

OFFICIAL RECORD OF PROCEEDINGS

Wednesday, 28 June 1995

The Council met at half-past Two o'clock

PRESENT

THE PRESIDENT

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

THE CHIEF SECRETARY

THE HONOURABLE MICHAEL SUEN MING-YEUNG, 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 NGAI SHIU-KIT, O.B.E., J.P.

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

THE HONOURABLE SZETO WAH

THE HONOURABLE TAM YIU-CHUNG

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

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

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

THE HONOURABLE RONALD JOSEPH ARCULLI, 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

REV THE HONOURABLE FUNG CHI-WOOD

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 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 PHILIP WONG YU-HONG

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

THE HONOURABLE ALFRED TSO SHIU-WAI

THE HONOURABLE LEE CHEUK-YAN

IN ATTENDANCE

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

THE HONOURABLE MICHAEL SZE CHO-CHEUNG, I.S.O., J.P.
SECRETARY FOR THE CIVIL SERVICE

MR HAIDER HATIM TYEBJEE BARMA, I.S.O., J.P.
SECRETARY FOR TRANSPORT

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

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

MR DOMINIC WONG SHING-WAH, O.B.E., J.P.
SECRETARY FOR HOUSING

MRS KATHERINE FOK LO SHIU-CHING, O.B.E., J.P.
SECRETARY FOR HEALTH AND WELFARE

MR PETER LAI HING-LING, J.P.
SECRETARY FOR SECURITY

MR BOWEN LEUNG PO-WING, J.P.
SECRETARY FOR PLANNING, ENVIRONMENT AND LANDS

MR KWONG KI-CHI, J.P.
SECRETARY FOR THE TREASURY

MRS STELLA HUNG KWOK WAI-CHING, J.P.
SECRETARY FOR HOME AFFAIRS

THE CLERK TO THE LEGISLATIVE COUNCIL
MR RICKY FUNG CHOI-CHEUNG

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>
Emergency (Requisition) (Repeal) Order 1995	251/95
Emergency (Deportation and Detention) (Forms) (Repeal) Order 1995.....	252/95
Appointment of Places of Detention (Consolidation) (Repeal) Notice 1995.....	253/95
Emergency Regulations (Repeal) Order 1995	254/95
Emergency (Deportation and Detention) (Advisory Tribunal) (Repeal) Rules 1995	255/95
Defences (Firing Areas) Ordinance (Amendment of First Schedule) Order 1995	256/95
Public Service Commission (Amendment) Regulation 1995	257/95
Security and Guarding Services (Fees) Regulation	258/95
Grant Schools Provident Fund (Amendment) Rules 1995	259/95
Subsidized Schools Provident Fund (Amendment) Rules 1995	260/95
Boundary and Election Commission (Registration of Electors) (Geographical Constituencies) (Amendment) Regulation 1995	266/95
Boundary and Election Commission (Registration of Electors) (Functional Constituencies and Election Committee Constituency) (Amendment) Regulation 1995	267/95
Legislative Council (Electoral Provisions) (Election Petition) (Amendment) Rules 1995	268/95

Building (Administration) (Amendment) (No.2) Regulation 1995	269/95
Merchant Shipping (Fees) (Amendment) Regulation 1995	270/95
Merchant Shipping (Engine Room Watch Ratings) (Amendment) Regulation 1995	271/95
Merchant Shipping (Navigational Watch Ratings) (Amendment) Regulation 1995	272/95
Merchant Shipping (Liability and Compensation for Oil Pollution (Compulsory Insurance) (Amendment) Regulation 1995	273/95
Merchant Shipping (Registration) (Fees and Charges) (Amendment) Regulation 1995	274/95
Pilotage (Amendment) Regulation 1995	275/95
Shipping and Port Control (Amendment) (No.2) Regulation 1995	276/95
Merchant Shipping (Certificates of Competency as A.B.) (Amendment) Rules 1995	277/95
Merchant Shipping (Certificates of Proficiency in Survival Craft) (Amendment) Rules 1995	278/95
Merchant Shipping (Safety) (Minimum Safe Manning Certificate) Regulation (Amendment of Schedule 2) Notice 1995	279/95
Merchant Shipping (Safety) (Cargo Ship Safety Equipment Survey) Regulations (Amendment of Schedule 3) Notice 1995	280/95
Shipping and Port Control Regulations (Amendment of Third Schedule) Notice 1995	281/95
Securities (Insider Dealing) (Registration of Orders) Rules	282/95
Cremation and Gardens of Remembrance (Urban Council) (Amendment) Bylaw 1995	283/95

Exhumation (Fees) (Urban Council) (Repeal) Bylaw 1995	284/95
Public Cemeteries (Urban Council) (Amendment) Bylaw 1995	285/95
Places of Amusement (Urban Council) (Amendment) Bylaw 1995	286/95
Pleasure Grounds (Regional Council) (Amendment) Bylaw 1995	287/95
Road Traffic (Safety Equipment) (Amendment) Regulation 1995	288/95

Sessional Papers 1994-95

- No.98 — 1994 Annual Report by the Commissioner of the Independent Commission Against Corruption
- No.99 — Report by Commissioner of Correctional Services on the Administration of the Correctional Services Department Welfare Fund for the year ended 31 March 1994
- No.100— Report by the Trustee of the Correctional Services Children's Education Trust for the period 1 September 1993 to 31 August 1994
- No.101— Report by the Commissioner of Correctional Services on the Administration of the Prisoners' Welfare Fund for the year ended 31 March 1994

ADDRESS

1994 Annual Report by the Commissioner of the Independent Commission Against Corruption

MR RONALD ARCULLI: Mr President, as a member of the Advisory Committee on Corruption, I have pleasure in introducing the 1994 Annual Report by the Commissioner of the Independent Commission Against Corruption (ICAC), which is tabled today in this Council.

Early 1994 saw celebrations of the ICAC's 20th anniversary and many prominent citizens joined in paying tribute to the economic development and social stability of Hong Kong over the past two decades.

Late 1994 saw the submission to the Governor of the report of the Independent Review Committee. The Committee, chaired by Dr Helmut SOHMEN, had been asked by the Governor to review the powers of the Commission and its systems of accountability. The Review Committee's report contained 76 conclusions and recommendations designed to achieve a balance between the ICAC's public accountability and the powers required to fight corruption effectively.

The Commissioner welcomed the review, saying that the ICAC had to meet public expectations of transparency, openness and accountability if it was to continue to enjoy public support. And public support also has been and will continue to be the single most important factor in the success of the Commission. The Commissioner also saw the review as part of a process of obtaining a fresh mandate from the community. The year ended with the Administration giving priority to the implementation of the Committee's recommendations and the ICAC looking forward to 1995 as a year in which it would settle down as quickly as possible to the new way of doing things.

The year 1993 has seen a remarkable 44% increase in the number of corruption reports over 1992. In 1994 the rise continued but was only 10% over 1993. However, this included complaints arising from District Board elections in 1994. Complaints against the police and the private sector rose by 9% and 17% respectively and decreased by 5% against other government departments. The number of pursuable complaints, 1994 over 1993, rose by 14%. The result was that throughout the year the Operations Department carried a very high case load.

Another report in 1994 was that from the Council's Security Panel, which enquired into the circumstances surrounding the dismissal in late 1993 of a Deputy Director of Operations of the ICAC. The report concluded that the Commissioner had good reason to have lost confidence in the officer and that his decision to terminate his service was proper and reasonable.

The Corruption Prevention Department had another productive year in examining the practices and procedures of government departments and public bodies and in providing a confidential and free internal audit service to private sector organizations to prevent fraud and corruption. This work is a vital element of the Commission's three-pronged attack on corruption but does not always attract the attention and plaudits it deserves because of client confidentiality.

In the Community Relations Department, undoubtedly the most important project during the year was the development of the campaign on Business Ethics, a major policy initiative launched by the Governor in his 1993 policy address. The objective is to enhance Hong Kong's good reputation as a major international business centre. The campaign began with a Conference on Business Ethics in May, the first of its kind in Hong Kong. It was organized by the department jointly with six of the major chambers of commerce and was

sponsored by 108 trade and professional organizations and associations. Some 330 business leaders and corporate heads attended the conference. As the year ended, assistance was being given to all listed companies as well as chambers of commerce and trade associations in Hong Kong in drawing up corporate codes of conduct. Plans were also developing to set up an Ethics Development Centre, staffed by Community Relations Department officers, to provide practical assistance and guidance in these matters.

Mr President, in tabling this report I would like to join the Commissioner, ICAC in thanking the members of the various ICAC advisory committees for their valuable work and support during the year and all the staff of the Commission for their loyalty, dedication and efficiency.

PRESIDENT: Mr James TO, for the purpose of elucidation only, a short question.

MR JAMES TO (in Cantonese): Mr President, in the fifth paragraph of the Address, it was reported that the number of pursuable complaints, 1994 over 1993, rose by 14%. Compared with 1993, has the number of pursuable complaints increased or decreased, if complaints arising from District Board Elections in 1994 are deducted from the number?

PRESIDENT: Mr ARCULLI, can you answer?

MR RONALD ARCULLI: Mr President, I do not have the actual figures with me, but I will be happy to give a written reply to the question.

ORAL ANSWERS TO QUESTIONS

Emergency Medical Care in Public Hospitals

1. MR HUANG CHEN-YA asked: *Mr President, will the Government inform this Council of:*

- (a) *the number of trauma and blood loss cases handled by the accident and emergency departments of public hospitals in each of the past three years;*
- (b) *of the cases mentioned in (a) above, how many patients arrived in shock and how many patients were dead on arrival; and*

- (c) *of the capability of the emergency ambulance service of providing emergency medical care to the patients during transportation?*

SECRETARY FOR SECURITY: Mr President,

- (a) I have been advised by the Hospital Authority that the number of trauma patients, including cases of blood loss, received at the accident and emergency (A&E) departments of public hospitals over the last three years are:

<i>Year</i>	<i>No. of cases</i>
1992-93	276000
1993-94	308100
1994-95	348800

There are no separate statistics maintained for patients suffering specifically from blood loss.

- (b) I have been further advised by the Hospital Authority that these statistics are based on disease diagnoses of trauma cases. Shock is not in itself a disease diagnosis and there are, therefore, no statistics on the number of trauma patients who arrive at A and E departments in a state of shock. Furthermore, these statistics refer only to patients who are alive when they arrive at A&E departments. We do not have specific statistics on the numbers of people who are dead on arrival and whose cause of death is through trauma.
- (c) We have a well-trained, well-disciplined ambulance service who are specifically trained to deal with these patients. Such training in first aid includes controlling blood loss, minimizing shock, protecting wounds from infection and establishing scrupulous standards of hygiene. In addition, we have a special group of paramedic ambulancemen who have received further training in more advanced techniques including intravenous infusion, comprehensive patient assessment, cardiac care by defibrillation and the use of selected medication. When an emergency call is known to involve a patient suffering from trauma and serious blood loss, a paramedic ambulance will be despatched to provide the most appropriate emergency medical care to patients.

DR HUANG CHEN-YA (in Cantonese): *Mr President, I hope the Government will provide us with information in writing on the equipment, such as fluids and medications, actually carried on emergency ambulances. Despite the extensive training these ambulancemen have received, what can they do in the absence of equipment? While there have been 300000 plus cases of trauma, the Government reported that only 2000 or 20000 patients have been given infusions or injections to treat their blood pressure. My concern is that the fluids used may not be sufficient, or they may not be the most appropriate medications. So, I hope the Government may provide written information to us in this regard to ensure that the patients will not die before arrival at hospitals.*

SECRETARY FOR SECURITY: Mr President, I do not have the figures of the quantity of material in each ambulance which the Honourable Member has asked for.

On the question of what we did with some of these medications, I do have one little piece of information or statistic which might help to illustrate the degree of care which paramedical ambulances, for example, provide to people who suffer from the sort of situations where various kinds of injections or infusions are administered. In 1994-95, 357 patients were given intravenous infusions to alleviate acute diabetic conditions and 267 patients were given intravenous infusions of saline to maintain blood pressure.

DR TANG SIU-TONG (in Cantonese): *Mr President, in paragraph (c) of the Government's main reply, it was mentioned that there is a special group of paramedic ambulancemen who may carry out intravenous infusion or cardiac care by defibrillation and use selected medication for patients. I wish to know whether this group of paramedic ambulancemen are doctors. If not, would they have committed a criminal offence should the patients die of the treatment given by them?*

PRESIDENT: Only the first part of the question; the second part is calling for an opinion.

SECRETARY FOR SECURITY: Mr President, these paramedic ambulancemen are of course not doctors. Our paramedical ambulancemen are trained in particular; they are first of all selected with more than 10 years of operational experience to undertake a paramedical training course. They receive six weeks of training in patient assessment, in medical and environmental emergencies, in intravenous fluid therapy, in automatic external defibrillation and the administration of selected drugs. At the end of this training, the trainees are also required to go through a series of written and practical examinations as well as a hospital attachment, in order to receive a paramedic certification. They are then required to undergo examinations for re-certification every two

years. So, Mr President, as we will see, the training is very very important. The training is very highly professional and I do not believe that with this sort of training they would be in the unfortunate position of administering drugs in the wrong way.

DR HUANG CHEN-YA (in Cantonese): *Mr President, I hope the Government could provide us with information in writing on how actually are the ambulances equipped, for instance, what fluids or medications are available? Despite the extensive trainings received by the ambulancemen, can they solve problems empty-handed? Of the 300000-plus cases of trauma, the Government claimed that some 2000, or 20000, such cases have received fluid infusion last year to combat blood pressure problems. What worries me is that the fluids may not be sufficient, or the medications are inappropriate. So I hope that the Government could provide us with the information in writing, assuring that patients would not dead before arrival at the hospital.*

SECRETARY FOR SECURITY: Mr President, I will be happy to see what material I could gather in written form for the Honourable Member as regards the quantities of drugs and so on in the paramedic ambulances (Annex I). I have to say that I have no impression or information that those quantities of material are deficient.

DR CONRAD LAM (in Cantonese): *Mr President, Members can hardly know about many of the very important data from the Secretary's main reply; for instance, the percentage of patients whose conditions have aggravated or who have died as a result of excessive blood loss while they are in the ambulance. Although there were no data for such cases in the past, will the Secretary for Security in the coming year request the relevant institutions to make brief reports on patients' conditions while they are in the ambulance; so that such data could be made use of in the future administrative improvements to be undertaken by the Hospital Authority or the relevant government departments. Will the Secretary inform us whether or not this can be done? And if not, why not?*

SECRETARY FOR SECURITY: The ambulance service do do their best to ensure that as much information as they are able to give is given to hospital A&E departments upon their arrival at the A&E department delivering the patient. Paramedical ambulancemen are, of course, specifically trained to give much better information to the Hospital Authority, hospitals and A&E departments to ensure that as much information is available to the doctor who will be required to treat them.

System of Handling Complaints against the Police

2. DR CONRAD LAM asked: *Mr President, it is mentioned in the 1994 Report of the Independent Police Complaints Council that the proposals which are being considered by the Government to improve the system of handling complaints against the Police include the appointment of non-police officers to the Complaints Against the Police Office (CAPO) and the assignment of lay observers to monitor the investigation of complaints. In this regard, will the Government inform this Council:*

- (a) *of the merits and demerits of the two proposals mentioned above;*
- (b) *of the outcome of the Government's consideration; and*
- (c) *whether there is any other plan to support and reinforce the work of the Independent Police Complaints Council?*

SECRETARY FOR SECURITY: Mr President, as regards the first part of the question, the proposal to appoint non-police officers to the Complaints Against the Police Office (CAPO) might enhance public confidence in our system of handling complaints against the police, since the investigation work would not exclusively be carried out by police officers. However, the non-police investigators, if appointed, would still be under the police command and it will be difficult to recruit non-police investigators of the right calibre, who must have the necessary expertise and knowledge of police procedures. This is because most of the complaints involve allegations of breaches of the law or police discipline or procedures. Without this knowledge, they do not have the professional skills to make a fair judgement as to whether the action of the police officer under investigation is justified in the circumstances of the case.

The merits of appointing lay observers are that they would not be under the command of CAPO, and would thus be "independent". The involvement of lay observers in the investigatory process would enhance the transparency of the present system. The drawbacks of the proposal are that lay observers cannot participate in the investigation work, and they may not be able to follow through the whole investigation process.

As regards the second part of the question, the idea of appointing non-police investigators was first put forward by the (then) Police Complaints Council in 1993. After careful consideration, the Government did not accept the proposal for the reasons I have just mentioned. We are, however, prepared to discuss this further with the Independent Police Complaints Council (IPCC) and to consider any additional arguments which the Council may put forward.

The IPCC did not support the Government's proposal for lay observers, as an alternative to appointing non-police investigators. We do not consider that the lay observers scheme can achieve good results without the support of the Council and have, therefore, decided that the idea should be shelved for the time being.

As regards the third part of the question, the measures that are being planned or implemented to support and reinforce the work of the IPCC include making the Council a statutory body; installing close circuit television and video recording facilities in all CAPO report and interview rooms so as to ensure greater transparency in the handling of cases and to ensure that the investigating officers are not unfair or unbiased in questioning; implementing the Interviewing Witnesses Scheme to enable the Council to clarify matters with witnesses, complainants, complainees and experts directly; conducting a comparative study of police complaints systems in other countries to identify the strengths and weaknesses of our system; enhancing the publicity programme of the Council to strengthen public confidence in, and awareness of, its work; and organizing the Courteous Police Officers Award Scheme to encourage police officers to deal with members of the public more politely and tactfully, in order to reduce the number of complaints.

DR CONRAD LAM (in Cantonese): *Mr President, the Secretary mentioned in the fourth paragraph that the Independent Police Complaints Council (IPCC) did not support the Government's proposal for the lay observers scheme and that the Government has therefore decided to shelve the idea for the time being. First, I want to tell the Secretary that his findings are outdated as the IPCC, at a meeting two days ago, discussed this scheme and considered that there were merits in this proposal. The Council is studying how the merits of this proposal can be fully developed. My question now is: As and when the IPCC agrees to this proposal of the Government's, will the Government provide it with adequate resources so that it will have sufficient manpower to participate in this plan? If so, when?*

SECRETARY FOR SECURITY: Mr President, I thank the Honourable Member for updating me on the latest thinking of the IPCC, of which of course he is a member and I am not.

As regards the question of the precise way in which, if the IPCC believes that the lay observers scheme should be implemented, how, when and precisely at what time and in what way it should be implemented, these are matters which we will need to discuss with the IPCC in due course. We have not had this opportunity to discuss it, so I am not able to say what resources or what timescale or what procedures will be implemented.

MISS EMILY LAU (in Cantonese): *Mr President, will the Government affirm whether the Commissioner for Administrative Complaints has suggested that the Government should allow his Commission to investigate the civilian staff of the police? Does the Government consider this suggestion desirable? Will it consider that it is a step forward? If so, when will this plan be put into effect to allow the Commission for Administrative Complaints to investigate complaints against the civilian staff of the police?*

SECRETARY FOR SECURITY: Mr President, all I can say at this stage is that I have heard reports for such remarks being made, although I have not personally seen a formal recommendation to that effect.

I should like just to say a few words about the specific point of whether or not the Commissioner for Administrative Complaints should investigate complaints against civilian staff of the Police Force. Under the Police Force Ordinance, the Commissioner of Police is responsible for the command and management of the Police Force, which includes disciplined and civilian staff. The present complaint handling system is geared to cover both disciplined and civilian staff as they work very closely with each other in carrying out their duties in certain circumstances. Bearing in mind that many civilian members of the force, like traffic wardens, have direct law enforcement authority, the proposal to separate civilians from the present complaint handling arrangements is not really very practicable.

MR WONG WAI-YIN (in Cantonese): *Mr President, the Secretary mentioned in the third paragraph of his main reply that the Government did not accept the proposal of the IPCC to appoint non-police investigators to the Complaints Against the Police Office for the reasons he mentioned in the first paragraph, that is, recruitment of these people would be very difficult and so it is unacceptable. I wonder if it will be more difficult to recruit these people than to choose the Chief Executive. Mr President, our request is just to appoint some non-police staff to the Complaints Against the Police Office, not to replace all. After these people have joined the Office, they will gradually familiarize themselves with the relevant procedures and gain experience through their work. I want to ask the Secretary: Does the Government agree to the principle of appointing non-police officers to the Complaints Against the Police Office? If so, we are prepared to remove all the difficulties. If the Government does not even agree to this principle, then the IPCC could have no more comments to make.*

PRESIDENT: Secretary, you can ignore the reference to the Chief Executive.

SECRETARY FOR SECURITY: Thank you, Mr President. On the question of the difficulty which I referred to in finding the right type of non-police investigators, of course, as I mentioned in the main reply, non-police investigators if appointed will still be under the police command and in that sense therefore there is also a different issue of whether or not you can recruit them. In effect therefore, even if they are non-policemen, and even if they can be recruited, they will still be under the police command and it is therefore questionable to what extent that would increase public confidence or transparency in these investigations.

I just repeat, Mr President, that our minds are not completely closed on all these issues. We noted, of course, that the IPCC has made its views that they still believe that this is worth pursuing and we would be prepared to discuss these issues further with the IPCC, as indeed we would also wish to conduct the study that I referred to in my main reply about how complaints against police systems in other jurisdictions and other territories and countries work, so as to enable us better to decide what further measures might be taken as regards improving the transparency and the public credibility of our complaints against police system.

MR MAN SAI-CHEONG (in Cantonese): *Mr President, as far as I know, the IPCC is not yet a statutory body and the Government has suggested in the IPCC to table a bill to the Legislative Council. But this suggestion was made several years ago. How far have we gone now? Are there any difficulties? Has the bill concerned been tabled to the Council for scrutiny? If there are difficulties, are they involved with the Government's hesitance for fear that Legislative Councillors will insist on having non-police officers handle the complaints?*

SECRETARY FOR SECURITY: Mr President, we are still looking at the drafting of the bill. We are not yet at a stage where we can consult the Chairman of the IPCC on a definitive version of the draft bill. I am not able to say precisely when I will be able to introduce the bill into this Council.

PRESIDENT: Mr MAN, not answered?

MR MAN SAI-CHEONG: *Can I have a short follow-up. What will be included in the proposed legislation? Will it include the composition and also the powers?*

PRESIDENT: Secretary, that is a second supplementary.

SECRETARY FOR SECURITY: The purpose of the IPCC bill is primarily to give statutory status to the existing IPCC system. It will certainly address the functions and the membership of the Independent Police Complaints Council.

MR JAMES TO (in Cantonese): *Mr President, at least from the Government's point of view, the IPCC is very familiar with the operation of the police and can handle complaints fairly; it has gained much experience about the work and its members are highly respected people of the society. The IPCC has recommended two levels of reform: first, there should be non-police officers participating in the investigations; second, as Dr the Honourable Conrad LAM has suggested just now, there should be someone observing the investigations. Despite the recommendations made by a Council the members of which are all trusted by the Governor and whose chairman having repeatedly asked the Government to consider these recommendations, it seems that up till now, the Secretary for Security has only given two very short reasons in his main reply. He has not given a detailed account of the Government's arguments. Will the public be convinced? In the first paragraph of the reply, it is mentioned that since non-police investigators do not have the knowledge of police procedures or disciplines, they cannot make a fair judgement as to whether the police officer's action is justified. I want to ask then: Can a judge do so? At present, the court hears cases involving breaches of the law every day. The court may even criticize during the hearing that some police procedures are improper. According to the Secretary's reply, is it right that only police officers are eligible to investigate?*

SECRETARY FOR SECURITY: Mr President, I have already, in my main reply, explained the Government's reasons for not pursuing at the time the recommendation of the Police Complaints Committee to have a system of non-police investigators. I have also said that given the comments of the IPCC currently we are prepared to have discussions with the IPCC to discuss their views further on the idea of non-police investigators. I have also said that initially we, the Government, were prepared to go down the road of a lay observers scheme. It was at the time not given very strong support by the IPCC, but I am glad to hear today from Dr the Honourable Conrad LAM that the IPCC may have further things to say and we will certainly be prepared to discuss them. I do not believe, Mr President, it is right to make a comparison between judges and police officers.

Importation of Foreign Domestic Helpers

3. DR SAMUEL WONG asked: *Regarding the importation of domestic helpers, will the Government inform this Council:*

- (a) *whether it has information to show the differences in salary, terms and conditions of service, between domestic helpers in Hong Kong*

and those in Singapore and the difference in retraining charges imposed by the two governments relating to such employment;

- (b) of a breakdown, by country of origin, of foreign domestic helpers permitted by the Immigration Department to work in Hong Kong; and*
- (c) whether the Government will encourage people to employ local domestic helpers?*

SECRETARY FOR EDUCATION AND MANPOWER: Mr President,

- (a) All foreign domestic helpers (FDHs) in Hong Kong are admitted to work for a specified employer under a standard two-year contract of employment which stipulates the terms and conditions of their employment. This standard contract is governed by all the relevant labour legislation in Hong Kong. Each FDH is also entitled to receive from his/her employer a specified minimum allowable monthly wage. At present, this amounts to HK\$3,750. Employers are not required to pay any retraining charges arising from the employment of such helpers.

As regards the FDHs in Singapore, we understand that their employment is not governed by any standard contract of employment. The terms and conditions of employment are subject to negotiations between the employers and the helpers themselves. The helpers are not entitled to any specified minimum monthly wage. Their average monthly wage ranges from S\$150 to S\$350. However, the employer of each FDH is required to pay to the Government a monthly levy of S\$330 and a security bond of S\$5,000 as a deposit. The latter amount will be refunded to the employer upon the termination of the service and departure from Singapore of that helper.

- (b) The breakdown of FDHs permitted to work in Hong Kong by country of origin as at the end of this year is at Annex, tabled with the reply.
- (c) As with the employment of any other types of local workers, the employment of local domestic helpers should be decided by the forces of demand and supply in a freely competitive market. The Government's responsibility is to facilitate such employment through the provision of employment services and suitable training and retraining.

The Local Employment Service (LES) of the Labour Department provides free employment assistance and counselling services to all local job-seekers, including domestic helpers, who register for employment. Anyone who wishes to employ local domestic helpers can also register with any of the LES offices. According to the statistics kept by the LES, the placement cases of local domestic helpers constitute about 4.7% of the total placement figures.

The Employees Retraining Board (ERB) is now running two job-specific retraining courses on domestic work. A total of 199 retrainees have completed the courses and 38 are still attending them. The ERB is liaising with a number of training bodies and other interested organizations with a view to organizing more retraining courses on domestic work.

Annex

Number of Foreign Domestic Helpers in Hong Kong
as at 31 May 1995

(breakdown by nationality)

<i>Countries</i>	<i>Number</i>
Philippines	126425
India	1168
Thailand	7073
Indonesia	13049
Sri Lanka	808
Myanmar	145
Malaysia	60
Singapore	7
Pakistan	90
Nepal	192
Bangladesh	17

<i>Countries</i>	<i>Number</i>
Others*	72

Total	149106
	=====

* Note: "Others" column include countries like Austria, France, Germany, Korea, Mexico, the Netherlands and the United States.

DR SAMUEL WONG (in Cantonese): *Mr President, at present, in employing foreign workers, employers are required to pay a retraining charge of \$400 for every imported worker they have taken on, except for the foreign domestic helpers. Since the Employees Retraining Board (ERB) is currently running retraining courses relating to domestic helpers, may I ask if the Government will consider levying retraining charges on employers of foreign domestic helpers?*

SECRETARY FOR EDUCATION AND MANPOWER (in Cantonese): Foreign domestic helpers come under a separate scheme which is different from the labour importation scheme. For this reason, our present approach is based on the policy that has been adopted for the past 20 years and that is, foreign domestic helpers are imported on the basis of the local demand, with no special charges levied or quota set for such employment. Therefore, we consider it inappropriate to levy charges on the employers. Of course, if we deem it is necessary to readjust the demand and supply, it is possible that we will use other methods to readjust the demand and supply of foreign domestic helpers. However, we will certainly give this matter individual consideration because this is a matter different from the labour importation scheme.

MR STEVEN POON (in Cantonese): *Mr President, according to the annex provided by the Government, there are 149000 foreign domestic workers in Hong Kong and this is a very huge number. Does the Government know how large the market of domestic helpers is in Hong Kong? What is the percentage of foreign domestic helpers in the entire domestic helper market? What is the highest possible number of foreign domestic helpers in Hong Kong? Does Hong Kong have any plan to deal with such an enormous number of them eventually?*

SECRETARY FOR EDUCATION AND MANPOWER (in Cantonese): Mr President, as I said in the main reply, the foreign domestic helper importation scheme is purely a matter of demand and supply. As early as the 1970s, this is some 20 years ago, certain employers were already permitted by the Government to import foreign domestic helpers as the supply of local domestic

helpers had fallen short of the demand. The Government has not carried out a comprehensive survey but foreign domestic helpers are imported on the basis of the applications from local families which have the need. It is a natural matter of demand and supply in the market. We do not have any specific plan to fix the number of imported domestic helpers. This is a matter different from the labour importation scheme.

MRS ELSIE TU: Mr President, in view of the increase in unemployment of local women, would it be possible for the Government to consider scaling down the number of foreign domestic workers permitted to work in Hong Kong?

SECRETARY FOR EDUCATION AND MANPOWER: Mr President, of course we have had this point raised on several occasions in this Council, among other things, in the context of importation of labour. I would just like to make one point and that is that in the review on the importation for labour scheme we will, of course, take into account the needs of local workers for more jobs. If, and I stress the point if, it can be proved that there is a demand for local domestic helpers in Hong Kong which is clearly and demonstrably clear to us that this need is not fulfilled, then of course we would be very happy to look at this scheme again to see whether we ought to give priority to local workers to take up domestic work and accordingly restrict the number of foreign domestic helpers. But we have yet to have the evidence to show this point.

PRESIDENT: We have got time for three more supplementaries, as we have got a very long agenda today.

MRS PEGGY LAM (in Cantonese): *Mr President, there are already more than 100000 foreign domestic helpers in Hong Kong and this number is constantly rising. Moreover, according to a survey I have recently conducted, members of the public think that the number of FDHs should not be allowed to go up indefinitely and that a quota system ought to be implemented. In the circumstances, will the Government inform this Council whether it will conform to the wishes of the people by formulating a policy on the quota of foreign domestic helpers in the near future?*

SECRETARY FOR EDUCATION AND MANPOWER (in Cantonese): As I have said before, the importation of foreign domestic helpers is purely a matter of demand and supply in a free market and for the time being, the Government has no intention to intervene in this respect. Yet, if it is the view of the community that some local workers being unable to find jobs is the result of these foreign helpers coming to work in Hong Kong, we would certainly review this scheme and see if it is necessary to readjust the importation of foreign domestic helpers. In the meantime, we will also have to consider whether local

domestic helpers can satisfy the demand of the local families. We will adopt an open attitude towards this matter.

MR TAM YIU-CHUNG (in Cantonese): *Mr President, in fact, many families in Hong Kong do not necessarily need to take on full-time domestic helpers who can actually be replaced by part-time local domestic helpers instead. May I ask whether the Government will ask the ERB to organize and increase the number of related courses, and to take up the responsibility to provide placement service in an effort to enhance the employment opportunities of local workers?*

SECRETARY FOR EDUCATION AND MANPOWER (in Cantonese): Mr President, as I mentioned just now, the ERB is running two training courses on domestic work for these people. We will certainly encourage the ERB to provide more courses of this sort to meet the local demand if necessary. As to how we can help local workers take up domestic work, we will be happy to look into this matter and see if it is necessary to provide additional training courses through the ERB by running this type of courses for local workers to enable them to work as domestic helpers. As regards part-time domestic helpers, we will also give consideration to running training courses for them if there is such a need.

MRS SELINA CHOW (in Cantonese): *Mr President, very often we can see foreign domestic helpers engaging in duties other than those specified in their employment contracts. Just take a look at the notice boards in supermarkets and one will know. What measure does the Government have in place to ensure that foreign domestic helpers are genuinely observing the original employment contracts that they made when they first came to work in Hong Kong? What measures will be adopted to stop an enormous pool of these helpers from engaging in part-time domestic work which is not a duty specified in their contracts? Is there any plan to further ensure the strict observance by employers of the terms of the contracts?*

SECRETARY FOR EDUCATION AND MANPOWER (in Cantonese): Members may remember that the Secretary for Security has stated in clear terms that we would strengthen our work in this regard particularly and that means, firstly, we will monitor whether foreign helpers are engaging in domestic work in local families; secondly, we will strengthen our enforcement actions; thirdly, we will strengthen the deterrent effect of the penalties. I believe that the Government is certainly determined to spare no effort to combat this kind of activities.

PRESIDENT: Mrs CHOW, not answered?

MRS SELINA CHOW (in Cantonese): *The Secretary did not say whether the Government will take further action to ensure the strict observance by the employers of the terms of the contract. This is because there are also problems on the part of the employers now. May I ask the Government if it has any plan to do that?*

SECRETARY FOR EDUCATION AND MANPOWER (in Cantonese): Mr President, we will certainly consider this.

Brain Drain Problem

4. MR PETER WONG asked: *Will the Administration inform this Council:*

- (a) *of the total number of local residents who have emigrated abroad in the last two years, together with the respective percentages of civil servants and professionals among these emigrants; and*
- (b) *whether it has taken any measures to cope with the brain drain problem; if so, what the measures are?*

SECRETARY FOR SECURITY: Mr President, we estimate that about 53400 persons emigrated from Hong Kong in 1993, and about 61600 in the year 1994. Of these numbers, respectively 7.5% in 1993 and 6.5% in 1994 are professionals. Civil servants are not separately identified in our emigration statistics.

As regards the second pan of the Honourable Member's question, let me first of all reiterate that Hong Kong does not, and will not prevent its people from emigrating elsewhere. What we seek to do are:

- (1) To maintain Hong Kong's stability and prosperity so that our citizens can continue to live and work in an environment which allows them to apply their talents and expertise, and rewards them for their successes. To this end, we have done a great deal to improve our infrastructure, which is so necessary for our economic development. Our economic and financial policies have also enabled us to enjoy sustained economic growth and sound public finance over the past few years. Hong Kong remains today an attractive place in which to live and work. Indeed, it is at least partly because of the economic opportunities offered by Hong Kong that a fair number of former emigrants, some of them highly educated and professionally trained, have returned here.

- (2) We do understand that some of the factors contributing to people's decision to emigrate is their anxieties about the future. The best answer to their worries is the full and faithful implementation of the provisions of the Sino-British Joint Declaration on the future of Hong Kong. We have in the past years devoted a great deal of effort to that end. We have had some successes in our endeavours, for example, the Defence Land agreement in 1994 and the Court of Final Appeal agreement this year. Nevertheless, we recognize that a great deal more work needs to be done, and we shall continue to do our best in this regard.
- (3) In response to the specific emigration pressures in the late-1980s, we have instituted the British Nationality Selection Scheme, which has as its primary objective the anchoring of well-qualified personnel in Hong Kong at the prime of their career. The Scheme is designed to enable up to 50000 qualified families to obtain British Citizenship without leaving the territory. Progress in implementing the Scheme is good: so far, 43400 heads of families, together with their dependents, have been registered as British citizens under the Scheme. Many of the 43400 principal beneficiaries are well-educated, including professionals, and in the prime of their career.
- (4) We seek to replenish our supply of highly educated and trained people whom we lose through emigration. We have, for example, increased the number of first year, first degree (FYFD) places substantially in the past few years, from 7426 places (or 8.64% of the relevant age group) in 1988-89 to no less than 14500 places (or 18% of the relevant age group) in 1994-95. As a result of this expansion of tertiary education, the number of workers with degree or above qualifications is projected to increase from 173000 in 1991 to 235400 in 1996, and further to 320800 in the year 2001. This represents a growth of 6.4% a year during this 10 year period, by the end of which we should be able to match supply with demand.

We have also been providing a comprehensive system of technical education and vocational training through the two Technical Colleges, seven Technical Institutes and 18 Industrial Training Centres of the Vocational Training Council. Together, 43100 full-time and 66600 part-time training places will be provided in 1995-96. As a result of these training facilities, the number of workers with sub-degree qualification are expected to increase from 106800 in 1991 to 143200 in the year 1996, and further to 180200 in the year 2001. The manpower supply at technician and craft levels is projected to increase from 59100 in 1991 to 113500 in the year 2001.

MR PETER WONG: *Mr President, as the Secretary for Security is determined not to provide me with statistics on the civil service emigration, can the Secretary for Education and Manpower or the Secretary for the Civil Service, or even the Chief Secretary who is thereby head of the Civil Service, assist?*

PRESIDENT: The question is strictly to be answered by the public officer concerned.

SECRETARY FOR SECURITY: Mr President, may I defer to my colleague, the Secretary for the Civil Service, to see whether he has anything more to say. My emigration statistics do not, unfortunately, capture emigration statistics for civil servants.

SECRETARY FOR THE CIVIL SERVICE: Mr President, civil servants normally leave the Government by either resignation or retirement. For those who resign, they are not obliged to provide the reasons for resignation. The only exceptions are those who apply for early retirement under the old pension scheme, between the age of 45 and 49, and the figure that I have for you for 1994-95 is that out of a total of 448 officers retired between that age bracket, 302 officers retired prematurely for the purpose of emigration.

As I mentioned, officers who retire early other than under the scheme that I just mentioned do not have to tell us the reasons, but as good managers we do interview officers to find out the reasons — whether or not they wish to inform us of, for example, whether there are improvements to our management systems they wish to suggest. Since they are leaving, they probably will tell us the truth. So, of the 3489 officers who resigned in 1994-95, 1620 have voluntarily told us the reasons why they were resigning, of which 371 told us that it is for reasons of emigration.

MR EDWARD HO: *Mr President, the Secretary gave us a figure of emigration of professionals in the last two years and a quick calculation shows that that was about 8000 people who left in the last two years. Since this brain drain has already started probably 10 years ago, would the Secretary consider that this sort of brain drain is serious and whether he thinks that there would be a serious impact on our economy, especially the service sector?*

SECRETARY FOR SECURITY: Mr President, I am not sure where the figure of 8000 comes from. I will just give an example: from our emigration statistics for the year 1994, 6.5% of them were professionals. That amounts to a figure of about 4000 for the year 1994.

Having said that, as I have mentioned in my main reply, one of the things that the Government has embarked upon is to expand our education facilities in such a way that we would be able to catch up with the balance of supply and demand. That balance of supply and demand must, of course, take account of the fact that we do lose people, we do lose some highly educated people and professionals through emigration. But at the same time, the expansion in our tertiary institutions, which I have just mentioned, should enable us by the target time to replenish the supply of talent which we have lost.

MR MARTIN BARROW: *Mr President, could the Secretary tell us what steps are being taken to encourage emigrants to return to Hong Kong as part of the solution to the brain drain problem, and to what extent this has met with success?*

SECRETARY FOR SECURITY: Mr President, as far as I understand, we estimate that approximately 12% of the emigrants who have left Hong Kong in the past 10 years have returned to Hong Kong. Now that figure, I must stress, is of course only an estimate. As I mentioned already in the main part of my reply, one of the reasons, no doubt, why emigrants who have left Hong Kong do return to Hong Kong is of course the economic opportunities which are available in Hong Kong and which might not be available in such plentitude in other territories where they are living.

MR ALBERT CHAN (in Cantonese): *Mr President, in the reply provided by the Secretary for the Civil Service regarding the emigration of civil servants, it was mentioned that among the 448 civil servants who applied for early retirement, 302 left the Government for the reason of emigration, representing almost 70% of civil servants who retired prematurely. The percentage is really alarming. What are the measures which the Government is going to undertake in an attempt to minimize the drain of the civil servants who might have joined the civil service for 20 or 30 years and are there any measures in place to minimize the impact of the drain of these civil servants on the entire operation of the civil service?*

SECRETARY FOR THE CIVIL SERVICE (in Cantonese): Mr President, 448 may well be regarded as a drop in the ocean given the size of the civil service which comprises 180000 officers. Moreover, the ranks of these officers vary from the very low to the very top, therefore it is difficult to put in general terms the impact of their early departure on the stability of the civil service or on the operation of our society as a whole. From my personal point of view, I do not think that the impact is really serious. However, I must stress that our civil service training programmes and recruitment exercise have taken into account the factor that some colleagues will leave the service prematurely.

Tax Liabilities of Chinese Functionaries in Hong Kong

5. MR FREDERICK FUNG asked: *Mr President, under the local tax system, incomes earned from employment in the territory as well as net profits derived from a trade, profession or business being carried on in the territory are liable to tax. In this connection, will the Government inform this Council:*

- (a) *whether the following three categories of people are required to pay tax;*
 - (i) *functionaries on the payroll of the Chinese Government (non-diplomatic personnel);*
 - (ii) *functionaries of Chinese enterprises and service institutions who are posted to the territory; and*
 - (iii) *personnel of the Hong Kong Branch of Xinhua News Agency posted to the territory, including the director and deputy directors; and*
- (b) *if the answer to (i), (ii) and (iii) of (a) above is in the affirmative, how many of these people have paid tax, and what is the total amount of tax paid by them in the last fiscal year and how many of them are exempted from paying tax and why?*

SECRETARY FOR THE TREASURY: Mr President,

The answers to the questions are as follows:

- (a)(i) Under the Inland Revenue Ordinance, the official emoluments of consuls, vice-consuls and persons employed on the staff of any consulate, who are subjects or citizens of the state which they represent, are exempt from salaries tax. To conform with international practice, this exemption is extended to officials of another jurisdiction who serve with a department or agency of that jurisdiction, provided that the department or agency is not an undertaking carried on for profit. Accordingly, Chinese officials who are posted to Hong Kong to serve with a department or agency of the Chinese Government that is not an undertaking carried on for profit are exempt from salaries tax in Hong Kong.
- (ii) Any person employed by Chinese enterprises and service institutions carrying on business in Hong Kong for profit are liable to salaries tax on income arising in or derived from Hong Kong from an office or employment of profit. We do not draw any distinction between persons posted to Hong Kong and persons engaged locally.

- (iii) Chinese officials posted to the Hong Kong Branch of the Xinhua News Agency are exempt from salaries tax in Hong Kong by virtue of (a)(i) above. However, locally engaged personnel are liable to Hong Kong salaries tax.
- (b) As a general point, I would like to remind Members that under the secrecy provision of the Inland Revenue Ordinance, we are not at liberty to disclose details of the tax liability of individual taxpayers.

Turning to the specific question, we do not keep detailed statistics on the number of people in the categories referred to in the Member's question and their tax liabilities.

