular points in the report: the establishment of centres of academic excellence and the future enrollment planning of tertiary institutions.

There is nothing wrong with the higher education in Hong Kong, in light of the economic development in the Asia-Pacific region and indeed in the world, to head in the direction of professional training and high-tech development. However, if the centres of academic excellence as proposed by the UPGC are to be developed, then we had better be sure that there is adequate extra funding for them, and the resources for the development of secondary education, primary education and pre-school education would not be squeezed directly or affected indirectly. At present, our secondary schools, primary schools and kindergartens jointly have more than 1.4 million students. Funding for these schools, as a percentage of total funding for education, has already been cut several times over the years. It now accounts for 61% of the total public expenditure on education. In the area of basic education, many improvements are badly needed. For example, we need whole-day primary schools, we need one social worker per school, and better pay and conditions of service for kindergarten teachers. We, however, have no idea when these needs are going to be met. We must understand that school education is made up of a number of integral parts. It will backfire if one part grows rapidly without the necessary corresponding support of the other parts. Some years ago, the Government sharply increased tertiary places when secondary education and matriculation classes were not quite ready to back up such a development, leading to a decline in the academic quality of tertiary institution students. We should learn a lesson from this.

In developing the centres of academic excellence, the Government must increase its investment in education by a net amount equal to 5% of its current funding for education. This additional allocation should be invested prudently and gradually in a manner that our basic education will not be adversely affected. The Government should first have a clear idea about the scope and pace of the development of the centres. It should then carry out its plan step by step in an orderly manner. Review of cost-effectiveness at regular intervals should also be conducted. It should not take the next step until things are found to have gone well. Such a procedure is all the more necessary because the development paces of the seven existing tertiary institutions are not synchronized. Therefore, the whole plan should start on a trial basis. A careful selection should be made to include first the most qualified departments of the tertiary institutions in the plan. Meanwhile, the less qualified departments and institutions should use the resources made available mainly for the improvement of overall quality. This arrangement would forestall any competing claims for limited resources and ensure that the right order of priorities will not be upset.

When studying how resources should be distributed, the Government should pay attention to maintaining the best possible balance among arts courses, science courses, engineering courses and business courses, lest the humanities be neglected or indeed sacrificed in the competition for resources. At this juncture, I may have to declare interests. The courses I took at the University of Hong Kong were all about humane studies. I am partial to the humanities and I do not want to see them discriminated against.

The report's second most important proposal is about the future enrollment of tertiary institutions. It provides some guidance figures. The report says that undergraduate places will be maintained at 15 000 in each of the three coming academic years and that there will be 900 additional postgraduate research places per year. I wonder if such a scale of increase is sensible. According to a Census and Statistics Department forecast, in the year 2001, Hong Kong will need 268 000 employees with bachelor degrees or above, but there will be 291 000 qualified individuals around. This means that there will be a surplus of over 20 000 qualified individuals. However, the Government has yet to work out any long-term plan to deal with this surplus of manpower. Instead, the Government has seen it fit to sharply increase the enrollment of tertiary institutions and formulate a policy on importing professional talent from China. Clearly, the Government's policy is ill-conceived and contradictory where human resources planning is concerned. There will certainly be a bad waste of human resources if the hasty move to increase the enrollment of tertiary institutions leads to a situation under which there are not enough jobs for individuals who have completed courses in graduate schools or they have to accept jobs for which they are over-qualified or they have to go abroad to look for jobs. To address this problem, the Government must make a study of the development potential of each tertiary institution to see, among others, whether it has enough qualified academic staff and enough resources at its disposal. The Government must also make a new forecast of the community's needs for graduates and post-graduates and accordingly make an adjustment to the pace of expansion of places in undergraduate and graduate courses.

Mr President, we are of course not opposed to the expansion of higher education. But the point is that we must proceed step by step to achieve our objective. And we must have good co-ordination of the employment of resources among the institutions and careful planning of a development strategy and a human resources demand forecast. What we do not want is a higher education development policy which is made in haste and which is disjointed, unbalanced and has no regard to the community's needs.

For the development of higher education, there must be a correct policy and goal; there must be adequate resources; there must also be good management. The recent personnel problems in the Department of Hotel and Tourism Management of the Hong Kong Polytechnic have given cause for concern over the management of tertiary institutions. These problems may just be the tip of the iceberg. The Government, and the UPGC in particular, must

take a square look at them. How can flawed management turn a tertiary institution into a place of academic excellence?

Mr President, with these remarks, I support Mr TIK Chi-yuen's motion.

MR FRED LI (in Cantonese): Mr President, in his 1989 policy address, the then Governor David WILSON said that higher education places would be substantially expanded so that by 1994, about 18% of all students in the right age group would be able to take first-degree courses. Later, Mr Chris PATTEN succeeded the governorship. In his first policy address, he, too, unfurled a beautiful blueprint of education development. He stressed that spending in this area would be increased considerably.

The people of Hong Kong, of course, hope that this blueprint is not an illusion.

We are very glad to learn that the Government intends to expand higher education and make it available to all students in the right age group. Parents and students, in particular, will be happy to know that higher education opportunities will become increasingly accessible.

At the time when tertiary places have increased, has the quality of higher education been raised or at least maintained at a high level in the same spirit?

The Meeting Point, including myself, thinks that, in order to ensure the good quality of higher education, the Government must make a commitment to ensure an adequate supply of resources and academic autonomy.

#### *Adequate resources*

A successful development of higher education must be supported by adequate resources. Regrettably, however, funding for higher education has not increased rapidly enough to support the pace of its development.

Take the number of first-year first degree places for an example. The number has increased from 7 000 in 1990 to 14 500 this year, up more than 100%. But Hong Kong's total public expenditure on education has not increased noticeably in recent years and remains at only about 3% of our gross domestic product (GDP).

Such a percentage is quite low in view of the real growth of our GDP. It also pales by comparison with other developed countries. Hong Kong's total public expenditure on education is 300% behind compared with that in the United States. It is about 200% behind compared with Australia, Japan and South Korea.



Funding for Hong Kong's higher education can by no means be described as "adequate". Therefore, Mr President, I think that the Government must make an extra funding commitment to back up the UPGC's idea of setting up centres of excellence in the tertiary institutions. Funding for the centres of excellence must not come from a reallocation of the resources that have already been earmarked for education. If it does, then it will have adverse impacts on the existing development plans of tertiary institutions.

*Academic autonomy*

To maintain the high quality of higher education, the Government must ensure a high degree of academic autonomy for tertiary institutions.

The UPGC has been quite equal to its work of making overall plans for the distribution of resources for higher education. Its success in this regard is partly due to the fact that it has always had members who are world-class overseas scholars. Therefore, the Meeting Point would like to propose that the composition of the UPGC's membership should remain the way it is.

The UPGC is the Government's most important advisory body on the development of higher education and on funding for that matter. In November last year, it published an interim report in which it emphasized that it would more actively encourage all institutions to strive for excellence and reward them for their excellent achievements.

Mr President, the Meeting Point thinks that the UPGC certainly deserves support for its plan to take more active steps to encourage tertiary institutions to do better in teaching and in research. However, we think that the UPGC must also show a high degree of respect for the uniqueness and academic autonomy of each institution so that academic diversification could be achieved and the quality of teaching in each discipline will remain high.

Therefore, the Meeting Point suggests that, in its future decision making, the UPGC should adhere to the principle of respecting the academic autonomy of each institution. It should also take positive steps to bring in participation from tertiary institutions in its decision making process and it should maintain close contacts and co-operation with them.

In addition, the UPGC must adjust to the social development trend. Many tertiary institutions, for example, have in recent years started to offer courses on the China market and on China trade. For instance, the Hong Kong Baptist College over the past three years had sponsored several dozen government-subsidized programmes of academic exchange between China and Hong Kong. The programmes included research projects, conferences, summer workshops, seminars, training programmes and development of teaching materials. The Baptist College offers two degree courses on China trade and students who have taken or are taking these courses number more than 300. In the case of Lingnan

College, it sponsored 20 academic exchange groups with its counterparts in China in 1992 and 26 of them in 1993.

The above figures show that the scope of academic research for all tertiary institutions has broadened in keeping with the social development. In this connection, the Meeting Point hopes that the UPGC would consider adding to its membership some academics who are familiar with the China scene. It is hoped that this will enable the UPGC to distribute resources in a manner that is more responsive to the community's needs.

Mr President, with these remarks, I support Mr TIK Chi-Yuen's motion.

SECRETARY FOR EDUCATION AND MANPOWER: Mr President, the development of higher education is of great importance to the well-being of Hong Kong. It is much more than just enabling our young people to have access to degree places. It is to ensure that Hong Kong will have:

- the trained manpower to sustain our economic growth and social development;
- the responsible citizens who can analyse objectively and think independently, with the well-being of the community in mind; and
- the quality leaders who can judge sensibly and lead capably in both the public and private sectors.

This subject rightly deserves so many Members' attention and concern. I am grateful for their constructive comments this afternoon. I also welcome this opportunity to explain the Government's thinking on the future direction of our higher education development.

One of the Government's major education initiatives for the 1990s was the decision, made in 1989, to accelerate the expansion of tertiary places. Starting from the early 1980s, having successfully introduced nine years of free and compulsory education, the Government began to embark on a phased programme in expanding tertiary education. In 1979-80, only one in 50 of our youths aged between 17 and 20 had access to first-year first-degree places in local institutions. By 1989-90, this ratio had increased substantially to one in 12.

The speed of expansion was already quite fast then, but we were not satisfied with it. We knew we would need more, given our pace of economic development and to offset the outflow of talents through emigration. It was also very clear to us that following the successful development of mass education at the primary and secondary level, parents would naturally expect the Government to expand tertiary places for their children. In short, we needed the supply, and the demand was increasing obviously.