MR FREDERICK FUNG (in Cantonese): *Mr President, what I would like to pursue is that, in regard to the functionaries of the Chinese Government who are posted to the territory that I mentioned in paragraph (a)(i) of the main question, as well as the personnel of the Hong Kong Branch of the Xinhua News Agency mentioned in paragraph (a)(iii) of the main question, when the Hong Kong Special Administrative Region has become a local government of the Chinese Government after 1997, will the identities of the above personnel then be changed and will they thus be required to pay tax?*

PRESIDENT: Are you able to answer, Secretary?

SECRETARY FOR THE TREASURY: Mr President, I do not think I can speculate on what would happen in 1997.

MR FREDERICK FUNG (in Cantonese): *Mr President, is the Secretary for the Treasury not able to tell whether Hong Kong will become a SAR Government under the Chinese Government? This should not be regarded as "speculation".*

PRESIDENT: If you have not got the answer to that as a matter of law, I will not call on you to answer, Secretary. Is that the position?

SECRETARY FOR THE TREASURY: Yes, Mr President.

MR LEE WING-TAT (in Cantonese): *Mr President, it is mentioned in paragraph (a)(iii) of the main reply that the locally engaged personnel of the Hong Kong Branch of the Xinhua News Agency are liable to Hong Kong salaries tax. I would like the Secretary for the Treasury to clarify the definition of locally engaged personnel. For instance, does Mr MAO Jun-nian,*

one of the deputy directors of the Xinhua News Agency, belong to that category? How do you determine whether an employee of the Xinhua News Agency is a local employee?

SECRETARY FOR THE TREASURY: Mr President, as I have said, I am not at liberty to disclose details of the tax liability of individual taxpayers, so I cannot comment on the individual referred to by the Honourable Member. The question of whether an employee of the Xinhua News Agency is a local employee is a matter of fact which will be determined by the Commissioner.

MR JAMES TO (in Cantonese): *Mr President, officials like consuls or vice-consuls will not be posted by a state to its own territory. In paragraph (a)(i) of the main reply, the Secretary for the Treasury mentioned the Inland Revenue Ordinance. I have just read through section 8(2)(b) of that Ordinance concerning the consuls, vice-consuls and other local citizens employed on the staff of a consulate. However, according to the Consular Relations Ordinance (Cap.259), theoretically speaking, if a government wants to obtain that kind of exemption, it has to notify the local government which staff members are the consuls or the vice-consuls. May I ask the Secretary for the Treasury whether the Xinhua News Agency, as an organization of the Chinese Government, has notified the British Government that the personnel of the Xinhua News Agency are in fact the consuls or vice-consuls, so that they can be exempt from the payment of tax according to section 8(2)(b) of the Inland Revenue Ordinance?*

SECRETARY FOR THE TREASURY: Mr President, in fact my answer does not specify that the employees of the Xinhua News Agency are regarded as consuls or vice-consuls and so on. I said: "To conform with international practice, this exemption is extended to officials of another jurisdiction who serve with a department or agency of that jurisdiction, provided that the department or agency is not an undertaking carried on for profit." The officials of the Chinese Government posted to the Hong Kong Branch of the Xinhua News Agency fall into that category.

PRESIDENT: Mr TO, not answered?

MR JAMES TO (in Cantonese): *Mr President, the Administration has not answered my question. It is because procedure-wise, no matter it is consuls, vice-consuls or even non-profit making department or agency that is concerned, the Chinese Government should fill in some sort of tax returns to indicate which people are its employees, including consuls, vice-consuls and all the officials working in the non-profit making departments or agencies. But finally, under which section of the Inland Revenue Ordinance are they exempt from payment of tax? Is this kind of procedure necessary? Otherwise, the Commissioner of*

Inland Revenue is totally ignorant of which people who thinks they can be exempt from payment of tax, or under which section of the Ordinance that they can be accorded such exemption.

SECRETARY FOR THE TREASURY: Mr President, where an individual is exempt from payment of tax there is no requirement on him or her to report the situation to the Commissioner.

MR LEE WING-TAT (in Cantonese): *Mr President, on many public occasions, the Hong Kong Branch of the Xinhua News Agency remarked that it is a news agency engaging in news reporting and gathering activities. These activities are, of course, commercial activities. If it is correct in saying so, in other words, the Xinhua News Agency is an organization operating with profits. May I ask the Secretary for the Treasury whether the Hong Kong Branch of the Xinhua News Agency is classified by the Administration as a news agency? Has it ever been involved in the sale of news for reaping profits while engaging in the news reporting and gathering activities?*

SECRETARY FOR THE TREASURY: Mr President, as I have said, the Xinhua News Agency is the official news agency of the Chinese Government and we do not regard that as being carried on for profit.

PRESIDENT: Not answered, Mr LEE?

MR LEE WING-TAT (in Cantonese): *Mr President, my question is: Has the Administration required the Hong Kong Branch of the Xinhua News Agency to clarify whether it is an agency posted to Hong Kong representing the Chinese Government or whether it is a news agency? After hearing the reply from the Secretary for the Treasury, I find that the Secretary has already confirmed that the Hong Kong Branch of the Xinhua News Agency is not a news agency engaging in news gathering activities and having economic activities. Is that the situation?*

SECRETARY FOR THE TREASURY: Mr President, I think the premise on which the Honourable Member asked the question is that a news agency is necessarily a profit-making one. I do not accept that.

PRESIDENT: Mr James TO, this is the last question in view of our long agenda.

MR JAMES TO (in Cantonese): *Mr President, I would like to follow up the question just asked. Which section or which subsection of the Inland Revenue Ordinance stipulates that to an individual who is employed but not liable to tax, neither he himself nor his employer is required to report any information in regard to taxation?*

SECRETARY FOR THE TREASURY: Mr President, as I understand it, the liability on employers to report is to report on those who are liable to tax.

MR JAMES TO (in Cantonese): *May the Administration provide a written reply, for instance, in the form of a piece of legal advice, stating in which section of which chapter does the stipulation concerned appear so that it can clearly be put on record? Or will it be the common law? I believe it is not the common law. It should be the statutory law. Should it be the statutory law, may the Administration point out where the stipulation appears under the statutory law?*

SECRETARY FOR THE TREASURY: Mr President, I am happy to refer this to the Commissioner of Inland Revenue and to provide a written answer. (Annex II)

Policy towards Preliminary Working Committee

6. MR LEE WING-TAT asked: *Mr President, in the agreement on the Court of Final Appeal issue between the British and Chinese sides, the British side has agreed to amend the Court of Final Appeal Bill on the basis of eight suggestions made by the Preliminary Working Committee of the Preparatory Committee (PWC) of the Hong Kong Special Administrative Region. In view of this, will the Government inform this Council whether there is any change in its policy towards the PWC; if so, what the new policy is; if not, why not?*

SECRETARY FOR CONSTITUTIONAL AFFAIRS: Mr President, the Preliminary Working Committee (PWC) is a body established by the Chinese National People's Congress to tender advice to the Chinese Government. As such, there is no formal relationship between the Committee and either the Hong Kong Government or the British Government.

But no formal relationship does not mean no contact. The work of the Committee is related to Hong Kong's future and the transition. We take the view that it would be appropriate to provide them with information to help them understand different aspects of Hong Kong. As Members are aware, we do have contacts with the PWC through a variety of channels. Where they have

sought information from the Hong Kong Government, we have invariably responded, and we will continue to do so.

As for the Court of Final Appeal, the various suggestions of the Political Affairs Sub-group of the PWC were largely consistent with our own proposals. We, therefore, indicated our willingness to pursue these suggestions, in much the same way as we would have considered views from other bodies which commented on the establishment of the Court of Final Appeal in Hong Kong. Also, we understood from the Chinese side that they, too, believed that the PWC suggestions provided a useful basis to take forward the discussion on the question of the Court of Final Appeal. What happened afterwards is, of course, a matter of public record: the agreement we eventually reached with the Chinese side provides, amongst other things, that we would amend the Court of Final Appeal Bill on the basis of the eight suggestions published by the Political Affairs Sub-group of the PWC.

MR LEE WING-TAT (in Cantonese): *Mr President, in his Question and Answer sessions, the Governor has said that the proper channel to resolve issues on Hong Kong's transition is the Sino-British Joint Liaison Group, and government officials are prohibited from attending official meetings of the PWC in their capacities as officials. To put it objectively, it means that the status of the PWC is not recognized. Recently, the Government has permitted officials to attend seminars hosted by the PWC, and this time the Government openly adopts the views formally expressed by the PWC. The change is a marked one. However, the Government refuses to admit that there is a change in policy. So the Government is, is it not, either self-deceiving or suffering from split personality and therefore has not realized that there is a significant change in policy resulting in what it was contradicts with what it is?*

SECRETARY FOR CONSTITUTIONAL AFFAIRS: Mr President, I think the Hong Kong Government has time and again explained that we adopt a pragmatic approach in dealing with the PWC. We certainly would provide information to the Committee where such information is useful to its work because the Committee is involved in deliberations affecting the future of Hong Kong and the transition of Hong Kong. We certainly maintain contact with that Committee, as we have done individually or as a group, and we have participated in a number of public seminars or public occasions organized by the PWC. So our stand on dealings with the PWC has been consistent, has been pragmatic and has been geared towards the interests of Hong Kong.

MR FREDERICK FUNG (in Cantonese): *Mr President, in the past Chinese officials had time and again denied to recognize the Legislative Council of Hong Kong as a legitimate institution or an advisory body. However, with the signing of the agreement on the Final Court of Appeal, there is a change of attitude on the part of Chinese officials towards the Legislative Council, in that they have*

become more positive and may even go as far as to accept that the Court of Final Appeal Bill is to be passed by the Legislative Council to become a law of Hong Kong. Could it mean that it is an agreement for Hong Kong to recognize the PWC and for China to recognize the Legislative Council in return?

SECRETARY FOR CONSTITUTIONAL AFFAIRS: Mr President, I explained in my main answer the background leading to our readiness to consider the proposals made by the PWC on the establishment of the Court of Final Appeal. I have nothing to supplement that aspect of the answer.

As regards the involvement of the legislature in the Court of Final Appeal Bill, again that is a necessary step in our legislative process. Before any bill becomes law, obviously the Legislative Council has to be involved and it is our plan that our Bill will be put before this Council, debated and enacted before the end of this Session. That explains the involvement of the Legislative Council.

MR JAMES TO (in Cantonese): *Mr President, the Secretary for Constitutional Affairs has mentioned in the second paragraph of his reply that when the PWC sought information from the Hong Kong Government, the Government had invariably responded, and the Government would continue to do so. Can the Government say for certain that the information obtained by the Legislative Council, other consultative bodies or the people of Hong Kong will not be any less than what the PWC has obtained from the Government?*

SECRETARY FOR CONSTITUTIONAL AFFAIRS: Mr President, our general stand on provision of information to members of the public or to anybody who has an interest in a particular public policy is well known. Where that information is available, where that information can be made public, we certainly would not shy away from providing that information and our general objective is to allow the public to have as much information as possible on any public policy that is under debate or under discussion.

MR LEE WING-TAT (in Cantonese): *Mr President, I would like the Secretary for Constitutional Affairs to confirm whether or not the Sino-British Joint Liaison Group (JLG) is the formal channel to resolve issues concerning Hong Kong's transition? If so, do we have to face such a situation that in future, the discussion, contact or resolution of the numerous issues concerning transition will have to be carried out, first of all, at the PWC, and then rubber-stamped by the JLG? Is it the case or not that the people of Hong Kong will be anticipating to have such a situation?*

SECRETARY FOR CONSTITUTIONAL AFFAIRS: Mr President, the establishment and functions of the Joint Liaison Group (JLG) are very clearly set out in the Joint Declaration and we certainly will continue to make use of the JLG as the formal forum to exchange views between the British and the Chinese Governments on matters related to the transition. That position will not change.

DR CONRAD LAM (in Cantonese): *Mr President, in the second paragraph of the main reply, the Secretary for Constitutional Affairs mentioned that no formal relationship does not mean no contact. My impression is that he seems to be talking about "a mistress", who has no formal relationship but this does not mean no contact. I do not care whether or not there is a formal relationship. But does the Government recognize the role played by the PWC? The Government admits that there is no formal relationship with the PWC, but does the Government recognize its role?*

SECRETARY FOR CONSTITUTIONAL AFFAIRS; Mr President, the PWC, as I mentioned, is an advisory body established by the Chinese Government to tender advice to the Chinese Government on matters related to the transition and the future of Hong Kong. Quite obviously, the official link is between the PWC and the Chinese Government. But on the other hand, where information is required by the PWC, where subject matter discussed by the PWC is of interest to Hong Kong and to Hong Kong people, and where the Hong Kong Government can supply and help in that process, we certainly would take part fully in the provision of such information and in maintaining general contact with the PWC.

WRITTEN ANSWERS TO QUESTIONS

Delegation of Securities and Futures Commission's Powers and Duties

7. MR CHIM PUI-CHUNG asked (in Chinese): *Will the Government inform this Council whether the Securities and Futures Commission has laid down any internal guidelines governing the exercising of power and execution of duties by authorized persons under the Securities and Futures Commission Ordinance; if so, what the guidelines are?*

SECRETARY FOR FINANCIAL SERVICES: Mr President, the powers and duties of the Securities and Futures Commission contained in the Securities and Futures Commission Ordinance (Cap.24) may, with the exception of the functions of the Commission set out in the Schedule to the Ordinance, be delegated to any directors of the Commission, to any committees established by the Commission, or to any employees of the Commission. Such delegations do

not prevent the Commission itself concurrently performing the functions delegated. In practice, operational staff report to the members of the Commission, and significant matters involving the exercise of the Commission's powers are considered by the senior management of the Commission. Moreover, all directors of the Commission are informed of, or decide on, major initiatives.

The Commission has published guidelines regulating market conduct which contain criteria under which the Commission is bound to act. For example, the Takeovers and Mergers Panel is a committee established under the Securities and Futures Commission Ordinance and comprehensive Codes on Takeovers and Mergers and Share Repurchases have been published which set out the duties of the Panel and make provision, amongst other things, for disciplinary proceedings and decisions. Similarly, guidelines as to how the Commission will exercise its powers have been published in the Code on Unit Trusts and Mutual Funds with regard to the authorization of mutual fund corporations and unit trusts, and in the booklet entitled *The Fit and Proper Criteria* which sets out the conditions to be met by persons wishing to be registered as intermediaries. A list of the relevant publications is at the Annex. As far as the more routine exercise of powers is concerned, internal Commission guidelines have been stipulated as necessary and these generally follow the published guidelines.

Annex

- *The Fit and Proper Criteria*
- *Code on Investment-Linked Assurance and Pooled Retirement Funds*
- *Guidelines for the Exemption of Listed Companies from the Securities (Disclosure of Interests) Ordinance*
- *Code on Unit Trusts and Mutual Funds*
- *Licensing Information Booklet*
- *Hong Kong Codes on Takeovers and Mergers and Share Repurchases*
- *Code on Immigration-Linked Investment Schemes*
- *Notes to Financial Resources Rules*
- *Code of Conduct for Persons Registered with the Securities and Futures Commission*

Annex

- A Simplified Outline of the Leveraged Foreign Exchange Trading Ordinance, Subsidiary Rules and Guidelines
- Core Operational and Financial Risk Management Controls for Over-the-Counter Derivatives Activities of Registered Persons

Karaoke Clubs Showing Category III Film Clips

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

- (a) *of the number of complaints lodged in the past three years against karaokes for showing category III films on videotapes, laser discs or compact discs respectively to persons under the age of 18; together with the number of successful prosecutions and a breakdown of the sentences passed in each of the successful prosecutions; and*
- (b) *what measures the Government will adopt to reduce the showing of category III films to persons under the age of 18 in those establishments?*

SECRETARY FOR RECREATION AND CULTURE: Mr President, in the past three years, the Television and Entertainment Licensing Authority (TELA) had received three complaints, of which two related to laser discs and one to videotapes, about the showing of alleged Category III film clips to persons under the age of 18 in karaoke establishments. No prosecution has been taken against the operators of these karaoke establishments as there was insufficient evidence to substantiate the allegations. However, these operators had been warned not to show Category III film clips to persons under the age of 18, which was an offence liable to a maximum fine of \$50,000 on first and second conviction and \$100,000 on subsequent conviction.

Measures have already been and will continue to be taken to remind the public not to show Category III films to persons under the age of 18 in public places, including karaoke establishments. During the past two years, TELA distributed more than 11000 posters and 105000 leaflets to remind the public of the age restriction imposed on Category III films. There is a similar warning in the certificate of approval for Category III films as well as on the packaging of Category III videotapes and laser discs.

In connection with the planned publicity for the refined film classification system after the enactment of the Film Censorship (Amendment) Bill 1995, TELA will make use of this opportunity to further remind the public as well as

karaoke operators that Category III films are prohibited to be shown to persons under the age of 18.

Private Car Toll for Cross-Harbour Tunnel

9. DR SAMUEL WONG asked: *Will the Government inform this Council of the reasons why the toll of \$5 for private cars using the Cross-Harbour Tunnel has remained unchanged since the date of its opening in 1972?*

SECRETARY FOR TRANSPORT: Mr President, under section 41(1) of the Cross-Harbour Tunnel Ordinance (Cap.203), the Cross-Harbour Tunnel Company Limited may increase toll levels with the agreement of Governor in Council. If such agreement cannot be reached then, under section 41 (2) of the Ordinance, the Company may submit its toll increase proposal to arbitration. In reaching a decision, the arbitrator will have regard to whether the tunnel franchise provides the company with reasonable remuneration.

In accordance with this procedure, the Company sought a toll increase in 1988. The application was rejected by the Governor in Council and the Company sought arbitration. The arbitrator subsequently ruled that a toll increase was not merited. The Company has not submitted any subsequent applications for toll adjustment.

The onus is on the Cross-Harbour Tunnel Company to apply for toll increases if it believes these can be justified under the terms of its franchise, as embodied in the Cross-Harbour Tunnel Ordinance.

Blake Notice

10. DR TANG SIU-TONG asked (in Chinese): *In the negotiation between the British Government and the Government of the Ching Dynasty, on the lease of the New Territories in 1899, the two governments had signed an agreement which included a provision stating that burial grounds within the leased territory would forever not be subject to removal. The then Governor of the territory, Sir Henry Arthur Blake, promulgated the full text of the agreement in a Government Notice which was published in the Gazette on 7 October 1899, and this notice has since been known among the villagers as the "Blake Notice". In connection with this, will the Government inform this Council whether:*

- (a) *the Government is obliged to abide by the "Blake Notice"; and*
- (b) *the "Blake Notice" is legally binding; if not, why not?*

SECRETARY FOR PLANNING, ENVIRONMENT AND LANDS: Mr President, the statement that "the graves in the leased territory are never to be removed" appeared in a translation of the "Blake Notice" issued by the Viceroy of the Two Kwong Provinces and Governor of Kwong Tong Province dated 4 April 1899. There is no evidence of a signed agreement between the British and Chinese Governments stating that burial grounds in the New Territories would not be subject to removal.

The Notice was laid before the Legislative Council and gazetted on 7 October 1899. The records show that the reason why the Notice was published in the Gazette was that a Legislative Council Member had asked for it to be tabled at the Legislative Council. In those times, it appears to have been the practice to record proceedings in the Legislative Council in the Gazette.

The then Governor, Sir Henry BLAKE, issued a Proclamation on 9 April 1899. It referred to the lease of the New Territories and contained a statement that "your (the inhabitants') commercial and landed interests will be safeguarded; and that your usages and good customs will not in any way be interfered with". There was no reference to ancestral graves in the Proclamation.

The "Blake Notice" was in fact a proclamation made by an official of the Chinese Government. It does not form part of the law of Hong Kong and does not have legal force in Hong Kong.

Touting and Commission-taking among Solicitors and Paralegals

11. MISS EMILY LAU asked: *The Legal Practitioners' Ordinance (LPO) was amended in July last year empowering the Law Society to appoint inspectors to investigate touting and commission-taking among solicitors and paralegals. Will the Administration inform this Council:*

- (a) *what measures are in place to assess whether the amendments to the LPO have been effective in combating touting and commission-taking by lawyers and paralegals;*
- (b) *how many lawyers and paralegals have been formally disciplined for such malpractice, and with what results; and*
- (c) *whether it will consider criminalizing touting and commission-taking in order to stamp out the malpractice?*

ATTORNEY GENERAL: Mr President, the answers to the three parts of this question are as follows.

- (a) The Legal Practitioners Ordinance was amended in July 1994, but the Inspectors' Powers Rules did not come into force until November of that year. The following measures are in place to assess whether the amendments are effective.
 - (i) Law Society inspectors are required to submit written reports to the Law Society following each individual inspection, which are under constant review by the Law Society. In this regard, a Standing Committee on Compliance has been specifically tasked to monitor the inspectorate system.
 - (ii) The Law Society submits quarterly reports on the progress and effectiveness of the inspectorate system to the Administration. The first progress report was submitted at the end of March 1995.
 - (iii) The Working Party on Touting and Commission-taking in Criminal Defence Work reviews the effectiveness of the inspectorate system on a regular basis. I chair the Working Party which comprises representatives of the Law Society, the Bar Association, the Independent Commission Against Corruption (ICAC) and my Chambers.
 - (iv) The general public are encouraged by the Law Society as well as by the Administration (for example, through the recently published Consultation Paper on Legal Services) to report cases of touting and commission-taking and any malpractices within the legal profession to the Law Society and the Administration.
 - (v) At the suggestion of the Administration, the Law Society recently set up a working party to consider the problem of touting and commission-taking in conveyancing matters. The Administration is determined to combat touting and commission-taking in this area. Representatives of the ICAC and my Chambers have been invited to attend meetings of the working party and to participate in the discussion of measures to tackle the problem. It is envisaged that the working party will submit its report to the Law Society's Council for consideration before the end of this year.

These arrangements provide regular and comprehensive monitoring of the effectiveness of the inspectorate system in tackling the problem of touting and commission-taking not only in criminal defence work but also in conveyancing matters. In order to ensure

the success of the inspectorate system, we also need the co-operation of lawyers and consumers of legal services to come forward and report cases of touting and commission-taking and any other malpractices of lawyers and their employees.

- (b) Law Society inspectors have so far conducted 15 inspections in court promises and 23 inspections of solicitors' firms. As a result of these inspections, six files have been opened for further investigation. The Investigation Committees of the Law Society are considering disciplinary proceedings in three of these six cases whilst the remaining three are still under investigation.
- (c) The Administration has not excluded the option of criminalizing touting and commission-taking if the legal profession fails to solve the problem by self-regulation. Public views on this issue have been sought in the Consultation Paper on Legal Services. The matter will be reviewed in early 1996, by which time the inspectorate system will have been in operation for a period of 12 months.

Expatriate Schoolchildren in Hong Kong

12. MR CHEUNG MAN-KWONG asked (in Chinese): *At present, some expatriate children who are eligible to receive education locally come from economically developing countries, and their proficiency in Chinese and English is likely to be limited. In view of this, will the Government inform this Council:*

- (a) *of the policies for providing education to these expatriate children;*
- (b) *of a breakdown of their nationality and age;*
- (c) *how many of these expatriate children have already enrolled in Government or subsidized schools in the territory, and how many who have not done so and what are the reasons for non-enrolment; and*
- (d) *whether consideration will be given to allowing these expatriate schoolchildren, especially those at primary school age, the choice to study at schools near their homes in the same way as the local schoolchildren, so that they can be completely integrated into the territory's school environment?*

SECRETARY FOR EDUCATION AND MANPOWER: Mr President, our policy on free and compulsory education applies to all eligible children within the appropriate school age, irrespective of their country of origin.

We do not have information on the distribution in our schools by nationality and age of children who come from economically developing countries. We believe the number of these children who are eligible for public education service to be very small.

Three government schools offer public school places for non-Chinese students with limited command in English and Chinese. The vast majority of these children are of Indian or Pakistani origin. Their current enrolment in these three schools is 1200. No separate record is kept on those admitted to aided and private schools. We are, therefore, not aware that any such children have been refused enrolment. We offer school placement service to all eligible children who approach us for assistance.

There is no disparity of treatment between the expatriate children in question and their local counterparts. However, because of their limited command in English and Chinese, some of them can only be allocated to the three schools mentioned in (c) above. When their language abilities have improved sufficiently to enable them to benefit from the curriculum in ordinary local schools, the Education Department will allocate them in the same way as their local counterparts in accordance with the established policy, that is, primary pupils will be allocated to schools in their own district and secondary pupils on a territory-wide basis.

Scheduled Training Programmes

13. MISS CHRISTINE LOH asked: *As the Immigration Department grants employment visas to both imported workers and foreign workers coming to the territory to participate in "scheduled training programmes", will the Administration inform this Council:*

- (a) *how many foreigners who are currently participating in "scheduled training programmes" with the permission of the Immigration Department have stayed in the territory for more than six months; and*
- (b) *of the reasons why foreign workers participating in "scheduled training programmes" are excluded from the statistics on imported workers under the Government's imported labour scheme?*

SECRETARY FOR SECURITY: Mr President,

- (a) In 1994, 5726 visas for the purpose of training were issued; in the first five months this year, 1961 visas were issued. We have no breakdown of these numbers by the length of the training period.

- (b) Foreign trainees are admitted to stay for a limited period to acquire, through training, skills and knowledge not readily available in their home country. After the training, they will return to their home country to continue employment in their profession or trade. Imported workers are admitted to meet a local demand; they work for a specified employer in a specified post under a standard contract. Since the purpose of entry for foreign trainees and imported workers are different, they are accounted for separately in the statistical data.

Neighbourhood Watch Scheme

14. MR WONG WAI-YIN asked (in Chinese): *At the end of last year, the authorities concerned reintroduced the Neighbourhood Watch Scheme on a trial basis in Mongkok, Tuen Mun and Yuen Long for a period of six months. As the trial scheme has now been completed, will the Government inform this Council:*

- (a) *of the respective numbers of related activities organized in the three districts above-mentioned together with the respective numbers of participants;*
- (b) *of the findings of the review of the trial scheme, and whether the trial scheme has been effective; and*
- (c) *whether the Neighbourhood Watch Scheme will continue to be in operation and whether it will be extended to other districts?*

SECRETARY FOR SECURITY: Mr President, the Neighbourhood Watch Scheme was reintroduced on a trial basis for a minimum of six months in Mongkok, Tuen Mun and Yuen Long in September 1994, November 1994 and January 1995 respectively. The trial scheme is ongoing and is expected to be completed in around August this year. A review will then be conducted.

The answers to the specific questions are:

- (a) The activities organized in relation to the Scheme vary between the three districts. They include visits, seminars, press conferences, concerts, variety shows, essay competitions and the distribution of promotion leaflets. We do not have statistics on the number of participants involved in each of the activities.

In Mongkok, since September 1994, 76 buildings have joined the Scheme (the trial scheme in Mongkok is based on buildings, rather than households). The police, with the assistance of the District Office, have conducted 300 visits to Mutual Aid Committees,

Owners Incorporations and resident associations; organized a press conference; and distributed some 30000 leaflets to residents to promote the Scheme.

In Tuen Mun, since November 1994, 199 households have joined the Scheme; 12 visits have been conducted; six seminars were held; a variety show with some 3000 participants was organized; and some 11500 bulletins and leaflets were distributed.

In Yuen Long, since January this year, 2611 households have joined the Scheme; 900 visits have been conducted, two press conferences were held, an essay competition with over 1000 contestants was organized; two seminars, with 450 participants were arranged; and a concert with 13000 participants was organized.

- (b) We have not yet conducted a review on the trial scheme, which has not yet been completed. However, residents in the three districts appear to have responded favourably to the Scheme.
- (c) We will review whether the Scheme should continue and be extended to other districts after we have reviewed the trial scheme, which is expected to complete in August this year.

Euthanasia

15. DR CONRAD LAM asked (in Chinese): *In view of the aging of the population, the progress made in life-prolonging medical technology and people's changing attitude towards life and death, the concept of euthanasia has aroused concern, discussions and researches on an increasing scale all over the world. Some governments have introduced legislation to legalize the practice of euthanasia and monitor its execution. In the United States, at least 15 states have introduced the Right-to-die Acts, and a Senate Committee On Euthanasia And Assisted Suicide has been set up in Canada. In this regard, will the Government inform this Council:*

- (a) *Whether an in-depth survey will be conducted to solicit the views of the public on euthanasia; if so, when it will be conducted; if not, why not; and*
- (b) *Whether the Government will consider setting up a committee consisting of members holding views for and against euthanasia, as well as representatives of religious organizations and the medical and legal professions, to study thoroughly whether the practice of euthanasia should be promoted in the territory; if so, when the committee will be set up; if not, why not?*

SECRETARY FOR HEALTH AND WELFARE: Mr President, when the subject of euthanasia was last raised in this Council in February 1993, we sought views from the Medical Council of Hong Kong, the Joint Hong Kong Medical Association/British Medical Association Medical Ethics Advisory Committee and the Hospital Authority.

While they regarded euthanasia as basically an ethical and professional issue to be addressed by medical bodies and associations, their response also suggested that local doctors did not regard it as a pressing matter of public concern. They were not aware of any cases of euthanasia having taken place in Hong Kong.

However, as Dr LAM has pointed out, many changes have taken place outside Hong Kong since then. Local attitudes may also have changed.

I therefore intend to look further into the matter. As this is an issue with moral, ethical, social and legal implications, there is need to seek views not only within the medical profession, but also from the community at large. I intend to consult the district boards in the near future on their views on the issue before deciding on further action.

Noise Nuisance at Tsui Ping Estate

16. MR TAM YIU-CHUNG asked (in Chinese): *Will the Government inform this Council whether any measures have been put in place to abate the noise nuisance caused to residents of Tsui Chung House and Tsui Tung House at Tsui Ping Estate by vehicles entering the Tseung Kwan O Tunnel; if so, what the measures are ?*

SECRETARY FOR PLANNING, ENVIRONMENT AND LANDS: Mr President, the section of Tseung Kwan O Road near Tsui Ping Estate has already been paved with a flexible bituminous material which has noise reduction effects.

In addition, the Government is currently studying ways to further reduce traffic noise from existing roads. The study will identify the roads that require mitigation measures, the potential benefits of such measures, their technical feasibility and financial implications. The study will be completed within two years.

Safety of Slope in Kwun Lung Lau

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

- (a) *whether the Government is still monitoring the safety of the slope in Kwun Lung Lau; if so, what inspection and studies the consultants have carried out and what the results are;*
- (b) *whether the subsurface drainage has been inspected by closed-circuit TV; if so, what the results are, and*
- (c) *whether the Government will carry out repair works on the slope; if so, when such works will be completed?*

SECRETARY FOR WORKS: Mr President,

- (a) Following the fatal landslide below Block D at Kwun Lung Lau on 23 July 1994, a statutory order under section 27A of the Buildings Ordinance was served on the Hong Kong Housing Society (HKHS) on 30 July 1994 by the Building Authority. This order required the investigation and submission of remedial proposals for the existing retaining wall and slopes below Blocks D and E. A similar order was served on 11 January 1995 in respect of the existing slope and retaining wall below Block G. A further similar order was served on 31 May 1995 on both the HKHS and the owners of 71-77 Smithfield, in respect of the existing slope below Block B.

All the above-mentioned statutory orders provide for the appointment of an Authorized Person to supervise the work required by the order, and the appointment of such Authorized Persons includes responsibility for monitoring stability until completion of preventive works and giving warning of impending danger.

The stability of the site including the effect of the improvement works on adjacent buildings and lands are closely monitored. So far, the monitoring records revealed no undue ground movement.

- (b) The detailed drainage investigation carried out by the Buildings Department included a closed-circuit TV survey of the foul water and stormwater drains.

The results of the drainage investigation were published in the Report on the Kwun Lung Lau Landslide of 23 July 1994 Volume 2 — Findings of the Landslide Investigation (Appendix J). Parts of the drainage systems were found to be in poor condition with leakage.

A statutory order under section 28(3) of the Buildings Ordinance was served on HKHS on 8 February 1995 requiring the investigation, repair or renewal of the defective drains. Repair work is in hand.

- (c) Repair works on the slopes as required by the orders referred to in (a) above will be carried out by the HKHS; in the case of 71-77 Smithfield, by the owners.

About 70% of the remedial works to the failed retaining wall and slope below Block D have been completed. The final completion date for this part of the works will be the end of July 1995.

Noise Generated by Port Operations

18. MR LEE WING-TAT asked (in Chinese): *The development of the port has resulted in offshore operation activities (such as public cargo working areas and mid-stream operation berths) being located closer to residential areas. In this regard, will the Government inform this Council:*

- (a) *what measures have been put in place to prevent the noise generated by these offshore operations (including the noise caused by machines operation and the use of loud-hailers) from disturbing the nearby residents;*
- (b) *whether restrictions will be imposed on these offshore operations near residential areas between 11 pm and 7 am;*
- (c) *how the relevant legislation will be enforced to prohibit offshore operators from using loud-hailers between 11 pm and 7 am; and*
- (d) *whether the Government has received complaints from residents about noise nuisance generated from the public cargo working areas and mid-stream operation berths in Tsing Yi and Tsuen Wan in the past year; if so, whether prosecutions have been instituted against them?*

SECRETARY FOR PLANNING, ENVIRONMENT AND LANDS: Mr President,

- (a) Noise generated by the operations of the port in the vicinity of residential areas is most effectively mitigated by careful planning to provide an adequate buffer between the noise sources and sensitive receivers — the Environmental Protection Department works closely with other government departments to this end. In addition, noise generated by machines and by loud-hailers is controlled under the Noise Control Ordinance (NCO) (Cap.400). The Marine Department also meets regularly with barge operators to seek their assistance to restrict the use of loud-hailers at night.
- (b) Between 11.00 pm and 7.00 am, public cargo working areas are closed. As for cargo-handling operations outside public cargo working areas and apart from the measures outlined in (a) above, the Administration is considering legislative provisions to control the use of loud-hailers and public address systems on vessels at night.
- (c) Noise from port activities, including machinery and the use of loud-hailers inside designated public cargo working areas is controlled under section 13 of the NCO. Noise from activities outside these designated areas is controlled under sections 4 and 5 of the NCO. The former is enforced by the Environmental Protection Department, while the latter is enforced by the police. As noted in (b) above, the Administration is also considering legislative provisions to restrict the use of loud-hailers and public address systems on vessels at night in order to further minimize the disturbance caused by their possible mis-use.
- (d) In the past year, the Environmental Protection Department and the police have received nine complaints related to noise from public cargo working areas and mid-stream operation berths in Tsing Yi and Tsuen Wan. Five cases were not actionable because the noise did not exceed the statutory limit; in three cases warnings were given and one case is still under investigation. There have been no prosecutions.

Cooling Towers

19. MR FREDERICK FUNG asked (in Chinese): *Will the Government inform this Council of the following:*

- (a) *what is total number of cooling towers in the territory; how many of them have been abandoned;*

- (b) *which legislation regulates the installation of cooling towers; and what are the particular points to which attention should be paid during installation in order to avoid violating the relevant legislation;*
- (c) *which department is responsible for demolishing cooling towers abandoned by companies which have ceased operation; whether action will be taken to recover the costs of demolition from the owners of such companies; and*
- (d) *whether the Government has demolished any abandoned cooling towers in the past three years; if so, how many were demolished each year ?*

SECRETARY FOR PLANNING, ENVIRONMENT AND LANDS: Mr President,

- (a) The total number of cooling towers in the territory is not available, since no territory-wide survey on the subject has ever been conducted.

Since the installation of cooling towers is not considered as a separate type of building work in the Administration's record system, it is also not practicable to extract the number of applications and approvals for cooling tower installation.

- (b) Water tanks or water cooling towers are not themselves building works. However, the supporting frameworks are considered as building works and therefore subject to the control of the Buildings Ordinance.

Any person who wants to install a cooling tower should appoint a building professional to prepare a building plan describing details of the works to be done. The plan should be submitted to the Building Authority for approval prior to the commencement of works.

During installation, all works should strictly follow the sequences, procedures and requirements mentioned in the building plan approved by the Building Authority.

- (c) The Buildings Department regularly removes dangerous or potentially dangerous cooling towers, whether they are abandoned or not, through patrols by its staff or investigation into complaints by the public.

Under the Buildings Ordinance and current policy, the Government will recover any cost incurred in the demolition action from the owners.

- (d) The Administration does not keep data on the number of abandoned cooling towers. The numbers of dangerous/abandoned cooling towers demolished by the Buildings Department in the past three years are as follows:

<i>Year</i>	<i>No. of dangerous/abandoned cooling towers removed</i>
1992	470
1993	480
1994	500

Clinical Training Supervisors

20. MR MICHAEL HO asked (in Chinese): *According to a letter issued on 15 September 1980 by the Chairman of the former University and Polytechnic Grants Committee, the former Medical and Health Department was responsible for creating clinical training instructor posts to provide clinical training in degree or higher diploma courses in Medical Laboratory Science, Radiography, Physiotherapy, Occupational Therapy and Nursing offered by the Hong Kong Polytechnic, as well as the degree courses in Nursing offered by the Chinese University of Hong Kong. In this regard, will the Government inform this Council:*

- (a) *of the ratio of clinical training instructors to students in each of the courses mentioned above; and*
- (b) *whether the University Grants Committee or the Hospital Authority is responsible for setting aside funds for paying the remunerations of clinical training instructors of the above mentioned courses ?*

SECRETARY FOR EDUCATION AND MANPOWER: Mr President,

- (a) In 1980, the then Hong Kong Polytechnic (HKP) and the Medical and Health Department (MHD) agreed that clinical supervision of HKP's courses in Occupational Therapy, Physiotherapy, Radiotherapy and Medical Laboratory Science would be provided by the MHD through the creation of clinical supervisor posts. Following the establishment of the Hospital Authority in 1990, however, provision of clinical supervision for these courses in

hospitals is arranged between the individual hospitals concerned and the Hong Kong Polytechnic University (PolyU). Different hospitals and courses may, therefore, have different arrangements.

The overall ratio of clinical supervisors to students for the courses in Medical Laboratory Science, Physiotherapy and Occupational Therapy offered by the PolyU ranges from 1:4 to 1:10 per placement. Details of the respective ratios are as follows:

Higher Diploma in Medical Laboratory Science	average 1:8 per placement
Bachelor of Science in Occupational Therapy	average 1:6 per placement
Bachelor of Science in Physiotherapy	average 1:6 per placement

As regards the ratio of clinical supervisors to students for the Bachelor of Science programme in Radiography, it ranges from 1:4 to 1:7 per placement.

Lastly, for the degree courses in Nursing, only students of the pre-registration nursing degree programmes require designated clinical supervisors for clinical training. In the case of PolyU, the ratio of clinical supervisors to students is one staff to five students in years one and two of the programme, one staff to six students in year three and one staff to 10 students in year four. For the Chinese University of Hong Kong (CUHK), the pre-registration nursing degree programme will be introduced in the academic year 1995-96 and the ratio of clinical instructors to students is planned to be approximately one staff to 20 students.

- (b) At present, designated clinical supervisors for the courses in Medical Laboratory Science, Physiotherapy and Occupational Therapy offered by the PolyU are provided by the hospitals concerned. They are hospital staff remunerated by the Hospital Authority, except for some supervisors of the Higher Diploma programme in Medical Laboratory Science who are remunerated by the Department of Health as some students are placed in laboratories run by the Department of Health for clinical training. For the Bachelor of Science programme in Radiography, clinical supervision is provided by both the hospitals concerned and the PolyU. As regards the degree courses in Nursing, clinical supervisors of PolyU are remunerated from the recurrent grants allocated to the University whereas those of CUHK will be remunerated from the Earmarked Grants provided by the

University Grants Committee (UGC) for the programme during the 1995-98 triennium.

MOTIONS

TATE'S CAIRN TUNNEL ORDINANCE

THE SECRETARY FOR TRANSPORT moved the following motion:

"That the Tate's Cairn Tunnel (Amendment) Bylaw 1995, made by the Tate's Cairn Tunnel Company Limited on 30 May 1995, be approved."

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

The Tate's Cairn Tunnel Ordinance empowers the Tate's Cairn Tunnel Company Limited to make bylaws but these are subject to the approval of the Legislative Council before they can take effect. The amendments to the Bylaws now before this Council are necessary for the day-to-day operation of an autotoll system, which will be introduced at the tunnel later this year. They cover such matters as the issue of electronic toll passes, signage as well as access to and passage through the autotoll booths. The opportunity has also been taken to make a minor amendment to facilitate the entry of non-articulated vehicles into the tunnel area without a special permit. This conforms with provisions in the Road Traffic Ordinance.

The Administration has examined the revised Bylaws, and I commend them to this Council for approval in accordance with section 35(3) of the Tate's Cairn Tunnel Ordinance.

Mr President, I beg to move.

Question on the motion proposed, put and agreed to.

EASTERN HARBOUR CROSSING ORDINANCE

THE SECRETARY FOR TRANSPORT moved the following motion:

"That the Eastern Harbour Crossing Road Tunnel (Amendment) Bylaw 1995, made by the New Hong Kong Tunnel Company Limited on 7 June 1995, be approved."

He said: Mr President, I move the motion standing in my name in the Order Paper concerning amendments to the Eastern Harbour Crossing Bylaws.

Similar to the previous motion, this seeks to facilitate the introduction of an autotoll system at the Eastern Harbour Crossing.

Mr President, I beg to move.

Question on the motion proposed, put and agreed to.

HOUSING ORDINANCE

THE SECRETARY FOR HOUSING moved the following motion:

"That the Housing (Traffic Contraventions) (Fixed Penalty) (Amendment) Bylaw 1995, made by the Housing Authority on 29 May 1995, be approved."

He said: Mr President, I move the motion standing in my name in the Order Paper, which seeks approval for amendments to the Housing (Traffic Contraventions) (Fixed Penalty) Bylaw.

Section 18 of the Bylaw allows a defendant against whom proceedings have been instituted for a traffic contravention inside a public housing estate to terminate the proceedings against him by paying the required penalty and court costs not less than 72 hours before the time specified in the summons for his appearance before a magistrate. The time limit is modelled on section 20B of the Fixed Penalty (Traffic Contraventions) Ordinance (Cap.237). However, this time limit was amended by this Council on 6 July last year to allow a defendant to pay the penalty and court costs not later than two clear working days before the day of his appearance in court. The purpose was to provide a more specific method of computing the time limit where Sunday and public holidays were involved, and to enable the magistracy administration to have sufficient time to cancel the proceedings after receipt of payment.

In order to ensure that a consistent approach is also adopted for traffic contraventions inside public housing estates, the Housing Authority made the Housing (Traffic Contraventions) (Fixed Penalty) (Amendment) Bylaw 1995 on 29 May 1995, amending section 18 of the Bylaw accordingly.

We have examined the amendments, and commend them to this Council for approval in accordance with section 30(2) of the Housing Ordinance.

Mr President, I beg to move.

Question on the motion proposed, put and agreed to.

INTERPRETATION AND GENERAL CLAUSES ORDINANCE

THE SECRETARY FOR PLANNING, ENVIRONMENT AND LANDS moved the following motion:

"That the Town Planning Ordinance (Cap.131) be amended -

(a) by repealing section 20(8) and substituting -

"(8) A person who contravenes subsection (7) commits an offence and is liable, in the case of a first conviction, to a fine of \$500,000 and, in the case of a second or subsequent conviction, to a fine of \$1,000,000.";

(b) by repealing section 21(2) and substituting -

"(2) A person who contravenes subsection (1) commits an offence and is liable, in the case of a first conviction, to a fine of \$500,000 and, in the case of a second or subsequent conviction, to a fine of \$1,000,000.";

(c) in section 23(6) by repealing everything after "is liable" and substituting -

"-

- (i) in the case of a first conviction, to a fine of \$500,000; and in addition, to a fine of \$50,000 for each day during which the offence is proved to have continued; and
- (ii) in the case of a second or subsequent conviction, to a fine of \$1,000,000 for each day during which the offence is proved to have continued."

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

The Town Planning Ordinance (Cap.131) was amended in 1991 to empower the Planning Authority to take actions against unauthorized developments in the New Territories. Such actions could generally be grouped as enforcement and prosecution actions. Enforcement Notices, Stop Notices or Reinstatement Notices could be issued to landowners, occupiers and persons responsible for an alleged unauthorized development, as appropriate. Persons who fail to comply with the Enforcement Notices or Stop Notices are then liable

to prosecution. Alternatively, any person responsible for an unauthorized development could be prosecuted directly under the Ordinance.

As at March 1995, the Planning Department was handling about 640 cases of suspected unauthorized developments covering about 260 hectares of land. The majority of the unauthorized developments were located in the north-western and the north-eastern New Territories. The most common types of unauthorized developments are open storages, vehicle repairing yards and land filling/site formation works. Open storages alone accounts for about 150 hectares of the unauthorized developments.

So far, a total of 1081 warning letters, 806 Enforcement Notices, 22 Stop Notices and 13 Reinstatement Notices have been issued. A total of 192 persons responsible for unauthorized developments in respect of 75 cases have been or are being prosecuted. And 105 defendants involved in 67 cases have been convicted.

As a result of enforcement and prosecution actions, unauthorized developments covering a total of 58 hectares of land and involving 138 cases, have been discontinued. In addition, unauthorized developments covering 41 hectares of land and involving a total of 63 cases, have been regularized by the Town Planning Board through granting of planning permission with planning conditions imposed in order to minimize their adverse effects on the local environment. Up to now, about 0.7 hectares of land had been reinstated.

Experience, however, has shown that the present level of fines under the Ordinance is too low to serve as a sufficient deterrent against unauthorized development. Only about 38% of the convicted unauthorized development cases have been discontinued. Even among the discontinued unauthorized developments, some of them have revived a few months later. For those unauthorized developments which have not ceased operation, many of the occupiers have removed their signboards on site so that further enforcement action and prosecution actions against them have become more difficult and time-consuming. This is not altogether surprising as the profits generated from unauthorized developments can be very substantial, as compared with the rather low fines on the convicted persons responsible for the unauthorized developments. For a typical 10000 sq m container yard in the New Territories, monthly profit can be in the region of \$90,000. This level of profit can be maintained for periods up to two years after enforcement action has commenced and before the person responsible is convicted.

As a result, the effectiveness of the Administrations' enforcement actions have been considerably affected. This could also render the vast amount of resources devoted to tackling the problem nugatory. The Administration is determined to contain unauthorized developments in the New Territories and thus considers it necessary to seek to provide as quickly as possible a more effective deterrent by raising substantially the penalties for convicted offenders.

This resolution provides for the increase in the maximum fine for which convicted persons will be liable under the Town Planning Ordinance. Specifically, we propose that the penalty under sections 20(8), 21(2) and 23(6) of the Ordinance be increased to a fine of \$500,000 on first conviction, and to \$1,000,000 on each of second and subsequent convictions, whilst the daily fine under section 23(6) for a continuing offence be increased to \$50,000 for first conviction, and \$100,000 for each of second and subsequent convictions. These proposed levels of fines are the maximum the court can impose on unauthorized developments. They also take into account the monthly turnover and profit margin of a typical container yard in the New Territories.

While taking enforcement action against unauthorized open storage of containers, the Administration is aware of the need to make available sufficient sites for open storage in the territory. In this connection, a total of about 333 hectares of land have been zoned open storage and other specified uses open storage on Rural Outline Zoning Plans to provide a planning framework for such uses. Apart from being able to accommodate the 150 hectares of unauthorized open storage uses, these sites could also help absorb a large part of the 360 hectares open storage uses which were identified to have existed before the amendment to the Ordinance in 1991 for which enforcement action is not taken under the Ordinance.

Mr President, I beg to move.

Question on the motion proposed, put and agreed to.

BILLS

First Reading of Bill

INTERPRETATION AND GENERAL CLAUSES (AMENDMENT) BILL 1995

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

Second Reading of Bills

INTERPRETATION AND GENERAL CLAUSES (AMENDMENT) BILL 1995

THE SECRETARY FOR SECURITY moved the Second Reading of: "A Bill to amend the Interpretation and General Clauses Ordinance."

He said: Mr President, I move the Second Reading of the Interpretation and General Clauses (Amendment) Bill 1995.

The purpose of the Bill is to tighten existing legislative provisions which provide for powers of entry and search or seizure to more fully protect journalistic material.

We are aware of the community concerns, particularly those expressed by Members of this Council and members of the media, that the powers of search and seizure of the police are too wide, and that such powers, if abused in relation to journalistic material, may threaten press freedom. Although we were asked only to amend the Police Force Ordinance, we discovered that similar provisions are contained in a number of other Ordinances. Therefore, we propose to deal with them all, by amending the Interpretation and General Clauses Ordinance.

The amendments contained in the Bill now before this Council addresses the concerns about the search for, and seizure of, journalistic material.

We propose to restrict the statutory powers to enter premises for the purpose of searching for, or seizing, journalistic material. This general restriction applies not only to the police, but also to all other law enforcement agencies and government departments.

To ensure that the grounds for entry and search for journalistic material are thoroughly considered and fully justified, the Bill specifies that an officer must apply for a warrant before he can be authorized to exercise such powers. The application has to be approved by a directorate officer before it can be made to a judge of the District Court or the High Court. This ensures that such applications are made and determined at a high level.

The Bill also requires a judge to be satisfied that a number of conditions are met before the warrant can be issued. These conditions are:

- that an arrestable offence has been committed;
- that the journalistic material to be searched for is likely to be of substantial value to the investigation or relevant to the proceedings for the arrestable offence;
- that other method of obtaining the material may compromise the investigation; and
- that it is in the public interest that a search warrant should be granted.

The threshold, or burden of proof, required in the proposed warrant application procedure is substantially higher than in similar provisions in many other Ordinances. However, Members should rest assured that the ability of our law enforcement agencies to conduct criminal investigations will not be impaired. The proposals in the Bill also have the support of our law enforcement agencies.

The Bill demonstrates the Government's strong commitment to encourage a free and vigorous press, which is one of the most important aspects of our way of life that makes Hong Kong so successful. It seeks to achieve a balance between the protection of press freedom and the need to maintain law and order. It also meets the Governor's undertaking, given in his 1994 policy address, to take action on provisions which impose legal restrictions on press freedom.

Mr President, I beg to move.

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

INLAND REVENUE (AMENDMENT) (NO.2) BILL 1995

Resumption of debate on Second Reading which was moved on 3 May 1995

Question on Second Reading proposed.

DR LEONG CHE-HUNG: Mr President, in the Budget speech of the Honourable Financial Secretary, he has intimated that clear guidelines will be given to specify the minimum records which a business must keep for tax purpose. This was met with jubilation by my constituents in that they will now be able to produce record to satisfy the unsatiable appetite of the Inland Revenue Department and hopefully avoid the "next to harassment" attitude of their investigating officers.

It therefore came as a dismay that whilst the current section 51C of the Inland Revenue Ordinance requires "sufficient records" to be kept to enable the assessable profits of the trades, professions or businesses concerned to be readily ascertained, the amendment to this section however merely specifies the type of records that will be regarded as "records" for the purpose of the section. However, which and how much of these now specified type of records are required to be kept will, it would appear, continue to depend on what records would be regarded as "sufficient" by the Inland Revenue assessors.

There is thus not only a lack of any expressed guidance in the legislation and the problem is actually left unaddressed, but it may also accentuate by the said amendment in that in future the records actually kept may be regarded as "insufficient" unless they include all the applicable types of records.

Mr President, whilst the Honourable Financial Secretary in his Budget speech stressed on the importance of receipts, yet the new provision makes no necessity of such. On the other hand, the Secretary for the Treasury in reply to my query on the need of receipts has this to say: "but sound business practice dictates that receipts should be issued, and that missing receipts should be accounted for. It is therefore desirable, for both accounting and control reasons, that receipts be serial numbered".

Mr President, the medical and dental professions are day in and day out involved in the honourable duty of keeping people healthy, sometimes even to maintain life. The least they like to do is to make a second guess of double talks.

In supporting this Bill, Mr President, we therefore look forward to the Administration coming up with clear guidelines in the explanatory pamphlets so that we can live happily ever after away from the shadow cast by the Inland Revenue Department.

Question on the Second Reading of the Bill put and agreed to.

Bill read the Second time.

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

SEX DISCRIMINATION BILL

Resumption of debate on Second Reading which was moved on 26 October 1994

Question on Second Reading proposed.

DR LEONG CHE-HUNG: Mr President, I rise to speak on behalf of the Bills Committee which was entrusted to study three bills — this Sex Discrimination Bill (SDB), the Equal Opportunities Bill (EOB) and the Disability Discrimination Bill (DDB). Today I will be speaking on our deliberation on the SDB and shall be speaking on the other two Bills in later sessions when they are ready for resumption of Second Reading debate.

The course of study of these three Bills is unprecedented. The Bills Committee commenced study of the EOB, a Private Member's Bill introduced by the Honourable Ms Anna WU, in July 1994. This EOB covers nine different

grounds of discrimination including, inter alia, sex and disability. In October 1994, the Government introduced the SDB and the Bills Committee was reconstructed to study this Bill as well. In the same way, the Bills Committee was again reconstructed in July 1995 to study the DDB also introduced by the Administration.

It would have been most difficult to study the three Bills, let alone voting on the different parts, if not for the kind indulgence of the Honourable Ms Anna WU who proposed and initiated the dropping of the portions on sex discrimination and disability discrimination from her EOB to facilitate Members of this Council in considering their preference when voting. To this we are most grateful and I would like to put it on record the thanks this Committee owes her for this pragmatic gesture. Similarly, she has reorganized the remaining different grounds of discrimination into three separate Bills. I understand that approval have been given for these three Bills to be gazetted and we look forward to their resumption of Second Reading debate at a later date.

Mr President, in presenting this SDB to Members, I would like to address three areas:

- (a) the work of the Bills Committee;
- (b) the mood of anti-discrimination; and
- (c) my own views on the Bill.

The work of the Bills Committee

Let me first turn to the work of the Bills Committee. It has held a total of 34 meetings to study the EOB and SDB, including 16 with the Administration and two rounds of meetings with 34 deputations. Views from 10 written submissions have also been considered.

Mr President, whilst Members of the Bills Committee, the Administration and the deputations all support, in principle, the spirit of anti-discrimination legislation, there are diversified views on the approach and timetable for introducing and implementing a total anti-discrimination legislation. The Administration prefers a step-by-step approach by introducing the SDB first, followed by the DDB only; so that the social, economic and legal implications of adopting the legislative approach can be closely examined after the enactment of these two Bills. Although some Members agree to this approach or rather this progressive approach, yet they urge the Administration to set out a concrete timetable for legislation on other aspects of discrimination. Others, of course, consider that the EOB is a more comprehensive package of anti-discrimination legislation and should be enacted early. The Government remains disappointedly undeterred.

It was until some other Members indicate support for the EOB, but not the SDB unless the Administration puts forward legislation against age discrimination in this Legislative Session that the Administration indicated that it also planned to conduct a study on the need for action to tackle discrimination relating to age, family status and sexuality no later than the end of 1995. This study was anticipated to be completed in 12 months.

The Bills Committee note that the subject matter of the SDB overlaps, in substance, Part II of the EOB. They both cover similar scope of grounds of discrimination, namely sex, marital status and pregnancy. However, the application of the scope of grounds of discrimination between the two Bills is different. Under the SDB, sex discrimination is relevant for the purposes of any provisions of the Bill; while discrimination on the ground of marital status or pregnancy is only relevant for the purposes of any provisions of Part III (discrimination and sexual harassment in employment field). Under the EOB, the scope of ground of discrimination, namely sex, marital status and pregnancy, is applicable to a wider range of discriminating activities.

To oversee the implementation of the sex discrimination legislation, the SDB provides for the establishment of a statutory body, the Equal Opportunities Commission (EOC). This Commission is empowered to issue codes of practice, and investigate complaints filed by the public and required parties concerned to attend conferences to resolve the matter by conciliation. Public reports would be issued for any formal investigations. The Commission is further empowered to issue enforcement notices, which are not legally binding, against anyone deemed to have committed discriminatory acts of sexual harassment. When a person has persistently committed such acts, the Commission could apply to the District Court for an injunction. When conciliation fails, it may provide assistance in respect of proceedings before the District Court. The EOB does not make provision for the establishment of any similar body (principally because of the difficulties faced by a Private Member under Standing Order 23).

The SDB proposes the setting up of a special court at the District Court level to hear all sex discrimination and sex harassment cases under the Bill. The public can put cases directly to the court in the form of civil litigation to seek equal compensation. However, it is to be noted that proceedings under the SDB in respect of "discriminatory practices" under clause 35 may only be brought by the Commission in accordance with clauses 69 to 71 (issue of enforcement notices by the Commission). The SDB further proposes to relax the requirements relating to legal representation and costs. The EOB proposes to make discriminatory acts or practices, in general, civil wrongs, triable in the District Court. The EOB proposes that the court may disregard the ordinary rules of evidence to inform itself on any matter as it sees fit. The Equal Opportunity Bill also proposes that each party to litigation will ordinarily bear that party's own costs. The court may, however, award costs as it thinks fit in exceptional circumstances.

Having thoroughly studied the provisions of the SDB and Part II of the EOB, and taking into account views expressed by deputations and written submissions, the majority of Members of the Bills Committee accept the wider scope of Part II of the EOB. On this basis, the Bills Committee proposes to amend the SDB of the Government to bring in some provisions along the lines of Part II of the EOB.

After extensive discussion, the Administration agreed to some of the proposed amendments to be moved during the Committee stage. I am sure the Secretary for Home Affairs will elaborate on these amendments which she will move in her speech.

Three sets of amendments

There will thus, Mr President, be three sets of amendments:

- (1) Amendments which have been agreed between the Administration and the Bills Committee. These will be moved by the Secretary for Home Affairs.
- (2) Amendments which are supported by the Bills Committee but repealed by the Administration. Mr President, I, as Chairman of the Bills Committee, will be moving these on behalf of the Bills Committee. I would like to stress here that these amendments were agreed by the majority of the Bills Committee Members present at the Bills Committee sessions.
- (3) I understand that the Honourable Mrs Peggy LAM has also indicated her intention to move some amendments. I will leave it to her to explain the rationale in the course of time.

Mr President, whilst I will assure Members that I will explain to them the reasons behind each amendment, but with your permission, I would like to take this opportunity to highlight a few points.

Date of commencement

The Bill, Mr President, before us in its original form gives no specific date for commencement of legislation. An EOC must first be set up, then approves a code of practice for employment, and only when such operational set-ups are in place will the Secretary for Home Affairs appoint a date for the legislation to come into operation. The Bills Committee is concerned that this will amount to delaying tactics and thus seeks to amend the Bill by bringing provisions of the ordinance into operation on 1 January 1996 or any earlier date to be appointed by the Secretary for Home Affairs.

Grace period for small business establishment

Mr President, the current Bill allows small business establishment a grace period of five years to come in line with the Ordinance. This was considered by the Bills Committee to be too long and in support of objections from most of the deputations, the Bills Committee will seek to amend it to one year, subject to an extension of another year by resolution of the Legislative Council.

'Small House Policy' exemption

The current Bill before us provides exemption for the small house policy. The Bills Committee is of the view that the small house policy is entirely against the spirit of the SDB. Moreover, this policy may already be unlawful under the Bill of Rights and its legality should not be revived by the SDB. The Administration responded by stating that a review of the policy is on the way although it cannot provide a concrete timetable. Members of the Bills Committee feel that all in all this is a delaying tactic and as the policy is outright sex discriminating, no exception should be given to it in the Bill.

Discrimination relating to marital status

Mr President, the Administration has brought up the worry that the marital status amendment may lead to double benefits for married couples if both of them work in the Civil Service. This is not the case, and has been well discussed in great length at the Bills Committee with the Administration. I am sure my honourable colleague, Ms Anna WU, will have more to say in this area, suffice it to say that there appear to be a lack of co-ordination and communication between the different government departments.

Mr President, I now like to turn to say a few words of what I call the "mood of anti-discrimination" which I have observed during the 12 months as Chairman of the Bills Committee to study the EOB.

Lukewarm response of legislators

Whist it is in the lips of all to push for anti-discrimination, the commitment in the deliberation of the Bills Committee amongst the Members and the Administration leave a lot of question marks! Mr President, some 23 Honourable Members joined this Bills Committee, but in most meetings, there were hardly enough attendees to form a quorum. In fact in a few sessions where decisions were not deemed forthcoming, such as receiving deputations, the meeting went ahead with no official quorum. Regrettably, Honourable Members will have to cast their votes today on the Bill and the amendments without being properly armed with the complete understanding of the very complicated issue of this substantive Bill.

Anti-discrimination discussion becomes employer-employee debating table

Mr President, through most parts of the Bills Committee, the deliberation on equity of the sexes was concentrated on employment. The meetings became the debating table between employers and employees. The discussion therefore in equality of the sexes became lopsided, leaving a lot to be desired.

Government's lip service and delaying tactic

Mr President, regrettably, and with due respect, the commitment of the Administration to equal opportunities gives an impression that it is very much of a lip service. Yes, the Administration has come up with the SDB and the DDB, but on other aspects we are facing a stone wall. Embarrassingly, the Administration even fails to send representatives to attend the Bills Committee meetings when other issue than sex discrimination was being discussed. On the odd occasion when they were there, no intelligent answers could be extracted from them anyway.

Hypocritical tactic of the Administration

Mr President, the pinnacle of hypocrisy condescended at the eleventh hour when the Administration, having fully understood the policy and the deliberation behind the Committee stage amendments to be moved by the Bills Committee which the Administration could not approve, turned round to scuttle some of the amendments by claiming that they have a charging effect for purpose of Royal Instructions XXIV(2). I am not here, Mr President, to debate the merit of the allegations, but such last-minute sabotage leaves no time for the Bills Committee to arrange further deliberations or to amend them further. It is also extremely unfair for you, Mr President, to have to make a difficult ruling without sufficient time. The end result is that in spite of your generosity, a few amendments from the Bills Committee could not, with pity, go forward.

Having said all that, the Bills Committee is most grateful to Ms Susie HO from the Home Affairs Branch who has spent a lot of time deliberating with us. This she did with poise, patience and understanding. We also owe our sincere thanks to the industrious staff members of the Legislative Council Secretariat.

Effects of the full set of amendments

Finally, Mr President, I would like to take this opportunity to say something on this Bill before us today. This Bill, the first of its kind, will turn a new page in Hong Kong history. Its impact on society will be tremendous but Will no doubt be the right step for equal opportunities. Should the Bill be passed, with any luck, with the full set of amendments, it will have the following effects:

- (1) the small house policy will not be discriminatory to the indigenous female;

- (2) a law on anti-discrimination on sex will take effect as on 1 January 1996;
- (3) the court will have the right to issue an order for reinstatement for loss of employment due to sex discrimination; and
- (4) all business establishments will have to provide equal opportunities for employment after one year of this law's enactment extendable for another year.

PRESIDENT: Dr LEONG, you have overrun the time under Standing Orders.

DR LEONG CHE-HUNG: Oh, do I? I thought I do not have a time limit. Mr President, I will finish in about two seconds if you may allow me.

PRESIDENT: Under exceptional circumstances, I can allow more time. If you are going to take two seconds, that is alright. *(Laughter)*

DR LEONG CHE-HUNG: Thank you for your indulgence, Mr President.

DR LEONG CHE-HUNG: Yet, Mr President, this Bill alone, incomplete for providing equal opportunities for the sexes and yet not taking into consideration discrimination of age, sexuality and family status, does not bring us too far. I urge the Government to quickly look at these areas and I look forward for the other equal opportunities bills that my honourable colleague, Ms Anna WU, will be introducing to this Council soon.

With these remarks, Mr President, thank you for your indulgence, I recommend Members to support this Bill with the full set of amendments.

MISS CHRISTINE LOH: Mr President, as Vice-Chairman of the Bills Committee on the Equal Opportunities Bill which was also asked to look at the Sex Discrimination Bill before us today, I would like to support what the Chairman of the Bills Committee, Dr LEONG Che-hung, has just said. I do feel this is a historic moment for this Council. First of all, I believe this is the first time a Private Member has proposed a full area of policy for the Government to adopt, and also a full area of law. This is no small feat. We know what time and effort has to go into sex discrimination for Hong Kong. Of course, Ms WU has gone further by coming up with the Equal Opportunities Bill, which I hope in July we will be able to debate. But for the moment, on the Sex Discrimination Bill.

Mr President, you will remember that only about two years ago the Government was quite adamant that Hong Kong does not need a law for sex discrimination. The Government was adamant that we had no problems with "equal work, equal pay". So the Government has moved quickly in the right direction, but how has this been achieved? Basically because of the commitment of this Council and small groups of community people who have pushed very hard continuously. In a way the Government has had to eat their words, but I think today we would not have this Bill on the table if it was not for Ms WU's effort in putting forward to us the Equal Opportunities Bill. It does show up the weakness of the Government, for a Private Member with a few very committed supporters, to be able to put together a whole area of policy and law.

There are many occasions, as Dr LEONG Che-hung said earlier, that the Government were simply unable to come up with any answers. But it also occurred to me that the Government had done as much research as it should have. During the debate of the Bill, the Government has said to us as a committee and also privately to us, that they do not like Private Member's Bills. Well, I am not surprised, because although somewhat blunted, it is proving to be a powerful instrument. It can be effective as we can see today with the efforts of Ms WU and others.

For myself there is also the Access to Information Bill, of course, which at least it was only to push the Government to come up with a code earlier rather than later. So, of course, the Government finds Private Member's Bills annoying. Right now we have to pass the hurdles of having no financial charge, Mr President, before you will allow it to be tabled into this Council. I would like to remind Members that after 1997 it will be virtually impossible to push forward Private Member's Bills. But look what it can do. It can push the Government forward quickly and in the right direction. Well, of course, civil servants are going to bleat about it. They seem to have two reasons for being very upset. One is that they say, well, if you do not give us enough time, Private Members, despite all their efforts, you may not be able to envisage all the various consequences. Well, that is utter nonsense because in the Mandatory Provident Fund Bill, well, what about that? Has the Government thought through that very well before they presented the Bill? During the Bills Committee on the Provident Fund Schemes Bill a number of Members asked a whole series of questions which the Administration could not answer. So the Administration selectively applies this criteria.

Secondly, the Government says it upsets the executive agenda. Well, that is the whole point about representative government. The executive is unelected and will remain unelected in future. Yes, they will have their timetable. So how will the representatives of the people of Hong Kong be able to push anything through if we did not have any ability at all to push through Private Member's Bills, and I see this as a grave, grave problem of the Basic Law, which basically takes this very limited right away. Perhaps we might see a challenge from the Government after the September election. Maybe they will even propose to this Council that we should stop pushing forward Private

Member's Bills that they cannot accept because it upsets the agenda. I hope Members, those of us who might return to this Council, will remember that we should not bargain with the devil. This is a very, very useful tool, that we still have. What we should be pushing for in future is to amend the Basic Law to at least not chop down this little right that we have because, Mr President, I see that in future as this Council becomes more representative, that it has more and more directly-elected Members that we would, of course, end up having to challenge the legitimacy of the executive.

I hope the executive will learn to power share with us, and will willingly allow this Council to participate at the early stage of policy-making by power sharing, by consultation, not by chopping down the rights that we have today. So I hope, Mr President, that this Bill has taught us a tremendous lesson. If anyone is in doubt about the usefulness of Private Member's Bill, I think today is a good example that we need it and we want it.

MRS PEGGY LAM (in Cantonese): Mr President, on 8 December 1993, I moved a motion in this Council urging the Government to make an effort to promote equality between the sexes in Hong Kong. It should include the establishment of a Women's Commission to monitor the enactment and enforcement of law against sex discrimination and the introduction of the United Nation's Convention on the Elimination of All Forms of Discrimination Against Women as soon as possible.

Today, I am very glad to see that the Government has finally worked out a Bill based on my motion and presented it to the Legislative Council. Although it has been delayed for 18 months, and while it is the Equal Opportunities Commission (EOC) instead of the Women's Commission that is going to be established, the scope of equal opportunities is obviously wide enough to include the problems of women for sure. Therefore, it is still acceptable to me. In regard to the United Nation's Convention on the Elimination of All Forms of Discrimination Against Women, I express my regret over the Government's tardiness in introducing it to the territory. Nevertheless, the United Nations has reminded the signatories that when carrying out legal reforms, they have to take note of, first of all, where the flaws of the system are, whether the reforms will cause any impact, whether the reforms are acceptable to society and whether they can be sustained. All these are very pragmatic suggestions. If it is based on this reason that the Government is not introducing the Convention into Hong Kong for the moment, I can certainly understand. We are not seeking to reach the sky in a single step, nor are we seeking to change everything instantly. But we must have a right goal and we have to consider the acceptability of the community and the continuity of the reforms, so that we can progress steadily. I therefore hope that the Government can work out a timetable in order that all those issues which cannot be incorporated into the Sex Discrimination Bill may be included phase by phase into the scope of the Bill for the deliberation of this Council at a later stage.

Sex discrimination has developed by the interaction of traditional culture and social factors over thousands of years. These traditional ideas cannot be changed overnight. This new Bill in front of us is to classify sex discrimination and sexual harassment as unlawful acts, for the purpose of attaining equality between the sexes. This will thus give rise to new grounds for legal proceedings.

However, the Bill is rather vague in regard to the aspect of compensation. It merely states that compensation will be sought in tort but does not spell out the method of computation. According to the laws of the United Kingdom and Hong Kong, when a new ground for legal proceedings is set up, it will usually be followed by an upper limit written into the law. This can serve as a guidance for compensation and through which the public will be aware of the consequence of breaking the law. If there is no upper limit as a guidance, the judgement in regard to the amount of compensation awarded may deviate so greatly in different cases that there is bound to be a lot of appeal cases. It is because different kinds of torts will have different methods of calculating compensation. For example, for cases like casualties due to negligence, libel, illegal occupation of land, causing personal injuries and so on, they have their respective methods of calculating the compensation. These cases have a lot of precedents for reference. Since legislation on sex discrimination and sexual harassment is newly introduced in Hong Kong, we therefore have no precedents for reference.

Recently a famous law firm in the United States, convicted of sexual harassment, was sentenced by the court to pay a compensation of US \$7.1 million. Although the amount of compensation was reduced after an appeal, the firm still had to pay over US \$3 million. Recently, there was also a case of sexual harassment in the United States pertaining to a Hong Kong businessman. The plaintiff claimed nearly US \$4 million as compensation. Some people think that these astronomical figures could only occur in the United States because the amount of compensation is decided by the jury. However, if we do not have any yardstick or precedents to follow in Hong Kong, it will be difficult to predict the result of adjudication.

In 1975, when the United Kingdom passed the Sex Discrimination Act, it was also stipulated that the amount of compensation should not exceed £5,200. In 1989, the upper limit was increased to £8,925 and later further increased to £11,000. In 1993, the average monthly salary of manufacturing workers in the United Kingdom was US \$1,615. The highest level of compensation was thus about 11 times the average monthly salary. After 20 years of application, this upper limit was only abolished recently by the United Kingdom in compliance with the decision of the European Common Market.

The enactment of this new legislation in Hong Kong is not to create new economic interests so as to benefit certain people, but to transform social habits. It is because when the defendants are condemned by the court for committing sexual harassment or acts of sex discrimination, the victims should have the

greatest satisfaction. Compensation in money terms should come second. I therefore suggest that at the early stage when the Bill is passed, we should set an upper limit. In 1994, the median monthly income of the workers in Hong Kong was around \$8,000. I therefore suggest that the maximum compensation should be set at \$150,000, which is approximately 18.75 times the median monthly income of the local workers last year. After a certain period of time, when the operation becomes stable while the court has accumulated a certain number of precedents, we can then reconsider whether to legislate to remove the upper limit. Of course, we do not want to follow the example of the United Kingdom in abolishing the upper limit only after nearly 20 years. Mr President, when we come to the Committee stage later on, I will move an amendment to the Bill which I hope will have the support of Members.

There are many ways to eliminate sex discrimination. A change in people's mentality depends on education, which includes the influence of schools, society and the mass media. The opening of opportunities depends on sufficient support services, formal and informal training as well as women's improvement of their own quality. Legislation is a form of full recognition of women's status, condemnation towards discriminatory acts and regulation on public behaviours.

Another function of legislation is to educate the public and to lay down the rules and regulations on their behaviours. Therefore, the investigation, consultation, mediation and education functions of the EOC are all very important. According to the experience in Australia, among the more than 10000 cases, only half of them fall within the jurisdiction of the EOC, and only about 10% of the cases have to be decided in the courts. Therefore, this EOC has to educate the public, and assist the public in understanding what are sex discrimination and sexual harassment so that we will not make the same mistakes as Australia. I hope that the EOC can take a more active work attitude to assist in formulating the code of practice, in mediating labour relations, in improving the work environment and the like so as to prevent sex discrimination and sexual harassment and thus to eliminate sex discrimination in a positive way.

Apart from the above, members of the public and I are very much concerned about the question of age discrimination. It is to my deepest regret that this issue has not been touched upon in this Bill. In Hong Kong, this situation indeed exists and is actually getting worse and worse. A lot of middle-aged women are unable to find jobs due to their age. I mentioned this during the previous motion debate concerning women's employment and I shall not repeat it here. I just want to call upon the Government to implement positive measures as soon as possible to solve this problem.

Finally, I hope that in the near future, sex discrimination and sexual harassment will cease to exist. As a matter of fact, the elimination of sex discrimination depends not only on legislation but also on our constant supervision, constant improvement of legislation and law enforcement. All these will require the joint efforts of women. However, legislation serves to

demonstrate the determination of this society in eliminating sex discrimination, and is only the very first step taken on an extremely long road.

MR JIMMY MCGREGOR: I rise to speak briefly on the subject because I was one of the Members of Dr LEONG's Committee which sat for the past year or more in many, many sessions. During all of that time, I tried very hard to indicate my opposition to some of the clauses which were being examined and some of the amendments which were being suggested which would, in my view, take these matters forward at too great a speed. And I refer specifically to the problem facing tens of thousands of small companies which may face a problem in regard to the application of the law to present practices, by which I mean small companies which are very often simply three- or four-member companies. I am worried that some of the clauses of this Bill and the application of these clauses through the courts, providing an opportunity to complainants to take small businesses through the courts for these reasons, would in fact disrupt very seriously the capability of small businesses to employ.

I feel I have made these views clear repeatedly throughout the last year. I want to say again and ask those Members who are businessmen and who understand business well, that is, most of the people in this Council, to be very wary and to look very carefully at some of the amendments we are now going to examine in order to ensure that, in their own hearts, in their own minds and with their own knowledge of business, that they well understand the effect that these amendments may provide for small businesses.

Mr President, I ask that the amendments be looked at very carefully also by the Government, and that the government representative, where he or she disagrees with the amendment proposed, that the reason should be given very clearly because I think these reasons will parallel very largely the feelings of many Members of this Council in terms of the operation of business in Hong Kong.

Mr President, I do not want to say any more than that. I am not opposed by any means to the principle. I think business generally agrees with the principle of no discrimination on sex basis. I think, if I may say so, the long track record of business in Hong Kong has shown a consistent improvement. I realize that women's organisations, some of them present here today, may not agree with me about the speed of development, but in fact taken in regard to most other countries in Asia and many other countries around the world, I think that the track record of Hong Kong business in terms of sex discrimination is relatively good, and that the relationship between employers and employees, therefore, is also good in terms of examination against most other countries in Asia.

On that basis, I do not think that we should trammel the operation of business in Hong Kong by introducing legislation and by introducing legislative restrictions and bars which will bring employers into court on sometimes very frivolous charges. At the same time, business has got to understand — and I am sure they support the concept that we are facing today — what it is exactly that they are required to do. There are some very woolly notions in my view that have been discussed throughout the last year about the problems in the street that may face the businessman if these legislative proposals are put into effect today. So, I ask the business Members of this Council to look very carefully at the amendments proposed to see whether they can accept them.

Thank you, Mr President.

DR YEUNG SUM (in Cantonese): Mr President, after a year's deliberation, this Bill on equal opportunities is formally tabled before Members today. I urge Members to support the amendments to be proposed later by the Chairman of the Bills Committee, Dr the Honourable LEONG Che-hung, on behalf of the Bills Committee.

This Bill symbolized one small step taken by the community of Hong Kong towards equal opportunities. Why is it just one small step? This is because many laws pertaining to equal opportunities have yet to be formulated and I think we still have to work in concert in the future.

I call for the early establishment of the Equal Opportunities Commission and the early implementation of this piece of legislation, particularly with regard to the part concerning employment. This is because employment constitutes a major part of the lives of the people of Hong Kong. If their employment is not safeguarded, the protection in respect of equal opportunities will be greatly undermined. Now, I would like to criticize the attitude of the Government on two points.

First, all along, the Government has been hesitant about equal opportunities. It was always been reluctant to eliminate sex discrimination and safeguard equality between men and women by legislative means. It was not until the Honourable Ms Anna WU had set her mind to dedicate a considerable amount of time, manpower and other resources and prepared a private member's bill that the Government hastily submitted this Sex Discrimination Bill and another bill, namely the Disability Discrimination Bill, to the Legislative Council. In this connection, I think the Government is not expressly determined to make its way for Hong Kong to go for equal opportunities.

Besides, I feel rather aggrieved at the stalling tactics that the Government used to deal with the amendments proposed by Ms Anna WU. It was only shortly before the tabling of this Bill for the deliberation of this Council that the Government indicated that some of the amendments carried a charging effect. However, Ms WU had in fact presented the amendments concerned to the

Government long time ago. It is my hope that these two points will be put on record in order to state my views in clear terms and that is, the Government is not handling this matter in a manner that is open and above-board.

I also hope that this piece of legislation, like the Bill of Rights Ordinance, can provide for the waiving of the income requirements by the Legal Aid Department for those who have been subjected to sex discrimination. If such exemption is not granted, some of those who have been discriminated against because of their sex will be unable to do themselves justice through a court of law for they will be unable to lodge an appeal because of financial constraints. I very much hope that the Government can handle this matter seriously and see whether changes can be made in respect of the legal aid service so that persons who have been discriminated against because of their sex will not be denied a fair treatment because of financial reasons.

Let me stress again that since the Government has undertaken to conduct a study on age discrimination, I hope that the Government will cease such a procrastination approach as saying after a round of study that there is no age discrimination in Hong Kong and so it is not going to legislate. I hope that the Government will handle the problem of age discrimination seriously. From our observations of various aspects, age discrimination in Hong Kong is in fact rather obvious and serious.

Finally, it is my hope that the Government will direct more efforts to education in areas such as sex discrimination, equal opportunities, protection for the disabled and so on as we still have to work hard to make improvements in these areas. On behalf of the Democratic Party, I would like to pay tribute to Ms WU because with her endeavours, a piece of legislation which can safeguard women's rights and equality between men and women will become part of the laws of Hong Kong and will enable the Hong Kong society to become more open, equitable and civilized.

MR FREDERICK FUNG (in Cantonese): Mr President, in a prosperous and advanced society, it is duty-bound for the Government to ensure that human rights are properly protected and that everyone enjoys equal opportunities to develop one's aptitude and realize one's potential. It is clear that the enactment of laws is one of the ideal and essential means to uphold the principle of equality. The Government of Hong Kong introduced into this Council the Sex Discrimination Bill on 14 October last year, in the hope that, through legislative means, discrimination between the two sexes can be eliminated and the two sexes would neither be unfairly treated nor be discriminated against in the areas of employment, education, accommodation and in the provision of goods, services and facilities and so on, so that everyone in the society enjoys the right of being respected. The legislative initiatives of the Government are welcomed by the public but some of the clauses in the Bill proposed by the Government are plagued with deficiencies if it were to fully protect Hong Kong women from

discrimination. To perfect the Bill, these clauses would have to be either amended or deleted.

In the first place, the government-proposed Bill does not specify a commencement date for the Bill. I am concerned that if the Bill will only come into operation after the establishment of the Equal Opportunities Commission (EOC) and the issue of guidelines by EOC, it will take a considerably long period and the commencement of the Bill will be indefinitely procrastinated. I hold that the Bill must specify a definite commencement date so as to avoid the indefinite stalling of the coming into operation of the Bill (clause 1 (2) refers.) I would regard the transition period of five years for small firms as provided for in the Bill as prolonged. Although the Secretary for Home Affairs will move an amendment to shorten the grace period to three years, the Bill in itself does not require the companies to undergo drastic changes, nor does it require the companies to institute specific arrangements or install specific facilities to cope with the enactment of the Bill. On the contrary, the Bill only requires the person-in-charge or the management of the company not to exercise discrimination against candidates and staff. In view of this, a grace period lasting three years is considered to be excessively long. I agree with the Bills Committee that the grace period should be shortened to one year (clauses 10(3), 10(6), 10(8) refer).

Apart from questioning the time lag between the enactment and the commencement of the Bill and the grace period provided for small firms, I find that, on the premise of upholding the principle of equity, some other clauses of the Bill also have to be amended or deleted. The most obvious case would be the small house policy. The upholding of human rights and the safeguarding of the principle of equality should be regarded as the two leading principles in a society. These two principles should override social customs and the policy pursued by the Government. When a society is continuously progressing, the Ordinances that have been implemented should also be appropriately and reasonably amended to tie in with the changes as time passes. Now in Hong Kong, the aspirations and the demand of the public are no longer confined to being satisfied in terms of basic livelihood, we also look for equal treatment and social respect. However, small house policy actually runs against the spirit of equality and violates the Bill of Rights (BOR) Ordinance. I hold that the Government should not put small house policy in the list of exceptions (item 2 to Schedule 4) on the ground that "the Government has not completed its review on small house policy" or that traditional virtues have to be upheld. By so doing, the Government is sweeping the long-drawn-out problem under the carpet. If the Government insists that small house policy should come under exceptions, that mirrors its lack of sincerity in enhancing sex equality. It is, to me, unacceptable. In addition, the provisions in respect of public appointments and elections could not offer adequate protection for the elections of Village Representatives and office-bearers of the Heung Yee Kuk. It is imperative that new clauses should be added to prohibit discrimination in respect of public elections and appointments (clauses 30 and 80(I) to be added refer).

The Sex Discrimination Bill of course does not protect only women from discrimination, the protection is also extended to men. In view of this, it is necessary to amend or delete clauses governing the unreasonable and outdated discriminatory exemptions for women, in the particular areas of employment and the provision of services. In that way, some of the regulations would be applicable to both men and women and the two sexes can be assured that they will enjoy equal treatment. Therefore, the Government should give a deadline regarding the conduct of a review on the relevant clauses, so that amendments could then be suggested. The deadline may be set at one year after the commencement of the Bill as suggested by the Bills Committee (clause 11 (2)(g) and 49 and Schedule 2 refer).

Last but not least, there is room for improvement insofar as the functions and powers of the prospective EOC are concerned. Since the Government's present proposal does not provide for arrangement for the Sex Discrimination Bill to override other legislations, BOR is the best to play that role. If the existing legislations are, in any way, inconsistent with BOR, the court should declare the relevant legislations void or rule that amendments should be made to the relevant legislations. I believe that EOC should enjoy the right to invoke the BOR Ordinance and put the legality of discriminatory legislations in question.

As to the functions of EOC, I believe that EOC should be equipped with the power to bring proceedings in its own name against unlawful behaviour or cases under this Bill (new clause 68A refers). At the same time, since the cases involved in these proceedings thus brought are discriminatory in nature and the court may have no precedent cases of this nature to refer to, I therefore also agree that EOC should be empowered to intervene proceedings and to comment on the cases, thereby providing a reference point for the future. The court may judge the extent to which EOC may intervene (new clause 68B refers).

I hope that the Members and the government officials, under the principle that equal opportunities in the society should be safeguarded, can throw your heart into caring the plight and situation of those people who have been discriminated against, so that, through legislative means, all uncivilized and discriminatory acts in the society may be eliminated and appropriate assistance and remedy could be offered to those who are being discriminated.

With these remarks, I support all amendments to the Sex Discrimination Bill to be moved by the Bills Committee.

MRS SELINA CHOW (in Cantonese): Mr President, it is an ideal that human beings are born equal, but there are many factors in the real world that reduce this ideal into a somewhat amorphous concept. As some scientific literature suggests, women compare favourably with men in observation, while men excel in brain development and so in logical thinking than women. All these have resulted in the differences between the two sexes in so much as the physical differences between men and women.

I quote these examples not for the purpose of proving that men are stronger than women or vice versa because down the ages, it has always been the case that men and women are different, having different weaknesses and different strong points. With the changes in terms of social environment and culture underway, the relationship between the two sexes also transforms. In a matriarchal society, women are superior to men; in some religious countries, it is upheld that women are only subordinate to men.

Undeniably, in Hong Kong, men take on a more significant role but individual women, albeit rare, have taken up weighty positions in our society. This phenomenon can be partly attributed to sex discrimination. That is why we do contemplate legislation to eradicate sex discrimination. To a limited degree, I agree with the Honourable Jimmy MCGREGOR that we must be extremely prudent and cautious when assessing the impacts.