The Government therefore decided in 1989 that we should accelerate the programme of expansion by aiming to provide sufficient tertiary places so that by 1994-95, about one in five of those in the right age group would have access to first-year first-degree places. If we add the sub-degree places to the equation, nearly one in four of our youths between the age of 17 and 20 will be joining local tertiary institutions as full-time students after this summer. While the target we set for ourselves is not over-generous by international standards, the pace with which we had it done was unprecedented. Thanks to the hard work and commitment of our tertiary institutions and all those who work in the higher education constituency, including of course the UPGC, we are well on target in achieving this important aim.

Five years into the expansion programme, the Government and the UPGC consider that this is the time both to take stock and to think ahead. As a theme to their Interim Report on Higher Education, the UPGC has put forward the idea of developing our tertiary institutions to incorporate centres of academic excellence that cater for functions beyond Hong Kong's local needs, that train high quality bilingual manpower for both Hong Kong and its hinterland, and act as points of reference in social studies, business and innovative science and technology for developments in both China and beyond.

The Administration welcomes this visionary idea in principle. We recognize that our next stage of development in higher education, following the decades of change from an elitist to a more accessible system, must be the quest for quality. There are strong arguments for a concerted policy in encouraging and guiding our institutions to aim higher and to see further ahead:

- first, this would have a catalytic effect in stimulating liveliness and effectiveness in teaching and in research;
- second, it would enhance the supply of highly trained and qualified manpower to cater for the needs of our increasingly sophisticated economy. The benefits therefore extend far beyond that of the staff and the students; and
- third, it would ensure that Hong Kong maintains a key position in the vanguard in the future growth and development of the Asia-Pacific region.

But we are a pragmatic administration. We are fully conscious of the fact that centres of excellence can only be nurtured through selective investments on the basis of performance; that our institutions' academic departments can only achieve international recognition through competition; and that funding for these centres must have regard to the need for balanced development among all the academic subjects being taught in the institutions, not merely boosting a few at the expense of the majority.

We have therefore asked the UPGC to give further detailed consideration to a number of issues which we have identified to be of concern, not only to staff and students, but also to the wider community. I would highlight the more important ones here.

- first, we wish our heavy investments in the institutions to be used efficiently and be responsive to the changing needs of Hong Kong. We would therefore wish to see that the directions in the development of these centres are geared clearly towards Hong Kong's economic and social benefits;
- second, we would wish to see the meaning of excellence for these centres be broadened to cover quality in teaching as well, for after all taught undergraduates and postgraduates form the bulk of our student population whose performance in society would depend more directly on the quality of instruction than on the depth of research alone;
- third, given the limit in public resources, serious consideration must be given to the development of non-government funding and direct private sector sponsorship of these centres in order to minimize additional public spending and to maximize their exposure to expressed market needs; and
- fourth, we wish to avoid the under-employment of highly trained people in whom Hong Kong had invested so much. We would need further careful thoughts on how many additional postgraduates are likely to be absorbed by the anticipated centre-related industries, the tertiary institutions themselves, and the anticipated increase in research activities in Hong Kong.

This important subject is now under public consideration and consultation. Members' views expressed in this debate will certainly be taken into account when the UPGC draws up its final report, and when the Government takes its final decision.

Some Members have expressed concern on the overall balance in education spending in the various sectors. I would just like to reiterate the Administration's position briefly. We have indeed invested heavily in tertiary education over the last few years. That is inevitable given the fact that we have nearly doubled the number of first-year first-degree places. But the increase has not been at the expense of the other sectors. For example, spending on school education has enjoyed a real increase of 20% between 1989-90 and 1994-95.

Before I respond to Members' request to review the structure and functions of the UPGC, I would like to explain briefly the history of the committee, the philosophy behind its establishment, and the long-established

functional relationship between the Government, the committee, and the tertiary institutions funded by the committee.

The committee was first established as the University Grants Committee back in 1965. In 1972, it was retitled the University and Polytechnic Grants Committee, UPGC in short, to reflect the inclusion of the Hong Kong Polytechnic within its purview.

It is by design that the UPGC should have neither statutory nor executive powers over the institutions. Each of the tertiary institutions is an autonomous entity with its own ordinance and governing body. The institutions are legally entitled to freedom of action, within the laws of Hong Kong, in the control of their curricula and academic standards; the appointment, management and discipline of their own staff; the selection of students; and the internal allocation of resources. The claim for autonomy does not rest upon any assumption of special privileges, but on the understanding, long accepted by the community, that tertiary academic institutions should have freedom of choice on academic matters and freedom of action in selecting their own students and staff. In short, they should be free from direct government influence.

But because the institutions are largely supported by public funds, and because of the importance of higher education to the community, the Government and the community at large do have a legitimate interest in the operation of the institutions to ensure that they are providing the highest possible standard of education in a cost-effective manner. The UPGC has therefore acted as a buffer between the Government and the institutions, safeguarding the academic and management autonomy of the institutions on the one hand, and ensuring value for money for taxpayers on the other.

The key function of the UPGC is to offer impartial and expert advice to the Government on the application to institutions of such public funds as may be approved by this Council for the purpose of tertiary education. The committee also provides the institutions with academic advice having regard to international standards and practices, and monitors the academic standards of the institutions through regular institutional reviews and academic audits.

Members of the UPGC are appointed by the Governor, having regard to the need for them to be able to provide impartial and credible advice to both the institutions and the Government. Members are therefore all prominent in their own fields, including renowned academics from overseas and locally as well as professionals and business people. Though its secretariat is served by civil servants, again by design no government officer sits on the committee.

The committee has served Hong Kong well. Members have worked very hard over the past years to deliver the ambitious targets in the provision of tertiary education places, but never letting go their insistence on maintaining the quality of the institutions at an internationally acceptable standard. They have also been forward looking and visionary, as evidenced in their latest initiative in

pointing the way forward for their institutions through the “centres of excellence” proposal. They have even initiated a major review on their own mission, through the publication of a Draft Mission Statement which takes into account the evolving role of Hong Kong as a business hub of South China and as a leading financial and service centre. The Draft Mission Statement has been published in their Interim Report on Higher Education. Members of this Council and the public are welcome to comment on the future role of the UPGC.

On the part of the Administration, we also keep an open mind in this area. We do feel strongly that academic independence is of paramount importance to tertiary institutions. They must continue to be given unfettered institutional autonomy in controlling their curricula and academic programmes, as well as in managing their own staff and resources. To avoid the undesirable consequences of the Administration having a direct influence on the institutions, we will continue to require an impartial and credible mechanism to act as the necessary buffer. The philosophy of this institutional design has long been accepted by the Government and the institutions. We should not therefore alter this design lightly, unless there are over-riding arguments in the public interest.

Other than this fundamental point, the Administration is open to constructive comments and suggestions on how the composition, structure and functions of the UPGC may be further improved to cope with the development in higher education.

The final part of today’s motion concerns the Government’s present policy on tertiary institution fees and student financial assistance. Members are aware of the background and the policies. So I shall not repeat them. I would like to highlight two points to put the debate in its proper context.

First, the crux of the issue is what should constitute a fair share of the cost burden between taxpayers and parents in educating their children. The Government’s philosophy has always been that, for the essential and necessary portion of the education system, that is, the nine years of basic education between Primary I and Secondary III, the Government should bear the full cost, in return for an obligation on the part of parents to send their children to schools. Beyond that, the Government will seek to recuperate a reasonable percentage of the education cost from those parents who can afford it. At a cost recovery rate of 18% under the present policy for senior secondary and tertiary places, the Government is effectively shouldering the bulk of the cost for public education for all students. But for those whose families who can afford it, we ask that they pay a small part of this cost.

A few Members have queried why students should be asked to pay part of the institutions’ costs, over which they have no control. This concerns the question of cost-effectiveness. The UPGC, as part of their role in advising the Government on the application of public funds to tertiary institutions, monitors the cost-effectiveness of the institutions’ delivery of their academic

programmes. This is done in a number of ways, including the examination of the institutions' triennial academic development plans, periodic visits to the institutions to review their academic activities and facilities, and the study of regular reports, statistical and financial returns on all aspects of the institutions' activities. The UPGC is now in the process of reviewing the methodology for assessment of recurrent fundings for allocation to the seven institutions. It aims to relate funding more closely to quality, output and performance in teaching, research and scholarly activity. In short, UPGC-funded institutions' cost-effectiveness are subject to systematic monitoring by the UPGC, and the system will further improve when the new funding model, which is now being developed, will be in place later this year.

Few, however, should question the principle of cost recovery. Hong Kong is an exceptionally low tax economy. Less than half of our working population pay salaries tax. We therefore have to make a reasonable charge for our services, sometimes at cost when it comes to commercial services, and very often at a substantial discount where social services are involved. The "user pays" principle helps to keep our tax rates down, reduces wastage, and enables a more efficient use in resources for the community as a whole. The real question then is whether the recurrent cost recovery policy is creating undue hardships to our tertiary students and their families.

Here I come to the second point. That is the effectiveness of our student financial assistance scheme. The Local Student Financial Assistance Scheme is a means-tested scheme which provides assistance in the form of grants and loans to eligible students who are in financial needs. The grants are intended to cover tuition fees, academic expenses and student union fees. They are automatically revised each year, in line with the actual increase in tuition and union fees. The loans are intended to help towards students' living and personal expenses. They are also adjusted in line with increases in students' living expenses as measured by a Student Price Index. Both grants and loans under the Student Financial Assistance Scheme are not subject to cash limits by the Government. In other words, we will provide as much money as for these loans and grants as the needy students require and can justify.

Let us now look at the actual statistics to see if the scheme is catering for the students' needs sufficiently. Between the current and last academic years, the tuition fee for degree courses in UPGC funded institutions has increased by 47%. But the average grant made to successful applicants has been increased by 73%. Similarly, the average loan has also been increased by the same magnitude. In 1993-94, the average successful applicant received \$15,000 in grant and \$21,000 in loan, compared to their degree course tuition fee of \$17,000. The comparable figures in 1992-93 were \$8,700 in grant, \$12,000 in loan, and \$11,600 in tuition fees. It is obvious from these figures that eligible students have indeed been better off after the fee increase.