As a woman, I naturally would not be happy to see that women are being discriminated against. However, if we seek to rectify these misconceptions through legislative means alone, it may not be a thorough solution to the problem.

There are religious, cultural or unique social factors behind sex discrimination, and that relates to moral obligations. We should not tolerate the existence of sex discrimination, but moral issues should always be dealt with from the perspective of education in an attempt to change people's sense of value in essence. We should not expect that the problem can be eradicated merely through the enactment of law. The law is only a tool to help, but not a standard solution to a problem.

If we rely too much on fossilized words of law to contain problems relating to human nature, that may derive other problems or produce counter-effects. For example, we do not want to see that women suffer from sexual harassment or other forms of discrimination in the office but under some exceptional cases, over-sensitive responses may lead to deterioration of relationship among the colleagues, and mutual respect and accommodation between colleagues may suffer setbacks. A hypocritical net of relationship supported merely by legislation will not be lasting. Even the link between colleagues will be weakened while the working environment will not be harmonious. This is not alarmist talk because these phenomena have been gradually emerging in the United States and the working relationship between men and women can no longer be amicable. This is what Hong Kong should try its best to avoid.

Regarding the relationship between employees and employers, that problem also cannot be mitigated merely through legislation. It is necessary to combat discrimination but employers and employees should enjoy certain degree of freedom when recruiting staff or choosing jobs. I would like to reiterate that I support the enactment of the Sex Discrimination Bill; however, I want to warn that if the Government seeks to eradicate the problem in one go through the

enactment of this legislation but not through the launching of civic education, the result would be that discrimination will only be removed on the surface but not in substance. In that case, the people would not be convinced at heart that this legislation should be respected and no substantial upgrading of moral standard would ever be observed. As a matter of fact, the social atmosphere is largely influenced by the attitude of the large organizations and bodies. As the biggest employer, the Government should take the lead and set an example for the other organizations by eradicating discrimination. This is the best way to prevent discrimination.

Mr President, I believe that we all remember too well the sex harassment incident that involved the Independent Commission Against Corruption. In fact, these incidents not only happen in government departments or public organizations, these are also frequent in the private sector. In the past, these events would end up in nothing because no one bothered to report the case. Although now that we have clear legislation to protect the victims and this is undeniably an improvement, we hope that the Government and the employers can assist and do justice to the victims when handling these cases.

Thank you, Mr President.

REV FUNG CHI-WOOD (in Cantonese): Mr President, the Sex Discrimination Bill was presented by the Government to this Council for deliberation last October. This piece of news should be welcomed by non-governmental organizations which have been constantly striving for equality between the sexes and for the protection of women's rights. However, when the Government proposed this Bill, the conservative position of the Government was long surpassed by social development and the public's expectation at the time. Consequently, the Government's lack of vision and determination to stamp out sex discrimination is laid bare in many aspects.

After some nine months' discussions, the Legislative Council Bills Committees on the Equal Opportunities Bill, Sex Discrimination Bill and Disability Discrimination Bill proposed a number of amendments to the Sex Discrimination Bill. Positive suggestions were made on provisions With regard to the interpretation of the amendments, the Interpretation and Exceptions of the Bill, the terms of reference of the Equal Opportunities Commission and so on. Yet, the Government's response to these suggestions has been very disappointing. While the Government has made certain amendments to the Bill, it remains apathetic towards the appeals from the public and those from members of the Bills Committees over many important issues. This shows that the Government on the one hand claims that sex discrimination legislation will be formulated to meet the requirements of the United Nations' Convention on the Elimination of All Forms of Discrimination against Women, but on the other hand opens up every opportunity for sex discrimination to continue to occur.

In fact, the Sex Discrimination Bill is found wanting in many aspects and concern is particularly warranted in three of these aspects.

Firstly, the Government has refused to adopt standards set out in international conventions in respect of sex discrimination but has just rigidly extended to the territory the provisions of the United Kingdom's Sex Discrimination Act. This shows that the Government lacks the foresight to improve the sex discrimination legislation in Hong Kong by adopting international standards.

Secondly, the Government has provided a good many exceptions for many existing ordinances, enabling the continuation of many existing ordinances or policies in which sex discrimination is embedded. The small house policy is a case in point. In addition, a large number of provisions involving the disciplinary forces are also exempted. This approach which is like "inviting a wolf to enter through the back door while fighting off a tiger at the front gate" cannot, by any standard, eliminate sex discrimination in the territory.

Thirdly, the terms of reference of the Equal Opportunities Commission are far from well-established. This has subjected this important body which is responsible for the enforcement of sex discrimination law to a myriad of limitations, thus weakening the powers of the Commission. For instance, the Commission can, in fact, file a litigation in its own name, conduct investigation on certain people or organizations for purposes pertaining to its functions, institute proceedings in its own name and so on. All these suggestions which aim at strengthening the powers of the Commission are rejected by the Government.

The Government, being short-sighted, always fears that the Commission will be vested with excessive powers, thus posing considerable threats to the commercial sector, employers, companies and so on. It is also fearful of a surge in proceedings pertaining to sex discrimination. That the Government should behave so cowardly shows that the Government is not substantially determined to root out sex discrimination. In view of these inadequacies on the part of the Government, the Bills Committee will propose some amendments, to be moved by Dr the Honourable LEONG Che-hung on behalf of the Bills Committee. These amendments have the support of the Democratic Party and we hope that Members can support these amendments.

In fact, the community and members of the public have long yearned for this Sex Discrimination Bill, which will have a far-reaching and significant bearing on the territory. What we and members of the public are asking for is a comprehensive piece of legislation, not one which is defective or full of loopholes. Therefore, I hope Members can support the amendments proposed by the Bills Committee.

MISS EMILY LAU (in Cantonese): Mr President, I speak to support the Sex Discrimination Bill and all the amendments to be moved later by Dr the Honourable LEONG Che-hung.

In fact, the spirit of this Bill is to give effect to the principle of gender equality. I trust that nobody in this Council or in the territory would oppose this. The issue, however, has given rise to many problems and a lot of twists and turns, which Honourable Members have just mentioned a moment ago. I regret very much the way in which the Government has handled the case. I have talked to the Honourable Ms Anna WU just now that I personally have some worries because a number of our colleagues, including the Honourable Jimmy McGREGOR and some of our more conservative Members, may not support the amendments to be moved later by Dr LEONG Che-hung. But no matter what the results of the amendments turn out to be, and whether those voting results will bring good or bad effects, I trust that Honourable Members as well as Hong Kong people know that Ms WU has done a great deal towards gender equality. Therefore, I hope that Ms WU will not feel disappointed later whatever the results will be.

Mr President, I am sure that Ms WU is not going to cry. In fact, she should laugh because she has forced the Government to do something very significant. It is just that the Government is such a huge organization that it is impossible to force it to do things in a short time frame. I believe, however, that Ms WU and other colleagues all know that the Government has taken a giant step and I myself will continue to give full support to the other private member's bills moved by Ms WU.

Mr President, in fact, the Bill now under deliberation should have been moved by the Government a lot earlier. When the Bill of Rights was adopted in 1991, the Government already said that it would consider bringing in the United Nations' Women Convention. The matter has been mentioned by many of our colleagues a moment ago. It is only now in 1995 that the Government is forced by Ms Anna WU's private member's bill to introduce this Bill and I regret very much the Government's approach to this matter. The Government's approach and attitude give Honourable Members and the general public the impression that the Government is very reluctant to pursue the Sex Discrimination Bill, which is in quite a contrast with the bill regarding disability now also under consideration because the latter was put forth by the former Secretary for Health and Welfare. As to this Bill, I consider that rather cruel because it is like going to the dentist for extraction but the tooth is taken out bit by bit. Since the Government does not want to pursue this issue, it has imposed in the Bill lots of restrictions and exemptions. Mr President, I really cannot support the Government's proposal and I will give my full support to the amendments to be moved later by Dr LEONG. Meanwhile, I would like to talk briefly about my view on those amendments.

First, it is in relation to the commencement date for the part of the Bill with regard to employees. The Government's proposal is to set up the Equal Opportunity Commission first and draw up a code of practice for employment before setting the commencement date of the Bill. This is unacceptable. Dr LEONG Che-hung's amendment will set out clearly that the commencement date is not later than 1 January 1996. This seems to be very reasonable to me. I hope that all Honourable Members will support this amendment later.

Secondly, Mr McGREGOR has just vividly spelled out the worries of the business sector, saying that the business sector may not be able to adapt themselves to the Bill. In fact, I have a little concern too whether there really are so many cases of discrimination against women in the business sector. If there are, they should be rectified quickly; if not, then it will be all right. I believe that Mr McGREGOR knows as well that, in fact, there is exemption provided in the Bill in which a grace period will be allowed especially for firms with fewer than five staff. Although the grace period is only five or three years, it somehow takes care of the business sector. I hope that Mr McGREGOR and other Members who represent the employers will tell us later that the business sector in Hong Kong in fact very much object to discrimination against women. Therefore, I hope that they will fully support these amendments and understand that nobody intends to use these amendments to stop the business sector from earning money or to make things difficult for them. If discrimination has existed for years, then we should take this opportunity to have it eliminated.

This Bill has yet another purpose, and that is to give effect to the United Nations' International Convention that I mentioned a moment ago. The amendment to be moved later by Dr LEONG Che-hung is to set out clearly that the interpretation of this Bill should follow that of the International Convention. This is quite reasonable and logical and I do not understand why the Government should put up an objection even on this matter. The Government's behaviour gives a direct impression that it lacks the sincerity in performing the obligations under the Convention. I hope that the Government will explain to us in its address later about their views on the Convention and let us know when that Convention will be introduced. Honourable Members have spoken on this matter time after time, let alone the several debates held here. I hope that the Government can take this opportunity to clarify its position later.

Moreover, this Bill has a very significant drawback, and that is it renders insufficient protection for women in the New Territories. Many people consider that gender inequality in Hong Kong is particularly prominent with regard to women in the New Territories. But it is exactly in this area of the Bill that the Government has proposed lots of exemptions. For instance, some Members mentioned just now that women in the New Territories do not have fair voting right and this is unacceptable to me. The Government always said that we should explain things to villagers by way of lobbying. However, if the principle is right, then it should be written into the law, why still linger on making explanations? For even by way of lobbying, there are bound to be some

people who will not be convinced after all and I therefore hope that the Government can accept that it is time for legislation.

Another unfair policy is the Small House Policy. This policy is not only unfair to women in the New Territories but also not fair at all to other Hong Kong people. Since none of us has small houses, I therefore really do not understand. Mistakes made in the past should not be allowed to continue. Some may say that for the sake of gender equality, perhaps we should let women have small houses too. This really is ridiculous. For people in the New Territories, men have small houses, and women also have small houses, then, what about those men and women living in the city? Therefore, to deduce the matter with logic, the only conclusion should be either there are small houses for all or small houses for none. In reality, I believe that it is impossible to provide small houses for all men and women in Hong Kong and the Government should also know what conclusion to be drawn. I hope that the Government will show its courage in pursuing the matter. Although certain matters may not gain universal support and the pursuance of which may even lead to fighting in the Council, things ought to be done are to be done after all and we absolutely have no reasons to allocate our limited resources by an unfair method. If certain people are in need of housing, we have the Public Housing Scheme to take care of them. I do not hope that some people should be taken care of by two sets of policies whereas some are cared by only one. I hope that the Government will explain clearly in its response later and tell all the Hong Kong people why the majority of them enjoy no such privilege whereas a few of them do?

Mr President, in fact, everyone understands that if there is the law but without an effective mechanism to enforce it, then the public can only rely on legal proceedings to get their fair deal. In that way, protection given to them by the law is limited. It is not possible for many people to go through legal proceedings for everything because it costs huge sum of money. The Government is not going to support the amendment to enable applications for legal aid in relation to this Bill to be exempted from a means test. I regret deeply for that because the amount of money involved is believed to be small. If the Government can allow applications in relation to the Bill of Rights to be exempted from a means test, why is the Government so stingy regarding this Bill? I hope that the Government can exempt the applicants from a means text when the bill regarding disability is presented later.

Meanwhile, as the Government does not exempt applicants from a means test when they apply for legal aid, therefore, a powerful Equal Opportunity Commission becomes even more important. For this reason, I will support Dr LEONG Che-hung's amendments so that the Equal Opportunity Commission will be empowered to conduct investigations, to make charges in its own name and even to continue legal proceedings on behalf of the plaintiff. Up till now, since the implementation of the Bill of Rights, the Government is still reluctant to set up the Human Rights Commission. This Equal Opportunity Commission Should specifically enforce this Bill now under deliberation, but the Government

just wants to turn it into a "toothless tiger". Many people may then ask, what does the Government really want?

Mr President, I will also support the amendments to be moved later by Dr LEONG Che-hung such that if the Commission finds that the existing legislation is in contravention of the provisions under the Bill of Rights in relation to the protection of gender, marital status as well as pregnancy, it can apply to the court for a repudiation of those legislation. In fact, the Government should have done this work a lot earlier and should have done it when the Bill of Rights was promulgated in 1991. Now this task is taken up by others but the Government refuses to give the green light. As such, what really is the Government's intention and determination towards human rights? I hope that the Government will explain to us in details with regard to those basic elements when they address the matter later. Otherwise, we might feel that the Government's respect for human rights is just lip service and it imposes all sorts of restrictions when the principle of human rights is put into effect.

Lastly, Mr President, I will not support the amendment moved by the Honourable Mrs Peggy LAM because she proposed that damages awarded by the court to a claimant should not exceed \$150,000. I believe that the court should have the authority to decide on the amount of damages in respect of such cases and be subject to no restriction. For example, if a very big enterprise dismissed a very senior staff out of sex discrimination, what deterrent effect would \$150,000 have on that company? What protection can \$150,000 provide for that staff?. And I would like to ask Mrs Peggy LAM how that \$170,000; why not set a \$150,000 limit is derived. Why not set at \$170,000; why not set at \$280,000, \$390,000 or why not set at \$130,000?

Mr President, I believe that Hong Kong people have waited too long for this Sex Discrimination Bill. The representatives from women organizations as well as other bodies present in the Public Gallery today earnestly hope that Members of this Council will show their courage as well as conscience. In fact, we also care for the business sector and I do not want anyone to be misled. Therefore, I hope that we all have the courage to show our support to all the amendments to be moved by Dr LEONG Che-hung on behalf of the Bills Committee. Finally, I reiterate that I have to pay my tribute to Ms Anna WU because she has made great efforts and lot of contributions towards gender equality in Hong Kong.

With these remarks, I support the Bill.

MRS MIRIAM LAU (in Cantonese): Mr President, it is an undisputed fact that in Hong Kong "women can heave half of the heaven".

Women of these days are having far better opportunities than their counterparts of the past in whatever domains like family, education, employment, or socio-political participation. Government statistics show that in

recent years women's labour force participation rate has reached nearly 50%; education-wise, women are also getting higher and higher education. Having said that, sex discrimination does exist in our society in one way or another. So I welcome very much today's debate on sex discrimination. In as early as 1991 when this Council debated on the socio-economical status of women, I already suggested that the Government should draw up legislation of similar standing to the Sex Discrimination Act adopted in the United Kingdoms in protection of women's dignity and fights.

Mr President, the Liberal Party is of the view that the focus of today's debate is not on whether we need this piece of legislation or whether we should pledge our support to equality between men and women. That is already beyond dispute. What we are debating today is the ambit of the legislation, the circumstances under which it will be enforced and the pace of its enforcement. Some criticized the ambit of the legislation as too narrow, its enforcement too relent, and its pace too slow. These are, however, not the views the Liberal Party would subscribe to. The Liberal Party supports equality between men and women, but we believe also that it is neither desirable nor appropriate to be over-radical in putting up any new policy or legislation, otherwise, the more hasty it is, the lesser the speed it will be, or it may even go so far as being counter-productive.

The Liberal Party believes that that women are being discriminated against is due to the bitter fruits borne by the traditions and the social perceptions of China which started to culminate since some thousands of years ago. Many people did not discriminate against women with intent — they did it unconsciously. As a matter of fact, these deep-rooted perceptions are not going to be changed overnight, nor would a single piece of legislation suffice to change them. The Legislative Council successfully put into place a New Territories (Exemption) Ordinance last year to entitle women to succession rights of ancestral land being passed on in the New Territories. On the surface it seems that this has realized the goal of equality between women and men, but in actuality I know that after the Ordinance was put into place many indigenous villagers in the New Territories have drawn up wills to pass on land to lineal kins or collateral relatives on the parental side. Indigenous villagers in the New Territories who are women are not benefited at all. Take the United Kingdoms as an example. In spite of the fact that the United Kingdom government has long adopted a Sex Discrimination Act, a survey report The Times recently quoted revealed that in today's United Kingdom women got only 75% of pay men got, and it was estimated that not until 50 years later would they first land "equal work, equal pay" for both men and women. So, to achieve equality between men and women in the real sense of the words, it is essential to reply on education and publicity to exert a subtle influence to altering the discrimination currently existing in our society. Legislation alone is not enough. The Liberal Party believes that the objective of this legislation should be premised on guidance and education instead of merely imposing punishments, in which case it would be putting the cart before the horse.

For this reason, we believe that the Government should not hastily put forth a Sex Discrimination Ordinance at a time when conditions are not well-brewed. Any such hasty move will be an irresponsible move, which will result in nothing but unnecessary disputes and pointless litigations, and jeopardize our harmonious society. A major constituent of the legislation is the establishment of an Equal Opportunities Commission which may issue codes of practice with practical guidance. In actuality, this guidance will be of great significance to employers and employees alike, so the Government must act prudently, study it carefully and conduct thorough consultation to maximize the effect of this guidance to the end. As the ancient saying goes: "Look into history to catch a glimpse of its vicissitudes." In Sung dynasty, a very well-known officialdom WANG An-shi put forth a whole set of new policies originally intended to make the state powerful, but because of the hasty way the policies were implemented they became harsh policies which only irritated the citizens. This is a lesson we should learn from history.

As far as small companies are concerned, the Liberal Party is of the view that a more relent approach should be adopted to give them more room for manoeuvre. An exemption period of five years should be given to them, too. Although the Government intends to slash the exemption period of three years, we still regard the original proposal of five years as appropriate. This is because these companies — doctors and barristers are not among them, of course — usually run on a small, domestic scale, which tend to have lesser flexibility in personal deployment, as they employ only a handful of employees where even the employers themselves have to commit themselves personally to operational work. What is more, confronted with the current sluggish economy and ever-increasing unemployment, employers and employees alike in every profession are all suffering badly. To oblige these companies to the requirements of this legislation or to get them involved in litigations on sex discrimination will undoubtedly be making lives even more difficult for them. In the end, employers will be forced to wind up their businesses, not to any advantage to professional women.

As regards whether too many exemptions are provided in the legislation, thus affecting the effect of the legislation, the Liberal Party is of the view that as long as those exemptions are justifiable and necessary which are able to safeguard public interests, we will find it barely acceptable. But once those exemptions are no longer needed they would be removed immediately. Take the Government's existing small house policy which entitles only indigenous villagers of the New Territories who are men to the right of building small houses as example, we are of the view that it contravenes the principle of equality between men and women. However, if this policy were to be abolished or amended hastily, many people would be affected and great repercussion will be incurred to the society. For this reason, in spite of the fact that the Liberal Party is against the continual existence of the small house policy, and the Party's belief that the Government should be quick to abolish it, but as the Honourable Miss Emily LAU has said just now, apart from men and women who are indigenous villagers of the New Territories, should men and women living in

the urban areas, or, in other words, should everybody be entitled to this particular right, or should the policy be amended? The Government has to take it seriously and act with despatch in conducting consultation to take into account views of different groups, particularly that of the Heung Yee Kuk's. The next step is to proceed prudently. But most importantly, be quick. The amendment has it that the Government should complete work in the area within one year. We do not support the time-frame of stipulating it to be completed in one year, but we do urge the Government to act with despatch and not just give it a lick and a promise.

Hong Kong's economic achievement is built upon a harmonious labour- employer relationship. Should either party has any misunderstanding regarding the Sex Discrimination Ordinance or the rights and obligations contained therein, this harmonious relationship will be jeopardized which will adversely, indirectly affect the healthy development of Hong Kong's economy. The Liberal Party believes that the people of Hong Kong do not enjoy to be implicated in litigations. This is one of the reasons attributable to Hong Kong's success. Therefore, this should be the principle upon which legislations are prepared. As a matter of fact, in foreign countries where anti-discrimination law is enacted it usually comes with ever-increasing labour disputes. The number of such disputes are particularly evident at times of economic recession. We do not want to see this happens in Hong Kong, particular at a time when our economic conditions is less than perfect.

For these reasons, the Liberal Party reiterates that anti-discrimination should be advocated only by learning overseas experiences as well as taking care of the actual situation of Hong Kong.

Mr President, with these remarks, I support the Sex Discrimination Bill.

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

MR LEE CHEUK-YAN (in Cantonese): Madam Deputy, in euphemistic terms, the Government is like an inefficient fire brigade that rushes to a fire-stricken area to spray water, but hurries away, before the blaze is put out, to a different scene to help combat the fire. In derogative terms, the Government is actually more like a huge rock which only sways slightly and then stops at the same old place when being pushed.

Now the Honourable Miss Anna WU is trying to push this huge rock. As a result, her Equal Opportunities Bill (EOB) is, I would say, "torn into pieces" by the Government. The Government has only agreed to introduce the Sex Discrimination Bill and the Disability Discrimination Bill, sweeping aside discrimination on the grounds of age, family responsibility, union membership, sexuality, and so on. Miss Anna WU, therefore, has no alternative but to introduce three bills to be gazetted on 19 July. First of all, we would like to

appeal to all Members to support these three new bills to be regazetted on 19 July, so that the "torn apart" EOB will eventually become a set of comprehensive legislation that eliminates all forms of discrimination and protects those Hong Kong citizens who are subject to discrimination for whatever reasons.

The Sex Discrimination Bill (SDB) we debate today is introduced by the Government for contingency purposes after the Government has dragged its feet for many years since it realized the seriousness of the issue. The Bill itself, however, has a lot of loopholes. It fails to provide women with comprehensive protection. Whether immediate or long-term, the protection is insufficient.

Firstly, the scope of the Bill is not wide enough to protect women against all forms of discrimination. Are we going to ignore sex discrimination in areas other than those covered by the Bill? For instance, the law does not protect a divorced woman with several children to whom a flat owner does not want to rent a room out of discrimination. Some employers do not take on women with the possibility of pregnancy, women whom they believe are no longer young (such as those aged over 30), and women who have children and elderly people to look after at home, in short, women bearing the family responsibility. This is sex discrimination, and these women are not protected under the law. Women from villages in the New Territories not having the right to vote is yet another form of sex discrimination. Regrettably, the SDB ignores these women and gives no protection to them.

Secondly, even though certain areas of discrimination are covered by the Bill, due to the limitations imposed by the Government and its procrastinating attitude, the Bill will not eliminate the existing forms of sex discrimination.

First, the Bill consists of too many exemption clauses. The "small house policy" exemption is one. In June last year, the Legislative Council passed the New Territories Land (Exemption) Bill, which recognizes the equal right of indigenous male and female residents to inherit small houses. The small house issue itself is a historical problem and a typical example which reflects sexual inequality. The Government should not defend sex discrimination and exempt the inheritance of small houses from the Bill.

Second, the exemption of disciplined posts from the Bill is difficult to understand. The Government explains that during riots, policemen are deployed to deal with male rioters and policewomen to deal with female rioters, and so, this exemption is necessary. I find this explanation totally incomprehensible. As far as I know, the SDB is not about such things as deployment, but rather about the difference in treatment. The Government at present enjoys freedom in staff deployment, and such freedom will not be affected by the passage of this law. I therefore do not understand at all why disciplined services can enjoy exemptions. Does the Government have some untold reasons? I hope the Government will explain this later on.

Another exemption concerns the protection of female employees in the industrial sector. At present, women enjoy protection against overtime work and the operation of dangerous machines. To achieve equality, I believe the same protection should be extended to men, so it is unacceptable to exclude the relevant ordinances from the SDB's coverage. A more positive way, I believe, is not to exclude those ordinances, but to apply them equally to men. On no ground should dangerous machines be operated by men only while women enjoy exemption. In fact, both males and females should have the same protection. Men should not have too much overtime work either. Therefore, I do not agree to the exclusion of the relevant ordinances, but hope they will protect males as well.

Further, I cannot accept the exemption of discrimination against employees who wholly, or mainly, work outside Hong Kong. Now that more and more Hong Kong people take up jobs in the Mainland, it is inappropriate to employ males alone for such jobs. Opportunities should also be given to females, and their job applications should not be rejected on the grounds of sex. I, therefore, object to the exemption of discrimination against employees who wholly, or mainly, work outside Hong Kong.

The second major problem is that, in addition to having too many exemptions, the Bill also provides insufficient protection to paid staff. Under the Bill, offering different employment terms for different sexes constitutes discrimination. This means only the situation of "same jobs, different pay" is regarded as discrimination. In Hong Kong, however, the role of the two sexes is traditionally stereotyped, resulting in serious segregation of the two sexes in employment. The salary and benefits of occupations and jobs with a high concentration of female employees are generally less than those of occupations and jobs dominated by male employees. The "International Covenant on Economic, Social and Cultural Rights" and "International Covenant on Labour" of the United Nations stipulate that the two sexes shall enjoy equal rewards for "jobs of equal value". Notwithstanding the extension of the "International Covenant on Economic, Social and Cultural Rights" to Hong Kong in 1976, the Bill still contains such a discriminatory clause. This matter has dragged on for 20 years and women have deeply suffered. I therefore think the Government should provide for "equal pay for equal jobs" when introducing the Bill and stipulate in the law that "equal rewards should be paid for job of equal value". This is already in force in Britain. I hope the Government will provide for the same as soon as possible.

The lack of protection in the form of reinstatement is another area of discrimination against salaried employees. I very much agree with the view of the Bills Committee that women should enjoy such protection as being reinstated if they are found to have been sacked unreasonably out of discrimination.

The third major problem, as mentioned by some Members earlier, is that discussions relating to the enforcement date of the provisions with regard to employment is just like a seesaw battle. The Government wants the Bill to take effect as late as possible — this is my impression and that of many people. From the point of view of the people being discriminated against, however, it is of course the earlier, the better. The earlier the Bill is enforced, the quicker society will accommodate or adjust to the law and hence reduce discrimination. I object to the idea that the law should be enforced only after a code of practice is established, the reason being that the code will not be legally binding. We should enforce the law first and then let the public learn and adapt to the law. The public definitely has enough time to do so.

On the other hand, we disagree with the Government's three-year transition period for small businesses with five or fewer employees. The Honourable Mrs Miriam LAU just now said that small businesses should be given room for survival. But in fact I do not understand this point. I do want the Government to explain whether the SDB will cost small businesses a lot of money and how much they will have to spend. Actually, they will not have to spend a great deal. All they are expected to do is to eliminate discrimination in salary payments for their employees. I believe it is not too difficult for small businesses to adapt to this law. Furthermore, according to the Government, it takes time to educate small businesses. But the best way to educate, I believe, is provided through legislation. If we allow a three-year grace period, the matter will drag on for three more years because small businesses will only start to adapt themselves to the law after three years. If the law comes into effect immediately, small businesses will have to learn and understand the law promptly. Otherwise, it is just like telling small businesses, "Do not worry, study the law three years later!" I do not think this is necessary.

The fourth problem is that the Government is imposing too many limitations on the functions of the Equal Opportunities Commission (EOC), rendering the Commission powerless and incapable of upholding sexual equality.

The EOC, which the Government plans to set up, should have such functions as investigation, education, acceptance of complaints and conciliation. Yet, I think the Bill over-emphasises the conciliatory function of the Commission and therefore has no deterrent effect on lawbreakers. There are many other functions which the Commission should have but which are not accepted by the Government, such as assisting or representing victims in prosecutions against lawbreakers; reviewing current laws and the judicial process to see whether they contravene the Bill, and if yes, applying to the court to repeal provisions that amount to discrimination on the grounds of sex, marital status and pregnancy. The Commission should also be empowered to investigate individuals and organizations involved in sex discrimination, otherwise it is impossible to prove discriminatory behaviour.

To keep the Commission informed, each government department should submit to the Commission a report annually on the measures taken to provide equal opportunities. Moreover, the Census and Statistics Department should break down the statistics they release by sex, so that the Commission can grasp the situation of both sexes accurately. The Commission should be empowered to ask for reports on the implementation of measures to provide equal opportunities from large organizations for the purpose of monitoring sexual equality in employment.

The Bill proposed by the Government stipulates that the EOC shall not provide financial assistance to organizations for conducting researches and activities except with the approval of the Secretary for Home Affairs. This provision undermines the independence of the Commission and indicates a lack of faith in the Commission. I hope the Government will give up such a provision.

The numerous loopholes in the Bill proposed by the Government give the impression that it is just a piece of perfunctory legislation. In view of this, I will support the amendments proposed by the Bills Committee. To prohibit discrimination through legislative measures will convey a clear message to the public that we should pursue the spirit of sexual equality. This will have a strong educational effect on society. Nevertheless, various forms of discrimination against women today will not be changed simply by legislative measures. For total improvement, we also need appropriate social policies and measures to match with the legislation.

In view of this, we think the Government should at the same time formulate a set of policies that will bring about sexual equality and improve the situation and status of women in all areas. In the aspect of employment, the Government should provide appropriate education and training to women in order to increase their opportunities to get promotions, to enter industries traditionally dominated by male employees, or to rejoin the workforce. Flexible working hours should be encouraged so that employees who have to bear the family responsibility can care for the family and work at the same time. The Government should use legislative measures to ensure part-time and full-time workers have equal terms of employment. Increase in child care service and improvement of relevant policies will allow women to enjoy the right of choosing to work.

To relieve women's pressure of being regarded as "the carer" of the family, the Government should provide sufficient community support services, such as elderly service, home help service, child care service and so on. Furthermore, granting "maternity" leave to the husband will encourage a sharing of child-rearing and family responsibilities between the two sexes.

Sex discrimination certainly still exists in many areas, such as in education and in cultural beliefs. The Government should take the first step and cease to be a hard rock or an inefficient fire brigade. It should then formulate policies and measures on the elimination of discrimination against women step by step. I believe our citizens will then have a better sense of sex equality.

I am awaiting the arrival of this happy day. Our work should begin once the Bill comes into effect. Finally, I would like to thank Miss Anna WU for the large amount of work she has done to lead Hong Kong towards a discrimination-free society.

MR JAMES TIEN: Madam Deputy, Hong Kong is one of the least discriminatory societies, and not just in Asia. Our attitude towards women is advanced. Visitors and some legislators may not even be aware of this, (1) because we do not brag about it; and (2) because we are not in the habit of putting everything into law. Women in Hong Kong enjoy equal opportunity and their prospects for promotion are as good as those afforded anywhere else.

Our Council is an example of genuine equality in practice. Name me any legislative assembly that has a greater percentage of women in it than our own. I can think of only three and they are Norway, Denmark and Iceland. We are leagues ahead of the British House of Commons and the American Congress or Senate. Our Civil Service is a model employer in that regard and its chief is a woman — although not today.

The Liberal Party is also the most enlightened of political groups. We have more women in our senior ranks than our rivals. Our party whip is a woman. This is not because we groomed them for prominence. They have earned the right to lead. I am as much against discrimination as I am against tokenism. One knows the two are reverse sides of the same coin. I hope other political parties which talk a lot about equal opportunity can emulate us.

Bigotry is not just immoral but it is also impractical. Any company in competitive Hong Kong that hires people, not according to their ability and experience but according to their gender, is not smart about business. When you are not smart in business you are not going to be in business for very long. Merit means money. Prejudice leads to the opposite. Chronic labour shortage in Hong Kong makes discrimination a bad business proposition. We take the best that we can get, period.

A year ago the Honourable Ms Anna WU herself proved that an able woman gets ahead in Hong Kong, suggested a sweeping law against discrimination. I applaud the principle behind the proposal but I question its details and its effects as well as effectiveness. As a lawyer, she naturally believes nothing is for sure unless it is codified with chapter and verses in the statute books.

My misgivings are shared by the business sector. They have conducted a survey and published a pamphlet, a code of practice, on how to end supposed discrimination at the workplace. They are not convinced that a law is the way to go but are genuinely sympathetic of the government Bill against sexual discrimination and sexual harassment.

Since the Senate confirmation hearing of Clarence THOMAS, candidate for the United States Supreme Court, sexual harassment has been a hot topic. People draw different lessons from that episode. Some think the definition of what constitutes sexual harassment is so vague as to invite abuse. Others believe the political system so rigged to benefit man that most simply do not get it.

Madam Deputy, in response to the Honourable Miss Emily LAU's comment on the Honourable Jimmy McGREGOR's speech, the business sector are unambiguously and unanimously against sexual discrimination and harassment. I have to say this with absolute emphasis because of the misguided popular assumption that businessmen are uncaring and short-sighted. We have pored over the Bill and support its thrust. We are enthusiastically for the dignified treatment of not only women but for everyone in our employ.

Hong Kong does not statistically have enough women as partners in professional firms and as senior managers. We are in a similar strait as the Americans, who invented affirmative action to advance minorities and women. Ironically, we are moving towards affirmative action shortly after the United States Supreme Court itself challenged the constitutionality of preferential treatment, job quota and reverse discrimination.

Businesses are disturbed by a Bill that seeks to intervene in an area — staff promotion — which has always been a discretion of the employer. We strongly believe that no authority is in a better position to judge the qualities of an employee than ourselves. Leave well be, we ask, and soon enough the force of competition will propel more women to the top. This is, of course, happening independent of the Government's social engineering or our Members' Bills.

Whether more women may prevail in the corporate and professional elite will not be determined by legislative initiatives. No women will scale the heights of opportunities opened up unless their education teaches them to aspire for corporate leadership. We would be wrong to patronize women with a law that decreed how fast and far they should go in business. They can do it themselves.

The Bill before us also seeks to introduce firms with no fewer than six partners to consider bringing a woman into their ranks within five years. We are puzzled by this demand because it implies professionals discriminate against women for promotion, but I will let professionals, that is, lawyers, accountants and so on, to address this topic.

Madam Deputy, some 80% of the companies in Hong Kong have 10 or fewer workers each. Most of them are actually not members of the Hong Kong General Chamber of Commerce, nor members of the Federation of Hong Kong Industries. However, they do form the backbone of the economy. They do not have any systematic way of recruitment, promotion and procedure standard in firms belonging to the Fortune 500. They will not be able to cope with this extraordinary demand when they are already saddled with regulations upon regulations — regulations which add cost and aggravation to employers struggling just to stay afloat. I recommend that firms with fewer than 10 staff be given the three years to comply. The law should not sacrifice legitimate business on the altar of perceived political correctness.

The Honourable Ms Anna WU only allows for two years' transition. I think this is harsh. Britain introduced a similar piece of legislation in 1975 with a five-year grace period. Even now, two decades after the law came to be, companies are still adjusting.

Anna also argues that the five-year extension is unreasonable because the Bill is not specific about job quota but is rather one of principle. I do not know whether her insistence that employers must count heads to see how many of their staff are men, how many women, is not also a form of discrimination. I have men and women working in my company, but to me the gender is immaterial because I see them only as my diligent, gifted employees. I have total respect for them, male or female. My friends also feel exactly the same.

Most troubling for my constituents is the clause in the Bill holding employer responsible for sexual discrimination and harassment in the company. The provision contradicts all that the Bill of Rights is supposed to uphold which is innocent unless proven guilty. The clause as it is now stated also puts the burden of proof on the accused and not the plaintiff in clear breach of the common law.

Madam Deputy, I back the Sex Discrimination Bill as a matter of principle. Let us now focus on educating our people to be more aware of equality. If such an education is successful, any law on sex discrimination would be a redundancy. I anticipate that day with delight.

With these remarks, I support the Bill and the Government's amendment, but not Dr LEONG Che-hung's amendments except his amendment to clause 49, which I will support.

THE PRESIDENT resumed the Chair.

MS ANNA WU: Mr President, the words of encouragement from Members embarrassed me and I thank them for those words. The Government has introduced a Bill that is titled the "Sex Discrimination Bill" but which, to be honest, should be subtitled, "How not to legislate for change". It contains so many exemptions and deferrals that it is close to a sham. I admit the law does not resolve all problems but it does provide a start. It is a safety net I certainly hope this community will never need to rely on it too frequently, but if we ever find ourselves a need, I would hope the law is there for the victim.

The language of the Bill defies logic and good sense. The scheme of the Bill is even more tortuous. Whatever protection is offered in the main provisions is somehow taken away as a result of the exemptions or deferrals. In the case of the Government's proposed amendment to retirement and benefit schemes, an empty schedule was resorted to. The Government's approach seems to be one of: "Let us pass the bill first and fill in the blanks later." I was told that this is now standard drafting procedure. When reading the Bill, make sure you read the fine print or the lack of it as the case may be.

As opposed to the Government's decision, one of the main principles of the Bills Committee's amendments is to give the Government time to review and to put its own house in order. How can that be unreasonable? There is no suggestion of deleting these exemptions. The Government has requested some Members to oppose the Bills Committee's amendments known as the "must defend" items. This is an invitation to perpetuate and defend government exclusive practices in many cases.

In the areas of protection of rights, our Government is a constant procrastinator. Despite the application of the International Covenants on Civil and Political Rights and Social, Economic and Cultural Rights to Hong Kong, the enactment of two Covenants in the Joint Declaration and the enactment of the Bill of Rights, our Government took no action to eliminate deep seated and widespread discrimination in twentieth century Hong Kong until the end of 1994.

The Hong Kong Bill of Rights was first proposed in 1990 and an ad hoc group chaired by the Honourable Mrs Selina CHOW held extensive hearings on the Bill of Rights. However, the Government decided to make the Bill of Rights applicable only to the public sector while promising further legislation to Prohibit discrimination in the private sector. At the same time, the Honourable Ronald ARCULLI, in a speech in the Legislative Council on 5 June 1991, indicated clearly his opposition to the removal of the private sector from the scope of the Bill and said he was voting in favour of the Bill only because of the Administration's "promise that specific legislation would be introduced to give Private individuals protection on their rights".

This further legislation, however, was not forthcoming for the longest time. In 1992, the findings of the government Working Group on Sex Discrimination in Employment concluded that anti-discrimination legislation should not be extended to Hong Kong. It was regarded that this legislation would be ineffective unless there were resources for enforcement. It also concluded that CEDAW (the United Nations Convention on the Elimination of all Forms of Discrimination Against Women) should not be extended to Hong Kong.

The Green Paper on Equal Opportunities for Women and Men was published in August 1993 to solicit views of the public. It read more like an effort to convince us all that there was no discrimination in Hong Kong than an effort to consult us on how to address it!

I announced in 1993 that I proposed to present a Private Member's Bill to prohibit discrimination. The first draft was ready in end-1993. Each draft was presented to the Secretary for Home Affairs for consultation until we were requested not to do so until the final draft was ready. In March 1994, I issued public consultation documents relating to this Bill and in July 1994 it was gazetted and introduced. The Government was invited to indicate all along whether it wished to take up any part of it.

After two motion debates in this Council relating to the extension of CEDAW and the rights of women sponsored by Miss Emily LAU and Mrs Peggy LAM, a historical change relating to the New Territories lands inheritance law spearheaded by Miss Christine LOH, many public statements by every female Members of this Council and of some male Members of course, including Mr Jimmy McGREGOR and the threat of a Private Member's Bill and much other pressure, the Government eventually reversed its position and announced in mid-1994 its intention to legislate against sex discrimination and the extension of CEDAW to Hong Kong.

Despite the Government's known reluctance to legislate, it still came as a surprise to me that the Sex Discrimination Bill it gazetted in October 1994 was such a sham.

The Government plans to delay the enforcement of all of the employment provisions in its Bill until after the Equal Opportunities Commission has issued detailed "codes of practice". I have questioned the need for such codes to be issued before the law is enforced, particularly since such guidelines have generally been developed in other countries after the law has been applied and experience has been gained with it. But thus far, the Government refuses to change its position on this issue, saying it would be difficult to enforce the law without detailed codes of practice. It is ironic that the Government is intent on procrastinating when chambers of commerce and the Federation of Hong Kong Industries have already started promoting their own comprehensive codes of practice covering discrimination on the grounds of sex, age, disability, religious conviction and sexual harassment.

It must be remembered that the Government had amended the Bill of Rights so as not to affect the private sector on the ground that it would be difficult to enforce a general anti-discrimination principle without detailed legislation. Now the argument is being raised that without codes of practice the Sex Discrimination Bill cannot be enforced. How long do we have to wait? The United Kingdom law on which the Bill was based did not have to wait. In fact, the first United Kingdom code was not promulgated until 10 years later. What the Government is really saying is, "We did not really want to legislate but since we were forced into it, let us delay its implementing using whatever devices possible."

The Bill also contains a five-year exemption for small businesses. This is not acceptable, particularly since the Bill would not require any company to practise affirmative action or to hire a minimum number of women. Rather, companies would only be required to cease discrimination against women. I have explained that a United Kingdom provision relating to small businesses was struck down by the European court and we should take this into account in our own process of law making.

The Government has inserted into its Bill a very broad exemption for matters such as death and retirement benefits, housing allowance and benefits arising from difference in marital status, employment by the disciplined services and laws that supposedly protect women — some of which, in fact, discriminate against women. These are blanket exemptions and are not qualified in any way. I have not asked for these exemptions to be deleted but merely that the exemptions should be reviewed by the Government during a period of one year extendible by another.

I need not impress Members upon the discriminatory aspects relating to the small house policy and rural elections. The Government has recently misled Members by suggesting that the small house policy is entrenched in the Joint Declaration and the Basic Law. This is not true. What is protected is the concessionary rent for village land. I am not calling for the abolition of the small house policy as such. I am asking the Government to make it more equitable.

The Government has admitted that the small house policy is not a New Territories custom but a welfare measure started in the 1970s. The Government has also indicated that it is not bound by any legal obligation. The policy is not entrenched in law and is merely exercised administratively.

There is no small house policy in the Bill of Rights. Excluded from its application, the Government would in effect be entrenching it in the law for the first time and remove the power of the court to make any pronouncement under this Bill.

The Government undertook to review the policy several years ago. Nothing has happened so far! I understand that the Executive Council has recently given the green light to review the policy. The Government wants a further indefinite period in which to conduct the review. Surely we should not entrench the current inequitable policy in law before the review is undertaken.

Based on the Government's own indication that it is now actively reviewing the policy, Members can consider the alternative of providing a year's review period subject to extension by another year. I would, however, urge you to support the deletion of the reservation from the Bill, not the deletion of that policy from the Bill.

On reinstatement as a discretionary remedy that may be ordered by the court, the Home Affairs Branch on behalf of the Government acceded to the request in principle in writing to the Bills Committee. It then turned around to exclude it from its own amendments and did the passing-of-the-buck trick again. Pass it to the Education and Manpower Branch for some more interminable reviews. Legislators are forever grappling with a moving target.

I must now turn to the tactics applied by the Government in the last days preceding this resumption debate. First, I found misinformation being generously dispensed by the government propaganda machinery. Scare tactics abounded. If any of the amendments were passed, the officials say, the Government would be faced with a doubling of the housing allowance bill, huge amounts would have to be paid in compensation to indigenous villagers and retirement benefit schemes would be significantly affected. If all these were true, I do not see how the Government could have failed to object earlier. After all, they had not failed to see to use the charging effect argument in other areas involving much smaller sums.

Well, let me explain these one by one in detail later on. It is however important to remember, when dealing with this Bill, that what is outlawed is not differential treatment but unreasonable and arbitrary differential treatment. The government policy of basing housing allowance on household size would not be affected. The Government would not be obliged to pay double benefits to civil service couples. The Government cannot on the one hand accept the principle of non-discrimination and on the other hand exclude itself from the applicability of these principles.

I have provided to the Government a standing offer for over one and a half years to brief all major government branches and to help to resolve their concerns. This offer was never taken up. The Home Affairs Branch is the co-ordinating Branch for this Bill. The Branches could raise their objections through Home Affairs but Members could not speak to the Branches through Home Affairs, the door God. Whenever a question was addressed to Home Affairs about other branches, Home Affairs responded by saying that it did not have the answer. And whenever a question was addressed directly to other branches, we were referred to the Home Affairs.

Last Friday, the Government raised last minute objections relating to four sets of amendments based on their charging effect. They have successfully blocked three of the four sets including the amendment allowing means tests to be waived for legal aid in the case of sex discrimination litigation. What was distressing was that these were last minute objections, technical in nature and designed for tactical advantage. Moreover, the amendment relating to the promotion of awareness of international obligations and vetting of legislation was admitted by the Government to be within the implicit powers of the Commission. It even attempted to block an amendment that it itself had previously accepted and now amending.

The Sex Discrimination Bill is intended to be a forward looking document. It should be a platform for the Government to continuously review its own policies, measures and laws. It is not intended to be a blank cheque for the Government to write itself out of a law and thus nullify its obligations under the Bill of Rights. The decent thing for legislators to do is to complete the unfurnished Bill by requiring the Government to review the exempted areas and require the Government to report again to the legislature in a year's time. I ask you to keep an open mind and to discard any misinformation you might have been given before you cast your vote.

Thank you, Mr President.

MR CHIM PUI-CHUNG (in Cantonese): Mr President, there have been occasions in the Legislative Council to discuss bills of similar nature about equality between men and women. In my mind, I do not really find any extreme cases of inequality between men and women. This is because Hong Kong has been under the rule of her Majesty, and Hong Kong men are more gentle. Therefore, in public, inequality between men and women does not generally exist. I, however, feel that under certain circumstances certain practice could be regarded as showing inequality, but this may be due to reasons connected to physical strength or adaptation. The masses often make a lot of noise out of such circumstances in the name of fighting for equality between the two sexes.

Mr President, we need to understand that many countries or regions have their own laws. These laws are often manipulated by those in power or those who are inclined to use force. For instance, there is a Human Rights Act in the United States where freedom and human rights are highly valued. What the United States Government had done, however, is often criticized by supporters of human rights, freedom and democracy. Of course, the voice of the critics may not be loud enough.

We also note that today's world has changed for the better. Prime ministers or presidents in countries such as Sri Lanka, the Philippines sometime ago, and many European countries are all women. So, there should be competitions. Not all things can be changed, however. So, we should look at the enactment of the Bill into law with reservations and cautiousness.

Mr President, I once quoted an ancient saying on an informal occasion, with a present-day interpretation, thus caused a lot of resentment and uneasiness among women. I wish to take this opportunity to clarify that actually I did not mean what I said. I quoted the saying out of a slip of the tongue. Today, I want to show my respect for women, so I shall show my support later for the relevant amendments, especially the one put forward by Dr the Honourable LEONG Che-hung, hoping that my action should clear any misunderstanding or doubt they may have about me.

Between 7 pm and 8 pm, I shall be attending a very important appointment. As I want to take part in the voting, I hope it could be arranged outside this short period of time; otherwise, I could only abstain. I will not oppose women's fights.

Mr President, I so submit.

SECRETARY FOR HOME AFFAIRS: Mr President, today's debate on the Sex Discrimination Bill marks the culmination of detailed consideration of the Government's legislative proposals to promote gender equality in Hong Kong. This exercise began to gather momentum two years ago with the publication of the Green Paper on Equal Opportunities between Women and Men, which sought public views on measures to promote gender equality. There was clear public support in the over 1000 submissions that we received for the proposals to legislate against sex discrimination and set up a statutory body to oversee the implementation of such legislation. In response to this, and having fully assessed the implications of adopting the legislative approach, we announced, in June 1994, the decision to draw up the Sex Discrimination Bill, which was introduced into this Council in October 1994.

I am most grateful to Dr the Honourable LEONG Che-hung, Chairman of the Bills Committee to study the Sex Discrimination Bill, and other Members of the Bills Committee for their considerable time and effort spent in scrutinizing the Bill.

Over the past seven months, we have worked hard to reach agreement on the provisions of the Bill. We have given very careful consideration to the views of Members of the Bills Committee, the Honourable Ms Anna WU's many helpful suggestions and the submissions from various employers' organizations, labour unions and women's groups, and other deputations received by the Bills Committee. The Committee stage amendments which I am going to move later

on are the outcome of that careful consideration and accommodate many of the suggestion that have been put forward.

I would now like to turn to the key changes we propose to make to the Bill during the Committee stage.

The transition period

The Bill renders unlawful sex discrimination in the employment field. Since this type of legislation is new to Hong Kong, it is prudent to allow a transition period for small business establishments so that they can familiarize themselves with the provisions of the legislation. Accordingly, the Bill provides for a five-year transition period for business establishments with not more than five employees. This provision has attracted much debate among Members of the Bills Committee, and employees and employers organizations. Having carefully considered the various views expressed, we will propose an amendment to reduce the length of that period from five to three years. However, we fully appreciate employers' concerns that the legislation may create undue hardship for small businesses if it is applied too quickly to them. We will therefore ask the Equal Opportunities Commission to review whether this transition period needs to be adjusted in the light of the operation of the Ordinance.

Extension of the scope of discrimination on the grounds of marital status and pregnancy to other fields of activity

Under the Sex Discrimination Bill, discrimination on the grounds of marital status and pregnancy in the employment field is unlawful. In response to the concerns expressed by Members of the Bills Committee and various women's organizations, we will propose an amendment that would also make it unlawful to discriminate on the grounds of marital status and pregnancy in the other areas of activities covered by the Bill, namely education, the provision of goods and services and the disposal and management of premises.

Government activities

Members of the Bills Committee proposed that discrimination in relation to the Government's activities should be explicitly covered in the legislation. In fact, the Government is already bound not to discriminate by the Bill of Rights Ordinance. Furthermore, the Sex Discrimination Bill applies equally to the Government as it does to persons in the non-public sector. However, to put the matter beyond any possible doubt, we will propose an amendment to make it explicit that the Government will be bound by the provisions of the Bill in the performance of its functions or the exercise of its powers. Our proposed Committee stage amendment on this largely reflects the relevant principles of the Bill of Rights Ordinance, including the exception for immigration control.

Other amendments proposed by the Bills Committee

While we have accepted nearly half of the amendments suggested by Honourable Members, there are some which the Administration cannot accept as a matter of principle. I would now like to highlight our concerns on several key issues.

Commencement date

One proposed amendment provides for the Ordinance to come into force on or before 1 January 1996. We appreciate Members' desire to see the Ordinance brought into force as soon as possible. Indeed, the Government shares the same sentiment. However, before the Bill is brought into force, it is necessary first to establish the Equal Opportunities Commission, engage adequate staff and provide for the other support facilities needed to enable the Commission to carry out fully its statutory duties.

Just as importantly, the provisions of the Bill in relation to employment matters should not come into effect until the relevant Codes of practice have been prepared by the Equal Opportunities Commission. These codes of practice will provide essential guidance to all parties involved to enable them to better comply with the Ordinance. We envisage that the codes of practice concerned will require about nine months to be finalized following the establishment of the Equal Opportunities Commission. The proposal for all the provisions of the Ordinance to be commenced on or before 1 January 1996 would mean bringing provisions into operation before they can be adequately enforced.

International treaty obligations and certain international instruments

Another proposed amendment would link the objectives of and the provisions of the Bill with certain international treaties and instruments. The proposal presupposes that the purposes of the Sex Discrimination Ordinance is to give effect to these international treaties. This is not the case. As I have made it clear, the purpose of the Bill is to render unlawful certain kinds of sex discrimination, discrimination on the grounds of marital status or pregnancy and sexual harassment and to provide for the establishment of the Equal Opportunities Commission. The proposed amendment would confuse and detract from this clear legislative intent. It would also distract the Commission from its clearly defined functions and duties.

The exceptions

The Bill provides for a number of exceptions to cover the situation where, for justified reasons, certain policies treat women and men differently. For example, exceptions are provided in respect of the small house policy, the differential treatment of male and female staff in the disciplined services and the provision of different levels of housing benefits for employees of different marital status. International jurisprudence on the meaning of discrimination

indicates that differential treatment between similarly placed persons does not amount to discrimination if there is objective and reasonable justification for it. The exceptions stipulated in the Bill are all well justified. For example, it is reasonable for the disciplined services to impose different height, weight and uniform requirements for male and female officers. It has been suggested that these exceptions should either be deleted or be subject to a sunset provision limiting them to a one-year term subject to extension by the Legislative Council for a further year. This proposal is not acceptable. The exceptions provided for are well justified and should remain unqualified by any time restriction.

The Equal Opportunities Commission

The Sex Discrimination Bill provides for an Equal Opportunities Commission to be established with the specific tasks of eliminating unlawful sex discrimination and sexual harassment, and promoting equality of opportunity between women and men. Hostile amendments will be moved during the Committee stage that would expand the powers of the Commission. For example, there is a proposal to empower the Commission to carry out an investigation relating to a named person without any ground or belief that the person concerned has performed an unlawful act. This would be most unfair to the person concerned as he or she would be publicly named as the subject of an investigation before the Commission can say that there was evidence of any unlawful activity. While we share the view that the Equal Opportunities Commission should have adequate and effective powers to enforce the Bill's provisions, we, however, firmly believe that the Bill already provides for this.

Mr President, the promotion of gender equality in Hong Kong has come a long way from the publication of the Green Paper on Equal Opportunities for Women and Men in 1993 to today's resumption of the Second Reading of the Sex Discrimination Bill. We have advanced from public consultation to concrete legislative measures. We have made considerable progress in the past 22 months. But there remains much more to be done. Ahead of us is the important task of establishing the Equal Opportunities Commission and educating the public about the rights and obligations provided for in the sex discrimination legislation.

Mr President, upon the enactment of the Sex Discrimination Bill, the people of Hong Kong will enjoy a similar level of legal protection, in respect of equal opportunities between women and men, as is provided for in other advanced societies. The Bill reflects community aspirations and how we should proceed to achieve equal opportunities between the sexes in a measured and appropriate manner. We are convinced that it will serve Hong Kong's needs well.

With these remarks, Mr President, I recommend the Bill to Members.

Question on the Second Reading of the Bill put and agreed to.

Bill read the Second time.

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

BANKING (AMENDMENT) BILL 1995

Resumption of debate on Second Reading which was moved on 22 February 1995

Question on Second Reading proposed.

MR PETER WONG: Mr President, on the 24 February 1995 a Bills Committee was formed to study the Banking (Amendment) Bill 1995. It has held three meetings with the Administration.

In studying the Bill, the Bills Committee has considered a number of issues. I would like to highlight the major ones.

Our major concern is on the checks and balances of the authorization, suspension and revocation of licence for registration of authorized institutions (AIs). We are particularly concerned over the extension of the Monetary Authority's (MA) power to temporarily suspend an authorization to cover licensed banks. This power currently applies to restricted licences banks and deposit-taking companies.

We consider that if an announcement is made to suspend a bank's licence, the bank is effectively doomed and revocation will inevitably follow. In response to our and the Hong Kong Association of Banks' expressed view that the checks and balances in respect of this power of temporary suspension should be further strengthened to guard against unreasonable application, the MA proposes to further tighten the "public interest" test under new section 24(1)(b) of the Ordinance. A Committee stage amendment will be made to provide that it must be upon the advice of the Financial Secretary that he considers it to be in the public interest before the power can be invoked. This would reflect the fact that the Financial Secretary is generally in a better position to judge the public interest than the MA.

I leave it to the Secretary for Financial Services to further explain the rationale of the checks and balances of the powers on authorization in his speech.

I would now like to turn to section 83 of the Banking Ordinance which restricts advances to directors, controllers and employees, limited to those responsible for determining loan applications, of AIs and their relatives.

The MA accepts that the current definition of "relatives" is very wide and is sympathetic to HKAB's concern over the compliance difficulties. Having regard to the definition of relatives in other legislation, the MA proposes, and the Bills Committee agrees, to narrow the definition under section 79.

In addition, it is agreed that the restriction should apply to relatives of employees of an AI who are responsible for "approving" instead of "determining" loan applications. This would exclude employees who participate in the process of determining loan applications but are not actually responsible for their approval.

Another issue considered by the Bills Committee is the limitation on advances by AIs.

Section 81 of the Ordinance limits an AI's financial exposure to a single party or group of connected parties to 25% of the AI's capital base. Under section 81(1), the 25% limit applies to an AI's aggregated exposures to companies which have the same controller or holding company. There is no exemption for public sector entities (PSEs) which are wholly owned by the Government such as the Kowloon-Canton Railway Corporation (KCRC) or by the Financial Secretary Incorporated in trust on behalf of the Government such as the Mass Transit Railway Corporation (MTRC). An AI's exposure to these entities would thus need to be aggregated for the purpose of calculating the section 81 limit. This has hitherto not created any significant difficulties as these entities have not been issuing in any significant way debt securities in Hong Kong. However, with the development of the Hong Kong dollar debt market and the expected increasing use of debt instruments by some of the PSEs (in particular the MTRC and the Provisional Airport Authority) to finance major infrastructural projects, the aggregate limit on exposures to PSEs may restrict their ability to raise fund for such project.

Apart from the practical consideration mentioned above, a more fundamental consideration in support of the exemption is that the credit risk of exposure to PSEs should be much lower than exposure to private section non-AI entities. Direct exposure to Government is exempted under section 81(6)(e) in recognition of the minimal credit risk. Given a strong link between the Government and the PSEs, it is reasonable that exposure to PSEs be exempted from the aggregation under section 81(1).

The Bills Committee therefore agrees that an amendment is to be included to the effect that subsection (1)(b)(i) or (ii), (1)(c) or (1)(d) should not apply for the purpose of determining the financial exposure of an AI to companies of which the controller or holding company referred to in these subsection is the Government or the Financial Secretary Incorporated.

Article 9 of the Basic Law provides that in addition to the Chinese language, English may also be used as an official language by the executive authorities, legislature and judiciary of the Hong Kong Special Administrative Region. In compliance with this provision, the Bills Committee agrees to amend section 132 to allow AIs to keep entries in books and accounts, and to submit information to the MA in either the Chinese or the English language. The Arabic system of numerals will be retained as it is also commonly used in the Chinese language.

Let me now turn to the grounds for revocation, which is another issue considered by the Bills Committee.

When the activities of an AI pose a threat to depositors or potential depositors, the MA's proposed powers under paragraph 12 of the Seventh Schedule or under paragraph 18 of the Eighth Schedule could be used to revoke an authorization. It might, however, be possible for an institution which was involved in certain objectionable activities (for example, money laundering or engaging in activities subject to international or United Nations sanctions) to argue that there was no threat to depositors or potential depositors and hence the MA's power to revoke on this ground should not be exercised. Such activities, however, would be detrimental to the reputation of Hong Kong as an international financial centre and could have long-term adverse impact on systemic stability of the banking system.

The Bills Committee agrees to the proposal to include as an additional ground of revocation under the proposed Eighth Schedule where "The Monetary Authority is satisfied that the institution engages in business practices which would be likely to prejudice the interests of Hong Kong as an international financial centre".

To end, I would like to thank the banking industry associations for their views and the Members of the Bills Committee, representatives of the Financial Services Branch and the Hong Kong Monetary Authority, and staff of the Legislative Council Secretariat for their effort in the scrutiny of this Bill.

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

DR DAVID LI: Mr President, at the outset I must declare my interest as the representative of the Financial Constituency. The Banking (Amendment) Bill 1995 before us is a product of close scrutiny in particular by the Administration, the Hong Kong Monetary Authority (MA) and by Members of the Financial Constituency. We are fortunate that the MA in particular consults widely among the banking and financial community and takes into consideration the concern that I expressed. In this manner, the views of the industry are recognized and heeded before any action is taken. The consultative approach of the MA has won the support of the financial industry as a whole.

The Hong Kong Association of Banks, the Hong Kong Deposit-taking Company Association, the Society of Accountants and the Bills Committee formed to study the Bill and Committee stage amendments to the Bill had had useful exchanges on the subject. As a result of ongoing interchange with the Administration, numerous refinements to the Bill have been agreed. The changes to the Banking Ordinance before this Council today are aimed at bringing about better operation of the industry, to enact further supervision and regulations. In so agreeing, members of the industry look to the supervisors and the regulators themselves and most directly to the MA for complete fairness. Such fairness should be shown in all dealings, regardless of the place of origin of any institution. All guidelines should be actually enforced with the widest degree of understanding and consultation.

It was felt that the initial provisions gave the MA considerable power and that such power must be tempered by appropriate checks and balances; in particular in respect of any temporary suspension of banking. It is now provided that where the grounds for such urgent action are in the public interest this must be on the advice of the Financial Secretary. The power vested in the MA to require information from group companies has also been amended. The MA may now only require such information from holding and sister companies where it is necessary to protect the interests of depositors or potential depositors of the authorized institution concerned.

The Bill has other improvements, including the narrowing of the definition of relative in respect of provision restricting unsecured connected lendings. Bookkeeping and submission of information required by the MA will now be permitted both in the English and Chinese in order to meet the terms of the Basic Law. However, the use of the Arabic system of numerals, now common in Hong Kong, will be retained. In recognition of the development of Hong Kong's style of debt market and the expected increasing use of that instrument by public sector entities, banks will now be exempt from the need to aggregate exposure to public service entities under section 81 of the Banking Ordinance. This will help to ensure such entities as the Mass Transit Railway, the KCRC and the Provisional Airport Authority are not restricted in their ability to raise the funds.

In addition, the licence of an authorized institution may be revoked on the basis that it engaged in business practices such as money laundering or sanction-busting that would be likely to prejudice the interests of Hong Kong as an international financial centre.

This is consistent with the Banking Ordinance and the Exchange Fund Ordinance which aim to maintain the stability and integrity of the monetary and financial systems of Hong Kong and to promote the interest of Hong Kong as an international banking and financial centre as stated in the Basic Law.

The events of this year has demonstrated clearly both the need for good regulations and good regulators. They reflect the importance of ensuring both equitable use of authority and authorities equal to the task of exercising such wide powers.

Mr President, with these remarks, I support the Banking (Amendment) Bill 1995.

SECRETARY FOR FINANCIAL SERVICES: Mr President, the Banking (Amendment) Bill 1995 before us today principally seeks to establish the Monetary Authority (MA) as the licensing authority for all three types of authorized institutions (AIs) under the Banking Ordinance and to clarify the scope, duties, power and objectives of a Manager appointed under the Ordinance to take control of an authorized institution.

I am very grateful to the Chairman of the Bills Committee, the Honourable Peter WONG, and Members of the Committee for their careful and meticulous consideration of the Bill. I would also like to thank the Hong Kong Association of Banks and the Hong Kong Deposit-taking Company Association for their useful comments on the Bill and the Hong Kong Society of Accountants whose comments have been taken into account at the drafting stage. The amendments to be moved at the Committee stage are the product of dialogue in a series of meetings between the Administration, the banking industry and the Bills Committee over the past few months. They will ensure that we have a much improved Bill.

In the course of the discussions on the Bill, one of the powers of the MA, namely the power to suspend temporarily the operations of an institution, was the subject of concern to the banking sector and the Bills Committee.

It was argued that news of a temporary suspension would irretrievably damage the institution concerned. I should take this opportunity to restate the Administration's rationale in introducing such powers in respect of all three types of AIs. The present powers of temporary suspension over restricted licence banks and deposit-taking companies date back to the former Deposit-taking Companies Ordinance. They are required because the normal suspension provisions provide for a notice period and a right to be heard before a suspension can be enforced. In the absence of an immediate suspension, there would be nothing to stop the institution concerned from continuing to accept deposits during the notice period, thus jeopardizing the interests of depositors and potential depositors.

An alternative to the powers of temporary suspension would be to restrict an institution's ability to take deposits by placing a condition to that effect on its authorization or by using the powers under Part X of the Ordinance. There would be no need to publicize such means. However, it would be difficult, in practice, to keep confidential the imposition of such a restriction given that the

institution concerned would have to decline to take deposits, inevitably giving rise to suspicions of difficulties.

The powers of temporary suspension are therefore required to deal with urgent cases where there are concerns that the institution involved would continue to take deposits and where it is unavoidable or indeed desirable that the public should be so informed. The suspension would take immediate effect for up to 14 days. In the meantime, the MA would be considering a longer suspension or revocation and would invite the institution to be heard on such proposed action.

I should assure Members that the right to be heard for institutions will be extended to all other authorization decisions except for instances involving urgent cases of temporary suspension where we believe that they are justified after balancing the interests of existing depositors and potential depositors.

In view of the serious consequences of a temporary suspension, we have striven to have in place a proper system of checks and balances to ensure that the powers will be exercised in a responsible and reasonable manner. The MA is required to have prior consultation with the Financial Secretary before exercising the powers of temporary suspension. In recognition of the concerns expressed by Members and the industry, the MA will have first to convince the Financial Secretary that the proposed action is necessary in the interests of depositors or potential depositors. Alternatively, the Financial Secretary must state that it is, in his opinion, in the public interest for urgent action to be taken. This would be consistent with section 52(1)(d) of the Ordinance (concerning the MA's powers of control) and would reflect the fact that the Financial Secretary would be in a better position than the MA to judge the public interest. This represents a significant tightening of the existing criteria for use of the powers.

At present, section 83 of the Ordinance restricts unsecured advances to directors, controllers and certain employees of institutions and their relatives. The Hong Kong Association of Banks has submitted that the definition of "relative" is too wide. We are sympathetic to the operational difficulties that would be faced by institutions in trying to ensure compliance with the restriction. Amendments will therefore be moved at the Committee stage to narrow the definition. To enable us to react quickly to address any problem that may arise from the proposed revision, the Financial Secretary is empowered to amend the definition by notice in the Gazette, should the need arise.

The proposed Eighth Schedule to the Ordinance sets out the various grounds for the revocation of authorization. We will move amendments at the Committee stage to introduce an additional ground for revocation, that is, when an institution engages in business practices which might threaten Hong Kong's status as an international financial centre. One prominent example of such activities is money laundering. This additional ground is consistent with one of the principal objectives of the Ordinance to promote the general stability and

effective working of the banking system. Furthermore, it is also in line with the MA's role, as set out in the Exchange Fund Ordinance, and other provisions of the Banking Ordinance, relating to the promotion of Hong Kong as an international financial centre.

The Ordinance currently stipulates that all relevant written returns and information have to be filed by institutions in English and books and accounts are also required to be kept in the same language. Similar to certain provisions in the Companies (Amendment) Bill 1995 which was introduced into this Council in April this year, amendments at the Committee stage will be moved to enable the books and returns to be kept or filed in either English or Chinese. This will place the two languages on an equal footing.

Mr President, amendments on the main issues which I have outlined and on those issues mentioned by Mr Peter WONG, together with a host of other detailed amendments of a more technical nature to improve the provisions of the Bill will be moved at the Committee stage.

With these remarks, I commend to Members the Banking (Amendment) Bill 1995.

Question on the Second Reading of the Bill 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.

INLAND REVENUE (AMENDMENT) (NO.2) BILL 1995

Clause 1

FINANCIAL SECRETARY: Mr Chairman, I move that clause 1 be amended as set out in my name in the paper circulated to Members.

I propose to amend clause 1 so that the citation of the Bill when enacted will become "Inland Revenue (Amendment) Ordinance 1995" instead of "Inland Revenue (Amendment) (No.2) Ordinance 1995". This is necessary as the Second Reading debate of the first Inland Revenue (Amendment) Bill introduced in 1995 will only resume on 5 July 1995. That Bill will therefore become the Amendment (No.2) Bill and the present Bill, now described as "No.2", will, if passed today, be the first amendment to the Ordinance in 1995.

Mr Chairman, I beg to move.

Proposed amendment

Clause 1

That clause 1(1) be amended, by deleting "(No.2)".

Question on the amendment proposed, put and agreed to.

Question on clause 1, as amended, proposed, put and agreed to.

Clauses 2 to 15 were agreed to.

SEX DISCRIMINATION BILL

Clauses 3, 4, 5, 9, 12, 16, 17, 22 to 25, 28, 29, 33, 35 to 38, 40 to 48, 52, 53, 58, 60, 61, 62, 65, 66, 67, 70 to 73, 75, 76, 79 and 82 were agreed to.

Clause 39

Question on clause 39 standing part of the Bill proposed.

MR RONALD ARCULLI: Mr Chairman, I rise to speak on the Liberal Party's position on clause 39. As we know, clause 39 makes an employer or an agent liable for the acts of an employee or someone who acts with the implied express authority of another person.

Clause 39(3) provides for a sort of defence to the employer if he proves that he took such steps as were reasonably practicable to prevent the employee from doing that act or from doing, in the course of his employment, acts of that description. Despite this, we have reservations as to how this will work in real life.

The reason for our doubts is because of a comparable situation under the Immigration Ordinance where the controller of a construction site would be guilty of an offence if it is found within such site an illegal immigrant. There is a defence available under that Ordinance if the controller proves that he took all practicable steps to prevent such persons from being on the site. Despite assurances from the Administration that prosecutions would be mounted with discretion, one was nevertheless mounted and found its way to the Court of Appeal.

The contractor was charged and convicted in a magistrate's court and fined \$15,000. The facts are basically simple. Some time in the morning on 11 April 1991, an illegal immigrant came out of the sea at Junk Bay having swam from the mainland to Hong Kong. He went to the construction site where he met an employee and asked for a job. His request was refused. He was told to leave. He did not, but instead he hid himself on the 30th floor of a 34-storey block. There were two almost completed 34-storey blocks on the site. He took off his clothes to dry and went to sleep. Some time that afternoon, the police, in the course of a series of raids which they had been making on construction sites in the area, went to the site and discovered him. As a result of that, the site controller was charged. The illegal immigrant was the only unauthorized person on the site at the time.

The Court of Appeal, despite having considerable sympathy with the defendant company, reminded itself that the Court would be very reluctant to overturn conclusions justifiably drawn from proven primary facts from the court where the case was heard. The Court accepted that all other preventative steps had been taken by the company but concluded that the employment of a single security guard was not enough. The appeal was dismissed and the conviction upheld, but the Court went on to say that each case really depended on its own facts.

Mr Chairman, that was not the end of the matter because the Attorney General sought a review against the fine of \$15,000 on the basis that it was wrong in principle or manifestly inadequate. In dismissing the Attorney General's application for review, the Court had this to say, and I quote: "We are, however, concerned with the culpability of the company here. From the facts we have recited it would appear that the culpability was minimal. The company had successfully taken steps to ensure throughout the entirety of the construction of the building upon this site that no unlawful entrants were employed. It was accepted that these steps were 100% successful. We are somewhat surprised that this prosecution was ever mounted."

Mr Chairman, it is therefore in our view right for us to put down a marker that we have reservations as to how and whether clause 39 will work and work fairly and justly. The Liberal Party is prepared to let it have a run, so to speak, but if it does not work or if it works unfairly or unjustly, we will consider putting in amendments at that stage.

In the circumstances, the Liberal Party will abstain from voting on clause 39.

SECRETARY FOR HOME AFFAIRS: Mr Chairman, clause 39 imposes vicarious liability on employers and principals for the acts of their employees done in the course of employment. I appreciate Members' concern over the implications of this clause upon employers. Nonetheless, this clause already provides for a defence: the employer will not be liable where he proves that he

took such steps as are reasonably practicable to prevent his employee from doing the act. In this connection, the codes of practice to be developed by the Equal Opportunities Commission will provide practical guidance to both employers and employees on their respective rights and obligations under this clause.

Question on the motion put.

Voice vote taken.

THE CHAIRMAN said he thought the "Ayes" had it.

MRS MIRIAM LAU: Mr Chairman, I claim a division.

CHAIRMAN: Committee will proceed to a division.

CHAIRMAN: Would Members please proceed to vote?

CHAIRMAN: Are there any queries? If not, the result will now be displayed.

The Chief Secretary, the Attorney General, the Financial Secretary, Mr HUI Yin-fat, Mr Martin LEE, Mr PANG Chun-hoi, Mr SZETO Wah, Mr TAM Yiu-chung, Mr Andrew WONG, Mr Martin BARROW, Mrs Peggy LAM, Dr LEONG Chi-hung, Mr Jimmy MCGREGOR, Mr Albert CHAN, Mr Vincent CHENG, Mr Marvin CHEUNG, Mr CHEUNG Man-kwong, Rev FUNG Chi-wood, Mr Frederick FUNG, Mr Timothy HA, Mr Michael HO, Dr HUANG Chen-ya, Mr Simon IP, Dr Conrad LAM, Miss Emily LAU, Mr LEE Wing-tat, Mr Eric LI, Mr Fred LI, Mr MAN Sai-cheong, Mr TIK Chi-yuen, Mr James TO, Dr YEUNG Sum, Mr WONG Wai-yin, Dr TANG Siu-tong, Miss Christine LOH, Ms Anna WU, Mr Alfred TSO and Mr LEE Cheuk-yan voted for the motion.

Mr Allen LEE, Mrs Selina CHOW, Mr NGAI Shiu-kit, Mr LAU Wong-fat, Mr Edward HO, Mr Ronald ARCULLI, Mrs Miriam LAU, Mr LAU Wah-sum, Mrs Elsie TU, Mr Peter WONG, Mr Moses CHENG, Mr Steven POON, Mr Henry TANG, Dr Samuel WONG, Dr Philip WONG, Mr Howard YOUNG and Mr James TIEN abstained.

THE CHAIRMAN announced that there were 38 votes in favour of the motion and no vote against it. He therefore declared that the motion was carried.

Clauses 6, 7, 8, 11, 13, 18 to 21, 26, 27, 30, 31, 32, 34, 50, 55, 56 and 69

SECRETARY FOR HOME AFFAIRS: Mr Chairman, I move that the clauses specified be amended as set out under my name in the paper circulated to Members.

The Bill presently renders unlawful discrimination on the grounds of marital status and pregnancy in respect of employment matters. As there is evidence that such discrimination exists in other areas of activities, in particular in the provision of services and the disposal of premises, clauses 6 and 7 will be amended to extend the scope of the Bill to make discrimination on the grounds of marital status and pregnancy unlawful in the following areas of activities: education, provision of goods and services and the management and disposal of premises.

Clause 8 covers discrimination by way of victimization of a person who, for example, takes actions pursuant to the Bill. The definition of victimization is now extended to cover circumstances where a person is victimized because of proceedings and other actions taken by another person under the Bill.

The Chinese text of clauses 11, 18, 21 and 27 are amended to correct the errors in the gazetted Chinese version of the Bill.

Clauses 19 and 30 provide exceptions to employment for religious purposes and the provision of services or facilities at a place occupied for the purpose of an organized religion. These two clauses are now amended so that instead of referring to the religious susceptibilities of a significant number of followers of the religion, reference is now made to the religious susceptibilities common to the followers of that religion.

The amendments to clauses 20 and 32 seek to improve the coverage of sexual harassment under the Bill. In response to the concerns expressed by Members of the Bills Committee, sexual harassment of an employer by an employee, sexual harassment of a principal by a commission agent, sexual harassment of a commission agent by a principal, sexual harassment of a student by another student in an educational establishment and sexual harassment of a teacher by a student will be made unlawful.

The amendments to clauses 13, 34, 50, 55 and 56 are technical amendments to improve the provisions in the Bill.

Clause 69 of the Bill relates to enforcement notices which the Equal Opportunities Commission is empowered to issue. An amendment is made whereby, in addition to the power to issue notices requiring a person to cease specific unlawful discriminatory acts, the Commission can issue enforcement notices requiring the person to cease specific practices that led to the unlawful discrimination.

Proposed amendments

Clause 6

That clause 6(1) be amended, by adding "or IV" after "Part III".

That clause 6(2) be amended, by adding "or IV" after "Part III".

Clause 7

That clause 7 be amended, by adding "or IV" after "Part III".

Clause 8

That clause 8 be amended —

- (a) in the clause heading, by deleting "不公平對待" and substituting "使人受害".
- (b) in subclause (1), by deleting "受不公平對待者" wherever it appears and substituting "受害人士".

That clause 8(1) be amended —

- (a) by adding "or any other person ("the third person")" after "that the person victimized".
- (b) by adding "or the third person, as the case may be," after -
 - (i) "knows the person victimized";
 - (ii) "suspects the person victimized".

Clause 11

That clause 11(2)(i) be amended, by deleting everything after "工作" and substituting "爲需要由一對已婚夫婦分別擔任的 2 份工作的其中之一".

Clause 13

That clause 13(2)(b) be amended, by deleting "hovercraft" and substituting "dynamically supported craft".

Clause 18

That clause 18 be amended —

- (a) in the clause heading, by deleting "僱傭中介行" and substituting "職業介紹所".
- (b) by deleting "僱傭中介行" wherever it appears and substituting "職業介紹所".

Clause 19

That clause 19(1) be amended, by deleting "of a significant number of" and substituting "common to".

That clause 19(2) be amended, by deleting "of a significant number of" and substituting "common to".

Clause 20

That clause 20 be amended, by adding —

"(9) It is unlawful for the principal, in relation to work to which section 18A applies, to sexually harass a woman who is a commission agent.

(10) It is unlawful for a commission agent to sexually harass a woman who is a fellow commission agent.

(11) It is unlawful for a person who is seeking to be, or who is, employed by a woman at an establishment in Hong Kong to sexually harass her.

- (12) It is unlawful for a person residing in any premises to sexually harass a woman -
- (a) employed by another person at an establishment in Hong Kong (and whether or not that other person also resides in those premises or those premises are that establishment); and
 - (b) carrying out in those premises all or part of her work in relation to her employment (and whether or not she also resides in those premises)."

Clause 21

That clause 21(4)(a) be amended, by deleting "*僱傭中介行" and substituting "職業介紹所".

That clause 21(4)(b) be amended, by deleting "僱傭中介行" and substituting "職業介紹所".

Clause 26

That clause 26 be amended, by adding —

"(4) In this section in relation to premises, "power to dispose"(有權處置) includes the power to sell, rent, let, sub-let or otherwise part with possession of those premises."

Clause 27

That clause 27(2)(b) be amended, by adding "共住" before "家庭"

Clause 30

That clause 30(1)(b) be amended, by deleting "of a significant number of" and substituting "common to".

Clause 31

That clause 31 be amended, by deleting subclause (4).

Clause 32

That clause 32 be amended, by adding —

"(3) It is unlawful for a person who is a student of an educational establishment to sexually harass a woman who is seeking to be, or who is, a student of the establishment.

(4) It is unlawful for a person who is seeking to be, or who is, a student of an educational establishment to sexually harass a woman -

(a) who is, or is a member of, the responsible body for; or

(b) who is a member of the staff of,

the establishment."

Clause 34

That clause 34(2) be amended, by deleting "hovercraft" wherever it appears and substituting "dynamically supported craft".

That clause 34(3) be amended, by deleting "hovercraft" wherever it appears and substituting "dynamically supported craft".

Clause 50

That clause 50(1) be amended, by deleting "within the meaning of section 49".

Clause 55

That clause 55(3)(a) be amended, by deleting "Chairman" and substituting "Chairperson".

That clause 55(5) be amended, by deleting "Chairman" and substituting "Chairperson".

Clause 56

That clause 56(2)(g) be amended, by deleting "承辦" and substituting "承擔".

Clause 69

That clause 69(2)(a) be amended, by adding after "act" —

"(which may include discontinuing or changing any of his practices or other arrangements which occasioned those acts, in particular to avoid any repetition thereof)".

That clause 69 be amended, by deleting subclause (5).

Question on the amendments proposed, put and agreed to.

Question on clauses 6, 7, 8, 11, 13, 18 to 21, 26, 27, 30, 31, 32, 34, 50, 55, 56, and 69, as amended, proposed, put and agreed to.

Clause 1

DR LEONG CHE-HUNG: Mr Chairman, I move that clause 1 be amended as set out under my name in the paper circulated to Members.

The proposed amendment is to bring provisions of the Ordinance into operation on 1 January 1996 or any earlier dates to be appointed by the Secretary for Home Affairs.

Under the provision in the Bill, the Ordinance is to come into operation on a date to be appointed by the Secretary for Home Affairs, and different dates may be appointed for different provisions. The Administration maintains the view that commencement dates of legislation should tie in with operational set-up. For the Sex Discrimination Bill, it is necessary to set up the Equal Opportunities Commission (EOC) first. The commencement of the Ordinance would depend upon whether the EOC considers itself ready to enforce the provisions in the Ordinance. The Administration has also stated that it will withhold the Bill's employment provisions from operation until the EOC promulgated a code of practice for employment. It estimates this will take about nine months. This of course will have to follow the establishment of the EOC. Suggestions have been made to the Administration to start drafting the framework of the code of practice so that the EOC can be given an easy start when it is established, even if it was not considered.

All in all, the Bills Committee feels that there is an element of procrastination within the Government. Members of the Bills Committee are generally therefore concerned about the time required for the establishment of the EOC and issue of the codes of practice. They consider it necessary to set a firm operational date for the Ordinance.

*Proposed amendment***Clause 1**

That clause 1 be amended —

- (a) in subclause (2), by deleting "This" and substituting "Subject to subsection (3), this".
- (b) by adding-

"(3) This Ordinance shall come into operation on a day not later than 1 January 1996."

Question on the amendment proposed.

MS ANNA WU: Mr Chairman, the Government has argued that bringing the Bill into operation before the Commission is ready would be disastrous for the Commission. But the proposed amendment already provides six months for the Commission to prepare itself before the Bill commences. The suggestion that the Commission will then be swamped by a sudden deluge of complaints in the first two or three months of the law's operation strikes me as deeply unrealistic. As a practical matter, the Commission's first task will be promoting the Bill. It will be trying to make the public aware of their new rights, not fending off a public that is overeager to exercise them.

I do not think that readiness of the Commission is the real source of controversy in regard to this amendment. The real issue is the Government's plan to further delay the employment provisions of the Bill. The Government has made it clear that, unless forced by this amendment, it will withhold the employment provisions from operation until the Commission completes a code of practice for employment a total delay of well over a year by the Government's own estimate.

In fact, the time it will take to promulgate the code is indefinite because it is not under the control of the Government, the Commission, or the Council. Clause 61 of the Bill gives the code a peculiar (and in my view, unnecessary) kind of quasi-legal effect. Because of this, clause 61 also provides an extremely cumbersome procedure for the Commission to produce the code. Although there has already been thorough public and legislative consideration of the Bill itself, the Commission must take the draft code through a new round of public consultation, formal gazettal, and presentation (possibly more than once) to the Council.

The complex procedure to produce the code provides those who oppose the Bill with a whole new opportunity for strategic delay.

While a code is being prepared, there is nothing to prevent the Commission from simply and rapidly issuing guidelines which do not have the quasi-legal effect of the code. Such guidelines have been extensively and effectively used by many Commissions in other countries, for example, Australian Commissions and the United States Equal Employment Opportunity Commission and many other examples.

The employment provisions of this are without doubt one of the most important and urgently needed parts. Therefore I support this amendment and I hope the employment provisions will come into effect quickly.

Thank you, Mr Chairman.

SECRETARY FOR HOME AFFAIRS: As I have explained at the Second Reading debate, commencement dates of legislation should tie-in with the operational set-up for implementing the legislation. In the context of the Sex Discrimination Bill, before bringing all the provisions of the Bill into force, it is necessary to establish first the Equal Opportunities Commission.

Furthermore, it is our intention that the provisions in relation to employment matters should not come into effect until the relevant codes of practice have been prepared by the Equal Opportunities Commission. The codes of practice on employment will provide important guidelines for employers, employees and those involved in the enforcement of the legislation on how to comply with the provisions in the Bill. For example, it will provide advice on how to develop a working environment free from sex discrimination and sexual harassment.

To require all the provisions of the Bill to come into force by 1 January 1996 is inflexible and unrealistic. This approach disregards the operational realities of the implementation of the legislation and would pre-empt the work of the Equal Opportunities Commission.

Mr Chairman, the Administration objects to this amendment and will vote against it.

DR LEONG CHE-HUNG: I would like to appeal to Members to support this amendment as I do believe that a concrete timetable was a first move as a commitment to see an Equal Opportunities Commission in function.

Question on the amendment put.

Voice vote taken.

CHAIRMAN: Committee will proceed to a division.

CHAIRMAN: Would Members please proceed to vote?

CHAIRMAN: Are there any queries? If not, the result will now be displayed.

Mr HUI Yin-fat, Mr Martin LEE, Mr SZETO Wah, Mr TAM Yiu-chung, Dr LEONG Che-hung, Mr Albert CHAN, Mr CHEUNG Man-kwong, Rev FUNG Chi-wood, Mr Frederick FUNG, Mr Michael HO, Dr HUANG Chen-ya, Dr Conrad LAM, 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, Miss Christine LOH, Ms Anna WU and Mr LEE Cheuk-yan voted for the amendment.