This is not because we approved less number of applications. As a matter of fact, the number of successful applicants increased from 14 000 to about

21 000 over the last year. The Government's total expenses on grants and loans have increased by 180% and 160% respectively over the said period, amounting to \$280 million and \$444 million respectively. Facts speak better than words. We have successfully upheld our policy that students would not be deprived of access to education due to lack of means. We shall continue to ensure that this policy is enforced vigorously. Our spending on student financial assistance will continue to increase to cater for the needs of the eligible students.

Despite that, we do review the effect of the policy each year to ensure that the scale and scope of the Local Student Financial Assistance Scheme is adequate, and that there is no undue hardship on families with marginal means. Up till now, despite the rather vocal opposition by some student groups, and despite my personal request to them to give us concrete cases of hardship, we still have not received any clear evidence that the present level of tuition fees exceeded the affordability of the average family with children studying in tertiary institutions. Members may wish to note that in 1993-94, out of a total of nearly 24 000 applicants who sought financial assistance, over 88% have succeeded and only less than 3% sought a review of their applications.

Given these facts, it would be irresponsible for the Administration to support a freeze in the existing level of tuition fees. I say irresponsible because if we were to freeze the fees at the present level, it could cost taxpayers up to \$376 million in 1994-95 alone. Much of this money could have been afforded by the students' families. It could also have been invested more fruitfully on more essential services.

Nevertheless, the Government is not oblivious to the possibility that a sustained increase in tuition fees could impose financial strain on those families that might have been trapped in the margins of the Student Financial Assistance Scheme. We are therefore, as part of our review, examining the scheme to see whether we need to introduce some improvements. But we need to target them at the right families, not indiscriminately dishing out financial assistance to everyone.

Mr President, this has been a useful debate. I am grateful to Members for their perceptive views and ideas. But, for the reasons that I have just stated, we cannot accept the plea in the last part of the motion to freeze the tuition fees at the existing levels. The Administration will therefore vote against this motion.

PRESIDENT: Mr TIK Chi-yuen, do you wish to reply? You have two minutes 48 seconds out of your original 15 minutes.

MR TIK CHI-YUEN (in Cantonese): First of all, I would like to thank Members for their participation in this debate. On this occasion, I find that there is consensus among most Members who have spoken with regard to the following:



First, the quest for academic autonomy. However, some Members worry that should the University and Polytechnic Grants Committee (UPGC) introduce reforms, academic autonomy may be endangered. I think we should not worry too much about it. I trust that if the UPGC, in introducing these reforms, can strengthen its ties with tertiary institutes, enhance local representativeness or the representativeness of mainland scholars or increase its transparency, there would not be any adverse effect on academic autonomy.

Second, we are unanimous on the establishment of centres of academic excellence. But we hope that the Administration can consider the following points:

- (1) new resources should be invested into this development should it be pursued;
- (2) a balance should be struck between this and other areas of education; and
- (3) the resources spent on education by the Administration are simply not enough. The money amounts to a mere 3% of our GDP and is really insignificant.

Finally, we think that such a big increase in tuition fees will certainly exert tremendous pressure on many students. To the Administration's reply just now, I can give it a score of 70 only since the Administration is unwilling to freeze the existing rate of increase in tuition fees. Neither has the Administration explained to us why the rate of cost recovery should be 18% instead of 8% or 28%. The Administration has made no mention of it.

Besides, the Administration has also offered no direct reply to the question that the increase in fees would constitute a heavy burden on parents. It only told us that should the increase for 1994 be frozen, the Administration's spending would go up by \$400 million. In view of the Government's healthy financial state, \$400 million is a very small amount. If spending \$400 million more can make more students concentrate on their studies, I think it is worthwhile. In my view, a lot more has to be done in striving for a reasonable tuition fees policy, and the road ahead is a long one.

Thank you, Mr President.

*Question on the motion put.*

*Voice vote taken.*

MR TIK CHI-YUEN: Mr President, I claim a division.

PRESIDENT: Council will proceed to a division.

PRESIDENT: Would Members please proceed to vote?

PRESIDENT: Are there any queries? If not, the results will now be displayed.

Mr Allen LEE, Mrs Selina CHOW, Mr HUI Yin-fat, Mr Martin LEE, Mr SZETO Wah, Mr Edward HO, Mrs Peggy LAM, Mrs Miriam LAU, Mr LAU Wah-sum, Dr LEONG Che-hung, Mr Jimmy McGREGOR, Mrs Elsie TU, Mr Albert CHAN, Mr Moses CHENG, Mr CHEUNG Man-kwong, Mr Frederick FUNG, Mr Michael HO, Dr HUANG Chen-ya, Dr Conrad LAM, Mr LAU Chin-shek, Miss Emily LAU, Mr LEE Wing-tat, Mr Eric LI, Mr Fred LI, Mr MAN Sai-cheong, Mr Henry TANG, Mr TIK Chi-yuen, Mr James TO, Dr YEUNG Sum, Mr Howard YOUNG, Mr WONG Wai-yin, Dr TANG Siu-tong, Miss Christine LOH, Mr Roger LUK and Ms Anna WU voted for the motion.

The Chief Secretary, the Attorney General, the Financial Secretary, Mr Andrew WONG, Mr Vincent CHENG and Dr Samuel WONG voted against the motion.

Mr PANG Chun-hoi, Mr Martin BARROW and Mr Timothy HA abstained.

THE PRESIDENT announced that there were 35 votes in favour of the motion and six votes against it. He therefore declared that the motion was carried.

## **RATES**

MR SZETO WAH moved the following motion:

“That this Council reprobates the Right Honourable Christopher PATTEN, the Governor, for acting against the will of the public in refusing to give Members of this Council permission to propose amendments to the resolution on rates introduced on 18 May 1994 to relieve the rates burden on the people of Hong Kong.”

MR SZETO WAH (in Cantonese): Mr President, not long ago in this Council, the Right Honourable Christopher PATTEN, the Governor, congratulated Mr CHUENG Man-kwong on being the first one to criticize him for having colonialist thinking. I do not know whether Governor PATTEN will congratulate me on this occasion. But, I must first congratulate him for he is the first Governor in the history of Hong Kong for over a hundred years ever

to be the subject of reproof in a Legislative Council motion. There was no parallel before him and there probably will be none ever after.

The Royal Instructions is a product of colonialism. By virtue of the prerogative conferred on him by this colonialist product, the Governor rejected the proposal by Members of this Council to move an amendment to the Government's motion on rates. The Royal Instructions, however, also confers on the Governor the prerogative of approval. Why did he choose to reject rather than approve? He should therefore be held responsible and be reproved.

The Government's motion was carried with merely 15 votes (including the votes of the three official Members), representing the support of only a quarter of the Members of this Council. This motion seems to be one which was carried with the most feeble support of this Council even in history. A motion carried under such circumstances is nothing short of a disgrace for the Government. The Governor, Mr Christopher PATTEN, should be held responsible for the disgrace and hence be reproved.

The amendment to the motion was jointly proposed by the three major parties of this Council, namely the United Democrats of Hong Kong, the Meeting Point and the Liberal Party. Elected Members comprise more than half of this Council and so do Members of this Council who belong to the three major parties. The proposal to move the amendment represented a consensus seldom reached by the three parties, which was based on strong and widespread public opinion. The Government, well aware of public opinion, should have moved an amendment on its own accord rather than leaving it to the three parties if it had any real intention of respecting public opinion. Not only did the Government fail to initiate an amendment, it also rejected the amendment proposed by the three parties. Such wilful decision which ignored public opinion deserves nothing but reproof.

A sharp increase in rates would definitely exacerbate the burden on the public and stimulate inflation. The Government can more than afford a reduction in revenue caused by a more moderate increase in rates. In fact, the rejection of the proposed amendment has run counter to the main thrust of the Budget prepared by the Financial Secretary this year which is to leave more money in the public's pocket. The Government's indifferent attitude towards the aggravated burden on the public and its lip-service approach deserve nothing but reproof.

Recently, people who have been keeping track of the news would notice signs of the Government's change of stance on a number of policy issues. That is a cause for worry and indignation.

When I said that the Governor will have no parallel ever after, I did not mean Mr Christopher PATTEN will not be subject to reproof on a second or a third occasion. I urge the Governor not to adopt an "in for a penny, in for a pound" approach. Otherwise, he would be repeatedly reproved and would

become a record-breaking Governor. Whether Mr Christopher PATTEN will return to London on bicycle, by sea or by air via the new Chek Lap Kok airport, bringing back such souvenirs would nonetheless be much too heavy. There is no better virtue than to put right what has been done wrong. Please be careful.

Mr President, with these remarks, I move the motion.

*Question on the motion proposed.*

MR ALLEN LEE (in Cantonese): Mr President, the Liberal Party requested the Government to freeze the rates a few weeks ago but the Governor invoked the prerogative vested in him by the Royal Instructions and vetoed the joint proposal made by the Liberal Party, the United Democrats of Hong Kong and the Meeting Point. We proposed to freeze the rates out of a very simple consideration: the financial position of the public coffers and the principle of equity. According to the Financial Secretary, the surplus for the coming year is estimated to be in the region of \$7.7 billion. With such an estimate in mind, we do not think that it is necessary to increase the financial burden on the public, nor to boost the public coffers with another \$1.4 billion from the rates. Secondly, rates is a broadly-based tax which has a bearing on every household in Hong Kong. At the time when concessions are granted to various tax items, we are at a loss as to why the Administration should seek to increase rather than to reduce this broadly-based tax item. It is absolutely unnecessary and unfair to increase the rates. Yet the Governor failed to understand this point and sought to invoke his prerogative to reject our proposals. It is regrettable that he chose to ignore the view of the majority in this Council.

Regarding the Honourable SZETO Wah's motion to reprove the Governor, although I disapprove of the Governor's action, our party finds "reprove" too strong a word. The passage of such a motion would amount to casting a vote of no-confidence on the Governor, which is a fairly serious matter. In fact, apart from the part concerning the rates, we feel that the Budget is on the whole acceptable to this Council. Therefore, the accusation as carried in the motion is not an appropriate way to reflect the views of the Liberal Party.