The Chief Secretary, the Attorney General, the Financial Secretary, Mr Allen LEE, Mrs Selina CHOW, Mr NGAI Shiu-kit, Mr PANG Chun-hoi, Mr Andrew WONG, Mr LAU Wong-fat, Mr Edward HO, Mr Ronald ARCULLI, Mr Martin BARROW, Mrs Peggy LAM, Mrs Miriam LAU, Mr LAU Wah-sum, Mr Jimmy MCGREGOR, Mrs Elsie TU, Mr Peter WONG, Mr Vincent CHENG, Mr Moses CHENG, Mr Marvin CHEUNG, Mr Timothy HA, Mr Simon IP, Dr LAM Kui-chun, Mr Eric LI, Mr Steven POON, Mr Henry TANG, Dr Samuel WONG, Dr Philip WONG, Mr Howard YOUNG, Dr TANG Siu-tong, Mr James TIEN and Mr Alfred TSO voted against the amendment.

THE CHAIRMAN announced that there were 23 votes in favour of the amendment and 33 votes against it. He therefore declared that the amendment was negatived.

DR LEONG CHE-HUNG: Mr Chairman, as Standing Order 46(4) and (5) stipulate that any proposed new clause shall be considered after the clauses of a Bill have been disposed of, may I seek leave to move that Standing Order 46(4) and (5) be suspended in order that new clause 2A be considered ahead of the amendments to clause 2.

CHAIRMAN: As only the President may give consent to move a motion without notice to suspend Standing Orders, your request, Dr LEONG, cannot be dealt with in Committee. I therefore order that Council will now resume.

Council then resumed.

PRESIDENT: Dr LEONG, you have my consent.

DR LEONG CHE-HUNG: Mr President, I move that Standing Order 46(4) and (5) be suspended to enable the Committee of the whole Council to consider new clause 2A before the amendment to clause 2.

Question on the motion proposed, put and agreed to.

Council went into Committee.

New clause 2A Relevant international
 obligations and instruments

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

DR LEONG CHE-HUNG: Mr Chairman, I move that new clause 2A as set out under my name in the paper circulated to Members be read the Second time. This new clause directs the Ordinance to be interpreted to give effect to relevant international obligations including the ICCPR, ICESCR and CEDAW.

Question on the Second Reading of the clause proposed.

MS ANNA WU: This clause is one of the three clauses that the Bills Committee agreed should be added to the Bill in order to link it clearly to internationally-recognized human rights standards relating to discrimination, for example, under the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW) and the International Covenant on Civil and Political Rights. The Government blocked both the other clauses on the grounds of their financial implications, which amounted to less than \$5 million by the Hong Kong Government's own estimates. For an administration with a professed commitment both to human rights standards and to treaty obligations, this Government puts a surprisingly low price tag on them.

New clause 2A is an ordinary interpretation clause of a type with which the courts are quite familiar. Where the terms of the Bill are clear, the courts will follow them and this clause will be irrelevant. New clause 2A will come into play only in situation where the detailed effect of the Bill is ambiguous. In such situations, new clause 2A directs the Courts to move discrimination law in Hong Kong closer to, not away from, the international standards of equal treatment that have been evolving under major human treaties for many decades now.

Judges already have the power to do this, and indeed ought to do so under the Ordinary rules of statutory interpretation. This clause serves as a useful reminder and provides clarity about the particular international instruments that are relevant to the Bill.

It has been asserted that inserting reference to international instruments into domestic Ordinances is irregular. This is decidedly not the case. May I remind Members of the preamble to the Internationally Protected Persons and Taking of Hostages Ordinance, enacted by this Council in March this year:

"An Ordinance to provide for the implementation of both the Convention of the Prevention and Punishment of Crimes against Internationally Protection Persons, including Diplomatic Agents and the International Convention against the Taking of Hostages "

To continue a casual survey of Ordinances enacted by this Council in the past six months:

1. The Dumping at Sea Ordinance, also enacted in March, defines certain terms by express reference to the Convention on the Prevention of Marine Pollution by Dumping of Wastes.
2. Two amendment Bills enacted in January inserted new references to international instruments into the Industrial Training (Clothing Industry) Ordinance and into the Animals and Plants (Protection of Endangered Species) Ordinance.
3. The Airport Authority Bill makes frequent references in its substantive provisions to "international obligations".
4. The Carriage of Goods by Sea Ordinance goes much further than the proposed amendment by giving direct, legal force to the International Convention for the Unification of Certain Rules of Law relating to Bills of Lading.

During the past few days' arguments over financial implications, the Government emphatically asserted that this particular Bill, unlike those I have just mentioned, is not intended by the Government to give effect to international obligations. This will come as a surprise to members of the public, who may remember that the 3 June 1994 GIS press release stated that the Secretary for Home Affairs said the following and I quote, "the Secretary for Home Affairs, "went on to say that institution of sex discrimination legislation is a means to implement the provisions in CEDAW."."

It is only fair and desirable that the Bill should actually be interpreted according to the standards that it will be purported to implement. For these reasons, I support the amendment and I would hope Members would equally do SO.

Thank you, Mr Chairman.

SECRETARY FOR HOME AFFAIRS: Mr Chairman, the proposed amendment by Dr LEONG would link the objectives and the provisions of the Sex Discrimination Bill with certain international treaties and instruments. The new clause 2A is based on the view that the principal purpose of the Sex Discrimination Ordinance is to give effect, and we maintain that view, to the international treaty obligations on Hong Kong under the ICCPR, ICESCR and CEDAW when CEDAW is extended to Hong Kong. As I have made it clear, this is not the Administration's intent. Members may wish to note that neither the long title nor the content of the Bill suggest that the Ordinance is enacted for such purposes.

Mr Chairman, the Administration objects to this amendment and will vote against it.

MR JAMES TO (in Cantonese): Mr Chairman, can I speak in response to the Administration's amendment to this clause?

CHAIRMAN: The convention is of course that the Administration has the last word but you are not prevented from speaking, Mr TO.

MR JAMES TO (in Cantonese): Mr Chairman, I am saying this because, regardless whether we are in favour of or against a particular clause, if the Government made no explanation at the Bills Committee, then it might be the first time that some Members come to learn of the views of the Government, or it might even be the first time members or even the Chairman of the Committee come to learn of the Government's explanation on why it objects to this clause. It is for this reason that I want to comment on it.

Mr Chairman, I was shocked on hearing the Government's remark. The Government said the principal purpose of this Ordinance was not to give effect to relevant international treaty obligations in Hong Kong. The problem is the Government only stated what it was not. I could not help asking: being an accountable government, should it not make it clear right from the very beginning the reason why it would propose this legislation, instead of merely saying that it was not aimed to give effect to international treaties? I think that the Government has not made any response as to the amendment, nor has the Government spelled out the principal purpose of this piece of legislation.

SECRETARY FOR HOME AFFAIRS: Mr Chairman, for the reasons that I have earlier stated, we maintain the view that we will object to this amendment and will vote against it.

Question on the motion put.

Voice vote taken.

THE CHAIRMAN said he thought the "Noes" had it.

DR LEONG CHE-HUNG: I claim a division.

CHAIRMAN: Committee will proceed to a division.

CHAIRMAN: Would Members please proceed to vote?

CHAIRMAN: We seem to be one short of the head count. Are there any queries? If not, the result will now be displayed.

Mr HUI Yin-fat, Mr Martin LEE, Mr SZETO Wah, Dr LEONG Che-hung, Mr Albert CHAN, Mr CHEUNG Man-kwong, Rev FUNG Chi-wood, Mr Frederick FUNG, Mr Michael HO, Dr HUANG Chen-ya, Dr Conrad LAM, 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, Miss Christine LOH, Ms Anna WU and Mr LEE Cheuk-yan voted for the motion.

The Chief Secretary, the Attorney General, the Financial Secretary, Mr Allen LEE, Mrs Selina CHOW, Mr NGAI Shiu-kit, Mr PANG Chun-hoi, Mr TAM Yiu-chung, Mr Andrew WONG, Mr LAU Wong-fat, Mr Edward HO, Mr Ronald ARCULLI, Mr Martin BARROW, Mrs Peggy LAM, Mrs Miriam LAU, Mr LAU Wah-sum, Mr Jimmy MCGREGOR, Mr Peter WONG, Mr Vincent CHENG, Mr Moses CHENG, Mr Marvin CHEUNG, Mr Timothy HA, Mr Simon IP, Dr LAM Kui-chun, Mr Eric LI, Mr Steven POON, Mr Henry TANG, Dr Samuel WONG, Dr Philip WONG, Mr Howard YOUNG, Dr TANG Siu-tong, Mr Roger LUK, Mr James TIEN and Mr Alfred TSO voted against the motion.

Mrs Elsie TU abstained.

THE CHAIRMAN announced that there were 22 votes in favour of the motion and 34 votes against it. He therefore declared that the motion was negatived.

Clause 2

SECRETARY FOR HOME AFFAIRS: Mr Chairman, I move that clauses 2(1) and 2(5) be amended and that clause 2 be further amended by adding subclauses 2(8) and 2(9) as set out under my name in the paper circulated to Members.

The amendment to clause 2(1) defines, inter alia, clubs and commission agents in the Bill. The intention is to cover the activities of clubs in the Bill. A club is defined as an association of more than 30 persons and which sells or supplies liquor for consumption on its premises.

Clause 2(5) states what constitutes sexual harassment. In response to suggestions put forward by Members of the Bills Committee, an amendment is suggested to widen the definition of sexual harassment so that it will also cover the situation where a person, alone or together with other persons, engages in conduct of a sexual nature which creates a sexually hostile work environment for another person.

Clauses 2(8) and (9) adds a new definition of "existing statutory provision".

Proposed amendment

Clause 2

That clause 2(1) be amended —

- (a) by deleting the definition of "Chairman" and substituting -

Chairperson" (主席) means the Chairperson of the Commission appointed under section 55(3)(a);".

- (b) in the definition of "educational establishment" by deleting "of Part 1".

- (c) by adding -

"club" (會社) means an association, incorporate or unincorporate, of not less than 30 persons associated together for social, literary, cultural, political, sporting, athletic or other lawful purposes that -

- (a) provides and maintains its facilities, in whole or in part, from the funds of the association; and
- (b) sells or supplies liquor for consumption on its premises;

"commission agent" (佣金經紀人) means commission agent as construed in accordance with section 18A;

"committee of management" (管理委員會), in relation to a club, means the group or body of persons (howsoever described) that manages the affairs of that club;

"dynamically supported craft" (藉動力而獲得支承的航行器) has the same meaning as in the Shipping and Port Control Ordinance (Cap.313);".

That clause 2(1) be amended, in the definition of "employment agency", by deleting "僱傭中介行" and substituting "職業介紹所".

That clause 2(3) be amended, by deleting "地方法院發出執行通知或" and substituting "執行通知發出或地方法院".

That clause 2 be amended —

- (a) by deleting subclause (5) and substituting -

"(5) For the purposes of this Ordinance, a person (howsoever described) sexually harasses a woman if -

- (a) the person -
 - (i) makes an unwelcome sexual advance, or an unwelcome request for sexual favours, to her; or
 - (ii) engages in other unwelcome conduct of a sexual nature in relation to her,

in circumstances in which a reasonable person, having regard to all the circumstances, would have anticipated that she would be offended, humiliated or intimidated; or

- (b) the person, alone or together with other persons, engages in conduct of a sexual nature which creates a sexually hostile or intimidating work environment for her.

(5A) For the avoidance of doubt, it is hereby declared that paragraph (b) of subsection (5) shall not apply for the purposes of sections 32 and 33."

- (b) by adding-

"(8) Subject to subsection (9), in this Ordinance "existing statutory provision" (現有法例條文) means any provision of -

- (a) any Ordinance enacted before this Ordinance was enacted;
- (b) any subsidiary legislation made-
 - (i) under an Ordinance enacted before this Ordinance was enacted; and
 - (ii) before, on or after this Ordinance was enacted.

(9) Where an Ordinance enacted after this Ordinance was enacted re-enacts (with or without modifications) a provision of an Ordinance enacted before this Ordinance was enacted, then that provision as re-enacted shall be treated for the purposes of subsection (8) as if it continued to be contained in an Ordinance enacted before this Ordinance was enacted."

Question on the amendment proposed, put and agreed to.

CHAIRMAN: Dr LEONG Che-hung, as the Second Reading of new clause 2A is not agreed, you can no longer move your amendment to clause 2.

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

SECRETARY FOR HOME AFFAIRS: Mr Chairman, as Standing Order 46(4), (5) and (7) stipulate that any proposed new schedule shall be considered after the clauses and schedules of a Bill have been disposed of, may I seek leave to move that Standing Order 46(4), (5) and (7) be suspended in order that new Schedule 1A may be considered ahead of the amendment to clause 10(4), and the addition of subclause 10(4A) to clause 10 as well as amendments to clauses 14, 15 and 81; Schedule 2 ahead of the amendment to clause 49; Schedule 4 ahead of the amendment to clause 54; and the amendment to clause 59 after new clause 80A.

Council then resumed.

PRESIDENT: Secretary for Home Affairs, you have my consent.

SECRETARY FOR HOME AFFAIRS: Mr President, I move that Standing Order 46(4), (5) and (7) be suspended to enable the Committee of the whole Council to consider new Schedule 1A before the amendment to clause 10(4), and the addition of subclause 10(4A) to clause 10 as well as amendments to clauses 14, 15 and 81; Schedule 2 before the amendment to clause 49; Schedule 4 before the amendment to clause 54; and the amendment to clause 59 after new clause 80A.

Question on the motion proposed, put and agreed to.

Council went into Committee.

New Schedule 1A	Provision in Relation to Death or Retirement to which this Ordinance shall apply
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Schedule read the First time and ordered to be set down for Second Reading pursuant to Standing Order 46(7).

SECRETARY FOR HOME AFFAIRS: Mr Chairman, I move that new Schedule 1A as set out under my name in the paper circulated to Members be read the Second time.

Clause 10(4) of the Bill presently provides that it would not be unlawful for the employer to treat male and female employees differently concerning "provision in relation to death or retirement".

Provisions in relation to death and retirement benefits are a complicated matter. Employers presently provide different types of retirement schemes and different death benefits. Such schemes and benefits may render different treatment to male and female employees. For example, there are a number of international firms that provide retirement benefits under existing schemes designed by their head offices, which may have different treatment for females and males. The purpose of the exception in clause 10(4) is to ensure that such arrangements would not be made unlawful by virtue of the provisions in the Bill.

Members of the Bills Committee have expressed the view that the exception should only apply to existing retirement schemes. We agree with this view. In line with this principle, we propose an amendment to add a new Schedule 1A in the legislation, in which provisions in relation to death or retirement benefits that are subject to the Ordinance will be specified. Before determining these specifications, we would need to consult the parties involved in the retirement scheme business to ensure appropriate coverage and avoid inadvertently creating undue funding or operational problems.

Question on the motion proposed.

MS ANNA WU: Mr Chairman, it is entirely reasonable that vested pension interests and the like should not be disturbed by this Bill. Therefore I joined the Bills Committee in supporting the principle of a "grandfather clause" exception for death and retirement benefits when it was first proposed. In fact, it was a proposal made by the Bills Committee and accepted by the Government.

However, when the Government proposed a grandfather clause to the Bills Committee, it was also naturally my understanding that those benefits not protected by it would be subject to the law. This is not the effect of the very confusing amendments that the Secretary for Home Affairs presented (but did not explain) to the Bills Committee on his last appearance before the Bills Committee, shortly before demanding Second Reading resumption for the Bill in the shortest possible time.

As drafted by the Government, benefit provisions placed on Schedule 1A, which is now empty, will simultaneously become subject to the law and to the grandfather clause. Until the Government sees fit to place something on this Schedule, however, all benefits are exempt under the Bill. I note that the Government's amendments give this Council no role either in placing items on the Schedule or in approving such placements. I also note that the Government has no timetable for filling the Schedule. What seemed to be a reasonable proposal has emerged instead as perhaps the most transparent of the many delaying tactics deployed by the Government.

I will not oppose this amendment, however, because at least it provides the theoretical means for the Government to implement its proposal to the Bills Committee at some unspecified future date. This is not much, but it is enough to justify an abstention.

I do wish to remind Members that there is a later amendment relating to the same issue, providing to the Government the period of one-year review subject to an extendable period of another year relating to retirement and death benefits.

Thank you, Mr Chairman.

MR JAMES TO (in Cantonese): Regarding the remarks made by the Honourable Ms Anna WU in connection with this part, we will abstain from voting.

Question on the motion put.

Voice vote taken.

THE CHAIRMAN said he thought the "Ayes" had it.

MR JAMES TO: I claim a division.

CHAIRMAN: Committee will proceed to a division.

CHAIRMAN: Would Members please proceed to vote?

CHAIRMAN: Are there any queries? If not, the result will now be displayed.

The Chief Secretary, the Attorney General, the Financial Secretary, Mr Allen LEE, Mrs Selina CHOW, Mr NGAI Shiu-kit, Mr TAM Yiu-chung, Mr Andrew WONG, Mr LAU Wong-fat, Mr Edward HO, Mr Ronald ARCULLI, Mr Martin BARROW, Mrs Peggy LAM, Mrs Miriam LAU, Mr LAU Wah-sum, Mr Jimmy McGREGOR, Mrs Elsie TU, Mr Peter WONG, Mr Vincent CHENG, Mr Moses CHENG, Mr Marvin CHEUNG, Mr Timothy HA, Dr LAM Kui-chun, Mr Steven POON, Mr Henry TANG, Dr Samuel WONG, Dr Philip WONG, Mr Howard YOUNG, Dr TANG Siu-tong, Mr Roger LUK, Mr James TIEN and Mr Alfred TSO voted for the motion.

Mr HUI Yin-fat, Mr Martin LEE, Mr SZETO Wah, Dr LEONG Che-hung, Mr Albert CHAN, Mr CHEUNG Man-kwong, Rev FUNG Chi-wood, Mr Frederick FUNG, Mr Michael HO, Dr HUANG Chen-ya, Mr Simon IP, Dr Conrad LAM, 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, Miss Christine LOH, Ms Anna WU and Mr LEE Cheuk-yan abstained.

THE CHAIRMAN announced that there were 32 votes in favour of the motion and no votes against it. He therefore declared that the motion was carried.

New schedule 1A read the Second time.

SECRETARY FOR HOME AFFAIRS: Mr Chairman, I move that new Schedule 1A be added to the Bill.

Proposed addition

New Schedule 1A

That the Schedule be amended, by adding —

"SCHEDULE 1A [ss.10(4A), 14(4A),
15(5) & 81]

PROVISION IN RELATION TO DEATH OR RETIREMENT
TO WHICH THIS ORDINANCE
SHALL APPLY

PART 1

PROVISION TO WHICH SECTION 10(1)(b)
AND (2) SHALL APPLY

PART 2

PROVISION TO WHICH SECTION 14(1)(b)
AND (d) SHALL APPLY

PART 3

PROVISION TO WHICH SECTION 15
SHALL APPLY

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

Clause 10

SECRETARY FOR HOME AFFAIRS: Mr Chairman, I move that clause 10(2)(a) be amended and that clause 10 be further amended by adding clause 10(2)(aa) as set out under my name in the paper circulated to Members.

The amendment to clause 10(2)(a) is to correct an error in the gazetted version of the Bill. The amendment to clause 10(2)(aa) is to put beyond doubt that it is unlawful for a person, in relation to employment, to discriminate against another person in the terms of employment.

*Proposed amendment***Clause 10**

That clause 10(2)(a) be amended, by deleting "; or" and substituting a semicolon.

That clause 10(2) be amended, by adding —

"(aa) in the terms of employment he affords her; or".

Question on the amendment proposed, put and agreed to.

SECRETARY FOR HOME AFFAIRS: Mr Chairman, I move that subclause (4) of clause 10 be amended and that subclause (4A) be added to clause 10 as set out under my name in the paper circulated to Members.

The amendment in respect of clause 10(4) relates to the provision of death or retirement benefits. For the reasons I have previously given, I move that clause 10(4) be amended and that clause 10 be further amended by adding subclause 10(4A) as set out under my name in the paper circulated to Members.

Proposed amendment

That clause 10(4) be amended, by deleting "Subsections" and substituting "Subject to subsection (4A), subsections".

That clause 10 be further amended, by adding —

"(4A) Subsection (1)(b) and (2) shall apply to provision in relation to death or retirement specified in Part 1 of Schedule 1A except in so far as any such provision made for a woman before the commencement of this section continues for that woman on and after that commencement."

Question on the amendment proposed.

MS ANNA WU: Thank you, Mr Chairman. I will be very brief. I have already explained the effect of these amendments in reference to the new Schedule 1A. They have no effect at all. They might have some effect in the future, if and when the Government adds an item or two to Schedule 1A. Then they will affect those items. This is of course not enough for me not to oppose the amendment. Therefore, I abstain.

Question on the Secretary for Home Affairs's amendment to subclause (4) of clause 10 and the addition of subclause (4A) to clause 10 put.

Voice vote taken.

THE CHAIRMAN said he thought the "Ayes" had it.

MR JAMES TO: I claim a division.

CHAIRMAN: Committee will proceed to a division.

CHAIRMAN: Would Members please proceed to vote?

CHAIRMAN: Are there any queries? If not, the result will now be displayed.

The Chief Secretary, the Attorney General, the Financial Secretary, Mr Allen LEE, Mrs Selina CHOW, Mr PANG Chun-hoi, Mr TAM Yiu-chung, Mr Andrew WONG, Mr LAU Wong-fat, Mr Edward HO, Mr Ronald ARCULLI, Mr Martin BARROW, Mrs Peggy LAM, Mrs Miriam LAU, Mr LAU Wah-sum, Mr Jimmy MCGREGOR, Mrs Elsie TU, Mr Peter WONG, Mr Vincent CHENG, Mr Moses CHENG, Mr Martin CHEUNG, Mr Timothy HA, Dr LAM Kui-chun, Mr Eric LI, Mr Steven POON, Mr Henry TANG, Dr Samuel WONG, Dr Philip WONG, Mr Howard YOUNG, Dr TANG Siu-tong, Mr Roger LUK, Mr James TIEN and Mr Alfred TSO voted for the amendment.

Mr HUI Yin-fat, Mr Martin LEE, Mr SZETO Wah, Dr LEONG Che-hung, Mr Albert CHAN, Mr CHEUNG Man-kwong, Rev FUNG Chi-wood, Mr Frederick FUNG, Mr Michael HO, Dr HUANG Chen-ya, Mr Simon IP, Dr Conrad LAM, 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, Miss Christine LOH, Ms Anna WU and Mr LEE Cheuk-yan abstained.

THE CHAIRMAN announced that there were 33 votes in favour of the amendment and no votes against it. He therefore declared that the amendment was carried.

CHAIRMAN: Dr LEONG Che-hung has given notice to move amendments to subclauses (6) and (8) of clause 10. The Secretary for Home Affairs has also given notice to move an amendment to subclause (6) of clause 10. I will call upon Dr LEONG to move his amendment first in accordance with Standing Orders 25(4) and 46(2).

DR LEONG CHE-HUNG: Mr Chairman, I move that subclause (6) of clause 10 be amended and subclause (8) of clause 10 be deleted as set out under my name in the paper circulated to Members.

The Bills Committee proposes to amend the transitional period of five years for small business establishment to expire in one year after enactment of the Ordinance, subject to extension by Legislative Council resolution for another year. The amendment will also delete the Governor's power to vary the date of expiry.

The Bills Committee considers that a grace period of five years, or even three years, which the Administration will move subsequently, is too lengthy.

Mr President, the Honourable Jimmy McGREGOR has raised doubt on the practicality of this particular amendment. The details have actually been clearly deliberated, and the majority of the Bills Committee is of view that they do not see the need for three years, and definitely not five years, for any business establishment to comply with the Ordinance.

Mr President, deputations from the business sector and employers told the Bills Committee that they were against discrimination, and some have already started to introduce codes of practices. If they are genuine in anti-discrimination, let them show their will by supporting a quicker pace of taking this Ordinance into effect.

Proposed amendment

That clause 10 be amended —

- (a) by deleting subclause (6) and substituting -

"(6) Subject to subsection (6A), subsection (3) shall expire on the 1st anniversary of the day on which this Ordinance is enacted.

(6A) Prior to the expiry of subsection (3) under subsection (6) the Legislative Council may, by resolution, amend subsection (6) to extend subsection (3) for a period of one year."

- (b) by deleting subclause (8).

- (c) by adding -

"(8) Subject to subsection (9), subsection (4) shall expire on the 1st anniversary of the day on which this Ordinance is enacted.

(9) Prior to the expiry of subsection (4) under subsection (8) the Legislative Council may, by resolution, amend subsection (8) to extend subsection (4) for a period of one year."

Question on the amendment proposed.

MR JIMMY McGREGOR: Mr Chairman, I simply make the point that I made earlier that some provisions such as this one would do in my view considerable damage to the business sector. We are speaking about tens of thousands of companies which have to make adjustments, which have at the moment a cultural style, a cultural and operational system which is nothing like the larger

companies. A very large company can take this legislation, can very easily put it into effect, if it has to, within a relatively short space of time and would have legal advice to do so, and no doubt would do so carefully and in such a way that the law would not subsequently be broken. They would be clear of any problem.

The small company is in a very different situation. A small company with four or five people may have prejudices which are cultural on the one hand, or which may be operational on the other. And these companies have to be given time to adjust to these requirements. There are tens of thousands of such companies in Hong Kong and they employ probably at least half of the entire working population. So what I have said consistently through the discussion of this issue in the Bills Committee over many many meetings is that I oppose the application of this legislation in anything less than three years. I might have been prepared to accept three years, but the Government has suggested five. And I would say if it was five it would have been well. I would be prepared to accept it if it was three, but certainly not the one year.

Thank you, Mr Chairman.

MS ANNA WU: Mr Chairman, the justification for the Bill's temporary exception for small firms rests jointly on two propositions: First, that small employers have special difficulties in complying with the Bill and second, that these difficulties will be alleviated, not merely deferred, by a temporary exception. There is little reason to accept the first proposition, and less to accept the second.

Casual assertions should not be enough to justify the exception. The exception deprives some 30% of the Hong Kong's working population of any protection under what may be the Bill's most important provisions. This covers roughly 70% of employers, however. Sexual harassment will remain legal in small firms. Gross disparities in pay will remain legal in small firms. That the Bills Committee accepted the exception at all is a significant concession. Its duration must be carefully considered and stringently limited.

Instead, it has become a matter for ad hoc bargaining. The five years of exemption originally provided by the Bill appears to have been based on the duration of the comparable exception in the United Kingdom. The duration of the exception in the United Kingdom, however, was not set by any careful consideration of the needs of small employers. The United Kingdom exception lasted five years because it took that long to secure a final court judgement that the exception contravened the non-discrimination standards embodied in European law. This event established the only thing that can be said with certainty about the exception: It certainly contravenes the spirit and perhaps, depending on its duration, the letter of the international standards the Bill is meant to uphold.

I understand that some Members have been told that I privately rejected an offer of to reduce the exception's duration to two years because I insisted on one year or nothing. No such offer was ever made to me. If it had been, I would have referred it to the Bills Committee, to which it ought to have been made in the first place. In the event, the Bills Committee's own suggestion, which I support, is extendable to a second year. If the Administration confirms that it, in fact, had offered two years to any Members of this Council, then it should so state now so that Members will consider that fact because that would be the same as one year extendable by another.

The Bills Committee's suggestion that the exception last for one year, extendable to a second year by Legislative Council resolution, allows the Council to examine how the exception actually operates in practice. It is the only proposal that does not set an essentially arbitrary duration. For these reasons, I support this amendment and will support the similar amendments proposed to clause 14 and clause 15.

Thank you, Mr Chairman.

MR JAMES TIEN (in Cantonese): Mr Chairman, regarding such bills as the Sex Discrimination Bill, I consider civic education to be more important than legislation. Take the Clean Hong Kong Campaign and the Anti-Corruption Campaign launched over the years in the territory as examples. Even if both campaigns had the backing of legislation, were the authorities indeed able to catch all offenders?

The Honourable Jimmy McGREGOR also pointed out today that for the tens of thousands of companies in Hong Kong, over 80% of them hire fewer than five employees. We can figure out what categories these companies fall into. They may be the "cooked food stalls", which cook and sell won ton noodles. These companies may only employ one, two, three or four workers. Our present Bill covers many matters, the manner of hiring employees, the promotion issue and assignment of work being some of them. Under such circumstance, I think that until big companies and then medium-sized companies have all pursued this direction and, I hope, have done their very best, can the small companies gradually achieve this goal. The United Kingdom made this law in 1995 which allowed an exemption period of five years but has been able to achieve its goal only in recent years.

Although none of the members of the Federation of Hong Kong Industries and the Chambers of Commerce has employed fewer than five workers, I believe that Hong Kong's economic momentum mainly comes from these "wage earners" turned small entrepreneurs. They hope to become successful industrialists and businessmen one day.

On grounds of the above reasons, Mr Chairman, the Liberal Party and the industrial and commercial sector oppose this amendment and the Government's amendment.

MR LEE CHEUK-YAN (in Cantonese): Mr Chairman, I am fully aware of the difficulties small enterprises are encountering as related by the Honourable James TIEN just now. But I personally believe that solutions are available. In spite of the fact that the legislation itself contains many clauses, implementing the legislation is in itself a learning process, during which many procedures will, at the end, have to count on the Equal Opportunities Commission for conciliation.

Let me take "cooked food stalls" as an example. Cooked food stalls do not place advertisements, so there is little problem in this areas. When it comes to inequality in staff promotion, if I have to educate staff working at cooked food stalls to understand this legislation, I believe that even five years is not enough, or it might take 10 years. Therefore, we do not have to worry about this, because promoting civic education to employees takes a long time too. But if cooked food stalls have employees who are so smart as to understand and know how to make use of this legislation, that is actually a good thing. The legislation provides that employees have to lodge their complaints to the Equal Opportunities Commission and the Equal Opportunities Commission will then try to conciliate the matter and invite the employers to discuss a settlement. Therefore, the process of conciliation is also a very important educational process. If we postpone the date at which the legislation will come into effect, then there will be no Equal Opportunities Commission to help conciliate the employers and employees of small enterprises, and it will also mean that there will all along be no education.

I hope we will understand that this particular legislation will not have great impact on small enterprises. On the contrary, it is the beginning of an education process. I hope Members will support the provision relating to small enterprises coming into effect in one year's time.

SECRETARY FOR HOME AFFAIRS: Mr Chairman, under clause 10(6) of the Bill, small business establishments with not more than five persons are given a five-year transition period to adapt to the new requirements set out in the legislation.

I have already mentioned this in my speech summing up the Second Reading debate. Anti-discrimination legislation is a new area of law which will have an extensive impact upon employers. It is important to provide for a reasonable transitional period so that small businesses will have the opportunity to better understand the operations of the Bill and benefit from the experience of large business establishments. The Administration objects to Dr the Honourable LEONG Che-hung's amendment for the following reasons:

First, the one year transition period proposed is not adequate to allow small business establishments to familiarize themselves with the new requirements of the law and implement changes in employment policies and practices. Secondly, the proposal of a one-year extension by the Legislative Council would create an uncertain business environment for employers.

Dr the Honourable LEONG Che-hung's proposed deletion of clause 10(8) would remove the Governor in Council's power to vary the length of the transition period. Mr Chairman, as I have explained in the Second Reading, the length of the transition period has attracted much debate among Members. Some Members have expressed concern that small businesses may have difficulties in complying with the provisions in the legislation. It is therefore important to retain clause 10(8) so as to empower the Governor in Council to vary the length of the transition period specified in the Bill. This will give us the flexibility to adjust, where necessary, the length of that period in the light of the operation of the Ordinance.

Mr Chairman, the Administration objects to these amendments and will vote against them.

Question on Dr LEONG's amendment put.

Voice vote taken.

THE CHAIRMAN said he thought the "Noes" had it.

DR LEONG CHE-HUNG: I claim a division.

CHAIRMAN: Committee will proceed to a division.

CHAIRMAN: Would Members please proceed to vote?

CHAIRMAN: We seem to be one short of the head count. Are there any queries? If not, the result will now be displayed.

Mr Martin LEE, Mr SZETO Wah, Mr TAM Yiu-chung, Dr LEONG Che-hung, Mr Albert CHAN, Mr CHEUNG Man-kwong, Rev FUNG Chi-wood, Mr Frederick FUNG, Mr Michael HO, Dr HUANG Chen-ya, Mr Simon IP, Dr Conrad LAM, 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, Miss Christine LOH, Ms Anna WU and Mr LEE Cheuk-yan voted for the amendment.

The Chief Secretary, the Attorney General, the Financial Secretary, Mr Allen LEE, Mrs Selina CHOW, Mr NGAI Shiu-kit, Mr PANG Chun-hoi, Mr Andrew WONG, Mr LAU Wong-fat, Mr Edward HO, Mr Ronald ARCULLI, Mr Martin BARROW, Mrs Peggy LAM, Mrs Miriam LAU, Mr LAU Wah-sum, Mr Jimmy McGREGOR, Mr Peter WONG, Mr Vincent CHENG, Mr Moses CHENG, Mr Marvin CHEUNG, Mr Timothy HA, Dr LAM Kui-chun, Mr Eric LI, Mr Steven POON, Mr Henry TANG, Dr Samuel WONG, Dr Philip WONG, Mr Howard YOUNG, Dr TANG Siu-tong, Mr Roger LUK, Mr James TIEN and Mr Alfred TSO voted against the amendment.

THE CHAIRMAN announced that there were 23 votes in favour of the amendment and 32 votes against it. He therefore declared that the amendment was negatived.

CHAIRMAN: As Dr LEONG Che-hung's amendment to subclause (6) of clause 10 and deletion of subclause (8) of clause 10 have not been agreed, I will now call upon the Secretary for Home Affairs to move her amendment to clause 10(6).

SECRETARY FOR HOME AFFAIRS: Mr Chairman, I move that subclause (6) of clause 10 be amended as set out under my name in the paper circulated to Members.

As I have explained above, clause 10(6) specifies a transition period of five years for small business establishments of not more than five persons. Members of the Bills Committee as well as other organizations have expressed various views on the length of this period. Having considered carefully these views, we now propose to reduce the period from five to three years.

Proposed amendment

That clause 10(6) be amended, by deleting "5th" and substituting "3rd".

Question on the Secretary for Home Affairs's amendment put.

Voice vote taken.

THE CHAIRMAN said he thought the "Ayes" had it.

MRS MIRIAM LAU: I claim a division.

CHAIRMAN: Committee will proceed to a division.

CHAIRMAN: Would Members please proceed to vote?

CHAIRMAN: We seem to be one short of the head count. Are there any queries? If not, the result will now be displayed.

The Chief Secretary, the Attorney General, the Financial Secretary, Mr Martin LEE, Mr PANG Chun-hoi, Mr SZETO Wah, Mr TAM Yiu-chung, Mr Andrew WONG, Mrs Peggy LAM, Dr LEONG Che-hung, Mr Jimmy McGREGOR, Mr Albert CHAN, Mr Vincent CHENG, Mr CHEUNG Man-kwong, Rev FUNG Chi-wood, Mr Frederick FUNG, Mr Timothy HA, Mr Michael HO, Dr HUANG Chen-ya, Mr Simon IP, Dr Conrad LAM, 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, Miss Christine LOH and Ms Anna WU voted for the amendment.

Mr Allen LEE, Mrs Selina CHOW, Mr NGAI Shiu-kit, Mr LAU Wong-fat, Mr Edward HO, Mr Ronald ARCULLI, Mr Martin BARROW, Mrs Miriam LAU, Mr LAU Wah-sum, Mr Peter WONG, Mr Moses CHENG, Mr Marvin CHEUNG, Dr LAM Kui-chun, Mr Eric LI, Mr Steven POON, Mr Henry TANG, Dr Samuel WONG, Dr Philip WONG, Mr Howard YOUNG, Dr TANG Siu-tong, Mr Roger LUK, Mr James TIEN and Mr Alfred TSO voted against the amendment.

THE CHAIRMAN announced that there were 31 votes in favour of the amendment and 23 votes against it. He therefore declared that the amendment was carried.

CHAIRMAN: Dr LEONG Che-hung, as your deletion of subclause (8) of clause 10 has not been agreed, your proposed addition of subclauses (8) and (9) cannot proceed in its present form. Would you like to seek leave to alter the terms of your amendment?

DR LEONG CHE-HUNG: Mr Chairman, with your permission, I would like to change the terms of my amendment to clause 10 to read as follows:

"(9) Subject to subsection (1), subsection (4) shall expire on the 1st anniversary of the day on which this Ordinance is enacted.

"(10) Prior to the expiry of subsection (4) under subsection (9), the Legislative Council may, by resolution, amend subsection (9) to extend subsection (4) for a period of one year."

CHAIRMAN: You have my leave.

DR LEONG CHE-HUNG: Mr Chairman, I move that clause 10 be further amended by my revised amendment which has just been tabled.

The proposed amendment is to the effect that the exception for employment provisions relating to death and retirement will expire in one year, subject to extension by Legislative Council resolution for another year.

The Administration proposes to "grandfather" the exception for death or retirement benefits in connection with employment, partnership, trade unions and so on. But its proposed Committee stage amendments are unsatisfactorily complex, unclear in effect and contain certain exemptions. This proposal was acceptable to the Bills Committee, but the actual Committee stage amendments produced by the Administration leave the existing exception for retirement benefits in effect indefinitely. The proposed amendment by the Bills Committee instead allows one year for review of death and retirement benefits after which this Council may decide, on advice from the Administration and the EOC, whether to renew the exception, or whether to substitute limited permanent exceptions if needed.

Clause 10

That clause 10 be further amended, by adding -

"(9) Subject to subsection (1), subsection (4) shall expire on the 1st anniversary of the day on which this Ordinance is enacted.

(10) Prior to the expiry of subsection (4) under subsection (9) the Legislative Council may, by resolution, amend subsection (9) to extend subsection (4) for a period of one year."

Question on the amendment proposed.

MS ANNA WU: Thank you, Mr Chairman. These amendments, together with the Bills Committee's amendments to clauses 14 and 15, allow the existing exception for death and retirement benefits to persist for one year while under review. Towards the end of that period, this Council will need to consider whether the exception should be extended to allow further review, or if it should be allowed to lapse. The Council will also be able at that time to consider whether any permanent amendments to the Bill are needed in respect of retirement benefits. Bearing in mind the empty Schedule, I would urge Members to consider the duration of one year extendable by another year carefully and positively.

I note in passing that there is a separate exception for insurance schemes, under clause 43, to which no amendments have been proposed.

The Government has suggested, in discussions with individual Members, that these amendments would require it to waste valuable administrative time and resources lobbying the Legislative Council. I am disappointed that the Government views the exercise as lobbying. Since it has proposed an empty Schedule, presumably with the intention of filling it up in future, it will in any case have to review the status of retirement benefits under the Bill. It will enjoy the expert assistance of the Equal Opportunities Commission in so doing. There is no reason to expect this Council ultimately to behave unreasonably towards any proposals the Government puts forward next year on the basis of a thorough review. The Bills Committee already expressed support in principle for a permanent grandfather exception for all death and retirement benefits. If the Government had proposed one today instead of an empty Schedule, these amendments would be unnecessary. Mr Chairman, judging from the last few years' flurry of activities, I should not think that the Government would have any difficulty undertaking lobbying if that is their fear.

I do not believe, however, that Members should accept a vague undertaking by the Government to resolve the matter some time in future, with no formal arrangement for further discussions with this Council. Until the Bill's existing blanket exemption of retirement benefits is removed, the Bill will place no restrictions at all on death and retirement benefits. It will remain perfectly legal for a pension scheme, for example, to offer to a woman a fraction of the benefits offered to a comparably-situated man, solely because she is woman. No actuarial justification will be needed. Mistreatment of half the population in this manner is precisely what the Bill aims to combat, and should not be tolerated for long under the Bill's authority.

There is therefore good reason to move quickly to remove the Bill's exemption for retirement benefits. But experience in many areas, for example, with the small house policy or with the belated introduction of this Bill itself, shows that the Government does not move quickly in relation to sex discrimination. It moves, if at all, only under great pressure. The proposed amendments will not, as some have suggested, throw benefit schemes into confusion. They will not directly affect benefit schemes for one or two years. Rather, the effect of the amendments is merely to throw the Government into action. For that reason, I support the amendment.

Thank you, Mr Chairman.

SECRETARY FOR HOME AFFAIRS: Mr Chairman, Dr LEONG's amendment disregards the fact that existing retirement schemes warrant special treatment and that a blanket removal of the exception for the provisions on death or retirement benefits will affect the operational and funding positions of existing retirement arrangements.

Mr Chairman, the Administration objects to this amendment and will vote against it.

Question on the revised amendment put.

Voice vote taken.

THE CHAIRMAN said he thought the "Noes" had it.

DR LEONG CHE-HUNG: Division.

CHAIRMAN: Committee will proceed to a division.

CHAIRMAN: Would Members please proceed to vote?

CHAIRMAN: Are there any queries? If not, the result will now be displayed.

Mr Martin LEE, Mr SZETO Wah, Mr TAM Yiu-chung, Dr LEONG Che-hung, Mr Albert CHAN, Mr CHEUNG Man-kwong, Rev FUNG Chi-wood, Mr Frederick FUNG, Mr Michael HO, Dr HUANG Chen-ya, Mr Simon IP, Dr Conrad LAM, 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, Miss Christine LOH, Ms Anna WU and Mr LEE Cheuk-yan voted for the amendment.

The Chief Secretary, the Attorney General, the Financial Secretary, Mr Allen LEE, Mrs Selina CHOW, Mr NGAI Shiu-kit, Mr PANG Chun-hoi, Mr Andrew WONG, Mr LAU Wong-fat, Mr Edward HO, Mr Ronald ARCULLI, Mr Martin BARROW, Mrs Peggy LAM, Mrs Miriam LAU, Mr LAU Wah-sum, Mr Jimmy MCGREGOR, Mr Peter WONG, Mr Vincent CHENG, Mr Moses CHENG, Mr Marvin CHEUNG, Mr Timothy HA, Dr LAM Kui-chun, Mr Eric LI, Mr Steven POON, Mr Henry TANG, Dr Samuel WONG, Dr Philip WONG, Mr Howard YOUNG, Dr TANG Siu-tong, Mr Roger LUK, Mr James TIEN and Mr Alfred TSO voted against the amendment.

Mrs Elsie TU abstained.

THE CHAIRMAN announced that there were 23 votes in favour of the amendment and 32 votes against it. He therefore declared that the amendment was negatived.

Question on clause 10, as amended, proposed, put and agreed to.

8.00 pm

PRESIDENT: Council will now resume. It is now eight o'clock and under Standing Order 8(2) this Council should now adjourn.