I do not think the use of strong words can achieve anything. For this reason, we will vote neither for nor against the motion, though we do not approve of the Governor's action. Our point is that if we vote against the motion, the Liberal Party may be mistaken as agreeing with the rates increase; if we abstain, we may be looked upon as no longer caring about the rates issue. In the coming year, given a sound public financial position, we may again put forward the proposal of freezing the rates, we hope that the Governor will consider our proposal and will not veto it again by invoking his prerogative. On the above grounds, the Liberal Party today will not vote on the Honourable SZETO Wah's motion.

MR PANG CHUN-HOI (in Cantonese): Mr President, since assumption of office, Governor Christopher PATTEN has been building up his own image as a democratic fighter safeguarding the interests of Hong Kong people. Nevertheless, in order to deal with the overwhelming majority of Councillors who were seeking to put forward amendments to the resolution on rates increase, the Governor categorically refused permission by invoking the Royal Instructions.

The existing political system of Hong Kong is executive-led, while the authority of the Legislative Council is very limited and is subject to the ultimate control of the Letters Patent. Even though all of its 60 seats may be directly elected in the future, the Legislative Council will still have to face the suppression from the Executive Council and the Royal Instructions. If this supreme, colonialist instrument which is the Royal Instructions is not abolished, it will still remain idle talk to say that this Council can exercise the function of championing for the public cause. This is the case with the present colonial government, and may even be worse with the future government of the Special Administrative Region.

Rates increase has the greatest impact on livelihood. Every citizen who is having a place to live, whether it is purchased or rented, has to pay rates. Also because this form of tax is a convenient, universal and steady source of revenue, the Government would not budge one bit from its adamant stand. Since the rental values are reviewed every three years, although a fine-sounding 20% rates cap is proposed this year, it can be further increased by 13% to 14% next year. While it is financially robust, the Government can afford to reduce profits tax, and air passenger departure tax, but rates alone are to be increased. This autocratic style, which holds the views of the public in contempt and alienates the people, is hardly convincing.

Mr President, with these remarks, I support the motion. I deem that the Right Honourable Christopher PATTEN, the Governor, should be reprovved for acting against the will of the public in refusing to give Members of this Council permission to propose amendments to the resolution on rates increase.

MR MARTIN BARROW: Mr President, I am disappointed that we are having a follow-up debate after the recent exchanges in the Council on the rates issue. I am surprised too at the tone of the wording of the motion.

This issue seems to go to the very fabric of Hong Kong's constitutional arrangements. It is on this wider issue that I wish to focus my remarks rather than reiterating all the points on the level of the rates itself.

However, let me first comment on the "will of the people" described in the motion, as we are being asked to reprove the Governor for acting against the will of the people. Mr President, I respect the Honourable SZETO Wah's position as a directly elected Member but I have heard little evidence that

members of the public have expressed very much concern about the matter. On the day we debated the issue in this Council, there was only a handful of the public at the entrance downstairs and I understand that the subject was not a significant issue in the local phone-in programmes. The public gallery was less than 10% full when we debated the issue last month. It does not appear today to be all that much more enthusiasm for the subjects.

It seems to me there is a danger of developing an unrealistic vision about the role of the Legislative Council and its relations with the executive. We must never forget Hong Kong's unique constitutional structure, both now and after 1997. We have an executive-led structure. We do not have in this Council an elected government party which can sink or swim with its policies. Hong Kong's constitution clearly has no provision for the Government to resign or be re-elected. But, Mr President, we always have a system of checks and balances.

It is wrong to imply that the Legislative Council is regarded as a rubber stamp and that civil servants have no sense of accountability towards this Council. Look at the amount of time civil servants spend briefing us on policies and on lobbying Finance Committee for support. Look at the number of government officials in the anteroom on a Wednesday afternoon seeking support on one issue or another. Remember also that the Governor gave assent to the Honourable TAM Yiu-chung's bill on civil service employment. Are these signs of an administration neglecting the opinions of Members?

With progress having been made towards a more representative Council, I believe the overall balance is about right. On this occasion, the Governor was entirely correct to use his powers. Clearly these are powers which should only be used sparingly, as the Administration must be able to achieve an accommodation between an increasingly assertive legislature and the executive. Mr Donald TSANG's speech "Silence of the Lamb" hit the nail on the head. I hope his message will continue to be echoed by his colleagues throughout the corridors of the Government. The Administration recognizes that the legislature has a vital role to play. Both in English constitutional law and in the legal system which will apply to Hong Kong after 1997 through the Basic Law, it is well established that the levying of money for use of the Government is not permitted without the assent of the Legislative Council.

Furthermore, Members of this Council have to be convinced by the Government that a change in law is good for Hong Kong overall. The Government must also seek the approval of this Council on increases in taxation and they need the Finance Committee's approval both for the annual Budget as well as specific expenditure items during each year. However, an equally important constitutional principle both in Hong Kong and the United Kingdom is that the introduction of measures to spend public money or impose taxes is the sole privilege of the Administration.

Mr President, the Governor is facing criticism for refusing to assent to a motion seeking to reduce the existing level of rates. We must look at the

principle, rather than the individual issue. It is not difficult for Legislative Council Members to gain public support for lower taxes: no-one likes to pay money to the Government. Every time a fee or a tax is raised, there will be a large number of people who would prefer not to pay. But is it right to equate introducing a modest tax increase with “acting in the face of public opinion”?

To conclude, Mr President, if one application by a group of Legislative Council Members to reduce a tax or charge were approved, where would it end? Once assent is given to one application, the Governor would face accusations of political bias if he refused it for others. What Hong Kong people look for in a governor is leadership, not just acquiescence to political demands and what they look for in this Council is responsible leadership in the best interests of Hong Kong, not a weathervane.

Finally, Mr President, the following Members have asked me to say that they support my remarks: Mr Andrew WONG, Mr Vincent CHENG, Mr Simon IP, Mr Marvin CHEUNG, Dr Samuel WONG, Mr Roger LUK, Mr Eric LI and Mr Timothy HA.

With these remarks, Mr President, I reject the motion.

Mr FREDERICK FUNG (in Cantonese): Mr President, today's motion is very meaningful. Governor Chris PATTEN may provide a footnote to the history of this Council, he may become the first Governor to be reproved. As we are all aware, what today's motion debate can accomplish, given the realities, will be very marginal. Ever since direct elections were introduced in this Council in 1991, the Government has never paid serious regard to the motions passed by this Council. The Government adopts an evasive attitude to the policies proposed by Members and that is that. Today's motion debate is not a policy debate. The motion is the declaration of a political position. Therefore, there is no need for the Government or the Governor to feel embarrassed. Nor do I think that they will feel embarrassed. But it should embarrass the Government if it reflects on the question: Why has the Government repeatedly failed to respond to the many motions adopted by this Council?

Concerning today's motion, the Association for Democracy and People's Livelihood (ADPL), including myself, think that Members should play by the rules of the game set by the Legislative Council. That is the proper thing to do. The Meeting Point, the United Democrats of Hong Kong and the Liberal Party have jointly moved an amendment to the rates resolution. Even the Legal Adviser of this Council is of the opinion that the motion is not in violation of the Legislative Council's Standing Orders, which say that the resolution in question may not reduce the Government's revenues. Still, the Government has high-handedly invoked Article 24 of the Royal Instructions to reject colleagues' proposal to move an amendment. This incident teaches us that we should not try to fleece the wolf in a lamb's skin. For if we do, the wolf will bare its ugly fangs and do everything in its power —threat, intimidation and coercion — to

defeat our motion because it may affect the executive-led government. This incident just goes to prove that colonial democracy is unreliable and that the Legislative Council's role is just to wave the flag of limited democracy to rationalize the Government's dictatorial rule.

We should realize that, under the current system of the separation of powers, the Legislative Council's role in the system of checks and balances is very limited. Under the constraints of the Royal Instructions and because only some of its Members are elected by the people, the Legislative Council is a congenitally defective and under-nourished baby. It is simply inconceivable that such a defective and divested body can supervise a huge executive machine. Today's motion to reprove the Governor points up our plight. As Legislative Councillors, we can shout and scream. But we just cannot turn the executive into a body which is guided primarily by the interests of the public.

The days of British rule in Hong Kong are numbered. Still, if some statutes are anachronistic, we must continue to review them. Some colleagues suggest that we should lobby the British Government to amend the Royal Instructions. This of course is feasible. But there are many other battle fields where the people of Hong Kong must fight for the amendment of unreasonable statutes.

First of all, we must make Hong Kong's political system develop further in the direction of democratization. We must cause the democratic forces to grow more vigorously. Then there is hope that this Council will play a clear monitoring role.

Secondly, the Basic Law is another problem. Article 74 of the Basic Law is even harsher compared with the Royal Instructions. It is clearly incompatible with a developing democratic system. Article 74 of the Basic Law says, "Members of the Legislative Council of the Hong Kong Special Administrative Region may introduce bills in accordance with the provisions of this Law and legal procedures. Bills which do not relate to public expenditure or political structure or the operation of the government may be introduced individually or jointly by Members of the Council. The written consent of the Chief Executive shall be required before bills relating to government policies are introduced." In other words, members of the future legislature may not move amendments to bills affecting the government's revenues. Nor may they introduce Private Members' Bills if the bills relate to reform proposals affecting the political structure and the operations of the Government.

Private Members' Bills, such as the 1994 Electoral Provisions (Miscellaneous Amendment) (No.3) Bill and the Access to Information Bill, which are now allowed to be introduced under our Standing Orders at present, will not be permitted three years later. We may oppose or support such Bills. But if we cannot even introduce them, the Legislative Council's scope will be seriously limited. Even when the executive makes all kinds of mistakes and even when its policy is anachronistic, the legislature will not be able to make



any change. Legislators will be able to do nothing except continue to hold debates to influence public opinion in the hope of bringing pressure to bear on the executive to make the desired changes. Therefore, I think that the Royal Instructions must be amended and that, after 30 June 1997, when the Basic Law comes into effect, some of its articles must be amended so that they may be compatible with the pace of democratic development in Hong Kong and that the legislature may really play the monitoring role. If this is not done, history will simply repeat itself: We will still have to content ourselves with orally reproving the Chief Executive. As legislators, we will continue to represent the people but continue to have no real power. We will still be political adornments.