ATTORNEY GENERAL: Mr President, with your consent I move that Standing Order 8(2) should be suspended so as to allow the Council's business this evening to be concluded.

Question proposed, put and agreed to.

PRESIDENT: It is the wish of a number of Members for a supper break as we are going to have to spend a great deal of time on these contested amendments. I will therefore suspend the sitting to enable Members and myself to have some supper.

8.48 pm

PRESIDENT: Council will now resume and is in Committee.

Council went into Committee.

Clause 14

SECRETARY FOR HOME AFFAIRS: Mr Chairman, I move that clause 14 be amended as set out under my name in the paper circulated to Members.

The amendment to clause 14(4) mirrors the amendment to clause 10(4). The effect of this amendment will be as explained in moving the amendment to clause 10(4).

Proposed amendment

Clause 14

That clause 14 be amended, by deleting "Subsection" and substituting "Subject to subsection (4A), subsection".

That clause 14 be amended, by adding —

"(4A) Subsection (1)(b) and (d) shall apply to provision made in relation to death or retirement specified in Part 2 of Schedule 1A except in so far as any such provision made for a woman before the commencement of this section continues for that woman on and after that commencement."

Question on the amendment put.

Voice vote taken.

THE CHAIRMAN said he thought the "Ayes" had it.

MISS EMILY LAU: I claim a division.

CHAIRMAN: Committee will proceed to a division.

CHAIRMAN: Would Members please proceed to vote?

CHAIRMAN: Are there any queries? If not, the result will now be displayed.

The Chief Secretary, the Attorney General, the Financial Secretary, Mr Allen LEE, Mrs Selina CHOW, Mr NGAI Shiu-kit, Mr PANG Chun-hoi, Mr Andrew WONG, Mr LAU Wong-fat, Mr Edward HO, Mr Ronald ARCULLI, Mr Martin BARROW, Mrs Peggy LAM, Mrs Miriam LAU, Mr LAU Wah-sum, Mrs Elsie TU, Mr Peter WONG, Mr Vincent CHENG, Mr Moses CHENG, Mr Marvin CHEUNG, Mr Timothy HA, Mr Simon IP, Mr Eric LI, Mr Steven POON, Dr Samuel WONG, Dr Philip WONG, Mr Howard YOUNG, Dr TANG Siu-tong, Mr Roger LUK and Mr Alfred TSO voted for the amendment.

Mr Jimmy McGREGOR and Dr LAM Kui-chun voted against the amendment.

Mr Martin LEE, Mr SZETO Wah, Mr TAM Yiu-chung, Dr LEONG Che-hung, Mr Albert CHAN, Mr CHEUNG Man-kwong, Rev FUNG Chi-wood, Mr Frederick FUNG, Mr Michael HO, Dr HUANG Chen-ya, Dr Conrad LAM, 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, Miss Christine LOH and Mr LEE Cheuk-yan abstained.

THE CHAIRMAN announced that there were 30 votes in favour of the amendment and 2 votes against it. He therefore declared that the amendment was carried.

CHAIRMAN: I understand there is a general wish to have the division time shortened to one minute. Attorney General?

ATTORNEY GENERAL: Mr Chairman, thank you. With your consent, I would like to move two motions. The first is to suspend Standing Order 36(4) or the last few words of Standing Order 36(4) that reads "division shall be held forthwith immediately after a division bell has been rung for three minutes." With your consent, I move that the last three words be deleted whilst the Council is in Committee.

PRESIDENT: Council will now resume. Yes, Mr TO?

MR JAMES TO (in Cantonese): Mr Chairman, I speak to oppose the proposal by the Attorney General.

I feel that in a council meeting, some rules of the game cannot be altered as we please. For example, we also debated for a very long time on political reforms. Almost all of us were present at the debate except one person or so, but we still followed the principle and obeyed the voting rules. That is very basic knowledge concerning the operation of a council meeting. And now are we to alter the rules of the game just because a few Members are absent, for example the Honourable HUI Yin-fat was here not long ago but now he is not here? At 8 pm, the rule of the meeting is to adjourn. But in this session, and even in the past few years since I was returned as a Member, we have had a consensus, which has become a tradition of this Council, that if the meeting cannot be concluded at 8 pm, we will suspend this Standing Order.

We do not have many Standing Orders that can be cancelled or repealed freely at any moment on consideration of any factor. Such actions can only be taken after having been considered for a long time. And we cannot cancel or repeal any orders just because of a single incident or just that we feel prompted by a certain impulse. Should this be the case, many rules will have the same result. Can rules of a meeting be repealed so easily and lightly? This will have a far reaching effect on the whole operation of the Council.

Mr Chairman, I oppose the proposal.

PRESIDENT: I had rather assumed that there was a unanimous wish that we shorten the division time and I would not have embarked upon this course if I had known that there was going to be opposition. If there is opposition even from one Member, I will withhold my consent. We are now back in Committee.

Council went back into Committee.

CHAIRMAN: Dr LEONG Che-hung, as the Secretary for Home Affairs's amendment to clause 14 has been agreed, your amendment to the same clause cannot proceed in its present form. Would you like to seek leave to alter the terms of your amendment?

DR LEONG CHE-HUNG: Mr Chairman, with your permission, I would like to change the terms of my amendment to clause 14 to read as follows:

"(4B) Subject to subsection (4C), subsections (4) and (4A) shall expire on the 1st anniversary of the day on which this Ordinance is enacted.

"(4C) Prior to the expiry of subsections (4) and (4A) under subsection (4B) the Legislative Council may, by resolution, amend subsection (4B) to extend subsections (4) and (4A) for a period of one year."

CHAIRMAN: Yes, you have my leave, Dr LEONG.

DR LEONG CHE-HUNG: Mr Chairman, I move that clause 14 be further amended by my revised amendment which has just been tabled.

The proposed amendment is to the effect that the exception for partnership provisions relating to death and retirement will expire in one year, subject to extension by Legislative Council resolution for another year.

The rationale behind this amendment is the same as the one we have discussed for clause 10.

Proposed amendment

That clause 14 be further amended, by adding -

"(4B) Subject to subsection (4C), subsections (4) and (4A) shall expire on the 1st anniversary of the day on which this Ordinance is enacted.

"(4C) Prior to the expiry of subsections (4) and (4A) under subsection (4B) the Legislative Council may, by resolution, amend subsection (4B) to extend subsections (4) and (4A) for a period of one year."

Question on the amendment proposed.

SECRETARY FOR HOME AFFAIRS: Mr Chairman, for the reasons I have explained earlier, the Administration objects to Dr LEONG Che-hung's amendment which would require all provisions in relation to death or retirement benefits to comply with the provisions in the Bill. This amendment disregards the fact that existing retirement schemes warrant special treatment and that a blanket removal of the exception for the provisions on death or retirement benefits would affect the operation and funding positions of existing retirement schemes.

Mr Chairman, the Administration objects to this amendment and will vote against it.

Question on the revised amendment put.

Voice vote taken.

THE CHAIRMAN said he thought the "Noes" had it.

MR JAMES TO: I claim a division.

CHAIRMAN: Committee will proceed to a division.

CHAIRMAN: Would Members please proceed to vote?

CHAIRMAN: Are there any queries? If not, the result will now be displayed.

Mr Martin LEE, Mr SZETO Wah, Mr TAM Yiu-chung, Dr LEONG Che-hung, Mr Albert CHAN, Mr CHEUNG Man-kwong, Mr CHIM Pui-chung, Rev FUNG Chi-wood, Mr Frederick FUNG, Mr Michael HO, Dr HUANG Chen-ya, Mr Simon IP, Dr Conrad LAM, 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, Miss Christine LOH, Ms Anna WU and Mr LEE Cheuk-yan voted for the amendment.

The Chief Secretary, the Attorney General, the Financial Secretary, Mr Allen LEE, Mrs Selina CHOW, Mr NGAI Shiu-kit, Mr PANG Chun-hoi, Mr Andrew WONG, Mr LAU Wong-fat, Mr Edward HO, Mr Ronald ARCULLI, Mr Martin BARROW, Mrs Peggy LAM, Mrs Miriam LAU, Mr LAU Wah-sum, Mr Jimmy MCGREGOR, Mrs Elsie TU, Mr Peter WONG, Mr Vincent CHENG, Mr Moses CHENG, Mr Marvin CHEUNG, Mr Timothy HA, Dr LAM Kui-chun, Mr Eric LI, Mr Steven POON, Dr Samuel WONG, Dr Philip WONG, Mr Howard YOUNG, Dr TANG Siu-tong, Mr Roger LUK and Mr Alfred TSO voted against the amendment.

THE CHAIRMAN announced that there were 24 votes in favour of the amendment and 31 votes against it. He therefore declared that the amendment was negatived.

Question on clause 14, as amended by the Secretary for Home Affairs, proposed, put and agreed to.

Clause 15

SECRETARY FOR HOME AFFAIRS: Mr Chairman, I move that clause 15 be amended as set out under my name in the paper circulated to Members.

The amendment to clause 15 mirrors the amendment to clause 10(4) in respect of the provision in relation to death or retirement benefits. The effect of this amendment will be as I have already explained in moving the amendment to clause 10(4).

Proposed amendment

Clause 15

That clause 15 be amended, by deleting subclause (4) and substituting —

"(4) Subject to subsection (5), this section shall not apply to provision made in relation to the death or retirement from work of a member.

(5) This section shall apply to provision -

- (a) made in relation to the death or retirement from work of a member; and
- (b) specified in Pan 3 of Schedule 1A,

except in so far as any such provision made for a member before the commencement of this section continues for that member on and after that commencement."

Question on the amendment proposed and put.

Voice vote taken.

THE CHAIRMAN said he thought the "Ayes" had it.

MR JAMES TO: I claim a division.

CHAIRMAN: Committee will proceed to a division.

CHAIRMAN: Would Members please proceed to vote?

CHAIRMAN: Are there any queries? If not, the result will now be displayed.

The Chief Secretary, the Attorney General, the Financial Secretary, Mr Allen LEE, Mrs Selina CHOW, Mr NGAI Shiu-kit, Mr PANG Chun-hoi, Mr Andrew WONG, Mr LAU Wong-fat, Mr Edward HO, Mr Ronald ARCULLI, Mrs Peggy LAM, Mrs Miriam LAU, Mr LAU Wah-sum, Mr Jimmy McGREGOR, Mrs Elsie TU, Mr Peter WONG, Mr Moses CHENG, Mr Marvin CHEUNG, Mr Timothy HA, Mr Simon IP, Dr LAM Kui-chun, Mr Eric LI, Mr Steven POON, Mr Henry TANG, Dr Samuel WONG, Dr Philip WONG, Mr Howard YOUNG, Dr TANG Siu-tong, Mr Roger LUK and Mr Alfred TSO voted for the amendment.

Dr LEONG Che-hung voted against the amendment.

Mr HUI Yin-fat, Mr Martin LEE, Mr SZETO Wah, Mr TAM Yiu-chung, Mr Albert CHAN, Mr CHEUNG Man-kwong, Rev FUNG Chi-wood, Mr Frederick FUNG, Mr Michael HO, Dr HUANG Chen-ya, Dr Conrad LAM, 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, Miss Christine LOH and Ms Anna WU abstained.

THE CHAIRMAN announced that there were 31 votes in favour of the amendment and one vote against it. He therefore declared that the amendment was carried.

CHAIRMAN: Dr LEONG Che-hung, as the Secretary for Home Affairs's amendment to clause 15 has been agreed, your amendment to the same clause cannot proceed in its present form. Would you like to seek leave to alter the terms of your amendment?

DR LEONG CHE-HUNG: Mr Chairman, with your permission, I would like to change the terms of my amendment to clause 15 to read as follows:

"(6) Subject to subsection (7), subsections (4) and (5) shall expire on the 1st anniversary of the day on which this Ordinance is enacted.

"(7) Prior to the expiry of subsections (4) and (5) under subsection (6) the Legislative Council may, by resolution, amend subsection (6) to extend subsections (4) and (5) for a period of one year."

CHAIRMAN: You have my leave, Dr LEONG.

DR LEONG CHE-HUNG: Mr Chairman, I move that clause 15 be further amended by my revised amendment which has just been tabled.

The proposed amendment is to the effect that the exception for provisions relating to death and retirement, in connection with trade unions, will expire in one year, subject to extension by the Legislative Council for another year.

The rationale for this amendment is the same as the one when I moved clause 14.

Proposed amendment

Clause 15

That clause 15 be further amended, by adding -

"(6) Subject to subsection (7), subsections (4) and (5) shall expire on the 1st anniversary of the day on which this ordinance is enacted.

(7) Prior to the expiry of subsections (4) and (5) under subsection (6) the Legislative Council may, by resolution, amend subsection (6) to extend subsections (4) and (5) for a period of one year."

Question on the amendment proposed.

SECRETARY FOR HOME AFFAIRS: Mr Chairman, for the same reasons that I have explained earlier, the Administration objects to this amendment and will vote against it.

Question on the revised amendment put.

Voice vote taken.

THE CHAIRMAN said he thought the "Noes" had it.

MR JAMES TO: I claim a division.

CHAIRMAN: Committee will proceed to a division.

CHAIRMAN: Would Members please proceed to vote?

CHAIRMAN: Are there any queries? If not, the result will now be displayed.

Mr HUI Yin-fat, Mr Martin LEE, Mr SZETO Wah, Mr TAM Yiu-chung, Dr LEONG Cheung, Mr Albert CHAN, Mr CHEUNG Man-kwong, Mr CHIM Pui-chung, Rev FUNG Chi-wood, Mr Frederick FUNG, Mr Michael HO, Dr HUANG Chen-ya, Mr Simon IP, Dr Conrad LAM, 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, Miss Christine LOH, Ms Anna WU and Mr LEE Cheuk-yan voted for the amendment.

The Chief Secretary, the Attorney General, the Financial Secretary, Mr Allen LEE, Mrs Selina CHOW, Mr NGAI Shiu-kit, Mr PANG Chun-hoi, Mr Andrew WONG, Mr LAU Wong-fat, Mr Edward HO, Mr Ronald ARCULLI, Mr Martin BARROW, Mrs Peggy LAM, Mrs Miriam LAU, Mr LAU Wah-sum, Mr Jimmy MCGREGOR, Mrs Elsie TU, Mr Peter WONG, Mr Vincent CHENG, Mr Moses CHENG, Mr Marvin CHEUNG, Mr Timothy HA, Dr LAM Kui-chun, Mr Eric LI, Mr Steven POON, Mr Henry TANG, Dr Samuel

WONG, Dr Philip WONG, Mr Howard YOUNG, Dr TANG Siu-tong, Mr Roger LUK, Mr James TIEN and Mr Alfred TSO voted against the amendment.

THE CHAIRMAN announced that there were 25 votes in favour of the amendment and 33 votes against it. He therefore declared that the amendment was negatived.

Question on clause 15, as amended by the Secretary for Home Affairs, proposed, put and agreed to.

Schedule 2

SECRETARY FOR HOME AFFAIRS: Mr Chairman, I move that Schedule 2 be amended as set out under my name in the paper circulated to Members.

Schedule 2 of the Bill sets out a number of legislative provisions which aim at protecting the safety, health and welfare of women by limiting their employment in certain trades or tasks. Item 5 in Schedule 2 refers to Regulation 36 of the Dangerous Goods Regulations. This Regulation provides that where work is being carried on in any dangerous building, there shall be present on duty in the building at least one male supervisor. Having reviewed this Regulation, we now propose to delete the reference to the "male" person. An amendment to delete the reference to the Dangerous Goods Regulations in Schedule 2 is therefore proposed.

Proposed amendment

Schedule 2

That Schedule 2 be amended, by deleting item 5.

Question on the amendment proposed, put and agreed to.

Question on Schedule 2, as amended, proposed, put and agreed to.

Clause 49

SECRETARY FOR HOME AFFAIRS: Mr Chairman, I move that clause 49 be amended as set out under my name in the paper circulated to Members. This is a technical amendment which is related to my earlier amendment to clause 2. The purpose is to move the reference to "existing statutory provisions" to the definition section.

*Proposed amendment***Clause 49**

That clause 49 be amended, by deleting subclauses (3) and (4).

Question on the amendment proposed, put and agreed to.

DR LEONG CHE-HUNG: Mr Chairman, I move that clause 49 be further amended as set out under my name in the paper circulated to Members.

The proposed amendment is to the effect that exceptions permitting exclusion of women from jobs covered by Schedule 2 and exempting protective legislation and acts done for the protection of women will expire in one year, subject to extension by Legislative Council resolution for another year.

The Bills Committee considers that regulations intended to protect women may be outdated and might have inadvertent restrictions. Same regulations should apply equally to both men and women. A time limit should be set for the Administration to review the exceptions; one year in the first instance, subject to extension by Legislative Council resolution.

*Proposed amendment***Clause 49**

That clause 49 be amended, by adding —

"(5) Subject to subsection (6), the provisions of section 11(2)(g), subsections (1)(ii) and (2)(b) and Schedule 2 shall expire on the 1st anniversary of the day on which this Ordinance is enacted.

(6) Prior to the expiry of the provisions referred to in subsection (5), the Legislative Council may, by resolution, amend that subsection to extend those provisions for a period of one year."

Question on the amendment proposed.

MS ANNA WU: Mr Chairman, the amendment provides for the expiration of Schedule 2 and of the various subclauses that exempt the regulation listed in Schedule 2. The regulations that the Schedule seeks to preserve are outdated, patronizing in many cases and discriminatory.

Some of the scheduled regulations restrict women's underground work and their working hours and overtime in industry. There is no systematic difference between men and women to justify these; if they should apply to women, they should apply to everyone.

Others restrict the weights that women workers are permitted to carry in industrial work. To assert that women, for the most part, are physically less strong than men, for the most part, is a classic instance of the type of indirect discrimination the Bill aims to combat. The central principle of the Bill is that such judgements should be made on the basis of individual capabilities, not on the basis of stereotypes. This relevance of this principle is especially obvious in relation to the ridiculous restrictions that forbid any women from cleaning dangerous machine parts. At the extremes, of course, regulations governing weights, dangerous machines and the like should cover both sexes.

In a heartening outburst of concern for international obligations, the Government asserts that the expiration of the scheduled regulations would put Hong Kong in violation of various International Labour Organization (ILO) Conventions. The three Conventions which the Government cited to the Bills Committee are No.45, dated 1935 and relating to underground work; No.89, dated 1948 and relating to night work; and No.127 dated 1967 and relating to heavy work.

It may seem surprising that the ILO Conventions would enshrine such antiquated notions of the frailty of women workers. Unfortunately, not all international obligations weather the test of time well. The ILO itself often supercedes outdated Conventions with new ones, but it is the sole responsibility of the State Party to renounce its old obligations and adopt the new ones. Thus the 1935 underground work Convention cited by the Government has already been superseded by a new Convention which Hong Kong has not yet adopted. Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW) in fact requires states parties to regularly review and update their obligations in regard to purported protective legislation. Pursuant to this, the night work Convention also cited by the Government was recently denounced by New Zealand following that country's accession to CEDAW.

In short, if Members have difficulty following that, the message is quite simple. We are very outdated and the Government has used very old, outdated labour conventions to support protective legislation in Hong Kong. The Government should in fact review and update the labour protection laws.

The Bills Committee asked the Government whether it would consider adopting the newer Conventions as soon as possible, but received no clear answer. I hoped that after passage of this amendment some of the resources devoted to searching out and preserving outdated protective regulations can be shifted to updating Hong Kong's international obligations in respect of them.

Most importantly, I want to emphasize that although the operative wording of clause 49 is identical to a similar exception in the United Kingdom, the effect of clause 49 and Schedule 2 diverges radically, and indeed incoherently, from the approach taken in the United Kingdom.

The exception for protective legislation in the United Kingdom was only enacted after several years of legislation to repeal outdated protective legislation. Some of the legislative provisions that were repealed in the United Kingdom are precise analogues of the provisions the Government has specifically sought to preserve in Schedule 2 of this Bill, such as those relating to underground work and heavy work. In other words, while the United Kingdom repealed those laws and enacted the same protective legislation exception, Hong Kong enacted the protective legislation exception on the basis of the old laws which have not been repealed and we are seeking to entrench them.

This is not just a comment on the Government's comparative blindness to the discriminatory character of the scheduled regulations. The clause 49 wording adopted from the United Kingdom to govern Schedule 2 is incompatible as a matter of law with the regulations that are actually listed in Schedule 2. Whether or not a regulation is scheduled, clause 49 preserves only legislation that protect women, "as regards pregnancy or maternity, or other circumstances giving rise to risks specifically affecting women". This language of clause 49, as interpreted in the United Kingdom, refers essentially to risks to women's reproductive systems such as may arise from working with lead or with ionizing radiation. Again, in case Members are finding it very tiresome, it actually says very simply that those protective legislation should only relate to reproductive systems such as those that have been referred to.

Not surprisingly, underground work and injuries from dangerous machine parts are not regarded in the United Kingdom as health risks specifically affecting women, and are not likely to be so regarded by the courts of Hong Kong. The scheduled regulations will therefore only survive until someone can invest the time and money needed to bring their incompatibility with clause 49 before a court of law.

The proposed amendment will allow this legally defective Schedule to expire naturally instead of having to wastefully litigate its demise. Absolutely nothing will be lost with its expiration: the proposed amendment does not affect clause 49's substantive exception for acts and laws that protect against risks that are genuinely specific to women.

For these reasons, I support the amendment and would urge Members to do so. Thank you, Mr Chairman.

SECRETARY FOR HOME AFFAIRS: Mr Chairman, the Administration objects to this amendment. As I have said above, Schedule 2 of the Bill sets out a number of legislative provisions which aim at protecting the safety, health and welfare of women by limiting or prohibiting their employment in certain trades, tasks or at certain periods of time. For example, under the Women and Young Persons (Industry) Regulations, women are prohibited from being employed in dangerous trades, and are restricted from carrying weights and are prohibited to work during meal times. Under the Dutiable Commodities (Liquor) Regulations, restrictions are placed on the time during which female persons under 18 may be employed in licensed premises where liquor is sold for consumption on the premises.

We recognize Members' concern over whether the protective legislation should be updated. The Administration will conduct a review of the relevant legislative provisions set out in the Schedule. However, it is not appropriate to pre-empt the outcome of the review by imposing a time limit on them now.

Mr Chairman, the Administration objects to this amendment and will vote against it.

DR LEONG CHE-HUNG: Mr Chairman, the fact is very, very simple and that is: when something is dangerous for women it should also be dangerous for men too. So, whatever we do, we should apply the same for both sexes. So I urge Members to support the amendment.

Question on Dr LEONG Che-hung's amendment put.

Voice vote taken.

THE CHAIRMAN said he thought the "Ayes" had it.

MR JAMES TO: I claim a division.

CHAIRMAN: Committee will proceed to a division.

CHAIRMAN: Would Members please proceed to vote?

CHAIRMAN: Are there any queries? If not, the result will now be displayed.

Mr Allen LEE, Mrs Selina CHOW, Mr HUI Yin-fat, Mr Martin LEE, Mr NGAI Shiu-kit, Mr SZETO Wah, Mr Andrew WONG, Mr LAU Wong-fat, Mr Edward HO, Mrs Peggy LAM, Mrs Miriam LAU, Mr LAU Wah-sum, Dr LEONG Che-hung, Mr Peter WONG, Mr Albert CHAN, Mr Vincent CHENG, Mr Moses CHENG, Mr Marvin CHEUNG, Mr CHEUNG Man-kwong, Mr CHIM Pui-chung, Rev FUNG Chi-wood, Mr Frederick FUNG, Mr Michael HO, Dr HUANG Chen-ya, Dr LAM Kui-chun, Dr Conrad LAM, Miss Emily LAU, Mr LEE Wing-tat, Mr Fred LI, Mr MAN Sai-cheong, Mr Steven POON, Mr Henry TANG, Mr TIK Chi-yuen, Mr James TO, Dr YEUNG Sum, Mr Howard YOUNG, Mr WONG Wai-yin, Miss Christine LOH, Mr Roger LUK, Ms Anna WU, Mr James TIEN and Mr Alfred TSO voted for the amendment.

The Chief Secretary, the Attorney General, the Financial Secretary, Mr PANG Chun-hoi, Mr Jimmy McGREGOR, Mrs Elsie TU, Mr Timothy HA, Mr Simon IP, Mr Eric LI, Dr Samuel WONG, Dr Philip WONG and Dr TANG Siu-tong voted against the amendment.

Mr TAM Yiu-chung and Mr LEE Cheuk-yan abstained.

THE CHAIRMAN announced that there were 42 votes in favour of the amendment and 12 votes against it. He therefore declared that the amendment was carried.

Question on clause 49, as amended, proposed, put and agreed to.

Clause 51

DR LEONG CHE-HUNG: Mr Chairman, I move that clause 51 be amended as set out under my name in the paper circulated to Members

Clause 51 provides exemption for acts done to safeguard the security of Hong Kong. The Bills Committee considers that this clause should have no bearing on sex discrimination. The Administration has explained that the clause is meant to provide for matters such as deploying male police officers to control male rioters. The Bills Committee considers that staff deployment within the disciplined services should be addressed by the ordinary terms of the Bill. We disagree with the Administration that, unless excepted, "any differential treatment will be regarded as discrimination". I would like to draw Members' attention to the fact that under clause 9 of the SDB, differential treatment will not be unlawful if justified by materially different circumstances anyway.

*Proposed amendment***Clause 51**

That clause 51 be amended, by deleting the clause.

Question on the amendment proposed.

MS ANNA WU: Thank you, Mr Chairman, I will not be as long as the last one. The Government explained to the Bills Committee that the clause 51 exception for acts safeguarding the security of Hong Kong is meant to authorize, for example, the deployment of male police officers to control male rioters as Dr LEONG has indicated.

Disregarding any exceptions, the Bill's basic definition of discrimination already excludes any differential treatment of men and women on the basis of materially different circumstances. This is the central theme which runs through the whole of the Bill. Unfortunately, I think the Government has misunderstood this quite badly. Other jurisdictions have had no difficulty concluding, on a similar basis, that this justifies such reasonable policies as deploying women police officers to search women suspects and so on. Differential treatment of a common-sense kind poses no problem under the Bill without the clause 51 exception. I would assume that the Government's common sense would not differ from mine.

The Government wants even greater certainty about what it can and cannot do, but the terms of clause 51 are hopelessly vague and confusing. It is not at all clear that ordinary matters of police deployment can even be considered as acts done for the security of Hong Kong. I have no idea what the terms means, and if the Government knows, it never told the Bills Committee.

The only way I can envision the clause as providing certainty is if it is interpreted to mean that the police and other security-related branches have operational carte blanche to ignore the Bill with impunity. It seems unlikely that the courts would interpret it in this way, but the clause also provides, in virtually incomprehensible terms that were never explained, for the Chief Secretary to certify conclusively that a particular act was done for the security of Hong Kong. This kind of unilateral, ad hoc exception is objectionable in principle.

The rule of law inevitably gives rise to a degree of uncertainty as legal interpretations by the courts evolve with time. I am confident that the protectors of Hong Kong's security are already well-adapted to living with the uncertainty and this Bill will not significantly worsen their situation. Clause 51

itself give rise to worse uncertainties. Therefore I support this amendment and would urge Members to do so.

Thank you, Mr Chairman.

MR JAMES TO (in Cantonese): I rise to support Dr the Honourable LEONG Che-hung's amendment.

Members please look at the clause to find that it is entirely unjustifiable. Clause 51(1) specifies that nothing in Part III, IV or V shall render unlawful an act done for the purpose of safeguarding the security of Hong Kong; in other words, if the Chief Secretary would sign to certify that a certain act was done to safeguard the security of Hong Kong, then nothing in Part III, IV or V of the legislation would be unlawful.

But when Members look at Part III, IV and V, you will find that until now the Government has never given any example — not in the Bills Committee, and neither written nor verbal — which is sensibly justifiable. Part III deals with discrimination in employment field; whereas Part IV deals with sexual harassment. I can see no circumstances under which a person who is the responsible body for an education establishment shall sexually harass a student of the education establishment in order to safeguard the security of Hong Kong. And I am also unable to understand why, as stated in clause 33, any person would have to sexually harass a woman in the course of offering to provide, or providing goods, facilities or services to her for the purpose of national security. I find this entirely devoid of common sense, and I hope the Government or any Member of this Council can give us an convincing example, illustrating why in safeguarding national security it will have to sexually harness a man or a woman? If no such example can be given, I hope the Government will consider again whether it should remain so insistent, or whether it had better support Dr LEONG Che-hung's amendment.

MR MARTIN LEE (in Cantonese): If you want to know whether there is any sex discrimination among the government officials, you do not have to listen, you only have to look around. Just look at the seats taken by government officials, the gentlemen have taken the three seats in the front row, the ladies have taken the three seats behind and two gentlemen have taken the seats in the last row. Hence, you do not have to listen, you will know there really is sex discrimination among them just by looking at them. It is totally understandable that they object to the amendment.

CHAIRMAN: I have not detected anything relevant in that speech, Mr LEE.

SECRETARY FOR HOME AFFAIRS: Mr Chairman, clause 51 is a savings clause for acts done for the purpose of safeguarding the security of Hong Kong. The purpose of this clause is to give the disciplined services flexibility to deploy officers of a particular sex to carry out special tasks in case of, for example, emergencies threatening the security of Hong Kong. This is a reasonable exception. We do not agree with Dr LEONG's amendment which would effectively remove this flexibility.

Mr Chairman, the Administration objects to this amendment and will vote against it.

MR JAMES TO (in Cantonese): Mr Chairman, it was my hope that the Government could at least convince Members with one example, at least one. But who would have expected that the Government was unable to cite even one example? Just now I had a discussion with other Members and I wonder if the following can be counted as an example. But in any event I do hope that it is the Government that cites an example.

The example we could think of is that supposing our secret service agents or what are called public security personnel who, for the sake of maintaining Hong Kong's security, have to obtain information by way of sexual harassment, or to secure some "handles", so to speak, or vulnerable points that can be seized on by means of sexual harassment, so as to blackmail certain political figures. I am not sure if this is a good example, but in any event I find it unacceptable. If possible, I hope that the Government can give us a more reasonable example the next time when it is to speak, so that we may be convinced that this provision is an essential one and that it should be retained. If it is really for the sake of Hong Kong's security, then I think we should seriously consider it.

Question on the amendment put.

Voice vote taken.

CHAIRMAN: Committee will proceed to a division.

CHAIRMAN: Would Members please proceed to vote?

CHAIRMAN: Are there any queries? If not, the result will now be displayed.

Mr HUI Yin-fat, Mr Martin LEE, Mr SZETO Wah, Mr TAM Yiu-chung, Mr Andrew WONG, Dr LEONG Che-hung, Mr Albert CHAN, Mr CHEUNG Man-kwong, Mr CHIM Pui-chung, Rev FUNG Chi-wood, Mr Frederick FUNG, Mr Michael HO, Dr HUANG Chen-ya, Dr Conrad LAM, Miss Emily LAU, Mr

LEE Wing-tat, Mr Eric LI, Mr Fred LI, Mr MAN Sai-cheong, Mr TIK Chi-yuen, Mr James TO, Dr YEUNG Sum, Mr WONG Wai-yin, Miss Christine LOH, Mr Roger LUK, Ms Anna WU and Mr LEE Cheuk-yan voted for the amendment.

The Chief Secretary, the Attorney General, the Financial Secretary, Mr Allen LEE, Mrs Selina CHOW, Mr NGAI Shiu-kit, Mr PANG Chun-hoi, Mr LAU Wong-fat, Mr Edward HO, Mr Ronald ARCULLI, Mr Martin BARROW, Mrs Peggy LAM, Mrs Miriam LAU, Mr LAU Wah-sum, Mr Jimmy McGREGOR, Mrs Elsie TU, Mr Peter WONG, Mr Vincent CHENG, Mr Moses CHENG, Mr Marvin CHEUNG, Mr Timothy HA, Dr LAM Kui-chun, Mr Steven POON, Mr Henry TANG, Dr Samuel WONG, Dr Philip WONG, Mr Howard YOUNG, Dr TANG Siu-tong, Mr James TIEN and Mr Alfred TSO voted against the amendment.

THE CHAIRMAN announced that there were 27 votes in favour of the amendment and 30 votes against it. He therefore declared that the amendment was negatived.

Schedule 4

SECRETARY FOR HOME AFFAIRS: Mr Chairman, I move that Parts 1 and 2 of Schedule 4 be amended as set out under my name in the paper circulated to Members.

Schedule 4 of the Bill sets out the matters to be excepted from the Ordinance. The present amendment covers three matters.

Firstly, item 3 of the Schedule provides for an exception for differential treatment of persons of different marital status in relation, *inter alia*, to housing, education and passage benefits. Its purpose is to allow employers to provide a higher level of benefits to married, widowed or divorced employees as against those who are single. Our amendment would remove the possible loophole that single persons may receive more favourable treatment than a person of another marital status.

Secondly, to expand the scope of the Bill so as to make unlawful discrimination on the grounds of marital status and pregnancy in the fields of education, provision of goods and services and the disposal and management of premises. In conjunction with that amendment, it is necessary to provide for exceptions for certain services which, for good reasons, are only provided to persons of a particular marital status. These include the provision of reproductive technology procedures and adoption services; and differential treatment of persons of different marital status in relation to the application of Home Ownership Schemes.

Thirdly, as I have mentioned in the Second Reading debate, I will be putting forward amendments to extend the scope of the Bill to explicitly cover the Government's activities. In respect of the Civil Service, the current statutory provisions have already been amended and equal treatment is provided for new officers joining the Civil Service. However, there are still a number of statutory provisions which apply only to past beneficiaries and provide for different pensionable age limits for male and female dependants of civil servants. It is necessary to provide exceptions in Schedule 4 to cover these provisions so as to honour the rights of the beneficiaries concerned.

Proposed amendment

Schedule 4

That Schedule 4, Part 1, section 1 be amended, by adding —

""reproductive technology procedure" (生育科技程序) means any medical treatment or scientific intervention directed at assisting human reproduction by artificial means, and includes in vitro fertilization, artificial insemination, gender selection and manipulation of gametes or embryos outside the body."

That Schedule 4, Part 2 be amended —

(a) in item 3, by adding "(but excluding any discrimination against a person who is not single as compared with a person who is single)" after "status".

(b) by adding -

- | | | |
|-----|---------------------|---|
| "4. | Parts IV and V | Any discrimination between persons of different marital status arising from the provision of any reproductive technology procedure. |
| 5. | Parts III, IV and V | Any discrimination between persons of different marital status arising from the provision of any facilities or services relating to the adoption of any infant within the meaning of section 2 of the Adoption Ordinance (Cap.290). |
| 6. | Parts IV and V | Any discrimination between of different marital status arising from the public housing scheme known as the Home Ownership Scheme or Private Sector Participation Scheme. |

7. Parts III, IV and V Any discrimination between men and women arising from -
- (a) section 2(5)(a) of the Surviving Spouses' and Children's Pensions Ordinance (Cap.79);
 - (b) section 18(1A) of the Pensions Ordinance (Cap.89);
 - (c) section 19 of the Widows and Orphans Pension Ordinance (Cap.94);
 - (d) section 19(4) of the Pension Benefits Ordinance (Cap.99); or
 - (e) section 20(4) of the Pension Benefits (Judicial Officers) Ordinance (Cap.401).
8. Parts III, IV and V Any discrimination between persons of different marital status arising from the proviso to regulation 4(1) of the Royal Hong Kong Auxiliary Police Force (Pensions) Regulations (Cap.233 sub. leg.)."

Question on the amendment put.

Voice vote taken.

THE CHAIRMAN said he thought the "Ayes" had it.

Miss Emily LAU claimed a division.

CHAIRMAN: Committee will proceed to a division.

CHAIRMAN: Would Members please proceed to vote?

CHAIRMAN: Are there any queries? If not, the result will now be displayed.

The Chief Secretary, the Attorney General, the Financial Secretary, Mr Allen LEE, Mrs Selina CHOW, Mr NGAI Shiu-kit, Mr PANG Chun-hoi, Mr Andrew WONG, Mr LAU Wong-fat, Mr Edward HO, Mr Ronald ARCULLI, Mr Martin BARROW, Mrs Peggy LAM, Mrs Miriam LAU, Mr LAU Wah-sum, Mr Jimmy MCGREGOR, Mrs Elsie TU, Mr Peter WONG, Mr Vincent CHENG, Mr Moses CHENG, Mr Marvin CHEUNG, Mr Timothy HA, Mr Simon IP, Dr LAM Kui-chun, Mr Eric LI, Mr Steven POON, Mr Henry TANG, Dr Samuel WONG, Dr Philip WONG, Mr Howard YOUNG, Dr TANG Siu-tong, Mr Roger LUK, Mr James TIEN and Mr Alfred TSO voted for the amendment.

Mr HUI Yin-fat, Mr Martin LEE, Mr SZETO Wah, Mr TAM Yiu-chung, Dr LEONG Che-hung, Mr Albert CHAN, Mr CHEUNG Man-kwong, Mr CHIM Pui-chung, Rev FUNG Chi-wood, Mr Frederick FUNG, Mr Michael HO, Dr HUANG Chen-ya, Dr Conrad LAM, 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, Miss Christine LOH, Ms Anna WU and Mr LEE Cheuk-yan voted against the amendment.

THE CHAIRMAN announced that there were 34 votes in favour of the amendment and 24 votes against it. He therefore declared that the amendment was carried.

DR LEONG CHE-HUNG: Mr Chairman, I move that part 2 of Schedule 4 be further amended as set out under my name in the paper circulated to Members.

This amendment proposes to delete item 2, which is the exception for the small house policy.

The Bills Committee is of the view that the small house policy is entirely against the spirit of the SDB. Moreover, the policy may already be unlawful under the Bill of Rights Ordinance and its legality should not be revived by the SDB.

The Administration accepts the need for a review of the small house policy. It expects to complete the review about a year after the enactment of the SDB. It explains that in order not to delay the enactment of the Bill, an exception for the policy is proposed.

When Members raised the question of whether the Administration could make known the options and strategies in the review so that we could have a better idea of its stand on the policy, it responded that the review was only at the internal discussion stage and was therefore premature to reveal any options considered. It would need more time to consider the scope of the review; hence could not provide a timetable of the review.

When Members questioned the need to retain the outdated custom the small house policy was trying to preserve, the Administration stated that whilst it was committed to the principles of the SDB, it had to take into consideration its pre-existing commitments to the indigenous community in the small house policy. Nevertheless, the relationship between the policy and the Bill would be taken into account in any review of the policy. Mr President, two wrongs do not make a right.

Members were also concerned about the effect if the SDB were enacted with the removal of the exception for small house policy. After seeking legal advice, the Administration confirmed that the policy is administrative in nature and that the indigenous villagers' right to small house is not a statutory entitlement. The Government has therefore no civil liability to male indigenous villagers if it stops or discontinues with the small house policy.

All in all, the Bills Committee feels that the Administration is adopting delaying tactics in regard to the small house policy. As this policy is outright sex discriminatory, we urge that no exception should be given to it in this Bill.

Proposed amendment

That Schedule 4, Part 2 be further amended, by deleting item 2.

Question on the amendment proposed.

MR LAU WONG-FAT (in Cantonese): Mr Chairman, although many Members here were born in Hong Kong, it seems that they do not have an in-depth knowledge about the history of development of the New Territories. Therefore, in our discussion of the small house policy, I have to speak briefly on the historical background of the policy concerned.

First, I have to stress that the present small house policy is the bit of traditional rights left to the villagers in the New Territories after their rights have been slashed by the Government. Before Britain assumed lease of the New Territories, owners of land in the New Territories could freely build houses on the land they owned and there used to be no distinction between "building land" and "agricultural land". But after Britain took the lease of the New Territories, the Hong Kong Government declared that all land in the New Territories belonged to the Government and it granted leases to the original landowners for 99 years by means of the Block Crown Lease in 1905. However, restrictions on land use were laid down and villagers had to submit applications to the Government if they wished to build houses. Thus, the right to build houses freely was taken away. Nevertheless, residents in the New Territories, whether indigenous or not, could still make an application to the Government to build houses.

Approval of applications to build houses became more and more difficult in the mid 1960s. As the problem of housing could not be solved, the Heung Yee Kuk started negotiations with the Government. After discussion, the Government eventually formulated the small house policy according to the actual housing needs of the villagers, having considered that the urban-dwellers were taken care of by the policy of the Home Ownership Scheme. Initially, under the small house policy, all residents, whether indigenous or not, could apply to build houses at their own expenses within their villages. However, the Government later tightened the policy and only accepted applications to build houses from male, indigenous residents at the age of 18 and above. And after the houses were built, titles could only be transferred after premiums were paid to the Government.

Mr Chairman, the purpose of implementing the small house policy in the New Territories since 1972 was to alleviate the housing problem of villagers in the rural areas. The measures concerned have generally attended to the ways of living of the villagers and their right to build houses in their own villages. Although outsiders often have a lot to say about this policy, the small house policy is in fact only a housing initiative which better suits the particular situation and the actual needs of the rural areas. Under the arrangements, a male, indigenous villager who is 18 years old or above can apply to build a small house. However, such an arrangement is not based on sex discrimination and, as I have said earlier, it is based on the ways of living and the actual needs of the villagers. According to traditions and customs in the rural areas, a woman who has married a husband with a different family name will follow him wherever he goes and will leave the village, just like Baroness DUNN settling in her husband's home town. Therefore, women do not need to build houses to have their homes whereas the male villagers have such actual needs. So in this regard, the male villagers are making applications to build houses on behalf of their families. It is not a question of sex discrimination at all.

In fact, the Heung Yee Kuk agrees with the arrangements under the present small house policy, having considered the actual circumstances and needs of the rural areas and because of its understanding of the problem of the shortage of land. Since the Government has committed to developing the New Territories and opening up new towns, it has taken possession of a lot of rural land and so land available for building houses in the villages has been continuously reduced. Meanwhile, the Government has become less enthusiastic in its commitment to the small house policy, resulting in a serious backlog of applications to build small houses. In many areas, applicants have to wait for many years before their applications would be approved.

Regarding the amendment motion proposed by the Honourable Member, it seems that those Members who support it do not have an adequate understanding of the historical background of the policy, of the process of deprivation of the land titles, of the unique circumstances of the rural areas, of the ways of living of the villagers and of the traditional custom. They are

trying to force people to accept their "indiscriminate" approach according to their own wishes.