As far as today's motion on reproving the Governor is concerned, the ADPL, including myself, think that the Governor should be reproved. The colonial government has killed legislators' chance to use the Legislative Council as a lawful forum to discuss the rates issue. This is the kind of nasty method which is used by a dictator or by a colonial ruler. The motion will set a precedent for the future. If anybody does something wrong, he should be reproved, and severely.

With these remarks, I support the motion.

MR JIMMY MCGREGOR: Mr President, I am afraid that I cannot agree with either the wording or intention of this motion. I think it fails to take into account the nature, construction and character of the system of government in Hong Kong. It fails to recognize that, perhaps unfortunately, we do not enjoy a system of democratic government within which a political party can be elected to office with the right to modify or replace public policies and procedures and even to change some elements of the system of government itself. This is not a government of the people, by the people and for the people. It is a government which I think may be for the people, but which certainly cannot be described as of the people since only a minority of us have been elected by the people. The rest of us either represent very narrow specialist groups of people or do not represent anybody at all.

It is therefore the case that with the present system of government, it is impossible for the normal political party system in use in democratic countries to be used in Hong Kong in such a way as will permit a party favoured by the electorate to form the Government with a mandate which will include executive authority. It is a fact that we have a colonial executive-led form of government with virtually no executive power or authority resting with the legislature. That is also the type of government system that will survive after 1997 and last for many years after that. It does not matter how we protest and scream at the unfairness of it all. That is the system that will apply. We can seek to change it without any real possibility of success. Alternatively we can do our best to make the system work. We can seek to modify the institutions and policies of

government and obtain executive approval for such changes. Some of us are trying to do just that. We have had some success.

But do we really believe that we shall be able to alter the present basis for executive authority in Hong Kong. It is clearly enunciated in the Joint Declaration and the Basic Law. It is applied in Hong Kong now and has been applied for 150 years without much indication of change except perhaps that the executive listens more carefully these days to the voice of the legislature especially where that voice is loud, clear, and undivided. That, of course, is very seldom the case with the increasingly political posturing that seems to affect so much of the work of this Council. There is also a great deal of genuine frustration among Members that the Government seems unwilling or unable to accept some strongly expressed views of the Council. In answer to a specific question put by a Member recently, the Government stated unequivocally that a majority view expressed by this Council will not have a binding effect on the Government although the Government will listen carefully to the views of Members. In other words, Mama knows best. Perhaps even Papa knows best.

I repeat that that is the system, so we should not be surprised when it is applied to situations where the Government and the executive do not accept the views of this Council. That is the case with the proposed rates increase. As it so happens, there is a divided view in this Council as to whether or not the increase proposed by the Government is reasonable. The view expressed by the United Democrats of Hong Kong, Meeting Point and the Liberal Party is by no means unanimous. I certainly disagree with the position taken by these parties and their individual Council Members who include incidentally several who represent business constituencies. I have not heard these organizations speak out strongly against the Government rates proposal. Nor did my own, the Hong Kong General Chamber of Commerce which I believe supports my own view that the rates increase is reasonable in all the circumstances.

Mr SZETO Wah is clearly frustrated and seeks to reprove the Governor. In doing so, it seems to me he should be aiming at the vehicle not the driver. He has no hope of changing the position of either in this matter since we are not all of one view and many of us recognize that the executive-led system of government cannot now be changed. I know incidentally that the last rates increase was discussed in this Council in May 1991. In respect of the 1991-92 Budget, two Councillors expressed concerns that the increase which is also that time kept at 25% would be inflationary. They however did in fact vote for the proposal. One Councillor abstained and at least two voted against the rates proposal. However, a very large majority of Members voted for the proposal rates increase and that is a matter of historical record. We seem to have changed little in the meantime.

It does seem a pity to me that this particular Governor, who has tried hardest to improve democratic reform, access to the Government, accountability

and transparency, should face the first attempted vote of no confidence in his performance. How ironical!

I did not agree with the proposal to freeze the rates. I do not agree that the Government has acted wrongly in the rates issue. I certainly do not agree with this motion of censure.

MISS CHRISTINE LOH: Mr President, I do not agree with the three political parties' position on rates but I do have some general observation.

In the past, the distinction between the executive and the legislature were blurred. The executive used to control the legislature and it took for granted that its policies would be supported by the Legislative Council. But the community has undergone fundamental changes in recent years. Rising educational levels and a taste for democracy have given rise to new expectations and aspirations. The public now expects the executive to be responsive and to be accountable. The executive sees this demand for consultation and accountability as a hinderance to an efficient executive-led government. The executive would like us all to believe that there is something mystical about the term executive-led government.

There is, in fact, nothing novel in this concept. Yes, of course, the executive should lead, that is its job. Its task is to govern, subject to the approval of the public, expressed through its elected representatives in this legislature, albeit this legislature is imperfect. The legislature is in turn accountable to the public which elected it. Some people see this aspect of the balance of executive and legislative powers as a transfer of power from the executive to this Council.

Mr President, this view is mistaken. It is wrong to equate the balance of power with the weakening of the executive and the emasculation of the Government. But an executive-led government must not come to mean a government controlled by the executive. The executive is expected to lead but it also has to carry the legislature with it. There should also be room in an executive-led government for Private Members in the legislature to propose legislation which has widespread community support. It is insufficient for the Governor and senior officials to say that the executive has other priorities and thus attempt to ignore popular legislative initiatives from this Council.

As the Honourable Martin BARROW and the Honourable Jimmy MCGREGOR said, Hong Kong has an unusual constitutional structure where the Administration is in effect the un-elected government party. Within this structure both the executive and the legislature have to work out a relationship which reflects the public's new aspirations.

Both my honourable colleague Anna WU and I are facing some problems. We face an uphill battle on the Access to Information Bill and the Equal

Opportunities and Human Rights Commission Bills, all of which deserve to be debated in this Council.

I hope the executive is listening to this debate and will firstly treat initiatives from this Council more seriously. Some of them are not bad ideas. Secondly, to be flexible enough to adopt good ideas and thirdly, to try and work with Members of this Council on these initiatives with a positive, co-operative spirit.

Mr President, it is not very constructive or meaningful for the executive to ask Members to attend meetings which only last 15 or 20 minutes where the executive tells the legislature to abandon their Private Members' Bills, even though the executive has conceded on principle on the need for these initiatives. I would prefer a chance to work with the Administration on the Access to Information Bill, for example.

Mr President, am I too unreasonable to expect to be able to work jointly with the Administration on the bill? Surely not, but our officials show no sign of willingness to work together. I wish it were different.

DR HUANG CHEN-YA (in Cantonese): Mr President, the Chinese have an old saying: "An oppressive government is more terrible than a tiger." This is why one of the Legislative Council's main duties is to monitor the Government's revenues and expenditures. This Council must stop the Government from wasting taxpayers' money and make sure that, when it spends money, it gets its money's worth. This Council also must have the power to limit the Government's tax levies, so that Government may not impose an undue burden on the citizenry or try to build financial soundness on the citizens' sufferings. Therefore, a Legislative Council without sufficient leverage over the Government's revenues and expenditures is but a paraplegic Legislative Council, a Legislative Council unable to discharge its due functions.

Mr President, why has the Governor rejected this Council's proposed amendment to the resolution on rates? Is it because Hong Kong has an executive-led government? The answer is no. In the United States the government is president-led, but the administration still presents its budget proposals to Congress, in which the president may not have majority support but which has the power to make major changes to the budget proposals. In France, which is also a country with a president-led government, the Finance Committee of the Chamber of Deputies nevertheless has the power to amend the administration's budget proposals. The observation therefore is that even in a presidential system with an executive-led government the budget presented by the administration is subject to amendment by the legislature. Similarly, in the United Kingdom and other countries with parliamentary and cabinet systems, the parliaments are allowed to amend budget proposals.

Therefore, the Legislative Council was not indulging in fantasy when it wanted to move an amendment last month. It merely wanted to be like the congresses, chambers of deputies or parliaments of other countries and to use its power to cut back on a government levy which was undue and excessive.

The problem lay not with the purported impropriety of the Legislative Council's request but with the fact that the request challenged the Government's constitutional basis and exposed the undemocratic nature of Hong Kong's political system. Secretary for the Treasury Donald TSANG was frank about this. He used an analogy. He said that, if the British Parliament should abolish the salary system, then the British Government would have to resign, after which a general election would have to be held; whereas, if the same thing should happen in Hong Kong, Hong Kong would find itself in an unbearable situation because the Government could neither resign nor continue to govern effectively. Because the government in Hong Kong has not been given a mandate by the people, it is weak and vulnerable, so much so that it cannot allow anybody to challenge its authority. Nothing in Hong Kong's constitution allows us to demand the resignation of our Governor. Even if we pass the motion to reprove him today, he still does not have to resign.

The rates issue involves a limited amount of money. It just will not bring on a financial crisis, considering that the Government has a huge surplus. As I have noted before, if need be, the Government can resort to other reasonable revenue measures to make up for its revenue loss from a reduced rates charge. Therefore, even if an amendment to the rates resolution had been moved and passed, it would not have brought on any financial crisis, making it necessary for the Governor or the Financial Secretary to resign. Nor would it have incapacitated the Government from governing.

Actually, if the Government uses the American or French system of separation of powers between the executive and the legislative branches of government, it will be more receptive to the Legislative Council's attempts to amend the budget proposals and it will not find itself in a so-called "constitutional crisis" because a Bill has been amended. Therefore, the Government just does not have a sufficient reason for not allowing this Council to propose an amendment whereby the question of whether to reduce the rates charge can be voted on by this Council.

The only explanation that makes sense is that the Hong Kong British Government does not want to shed its anti-democratic coloration, does not want to give real power to the Legislative Council and does not want the Legislative Council to progress towards a more democratic model. It wants the Legislative Council to operate within a bird cage, to operate in a discreet and disciplined manner and to stop dreaming about playing the role of the parliament of a democratic country to represent the people in stopping the executive branch of government from enforcing oppressive policies and abusing power.

The Government's hard-line position on the rates issue signifies that it wants to maintain executive dictatorship and wants the Legislative Council and the people of Hong Kong to listen to it, to get used to obedience and not to indulge in fantasies about true democracy now or about democracy after 1997.

Mr President, we know that, if the rates issue arises again after 1 July 1997, the result will probably be the same. The Basic Law provides that Hong Kong's legislature at that time will operate within a semi-colonial and semi-democratic bird cage. Any attempt by the legislature to amend a government-introduced Bill will run into all kinds of difficulties. The moving of any amendment affecting a government policy will have to have the written consent of the chief executive.

Therefore, what the Governor has just done sets a very bad precedent which will have repercussions after 1 July 1997. It will teach the chief executive of that time — who will possess no mandate from the people either — how to look down on the legislature, how to go against the wishes of the people and how to trample on democracy.

Mr President, high rates payments are a burden on the people. On the radio, we often hear people say that more air time should be given to discussions of livelihood topics and less to discussions of democracy. They say that too much talk about democracy will unsettle society and serve no practical purpose. But the rates issue provides a textbook case to show that there will never be safeguards for livelihood if there is no democracy and that we must strive for democracy if we want to live better. We must strive for democracy now and after 1 July 1997. The British Government often calls China undemocratic. Actually, this is like the pot calling the kettle black. Actually, both countries are undemocratic.

If the Governor really respects democracy, he should not hide behind the shield of the Royal Instructions. He should take the initiative in getting the Royal Instructions changed and thereby giving back the powers of the purse strings to the Legislative Council.

With these remarks, I support the motion.

MS ANNA WU: Mr President, this motion debate is not about "rates". It is about accountability, accountability of the executive branch to the legislature.

The Executive Council and the Legislative Council are now entirely separated and the formal levels of power remain firmly under the control of the executive. The issue of accountability is therefore particularly relevant to an "executive-led" government.

Making the executive subject to legislative scrutiny without also making it responsive to such criticism provides no more than an illusion of accountability. That is merely paying lip service to the notion of accountability.

Unless the Government uses its prerogative to lead and not to frustrate initiatives, the confrontation between an increasingly and legitimately assertive legislature and an executive which jealously guards its leadership prerogative is a certain recipe for political deadlock.

The principles of accountability require a government to be less dismissive with various initiatives proposed by legislators through motion debates, amendments to government bills, Private Members' Bills and otherwise.

While the Governor's prerogative to veto any Private Member's Bill and legislative initiative with financial implication is well-known and is prescribed by law, there is no prescription or precedent as to when the Governor should permit a bill's introduction.

The answer cannot be that Private Members' Bills are only appropriate when they enjoy the whole-hearted support of the Administration — when they are, in effect, just another variety of government bill. If that were the case, why bother providing for them at all?

On the contrary, Private Members' Bills as well as all other initiatives that Legislative Council Members are capable of making, should provide an essential check when the Government deviates from adequate standards of accountability and responsiveness.

Executive-led government does not mean that the sentiments of the Legislative Council reflected by the motion debates may be politely listened to and then ignored by the Administration. It does not mean that the Governor should obligate himself to answer a question on the one hand and eat his words on the other hand by failing to provide a meaningful answer. It does not mean that the prerogative to veto any initiative should be used to pre-empt, restrict or stifle debate in the Legislative Council Chamber or to excuse executive inaction.

If at all, executive prerogative should be exercised to permit the introduction of a Private Member's Bill or any other legislative initiative to implement major treaty obligations of the Government to protect human rights.

Last month, the Governor refused to grant legislators permission to move amendments to a government resolution in which there was a high degree of public interest. The amendments, supported by members of the two largest political parties in the Legislative Council, would have limited increases in the rates payable by property owners.

In refusing permission to move the amendments, the Governor failed to recognize the larger issue of whether the matter ought to be debated in the Legislative Council and the need at times for the executive to stand aside.

Mr President, while I am not in entire agreement with the wording of the motion, I nevertheless feel that regret should be expressed.

Thank you.

DR TANG SIU-TONG (in Cantonese): Mr President, today's motion has its origin in the rates debate of 18 May. Despite its tough wording, it is a flower of yesteryear, that is to say, it has no immediate relevance now. We would have had a different situation today if, on that previous occasion, Members from the major political parties had listened to my suggestion and either cast votes against the resolution or walked out in protest, thereby ending that sitting in midcourse. The three major parties had a meeting of minds as they rarely did before. Yet they failed at the last minute. We heard loud thunder claps but saw only small rain drops. The affair ended with Members' abstention from voting. Am I right to think that it was all a "political show"?

What does abstention signify? Some Members say that it signifies lack of conviction, or negativism or lack of guts. If the three major parties had stuck to their conviction that day, the Government would have had only two choices: either to raise the rates by 34% in disregard of this Council's opposition and at the risk of being strongly reprovved by this Council and the public, or to reverse its decision and freeze the rates charge for one year in response to the wishes of the public. Considering that the Government has a budget surplus of over \$10 billion, it is not too much to ask that it should freeze the rates charge for one year. Nor will such a freeze bring on a financial crisis. The Government would have gladly agreed to the freeze, would it not? Are we to assume that the Government would rather face the consequences of an irrational increase in the rates charge, consequences including protests by six million people, demonstrations in the streets day and night and waves of public criticism?

As far as vote counts are concerned, we possess an overwhelming majority in this Council. Yet we did not have the courage to confront the Letters Patent. Today's motion is nothing but an act to save face after our humiliation, which was brought on by our mistake in judgment. On that previous occasion, one Member asked me not to cast my vote against the resolution. He would even bow to me if I did as he asked. Now that I think about it, it seems to me that some people were then flinching before the formidable armour which is the Letters Patent. So they became disoriented and could not help themselves. When I was making my speech on that occasion, I noticed that one Member, Mr PANG Chun-hoi, cast his eyes in my direction and I saw righteousness in those eyes. It was the kind of righteousness that I had never seen before in my nearly two years with this Council. I was then overcome with a deep feeling that I was not alone.



Mr PANG is a veteran Legislative Councillor. He has worked for decades for the good of the labour sector. He must know the truth behind the present motion. He must know what the words “death before rebirth” mean? In one of Jin Yong’s kung fu adventure stories, it was said, “He who holds the broad sword called ‘Tulong’ gives orders to all the world; none dares disobey. Before the sword called ‘Yitian’ makes its appearance, ‘Tulong’ is matchless.” Now we are holding both “Tulong” and “Yitian”. We are also holding the sword called “Yuchang”. We have this combination of three swords and yet we have failed. This is really regrettable. The sword known as “Yuchang” is used by women. Some say, “If there is sex, there is no love. If there is no love, there is sex”. They can say whatever they want. But it is just improper to talk about sex and love in this august chamber for weighty deliberations. However, we can use the title of a scene in the play “*Hongfu Nu’s Elopement*”. That title says, “Wisteria need to cling to a sturdy tree”. These words apply to the “Yuchang” sword.

It can be seen that swords are just weapons. A good swordsman relies on the sheen of his sword. On that particular occasion, even the combination of three swords could not break the formidable armour of the Letters Patent. This goes to show that the Legislative Council is not what it appears to be and that, indeed, it is a rubber stamp. Still, the best swordsman holds the sword not in his hand but in his mind. Holding no sword in his hand, he can cope with the most formidable armour that the Letters Patent presents. Holding the sword in his mind, he can hurt his opponent even though the latter makes the first move. The sheen of his sword can turn even a leaf into a lethal weapon. Righteousness expresses itself as both courage and a sense of humour.

Mr President, I so submit. Today’s motion is a Johnny-come-lately. But it takes courage to recognize humiliation. I will vote for the motion.

MR MARTIN LEE (in Cantonese): Mr President, today is my 56th birthday, so I will not be rebuking or satirizing anyone in my speech. I just hope that Governor PATTEN can have a good reflection on why we have this motion debate today. In fact, he made a wrong decision on 7 October 1992 concerning the relation between the Legislative and Executive Councils. He had two options at the time. The first one was to appoint representative Members of every political party in this Council into the Executive Council, thereby making it an epitome of the Legislative Council. For example, the Liberal Party (the Cooperative Resources Centre then) could of course have some of its Members appointed into the Executive Council, and so could the United Democrats of Hong Kong and the Meeting Point. Although the Democratic Alliance for the Betterment of Hong Kong was not yet formed at that time, I think that Mr TAM Yiu-chung could also be included in the list of appointees. Of course, we could not leave out the “breakfast faction”. Had it been the case, then “each and every camp and faction”, to use the words of a Member who has just spoken, would have had representatives in the Executive Council. Had this arrangement been put in place, it would have created the most ideal scenario for Governor

PATTEN in every matter he handled. It would be best if no controversy arise. But even if controversy did arise, he could then have resolved the controversy through voting, that is, the Executive Council could give its approval where there were enough supporting votes. In this way, the Legislative Council would then also give its approval, thereby avoiding any disagreement that could have arisen between the Legislative and Executive Councils.

The other option was of course the complete separation of the Legislative and Executive Councils. If, like some people have said, politics is a game, then the first option can be regarded as a game in which everybody can take part, and the second one a personal game in which nobody except Governor PATTEN himself can take part, because he can appoint whoever he prefers into the Executive Council, not having to be accountable to the public.

In the face of these two options, Governor PATTEN decided to separate the Legislative and the Executive Councils. At that time, he received an administrative directive from Beijing that nobody of the liberal camp could be allowed into the Executive Council. So, to appease Mr LU Ping, Governor PATTEN expelled from the Executive Council all those Members who were also Members of the Legislative Council. These Members had no choice but to revolt and hence became the opposition party. But luck was not on Governor PATTEN's side, as every political party in the Legislative Council has joined the opposition camp, with the exception of the three official Members only. And the result is that nobody is happy. First of all, Members of the Executive Council are unhappy because their decisions have all been rejected by the Legislative Council. Their decision on the Court of Final Appeal is an example, and the issue of rates increase is the latest one. Such circumstances arise because Members of the Executive Council have simply been unable to feel the pulse of the public and of this Council. Members of this Council are unhappy also because time and again the motions passed by us have not been implemented by the Executive Council. The civil servants are unhappy because their good advices, despite the Executive Council's support, have all been rejected by this Council. As to the public, they are unhappy too because the views of those Members directly elected by them have always been disregarded by the Administration. But most regrettable of all, even Mr LU Ping is unhappy seeing that the Hong Kong Government has been unable to win the support of this Council to implement those policies approved of by the Chinese Government. The establishment of the Court of Final Appeal is one such example.

Mr President, we can in fact sum up our existing system in just a few words, that is, Members of the Executive Council have power but no responsibility; the civil servants have responsibility but no power; and Members of this Council have neither power nor responsibility.

As regards the Members of the Executive Council, they of course have power as all the major decisions are made by them and all the policies determined by them as well. But they have no responsibility to explain and sell

their policies and decisions. Occasionally we may see on the television individual Member of the Executive Council giving an explanation, but indeed they do not have such a responsibility.

As regards the civil servants, they have no power because they need not make decisions, but they have the responsibility to sell the decisions and policies of somebody else — the Executive Council. They have to come to this Council to canvass for Members' support, sometimes even in a supplicatory manner, only to find such proposals vetoed without enough supporting votes.

Members of this Council have, needless to say, no power. Nor do we have any responsibility because the decisions are not made by us. As the decisions are not ours, why do we have to support the Administration?

Now that we have this problem, how do we solve it? I hope that Members can look forward in trying to find the solution. In fact, I consider that there can only be two alternatives. The first one is to constitute, by way of an election system that is neither fair nor open, a Legislative Council of which most of the Members are under government control. The problem will then be solved because all the government proposals will be rubber-stamped by the Legislative Council. I believe the Chinese leaders will prefer such a system. That is why the Basic Law is so undemocratic and closed. However, this solution does not meet the requirements of Governor PATTEN because it is undemocratic and closed.

The second alternative is to appoint into the Executive Council representatives of the various political parties according to their proportion of representation in the Legislative Council, thereby resolving the conflicts between the executive and the legislature in a democratic way.

Mr President, although today is my birthday, I am sincerely presenting the second alternative as a gift because it is a democratic package that can realize the notion of "Hong Kong people ruling Hong Kong and a high degree of autonomy". I hope that Governor PATTEN will accept my gift.

MR ERIC LI (in Cantonese): Mr President, Governor PATTEN has been called different names but he has not been scared. I have no doubt that he has the courage of a politician. He is not an elected Governor; yet he has adhered to, and acted upon, the spirit of party politics. From a bystander's point of view, one may find that his being reproved by elected Members and their parties on this occasion is somewhat of his own making. I believe that he would feel disappointed rather than scared because the position of the executive-led government and the constitution will remain unscathed, notwithstanding this motion. As Mr Martin BARROW has pointed out just now, members of the public did not express very much concern about this matter.

The three political parties have joined forces over this issue and are determined to stand together, win or lose. Far from being a confrontation among themselves, this is a challenge to the executive-led government from these political parties. On 18 May, their challenge was deflected without achieving any success. Through today's motion, they are likely to turn the table on the Government and secure the final victory, thus saving a certain degree of face. I personally find their action understandable. After all, the general frame of mind of the public tends to come to the defence of the weak against the strong. But we do not have to criticize the Government so bitterly as Dr TANG was doing. I also trust that this incident is not going to have any significant repercussions. The reasons are:

Firstly, as mentioned just now, members of the public did not express very much concern about this matter. Secondly, the Government has tactfully arranged to make a statement earlier this afternoon, announcing measures to dampen property speculation. As a result, I trust that press reports on this motion to reprove the Governor will thus pale by comparison and become less controversial.

I am sure many people would agree that it is necessary to have an executive-led government at this stage when party politics — meaning that political parties could wield some power but would not be responsible for the implementation of public policies — is beginning to take shape. Furthermore, it is evident from many opinion polls that people show more or less the same degree of trust in, and acceptance of, political parties and the Government. I, therefore, consider it in line with the check-and-balance concept if the political parties win this round of political games.

However, I am entirely on the side of the Government in respect of the motion itself because it is the Government which would be accountable to the people with regard to the management of the public finances at the end of the day. So prudent measures must be taken to take care of our tax revenues. Secondly, as I have said in the last motion debate (many Members have also raised this point), we should be forward-looking and work out a sensible method to bring future Budgets more in line with public aspirations and responsive to public sentiments. In view of this, I am not going to support the motion moved by Mr SZETO Wah, whom I hold in great esteem. Here I would like to take this opportunity to wish Mr Martin LEE a happy birthday. May his wishes come true.

MR FRED LI (in Cantonese): Mr President, the Governor does not even need to pluck up courage to accept criticism. This is because the debate on the present motion will not do the least bit of damage to his position, so peculiar being Hong Kong's constitutional system. The Governor is not elected; he is sent here by the United Kingdom Government. Nothing that we do can have the least bit of effect on his appointment, removal, promotion or demotion. In the Legislative Council, we are just shooting our mouths off. So, in my opinion,

the worry of those Members who feel that the Governor needs to have a lot of courage is quite unnecessary. On the contrary, I feel that the heated motion debate on the rates issue three weeks ago was due chiefly to Mr Donald TSANG's speech "Silence of the Lamb" and its wide repercussions in this Council. Members today are no longer discussing the percentage ratio of rates to total revenue or to GDP or the impact of the rates charge on inflation. Perhaps the Government will care to explain, when it gives its response later on, its technical grounds for refusing to let Members amend the resolution on the rates charge.

I am a Legislative Council Member. I am also an elected representative of a local community. As I see it, the wishes of the people are quite clear. In fact, on the day following this Council's debate that time many people called in to the radio stations to criticize Mr Chris PATTEN. They were critical because the Government took a hard line on the rates issue and because it forbade Legislative Councillors to move an amendment. Therefore, the public has not been totally silent. I feel that the real question is whether anybody is listening to the public sentiment as expressed.

A moment ago, some Members said that this Council was like a rubber stamp. Dr TANG Siu-tong went further and said that this Council was a rubber stamp in every respect. I believe that we can say that we have no way to alter the Legislative Council's rubber stamp fate as far as the rates issue is concerned. Still, I would like the Government to know that Legislative Council Members (including myself and many colleagues) have been quite rational. Actually, if we want to be vindictive and to threaten the Government, we can. For instance, this Council's Finance Committee can pick any two of the Government's requests and reject them. I mean that the Finance Committee can reject the Government's request for money to create two directorate posts, supposing that the Government makes such a request. The request can be rejected not for any valid reason but out of vindictiveness. Can we do that? Yes, we can. Constitutionally and legally, we can do that. Suppose that we do so. The Government then will not have the two new posts created, because the money will not be appropriated. But will we do that? Being very rational, we have never done so. We have not done so before and we are not doing so now. Nor, I believe, will we do so in the future. I hope that the Government realizes that we, Legislative Councillors, have been very duty conscious. The Government should also realize that it may not abuse its power.

We support today's motion, because it expresses our resentment. Members just now neglected to mention one point, which is this: Members from our three parties wrote a letter to the Governor requesting a meeting with him to discuss our proposal to move an amendment on the resolution on rates. We waited until very late on Monday. Then came his reply, which said that he did not approve our proposal. His reply said nothing about our request for a meeting. The joint request of our three parties was ignored as if it had never been made. Looking at this, would one say that this was the proper thing for a responsible chief executive to do? 32 Legislative Councillors from three parties

asked him for a meeting to discuss a specific matter. He could not pretend that he did not hear, could he? That was not the proper attitude of a responsible chief executive who was accountable to this Council, was it? He did not even bother to say that he was too busy to see us; thus, he did not even show us the minimum courtesy. For this, I want to reprove Mr PATTEN, the Governor.

Actually, today's debate is quite dispassionate, much more so compared with the debate three weeks ago. As rarely happened before, the Government has this time failed to divide our three parties and Members from the Liberal Party have stayed with us throughout to try to move an amendment to the resolution on rates. I hope that they realize that today's motion debate will have no effect whatsoever on the constitutional system and that it is just a way to show our displeasure with the executive branch of government on the rates amendment issue.

Mr Allen LEE said earlier that he hoped that the rates charge would be frozen for one more year in the next financial year. But I would like to point out the truth, which is that that will not be possible. We can only move an amendment to a resolution, but the Government must introduce the resolution first. We cannot introduce a Private Member's Bill to freeze the rates charge. That is not possible. It is against the Standing Orders. Therefore, if the Government does not introduce any resolution about rates, there will be no resolution for us to move an amendment to. The initiative is always in the hands of the Government. Therefore, I think that the Liberal Party should give the matter some thought. Basically, on the rates issue, we cannot proceed any further. Therefore, I hope that the Liberal Party will consider supporting Mr SZETO Wah's motion.

I so submit.

FINANCIAL SECRETARY: Mr President, I believe the motion before us is misguided for two main reasons.

First, a motion reproving the Governor is a very serious matter. It should be reserved for serious policy or constitutional issues, or its impact is very greatly devalued. On this occasion, the motion is like "crying wolf" when no wolf exists, as are some of the speeches with references to "disastrous", "draconian measures" and even "dictatorship". Of course, people will naturally prefer to pay less on rates. But in the context of a generally very favourable Budget, I do not believe for one moment there is a strong feeling that a serious wrong has been done which must be righted.

Secondly, the motion seems to rest on an unhelpful over-simplification of what democracy means — or should mean — in Hong Kong. The fact is that our system, like many others, involves a balance of powers. That is so now, and it will be so after 1997. No amount of rhetoric will change that. Nor will it change the fact that the system simply would not work if it involved the

executive rubber-stamping the views of the legislature, any more than it would work if it involved the reverse — the legislature rubber-stamping the views of the executive. Incidentally there is, with respect, that certain lack of imagination in the use of the word “colonial” to criticize any action by the Administration which a Member does not agree with. In this case, it is a very old word to use, since the power of the Government is using is one which many non-colonial governments have under their constitutions and, of course, the Special Administrative Region Government will have this power after 1997.

Let me elaborate on those two important points. First, we are clearly not here involved in a major issue. Neither the additional bill resulting from the rates revaluation, nor indeed the total bill for rates payable by individual ratepayers, can be convincingly described as a “burden on the people of Hong Kong”. We must be one of the lowest tax communities in the world:

- Rates take up 2% of average household income.
- The increase this year, compared with last year, is only about 0.2% of household income.
- The average increase before application of the cap is in line with inflation over the revaluation period. With the cap, it is well below inflation.
- The percentage charge of 5.5% is to remain unchanged. It is a historical low, the percentage being as high as 18% back in the 1970s.
- 42% of our population are public housing tenants who will not be directly affected.

All this — this modest revaluation of rateable values ameliorated by a cap on the percentage increase — is hardly a sufficient cause for a constitutional drama — or perhaps melodrama? And if the public thinks despite these facts that the rates revaluation is in fact a burden, they are being uncharacteristically shy about voicing their concern. Based on the objections received so far to the new rateable values, the proportion of objections to the total number of assessments is just 1.3%, as compared to 3.1% after the last revaluation in 1991. This is the lowest rate of objections in any of the last three revaluations.

I would now like to expand on my second point, that our system is very different to that implied by the motion. A convenient shorthand description of our present system is that it involves an executive-led government, accountable to a partly-elected legislature. When you look at what this means in detail, both in theory and in practice, it becomes very clear that the relationship between the two bodies involves, as a number of Members have pointed out, checks and balances. Both bodies have certain powers. It is simply not true to say that the legislature does not have any powers. And for the system to work properly,

each has to respect those powers, and seek by dialogue — I agree with the call of a dialogue — to find solutions acceptable to the other.

Thus, for example, before the Administration implements any initiative to change the law, we should be able to persuade Members of this Council that such a change is necessary and desirable for the good government of Hong Kong. Before we impose or increase any taxation, we must seek the approval of this Council, and before we appropriate any funds to carry out our policies, we need to obtain the support of the Finance Committee of this Council. This is not a description of a body without power or rubber-stamp with or without a sword. But it is also true that the initiative to take these actions, unless in very special circumstances, lies with the Government — most clearly in respect of revenue and expenditure proposals. This is not “an illusion of accountability” which was another phrase that was used.

Whilst our system is in many ways unique, retaining the right to propose expenditure or increase taxes in the hands of the Government is not unique. Rather, it is commonplace. For example, it is the practice in the United Kingdom and in Australia. And it is the custom for good reason — it would be very difficult indeed to govern without assurance of the level of revenue and expenditure. To put it mildly, to accede to this motion — to agree that we should hand over to the Legislative Council the power to propose changes of the type which is the subject of this motion — would hardly be conducive to stability, or efficiency, or good government.

Mr President, I and my official colleagues oppose this motion, and strongly encourage other Members to do likewise.

PRESIDENT: Mr SZETO Wah, do you wish to reply? You have in fact nine minutes 47 seconds.

MR SZETO WAH (in Cantonese): Mr President, firstly, let me respond to Mr Jimmy MCGREGOR's comments. I do not have a sense of defeat because I will not be easily defeated. Secondly, I cannot help but take off my hat to Dr TANG Siu-tong, for his marvellous strategy of “dying a phoenix death”. However, may I say that he should not push it too far, for if the phoenix dies a cold death, it would be beyond resurrection. But I thank him anyway for his voting for this motion.

The Liberal Party will neither support, nor oppose, nor abstain. It just will not vote. This is a stand that I understand, one that is consistent with the style typical of the Party. I would welcome this as it is better than opposing or abstaining.

In fact, before the Financial Secretary spoke, press reporters had told me that I was accused by the Financial Secretary of having misled the public into



regarding the Administration as a rubber stamp. I trust that however hard I had ever tried to mislead the public, the Administration would never have been regarded by the public as a rubber stamp. Instead, the public would only regard the Administration as a “rubber face”. I say this because the Administration would keep its countenance, look without seeing and hear without listening in the face of however severe criticisms.

Should I make a metaphoric description of the Administration. I would compare it to the character of the King of Qi as depicted in the novels or traditional operas. The King of Qi had a wife who was Zhong Wuyan and a concubine Xia Yingchun. When he was in trouble, the King of Qi asked for Zhong Wuyan; when he was out of trouble, he asked for Xia Yingchun. The Administration treats the Legislative Council as Zhong Wuyan; when it wanted to push the reform package through, it claimed that the responsibility rested solely with the Legislative Council, and that the Legislative Council was responsible for the democratic future of Hong Kong. However, when it came to the question of rates, it did not respect the Legislative Council; it just ignored it. It did not take even a single glance of this Zhong Wuyan but turned to Xia Yingchun to have a good time with her. The Administration is just like this King of Qi as it asks the Legislative Council to help whenever it is in need, but it turns to the Executive Council when it is no longer in need.

Mr President, I so submit.

*Question on the motion put.*

*Voice vote taken.*

MR SZETO WAH (in Cantonese): Mr President, division please.

PRESIDENT: Council will proceed to a division.

PRESIDENT: Would Members please proceed to vote?

PRESIDENT: We have got a head count of 40, but only 33 have registered their presence. No one is of course obliged to register his or her presence but I will just wait a few seconds before displaying the results. Are there any queries. If not, the results will now be displayed.

Mr HUI Yin-fat, Mr Martin LEE, Mr PANG Chun-hoi, Mr SZETO Wah, Dr LEONG Che-hung, Mr Albert CHAN, Mr CHEUNG Man-kwong, Mr Frederick FUNG, Mr Michael HO, Dr HUANG Chen-ya, Dr Conrad LAM, Mr LAU Chin-shek, Miss Emily LAU, Mr LEE Wing-tat, Mr Fred LI, Mr MAN

Sai-cheong, Mr TIK Chi-yuen, Mr James TO, Dr YEUNG Sum, Mr WONG Wai-yin and Dr TANG Siu-tong voted for the motion.

The Chief Secretary, the Attorney General, the Financial Secretary, Mr Andrew WONG, Mr Martin BARROW, Mr Jimmy MCGREGOR, Mrs Elsie TU, Mr Vincent CHENG, Mr Marvin CHEUNG, Mr Eric LI and Mr Roger LUK voted against the motion.

Mr Alfred TSO abstained.

THE PRESIDENT announced that there were 21 votes in favour of the motion and 11 votes against it. He therefore declared that the motion was carried.

### **Adjournment and Next Sitting**

PRESIDENT: In accordance with Standing Orders I now adjourn the Council until 2.30 pm on Thursday 9 June 1994.

*Adjourned accordingly at seventeen minutes to Eight o'clock.*

*Note:* The short titles of the Bills/motions listed in the Hansard, with the exception of the Amusement Rides (Safety) Bill, have been translated into Chinese for information and guidance only; they do not have authoritative effect in Chinese.

**WRITTEN ANSWER****Annex I****Written answer by the Secretary for Education and Manpower to Miss Emily LAU's supplementary question to Question 3**

The Administration understands that in recent years there have been only two plagiarism cases involving staff of UPGC-funded institutions. In one case, the institution concerned conducted an internal inquiry which concluded that the copying was not significant, and it probably happened due more to muddle and bad scholarship than to an intention to profit by another's work. The article in which the plagiarism occurred was withdrawn from publication and the appointee reprimanded. In the other case, a staff member of another UPGC-funded institution was found to have published plagiarized work in an article in a local journal, following which he immediately resigned from the institution.

The Administration understands that all UPGC-funded institutions are alert to the possibilities of plagiarism involving staff or students, and considers that they are fully capable of handling such cases in accordance with established practice and procedures.

The University of Hong Kong has provided a progress report regarding the handling of the case involving infringement of copyright by one of its academic staff, as follows:

- (a) The Court of Appeal judgment was handed down on 25 August 1993; the Vice-Chancellor referred the matter to the Committee on Personnel Matters on 1 September 1993; the Committee met for the first time on 4 October 1993. Meetings are continuing, but the Committee hopes to complete its deliberations by the end of this month. As the Procedures require, the Committee's report will then be submitted to the Vice-Chancellor and if (as seems probable) he decides to refer it to the Senate, the Senate will receive it at its next scheduled meeting, on 6 September 1994. The recommendation of the Senate will be considered by the Council at its next scheduled meeting, on 27 October 1994.
- (b) No unexpected difficulties have been encountered during the investigation. It has become protracted because of the complicated legal issues involved, the time sought by the staff member concerned to prepare his case (which could hardly be refused considering the effect of the possible outcome on his career and indeed livelihood), and the difficulty of finding times for meetings convenient to all parties. A full attendance by all six committee

**WRITTEN ANSWER** — *Continued*

members is required at all times, since members may not take part in the final decision unless they have heard all the evidence.

The Administration has conveyed Miss LAU's request to the University and is awaiting its reply. It is understood that the University Senate's agreement on making the report available will be sought once the members have had an opportunity to consider the report in detail in October 1994.

It has to be reiterated that the UPGC-funded institutions are autonomous bodies governed by their respective ordinances. They are legally entitled to freedom of action in managing their affairs within the constraints of the laws of Hong Kong. In particular, the Administration is aware that the institutions have procedures and guidelines to deal with internal disciplinary issues such as allegations of plagiarism. It is inappropriate for the Government to seek to intervene in the management of the institutions' internal affairs.