Mr Chairman, before those Members decide on the amendment motion concerned, have they considered the actual needs of the villagers? Have they considered the questions of shortage of land and the serious backlog of applications? Have they thought of any solution? I have not heard anything from them on these points. I am not sure whether that is because they do not understand the problem or whether they have deliberately turned a blind eye to them. How can any feasible proposals be made in this way? If the proposal of reviewing the small house policy is really to be implemented, I think the most important and urgent steps to take are to speed up the process of approval, to expand the Village Expansion Area and to allocate more land in order to clear the serious backlog of applications to build houses and not to write this policy into the law without considering its consequences and before these problems are solved. That would push the situation of the backlog of applications to build small houses to the point of paralysis. I think this amendment motion would only create confusion and pipe dreams, it will not bring about any constructive results.

Mr Chairman, with these remarks, I oppose the amendment motion.

MR JIMMY MCGREGOR: Mr Chairman, I have to say I disagree with Mr LAU on a number of points in regard to this particular issue. We have listened in this Council many, many times to the discrimination against women in the New Territories. I find, as far as I can see, this is another form of discrimination against women, this small house policy. I separate from the Government in this debate. I have gone along with them so far but in this particular point it is taken too far, and as far as my colleague, Dr LEONG, is concerned, I agree entirely with him that this policy should now be brought under, subject to change, and subject to legal change.

The small houses we are speaking about, half of the western New Territories is covered with containers. There is land that might perhaps have been made available at one time for small houses, these small lots, and to women as well as men. And many of the small houses in the New Territories, as far as I know, are rented out. Some are actually for sale as far as I believe. So, I do not think it is quite true to say that this is a male preserve and it is by tradition and it is working now in the same way that it has worked for the last hundred, two hundred, three hundred years.

We have come to a situation now where in Hong Kong women are demanding equal rights with men. Women in the New Territories are no different to women in the cities. The villages are just the same now. They are rolled in with a very large environment in the New Territories of new towns. The villages are part, very often, of the new towns. So, women there are indistinguishable from women in new towns. In fact they are very often

moving between one place and the other. There are expatriates all over the New Territories in these small houses.

I think the Government has a very specific obligation to bring this policy to an end. It should never have been started, probably, in the first place, in my view.

Incidentally I will go back, Mr President, some years when I sat in this Council with Mrs Elsie TU and we were the only two people in the Council to demand some improvement to the situation of the indigenous women of the New Territories, and at that time there were several women Members with us speaking to the Heung Yee Kuk and other Members from the New Territories, and we were the only two to speak up. In fact we got a pasting from the male Members whom we were speaking to because we were two foreigners, allegedly two foreigners, speaking up for the women of the New Territories. And here we have the same arguments being advanced years later, and in the enlightened conditions under which we work, and I hope live, in future.

Mr Chairman, I really believe that the amendment put forward by Dr LEONG should be supported by this entire Council. Thank you.

MS ANNA WU: Thank you, Mr Chairman. Unfortunately, Mr Chairman, I am likely to be a little bit longer than the last time I stood up. The small house policy has almost certainly contravened the Bill of Rights since the day of the Ordinance's enactment in 1991. It would be a travesty to use this Bill, meant to combat sex discrimination, as a vehicle to revive the legality of such a gross instance of discrimination.

Some Members have argued that the exemption ought to remain because otherwise the Government will have to pay out huge sums in compensation to disappointed male villagers now on the waiting list for small houses. This is based on four assumptions:

1. It assumes correctly that the small house policy constitutes unlawful discrimination under the Bill and, but for the exemption, would have to be modified.
2. It seems that the policy would have to be ended because there is not enough land to provide to female as well as male applicants. This is also correct: there is not enough land for applicants now, so that the waiting list just keeps growing.
3. It further assumes that there would be an obligation to provide compensation for revoking the policy, and

4. that the amount of compensation should be limited or avoided by retaining the exemption.

Both the last two assumptions are, of course, mistaken.

First, no compensation would be legally due if the small house policy were ended. In the Bills Committee meeting on 20 January, the minutes show that and I quote, Mr Chairman, "the Administration clarified that the policy was administrative in nature and the indigenous villagers' right to small houses was not a statutory entitlement." I refer further to a letter of 16 February which is a follow-up letter from the Planning, Environment and Lands Branch to the Bills Committee which says:

"The Administration has sought legal advice on whether Government has any civil liability to male indigenous villagers. The answer is no."

Second, delay in winding up the policy can only result in greater liability if there is any at all. Because there is not enough land to satisfy existing applicants, the small house policy today is really accepting applications for government compensation, not for government land. If there is any liability under the small house policy, then an open waiting list is an open government chequebook.

Third, if depriving indigenous villagers of their right to a small house gives rise to government liability, then that liability doubled on 8 June 1991. Since enactment of the Bill of Rights, the Government has illegally deprived half the indigenous villager population — the female half — of their right to small houses.

I understand that there have been some private suggestions that the small house policy is enshrined in the Joint Declaration or the Basic Law. Annex III, paragraph 2 of the Joint Declaration and Article 122 of the Basic Law both preserve the Crown rent payable by indigenous villagers. These are concessionary rents. These provisions have no relevance to the small house policy itself. Article 40 of the Basic Law protects the lawful traditional rights and interests of indigenous villagers. But the small house policy, is neither a legal right nor a traditional interest: it is, by the Government's own account, a welfare policy that was initiated in 1972. The Government itself advised the Bills Committee in its 20 January meeting that, "the policy was domestic in nature and discussion with the Chinese authorities was not therefore required."

The Government also informed the Bills Committee that a review of the small house policy has recently been approved by the Executive Council, and that action under this Bill should not pre-empt the outcome of that review. At this very late date, it is difficult to see this as a concession by the Government. The surprising aspect of the announcement was that, for all the Government's long-standing talk of a review and the pressure brought to bear by Members of

this Council over the past several years, no official action had in fact been taken to review the policy until now.

The Government has long shown unbending reluctance to face the implications of its small house policy, even under sustained public pressure. The opportunity this Bill provides to force the Government to do so is unique and should not be wasted. Therefore I support this amendment. But may I also add that the small house policy itself, in any event needs to be reviewed by the Government. This is accepted and unless it is reviewed and unless pressure is brought against the Government for this purpose, there is no way that we can have a conclusion to this particular area of problem. I do not think anybody is suggesting that the small house policy should simply be done away with, but what has been suggested and pressed for a long time is that any welfare measure or housing measure by the Government to the population of Hong Kong in the New Territories or otherwise should be equitable. The small house policy by the Government's admission has nothing to do with New Territories customary rights. The small house policy by the Government's admission has nothing to do with legal liability. The small house policy, from what everybody can see, gets worse as we sit on it. It gets worse as the Government continues to be inactive and inert. Therefore I urge Members to support the amendment and please think about this very hard because it has been dragging for a long time.

Thank you, Mr Chairman.

DR TANG SIU-TONG (in Cantonese): Mr Chairman, citizens of Hong Kong always have a lot of misconceptions about the small house policy, which they think is the privilege of the indigenous residents of the New Territories. In fact, it is not a privilege. It is sort of a leftover from the Government's consistent deprivation of the statutory rights to which indigenous residents are entitled. This leftover does not value much but the disposal of which is quite regrettable. Looking back, we can say that what the indigenous residents of the New Territories have gone through is indeed heartrending.

As Mr LAU said just now, both men and women could in fact apply for the building of houses in the New Territories in the past. This is a right. In 1905, the Government introduced the Block Crown Lease which restricted the usage of land and provided that application should be made before houses were allowed to be built. This is already a covert deprivation of the rights of the residents'. Residents of the New Territories always seem to be manipulated by other people for they do not know how to fight for the rights that they should have. Later the Government imposed restrictions on the usage of land again by dividing the land into building land and agricultural land and this had further stripped land owners of their rights.

In 1970s, in view of the growth in population and the appalling living environment in villages, the Government then took into consideration the implementation of the small house policy to improve the environment in

villages. In fact, I would consider this policy a means of compensation rather than a kind of welfare because all along, the Government has been depriving original land owners of their rights so the Government was trying to make certain compensation to the residents so that the residents can have a place to live in.

Some Members argued that why other people of Hong Kong do not have this right while residents of the New Territories have it. This remarks is unfair and has triggered a conflict between city dwellers and villagers. In fact, we are born of the same root and why do we hurt each other so mercilessly? If we look back on the history, people of the New Territories have lived in the New Territories for more than a millennium. All along, they have been living on this piece of land which is their property and their lifeline. They have been dwelling there throughout these years and yet the Government has been depriving them of their land rights unceasingly, leaving their living environment unprotected. Under these unfair circumstances, what is left behind is merely some very minor rights — the right to apply for the building of small houses. This is not a right that every person is entitled to. Only men aged 18 and above are entitled to this right and they can have it only once in a lifetime. It is not a right that they can always enjoy. Besides, they can exercise their right only if they are owners of land because the Government does not have any Crown land to grant. They have to buy a piece of land at their own expense and then submit an application, of which the processing will take five to 10 years before the Government's approval can be sought. It may require a capital to the tune of \$1 million to build a house and they have to raise the money by themselves. In other words, it is not the case that the Government gives a small house to each man. Only that the Government gives him the right to apply for building a small house and one needs a lot of resources to build a small house.

Some people say that many residents of the New Territories have sold their small houses. As a matter of fact, small houses cannot be sold. One has to pay the premium before one is allowed to sell a small house, just as the sale of properties on other land. Take for another example the many properties that Sun Hung Kai has built in the New Territories, such as the Palm Springs, are put on sale subsequent to the payment of premium. Similarly, it is necessary to pay the premium before small house can be put on sale. In this connection, it is actually a matter of procedure, not a matter of profit making. It is basically a matter relating to the hope of the indigenous residents to improve their living environment.

I would like Members to take a look at written question No.10 that I raised today. Please take a look at it. A Blake Notice was published in 1899. Governor BLAKE told us at the time that the New Territories residents' commercial and landed interest would be safeguarded and their usages and good customs will not be in any way interfered with. If the Government said that this gazetted notice was not a law, I would find it very difficult to refute this statement because I am not a lawyer by profession and I do not know much in this field. Yet, it is at least a moral obligation of the Government to safeguard

the land rights of the indigenous residents. Therefore I think the small house policy is not a benefit for the indigenous residents. It is in fact a tiny bit of residual right of the indigenous residents following the deprivation of their land rights. Therefore, I hope that Members will take into consideration this situation, the environment where indigenous residents reside, the environment where they lead their lives as well as the historical factor and oppose Dr LEONG's amendment.

MR ANDREW WONG (in Cantonese): Mr President, I did not intend to speak. However, after listening to speeches made by the Honourable Jimmy McGREGOR and the Honourable Miss Anna WU, I changed my mind.

Whenever I spoke about issues arising in the New Territories, I would say sex discrimination is an issue better left to the indigenous villagers. Two other New Territories issues are bigger issues that remain unresolved: issues concerning land and the building of houses. The Administration has been using various means to appease villagers so that they accept arrangements offered to them, at least for the time being. This has led to the present state of affairs. I gather that the Administration has committed several mistakes, the first being one that was committed in 1898 when the New Territories was leased to Britain for a term of 99 years. On taking over the New Territories, Britain had two alternatives to deal with land in the New Territories. One of these was to treat all land in the New Territories as Crown Land and as part of the land in the entire colony of Hong Kong, which is what the Administration is doing now. The other alternative was to leave all leases and title deeds relating to land as they were, which was the arrangement applied to Wei Hai Wei, another parcel of Chinese land leased to Britain in 1898 for a term of 99 years.

The Hong Kong Government chose to adopt the first alternative, that is, to treat all land in the New Territories as Crown Land. Hence, after a surveying exercise was completed in 1905, all New Territories land was acquired by the Crown and then continued to be leased to residents, with a number of restrictions imposed on such land. As the Honourable LAU Wong-fat mentioned just now, there had been no distinction between residential land and agricultural land before the surveying exercise. After the exercise, however, user restrictions were stated clearly on the Block Crown Lease. Any further construction of houses on such land need to be applied for. If the application was not approved, residents would not have any land on which to construct houses. In 1910, all New Territories land was converted to Crown Land, whereupon the Crown Lands Resumption Ordinance became applicable. In the circumstances, all potential development value of the land was not compensated for.

I am not an indigenous resident and I do not have any land in the New Territories. Looking at the history of the matter from an unbiased angle, I would say this is really a history of compensation. Just now, Miss Anna WU mentioned about compensation, but then said those on the waiting list should not

be given any compensation. Indeed, such compensation is immaterial. What matters most is that for years indigenous villagers have been deprived of their land by the Hong Kong Government. The small house policy introduced in 1972 was an extremely clever way of granting the right to build houses to those who do not have land. However, only indigenous villagers are covered, whether they have land or not. Those who do may build houses on their own land; those who do not may build them on land made available by the Administration, after paying to the Administration costs for land development.

Orders made by the Privy Council in 1898 and 1899 made the New Territories part of the colony of Hong Kong. The granting of land under a Block Crown Lease in 1905 was the first mistake, in which the rights and interests of land owners in the New Territories have since been prejudicial. In 1972, under the policy of appeasement, only male indigenous villagers were allowed to make applications to build houses as the entire New Territories then comprised indigenous communities. However, Dr LEONG was right when he said "two wrongs do not make one right". The present policy is a mistake. So we have two mistakes already, and a third one is going to be committed. It is high time we treated the issue as one involving the claiming of compensation by indigenous New Territories land owners against the Government. The issue should not be regarded as "sparring" between the above two parties, in which only males are given benefits but the females are ignored. If such "sparring" is established, it will be transformed into one between the Government and those so-called open-minded Members who advocate the Sex Discrimination Bill. If so, at the end of the day, no compensation whatsoever would be paid to indigenous residents.

I am not in a position to speak for the Heung Yee Kuk. Albeit an outsider, I am, however, an unofficial Justice of the Peace and a member of Heung Yee Kuk. I give advice to the Heung Yee Kuk but would never dare to make decisions for it. My personal view is simple enough. The small house policy should be exempted from the Bill. This is not impossible to do. But first of all Members must give support to looking at the issue of land and house building in the New Territories from the point of view of compensation, that is, compensation paid to indigenous residents in respect of land values previously prejudiced. The best way out, I think, is to trust the Government for a period of time in which to work things out, and exempt the small house policy from the Bill. Then, within the next 12 months, the Government must complete a review, not an internal one but one that incorporates representations from land owners and experts, so that a fair conclusion may be reached.

Would Members please understand that the matter is not simply a sex discrimination issue? It involves basic things such as title to land and the right to build houses.

MR ALFRED TSO (in Cantonese): Mr Chairman, apart from the reasons the Honourable Andrew WONG has mentioned, I would also like to add a point or two for Members to think over.

In fact, there is no sex discrimination in the small house policy. I have time and again heard either the villagers or members of the Heung Yee Kuk talk about this issue, and it is their view that if the Government permits applications by women to build small houses, they will actually welcome the Government's doing so. It is merely that those problems pertaining to this policy are historical ones, and this policy was thus formulated in this form.

It is well known that the supply of land is limited, and in the villages of indigenous people, great importance is attached to the continuation of the clans; and most of their land in a certain village is inherited by family members of the various clans. When the land is handed down from the father to the son, and then to the grandson and so on, it is their wish that applications for the building of small houses are made by their male members so that members of the whole family, be they male or female, young or old, are able to settle down in the village. Therefore, this established form of the policy and the system have been widely accepted by the indigenous people, and people who have been living in the New Territories, including those who moved there from other places, have also appreciated and accepted the community of clans and the small house policy.

In fact, we have to take into account the fact that the New Territories has a unique history and that it is the wish of the people in walled villages to live in close-knit communities. This policy of the Government enables these people to build houses and live near their original villages. Just as some Members have mentioned, and just as the Government has clearly stated, it is the wish of the indigenous people to, at this stage, have the small house policy exempted from the scope of the Sex Discrimination Bill and then, as Mr Andrew WONG has said, to have this matter reviewed separately. Only in doing so is it a policy and a way of reassuring the public. I hope that Members can consider this carefully.

I oppose the amendment motion moved by Dr the Honourable LEONG Che-hung. Thank you, Mr Chairman.

MR WONG WAI-YIN (in Cantonese): Mr President, I am a non-indigenous resident who have been living in Yuen Long, the New Territories for more than 30 years and I have lived there for a longer time than many indigenous residents. I am also a legislator from the New Territories West and for a long period of time I have worked in the New Territories in such districts as Tuen Mun, Yuen Long and so on, engaging in community activities. Having lived in the New Territories for so many years, I have met many New Territories residents, both indigenous and non-indigenous. They have told me that there are still many problems which are in violation of the principle of equality

between the sexes in the New Territories. Obviously, the small house policy is one of these problems.

The Government has all along been evasive in respect of a policy review on the small house policy and has invariably adopted the "stalling tactic". Such being the case, the small house policy is rendered a subject which is well protected in the Sex Discrimination Bill. This approach, which has legitimized discriminatory practices, is absolutely unacceptable to members of the public. Just now many colleagues in this Council, who are mostly indigenous residents or non-indigenous residents working for years in the New Territories, raised a number of points. First, they said that the small house policy which was introduced in 1972 was meant to improve the living environment of indigenous residents in the New Territories. The Democratic Party still does not have a definite position in this regard and we are of the view that the question of whether the small house policy should be totally abolished is subject to review and public debate. As for the remarks that the small house policy is aimed at improving the living environment of indigenous residents in the New Territories, I cannot help asking this question: Why is it necessary to improve the living environment of the male indigenous residents only but not that of the female indigenous residents? Is this a form of discrimination? Why do the men have to live in places with better surroundings whereas the women do not have this need?

Some Members said just now that at the outset the small house policy was intended to preserve clan communities so that indigenous residents with the same family name can live together. It was meant to prevent the breaking up of the clan communities and deter people of different family names from living in the villages. Regrettably, however, as a result of the development over the past two decades, the nature of the small house policy in the New Territories has nevertheless changed to a very large extent. Many villagers who have the need to improve their living environment do not have the means to apply for building small houses. Besides, many indigenous residents have purchased property in the urban areas and since it is not necessary for them to build small houses in the villages, they have sold their rights to build small houses to developers in the end. At present, many big developers are building three-storey small houses with an area of 700 sq ft in the New Territories. In fact, it is through purchasing the rights from indigenous residents to build small houses that developers are able to carry out land development projects collectively. Many colleagues have noted just now that developers are still required to pay premiums. While the premium costs a mere \$900,000 and the selling price of a three-storey small house can be as high as \$3 million or \$4 million, the deal is indeed lucrative.

In fact, a more conservative estimate on the basis of statistics from the Environment, Planning and Lands Branch shows that over 20% of the small houses in the New Territories have been sold or leased. Evidently, indigenous residents in the New Territories have already found the preservation of clan communities no longer necessary as they can sell their small houses to people

not of the same family name as theirs. As a matter of fact, a great majority of the residents in many villages in the New Territories are rather people who are of different family names. Most of the indigenous residents have moved away to the urban areas. Dr the Honourable TANG Siu-tong, for example, has been living in Kowloon Tong for many years. In view of the changes in the nature of the small house policy, why do we not conduct a comprehensive review on the policy so that the Government and members of the public can have a clear picture of what stage the development of the small house policy is now at and see whether the small house policy ought to be maintained or whether it should be extended, just as other Members have suggested?

Representatives from the Heung Yee Kuk remarked earlier that they were not opposed to the inheritance of small houses by women. I have heard this for years and yet the Heung Yee Kuk seems to have taken no concrete action to petition the Government in an effort to fight for the extension of the right to build small houses to women. The Democratic Party is of the view that this policy has been dragging on for quite some time and further delays in resolving the problem will make a huge mockery of the principle of equality between the sexes. Therefore, the Democratic Party supports the amendment to the Bill which stipulates that the small house policy is to be exempted for a period of one year, which may be extended, if necessary, by the Legislative Council, whereby the Administration can conduct a review on this policy expeditiously for improvements.

We have meetings with the Home Affairs Branch and the City and New Territories Administration everyday and we have very strong feelings. I personally have two particularly strong feelings. First, many of the officials are "tape recorders" who invariably repeat the same answers to questions during our meetings. Secondly, what they mean by "expeditiously" is actually three to five years. Therefore, it seems to us that the Government will take action only when compelled by Members of the Legislative Council.

As a matter of fact, I firmly believe that to a very large extent, it is because of the Equal Opportunities Bill proposed by the Honourable Ms Anna WU that compelled the Government to face squarely this issue and present this Sex Discrimination Bill and the Disability Discrimination Bill, which is currently under our deliberation. While the Government is forced to take some actions now, they are still inadequate. In this connection, we hope that the Administration understands that members of the public have plenty of views about the small house policy and that they hope the Government can review the policy expeditiously and expeditiously here means one year. For this reason, the Democratic Party supports Dr the Honourable LEONG Che-hung's amendment.

MR ANDREW WONG (in Cantonese): Mr Chairman, I wish to say a few more words. As I have said earlier, what I wish Members from various political parties could respond to is that the present problem is not one of sex

discrimination. It is a problem regarding the value of land title and the building of houses in the New Territories. I do not know whether the Democratic Party and the Liberal Party would agree to cover this issue in the review. If this issue is to be covered, and if the Government is going to say in response that it will be included in the review which will be completed in a year, then I think that if this policy is taken out from the legislation and not to take effect until a year later, the Government will then be forced to complete the review even sooner. That is my personal view.

There are a lot of issues which I have not discussed fully earlier, for example, the loss of rights. Sometimes it seems that we are also partly responsible for depriving them of their rights. For example, the Honourable LAU Wong-fat won a court case in 1983 in which it was held that containers, as the Honourable Jimmy MCGREGOR has mentioned earlier, could be put on the so-called agricultural land in the New Territories. In other words, such land could be used as storage areas. Such a right was actually provided in the existing Block Crown Lease. However, it has been removed by subsequent legislation. Of course, I agree that everything has been done for the sake of improvement of our environment. However, compensation ought to be made under the circumstances. It is a very sad thing that the rights which were upheld by the court are removed by subsequent legislation.

Besides, titles held under the "red" lease granted before the year 1898, that is, before the Block Crown Lease came into existence in 1905, are permanent titles. After 27 June 1997, the status conferred by the "red" lease should be returned to the original landowners. However, after the Joint Declaration was signed in 1984, the slashed land titles will remain unchanged for 50 years. Nobody knows what will happen next. But no matter what happens, the British Government will not have to bear any responsibility because it has already signed the Joint Declaration with the Chinese Government. I think this is a very serious problem. If the question of land title is not properly solved, it would become a sore point forever.

The Honourable WONG Wai-yin has said earlier that small houses could be granted to women. The Heung Yee Kuk certainly hopes that women can also enjoy the right, but I do not agree that this right should be given under the present policy. I do not agree that it should be written into the policy at all because I think such policy is wrong. I think it is only reasonable that compensation should be made. Since the Heung Yee Kuk agrees to give this right to women, one may ask why it does not fight for this right on behalf of the women. At present, leases have not even been granted to the men who have been waiting to build houses. If the right is also given to women, where shall we have the land available for lease?

Therefore, if we supported Dr the Honourable LEONG Che-hung's amendment today, I would be very worried about what results that would bring. The Government would give a plausible explanation and say that it would not grant any more leases because of a shortage of land. However, a year after the

Sex Discrimination Ordinance comes into existence, the men may not have anything and neither do the women. Nobody will have anything, and nothing at all. The indigenous communities of the New Territories are now listening to these words. Even if I do not tell them, they can figure out what the situation would be. This kind of situation is exactly what they have been worried about. Why was there such a serious confrontation on the last occasion? That was because at that time they had already anticipated what would happen next.

I hope Members will pay attention to this political factor and will be more prudent. Anyone can talk about major principles, but they are something which, if implemented, can lead to serious consequences.

SECRETARY FOR HOME AFFAIRS: Mr Chairman, the small house policy was established in 1972 to improve the low standard of housing in rural areas and to preserve the cohesion of indigenous communities. The current policy allows male indigenous villagers to apply either for a licence to build a small house on their own agricultural land or for the grant, at a concessionary premium, of a site on government land for the same purpose.

If the exception provided for the small house policy in Schedule 4 of the Bill were removed, this policy would be rendered illegal in its current form. It is important to remember that the small house policy was originally introduced in response to genuine concerns on the part of the indigenous communities that the increasing urbanization of the New Territories would lead to village communities disappearing or becoming marginalized. These concerns remain valid today. The Secretary for Planning, Environment and Lands is presently conducting a review of the policy to look at ways to improve it. We should not pre-empt the outcome of the review by deleting the exception for the policy now, nor should we impose a limited life span on the exception for the policy in the Bill. We are strongly of the view that the exception should be retained, pending the outcome of the Government's review.

Mr Chairman, the Administration objects to this amendment and will vote against it.

DR LEONG CHE-HUNG: Mr Chairman, I have heard arguments from people like Mr LAU, Mr TSO and Dr TANG that the whole issue of small house policy is based on custom and not on sex discrimination. But whatever it may be, be it custom or otherwise, it must be custom with heavy, heavy bias on the male which in this day and age is unacceptable.

There is also mention that the whole issue is actually the Government victimizing the New Territories villagers. If this is victimizing at all, it is victimization in favour of the males in the New Territories.

Now, the Government realized that there is a problem and that something needs to be done. But, presumably to avoid direct confrontation with the indigenous villagers, has used the tactic to say, well, look, assessment is in the pipeline, therefore make this an exception.

If an area such as this which is so blatantly sex discriminatory in nature can be an exception, I do not see how this Bill can really hold water. Mr Andrew WONG in his first speech actually said that the reason why the small house policy persisted is because of government attitude, leaving the indigenous villagers a lot of false hope. Well, presumably this should be the time that this be corrected, and if it is not the right time now, then when is the right time?

So, Mr Chairman, if Members do treasure this Bill, if Members do treasure the issue of equal opportunity, then the way ahead is that we should support the amendment. Thank you.

Question on Dr LEONG Che-hung's amendment put.

Voice vote taken.

CHAIRMAN: Council will proceed to a division.

CHAIRMAN: Would Members please proceed to vote?

CHAIRMAN: Are there any queries? If not, the result will now be displayed.

Mr HUI Yin-fat, Mr Martin LEE, Mr SZETO Wah, Dr LEONG Che-hung, Mr Jimmy MCGREGOR, Mrs Elsie TU, Mr Albert CHAN, Mr CHEUNG Man-kwong, Rev FUNG Chi-wood, Mr Frederick FUNG, Mr Michael HO, Dr HUANG Chen-ya, Dr Conrad LAM, 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, Miss Christine LOH, Ms Anna WU and Mr LEE Cheuk-yan voted for the amendment.

The Chief Secretary, the Attorney General, the Financial Secretary, Mr Allen LEE, Mrs Selina CHOW, Mr NGAI Shiu-kit, Mr PANG Chun-hoi, Mr TAM Yiu-chung, Mr Andrew WONG, Mr LAU Wong-fat, Mr Edward HO, Mr Ronald ARCULLI, Mr Martin BARROW, Mrs Peggy LAM, Mrs Miriam LAU, Mr LAU Wah-sum, Mr Peter WONG, Mr Vincent CHENG, Mr Moses CHENG, Mr Marvin CHEUNG, Mr Timothy HA, Mr Simon IP, Dr LAM Kui-chun, Mr Eric LI, Mr Steven POON, Mr Henry TANG, Dr Samuel WONG, Dr Philip WONG, Mr Howard YOUNG, Dr TANG Siu-tong, Mr Roger LUK, Mr James TIEN and Mr Alfred TSO voted against the amendment.

THE CHAIRMAN announced that there were 24 votes in favour of the amendment and 33 votes against it. He therefore declared that the amendment was negatived.

Question on Schedule 4, as amended, proposed, put and agreed to.

Clause 54

DR LEONG CHE-HUNG: Mr Chairman, I move that clause 54 be amended as set out under my name in the paper circulated to Members.

Clause 54 provides for "further exceptions" to the Bill, as listed in Schedule 4. These exceptions currently include (i) certain discrimination within the disciplined services, (ii) discrimination arising from benefits relating to land in the New Territories granted to male indigeneous villagers and (iii) marital status discrimination in employment benefits and civil service benefits. Under the proposed amendment, these exceptions are amended to expire in one year, subject to extension by Legislative Council resolution for another year.

The Bills Committee considers complete exemption of discrimination in these matters unnecessary, unreasonable and subject to abuse. It is therefore proposed to allow one year, subject to extension by Legislative Council resolution, for necessary adjustments to be made before expiry of these exceptions. With regard to (iii), following expiry of the exception, employers may still provide differential benefits based on non-discriminatory criteria such as household size.

Proposed amendment

Clause 54

That clause 54 be amended, by adding —

"(3) Subject to subsection (4), the provisions of section (1) and (2) and Schedule 4 shall expire on the 1st anniversary of the day on which this Ordinance is enacted.

(4) Prior to the expiry of the provisions referred to in subsection (3), the Legislative Council may, by resolution, amend that subsection to extend those provisions for a period of one year."

Question on the amendment proposed.

MS ANNA WU: Thank you, Mr Chairman. The effect of this amendment is to cause the expiration of the ad hoc exceptions contained in Schedule 4 in one year, or in two if the Legislative Council extends that particular clause by resolution.

The principal items included in Schedule 4 are exemptions for marital status discrimination in the Government and, in regard to certain employment benefits. It is important to note that the Schedule is also a platform for more future exemptions, although subject to Legislative Council approval.

A number of branches of the Government have been issuing dire warning of the consequences should this Schedule be permitted to expire. The basis of these claims, in almost every case, is that reasonable, differential treatment of differently-situated men and women will become unlawful.

I will say again what I have said to the Government so many times during the past year's Bills Committee deliberations. No anti-discrimination law, this Bill included, makes it unlawful to treat men and women differently if in the particular circumstances there are material differences between them that warrant the treatment. That is what the Bill says, at least in clause 9, and that is what it will do.

I appreciate that, particularly when faced by a new law, the Government and others may feel some uncertainty about marginal cases: are these considered justifiable or not? That is why the Bill provides an extensive system of support for all those concerned about discrimination. It establishes an Equal Opportunities Commission to provide expert advice on request, to issue guidance in advance, to conciliate complaints when they arise and so on.

This, apparently, does not provide a high enough degree of certainty for the Government. The Government's insecurities about its own practices threaten to upset the whole Bill. You cannot claim to fight discrimination at the same time that you write endless ad hoc exemptions for yourself whenever you wonder about the quality of your own practices.

With the assistance of the Bill's support system, the Government should adopt the same approach that will necessarily be taken by those unable to write themselves exemptions. It should review its practices to consider whether practices that are arguably discriminatory can be adjusted to comport with the law; and then it should adjust them.

Employee and civil service benefits provide a good example. The Government suggests that vast sums will be lost and families will go hungry if marital status discrimination is forbidden in connection with such benefits. But benefits could also be apportioned according to the number of persons who actually depend on the beneficiaries, instead of according to whether the beneficiaries are married or not. This new approach — actually this is not a new approach but a reformalization of what you have — would no doubt take

some time and some hard thinking to work out, but it would also manifestly improve the final result. The purpose of such benefits after all, is to provide for employee's household according to their needs, and these needs can be better measured than by crude yes/no answers to marital status inquiries. The proposed amendment provides both time and flexibility to make such adjustments.

May I remind Members again that this is a provision and an amendment, whereby the Government will be provided with time to review whatever they are uncertain with. I would like to emphasize to the Government again that really, many of the examples that they have given to other people can be construed within the text of the law and that is, so long as these practices are rational, reasonable and are justifiable within the circumstances, there is no unlawful act and exemptions under the schedules are not really required. But if you are worried, then the treatment is really to look at it again, review it, ask for a year's exemption and then come back and see if you need any changes. This is the most sensible way of proceeding instead of having the Government writing a blank cheque for itself yet again and telling the public, "No, I do not have to be treated in the same way." And may I also remind the Government that the Government itself is bound by the Bill of Rights in any event if for instance, there is any kind of arbitrary or unreasonable differential treatment, those would be caught by the Bill of Rights and I believe that the Government should, in any event, review those policies to ensure that they are in compliance with the Bill of Rights.

Thank you, Mr Chairman, I support the amendment.

MR JAMES TO (in Cantonese): Mr Chairman, as the Democratic Party spokesman on security affairs and the Deputy Chairman of the Legislative Council Security Panel, I am very concerned with the implications of this clause on the disciplinary services. The argument that the Government has been holding is that if the clause is put into practice without any exceptions, at the end of the day, the entire recruitment exercise will be affected in view of the fact that the existing recruitment requirements, say the height and weight requirements and so on, for male and female police officers are different. I agree with the Honourable Ms Anna WU that clause 9 of the Bill has addressed this issue because it is stipulated in clause 9 that a comparison of the cases of persons of different sex shall be such that the relevant circumstances in the one case are not materially different in the other. We are not setting hard and fast recruitment conditions for men and women on the basis of demographic distribution statistics, making use of the rate of height difference between the two sexes in a certain community. Clause 9, in essence, has provide a solution to the problem.

The second problem relates to Schedule 4. The targets of the Schedule have been the staff members in the disciplinary services. However, we must pay attention to the fact that there are some non-disciplinary staff in the disciplinary

forces. Part 1 to Schedule 4 specifies that the Schedule is applicable to any post (however described) and no specific reference is made to uniformed officers or disciplinary officers. Take for example the recruitment of Police Interpreters or Technical Officers, which are posts established in the Police Force, according to the existing way of expression in Part 2 to Schedule 4, it is entirely within the law to set out conditions for the recruitment of an interpreter by specifying the height requirement for both male and female interpreters. In view of this, this exemption is certainly more than necessary. Given that exemptions have already been specified in clause 9, there is really no need to have Schedule 4. Even without Schedule 4, reasonable policy can still be worked out by setting different recruitment standard in consideration of cases which are materially different.

All in all, unless the Government can provide us with a notably satisfactory explanation elaborating on the legal advice upon which or the specific circumstance under which clause 9 is justifiably deemed to be insufficient and Schedule 4 has to cover such a wide sphere, the Democratic Party will not support the Government's proposal, but will support Dr the Honourable LEONG Che-hung's amendment.

SECRETARY FOR HOME AFFAIRS: Mr Chairman, Members are aware that no definition of discrimination is provided for in the Bill of Rights Ordinance. In international jurisprudence, discrimination involves differential treatment on a prohibited ground such as sex, of persons whose situations are similar, in the absence of any objective and reasonable justification. Sex discrimination, however, is defined in the Bill. To put it simply, under the Bill, a person discriminates against a woman if on the ground of her sex, he treats her less favourably than he treats a man where the relevant circumstances of the man and woman are the same or not materially different.

Specific exceptions are needed to cover reasonable differential treatment of men and women in similar circumstances. The exceptions in question cover: differential treatment of staff in the disciplined services (for example, differential height and weight requirements); different levels of employment benefits (for example, housing benefits) provided for employees of different marital status; and the small house policy. These exceptions are formulated having regard to the principle that the differential treatment of women and men is not discriminatory under international jurisprudence if there is objective and reasonable justifications for such treatment.

The amendment proposed by Dr LEONG would impose a "sunset" provision so that the above exceptions would expire in one year after the enactment of the Bill, subject to a one-off extension of a further year by this Council. The net effect is that all the exceptions would be removed at the end of one year or, with the approval of the Legislative Council, at the end of the second year. This is unacceptable as it ignores the clear justification for the differential treatment concerned.

Mr Chairman, the Administration objects to this amendment and will vote against it.

MS ANNA WU: Mr Chairman, may I be very brief because Mrs HUNG had indicated that this is considered to be a sunset provision. In some ways Mrs HUNG is right in so saying because that is the way it is drafted. It is one year, extendable by one year. However, the objective and the logistics of the whole clause is such that, on application, the Government would be required to review and if there are areas that the Government truly feels they have problems with, then they would be seeking amendments. That is the effect of that one-year review period, subject to an extension. So it is not the correct interpretation of the effect of the provision by simply saying that it is a sunset provision.

May I also say that the Government is actually asking Members to perpetuate the exclusion. What the Government is saying is: do not give me this time period to review. I would like to keep it permanently. I cannot afford to let it go and I cannot change that schedule when the Government has said many times to the Bills Committee Members and otherwise that the Commission will have the right to review the whole of the Ordinance and those in the exemptions. If, on the one hand you granted the review power to the Commission, on the other hand you are telling members do not change them, it seems to me that that is a contradiction in terms. You will be pre-empting what the Commission should be doing, and in those circumstances I would ask the Government to reconsider. You ought to proceed with the review.

Thank you, Mr President.

Question on the amendment put.

Voice vote taken.

THE CHAIRMAN said he thought the "Noes" had it.

Mr James TO claimed a division.

CHAIRMAN: Committee will proceed to a division.

CHAIRMAN: Would Members please proceed to vote?

CHAIRMAN: Are there any queries? If not, the result will now be displayed.

Mr HUI Yin-fat, Mr Martin LEE, Mr SZETO Wah, Dr LEONG Che-hung, Mr Albert CHAN, Mr CHEUNG Man-kwong, Rev FUNG Chi-wood, Mr Frederick FUNG, Mr Michael HO, Dr HUANG Chen-ya, Dr Conrad LAM, 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, Miss Christine LOH, Ms Anna WU and Mr LEE Cheuk-yan voted for the amendment.

The Chief Secretary, the Attorney General, the Financial Secretary, Mr Allen LEE, Mrs Selina CHOW, Mr NGAI Shiu-kit, Mr PANG Chun-hoi, Mr TAM Yiu-chung, Mr Andrew WONG, Mr LAU Wong-fat, Mr Edward HO, Mr Ronald ARCULLI, Mr Martin BARROW, Mrs Peggy LAM, Mrs Miriam LAU, Mr LAU Wah-sum, Mr Jimmy MCGREGOR, Mrs Elsie TU, Mr Peter WONG, Mr Vincent CHENG, Mr Moses CHENG, Mr Marvin CHEUNG, Mr Timothy HA, Mr Simon IP, Dr LAM Kui-chun, Mr Eric LI, Mr Steven POON, Mr Henry TANG, Dr Samuel WONG, Dr Philip WONG, Mr Howard YOUNG, Dr TANG Siu-tong, Mr Roger LUK and Mr Alfred TSO and voted against the amendment.

THE CHAIRMAN announced that there were 22 votes in favour of the amendment and 34 votes against it. He therefore declared that the amendment was negatived.

Clause 57

DR LEONG CHE-HUNG: Mr Chairman, with your permission, I would like to remind Members that we are now at page 28. *(Laughter)*

Mr Chairman, I move that clause 57 be amended as set out under my name in the paper circulated to Members.

Clause 57(3) obliges the EOC to seek the Secretary for Home Affairs' approval before it can provide financial assistance to outside research and undertaking.

The Bills Committee considers this provision as unnecessary and it restricts the EOC's independence. The Administration has adequate financial controls over the EOC in Schedule already.

Proposed amendment

Clause 57

That clause 57(3) be amended, by deleting the subclause.

Question on the amendment proposed.

MR JAMES TO (in Cantonese): Mr Chairman, I think this amendment imposes a very unreasonable restriction. First, the Equal Opportunities Commission (EOC) is itself a statutory body. If the amendment is passed, any research or educational undertakings to be taken up by the EOC with financial implications will require approval from the Secretary for Home Affairs and the Secretary for the Treasury. This is grossly unjustifiable as this restricts the independence of the EOC.

Just look at the Honourable TIK Chi-yuen. He is the chairman of a committee on matters relating to school-parent co-operation. Even so, the Administration allocated 1.5 million to enable the committee to carry out some work. Because it is a statutory body, the committee may use the allocated fund without first having to seek approval from any of our Secretaries. This appears to be consistent with the spirit of section 57(1) of the Bill, that is, statutory bodies shall apply allocated funds to activities that are expedient for the performance of their functions.

The EOC will not have any money to start its work without finance from the Administration because it cannot charge anything from anyone. Now it is proposed that if funds are allocated and afterwards, when the EOC needs to conduct any educational or research work, approval from two Secretaries are required. Can the Administration tell me whether other commissions or committees are subject to similar restrictions? If not, is the Administration minded or is it not minded to go ahead with the eradication of sex discrimination? If it is not, the Administration should in the first place refrain from allocating funds at all to the EOC to undertake research or educational activities.

MS ANNA WU: Thank you, Mr Chairman. I would like to say that clause 57(3) blocks the Commission from funding any outside research or educational undertakings without first obtaining approval from the Secretary for Home Affairs, in consultation with the Secretary for the Treasury. This particular format of consultation and approval applies irrespective of the amount. The Government argues that this is a standard provision governing the operation of a statutory body.

I refer Members to Schedule 5 of the Bill because in that Schedule 5 you will see various sections 15(2), 26(2) and 17(2), giving the Secretary for Home Affairs and/or the Secretary for the Treasury full power to control expenditures, borrowings and investment by the Commission. Those powers are already there in those schedules despite that the Government feels that it is necessary to interpose another layer of control particularly with regard to education functions in respect of the Commission. I really question the minds of the Administration in so doing.

The Schedule 5 provisions, which I referred to, that is, at the back of the Ordinance and not in the principal Ordinance, are indeed standard in some ways. The Law Draftsman informed the Bills Committee that they also appear in the Schedules to two other Bills under consideration by this Council. I only know of two other Bills. I do not know whether it is more standard than that.

Clause 57(3), the clause we are talking about in terms of amendment, is in fact in the principal Ordinance and it applies to a particular Commission activity, any particular item. This is truly an unwarranted interference with the Commission's independence. Given the rather excessive controls that the Government already has on the Commission finances under the various provisions in the schedules, I do not really see why they should need 57(3). I support the deletion and I would certainly hope Members would consider that. I know it is getting late but please think hard about this. Why should the Government want an additional power of this nature when firstly, it has enough power and secondly, it should choose to impose that kind of restriction with regard to educational research functions of the Commission?

Thank you, Mr Chairman.

SECRETARY FOR HOME AFFAIRS: Mr Chairman, Members should note that the intention of this subclause is to ensure that the Commission does not use public funds to subvent the activities of other persons not related nor working on behalf of the Commission to undertake research and educational activities without government approval. This is a reasonable requirement and we do not see any justification for removing this subclause.

Mr Chairman, the Administration objects to this amendment and will vote against it.

DR LEONG CHE-HUNG: The Equal Opportunities Commission is the pivot of the Sex Discrimination Bill. It is a statutory body which is empowered with the function, among other things, for the promotion and education of anti-sex discrimination. Mr Chairman, any restriction of this nature is to make really the EOC a toothless tiger.

Question on the amendment put.

Voice vote taken.

THE CHAIRMAN said he thought the "Noes" had it.

MR JAMES TO: I claim a division.

CHAIRMAN: Committee will proceed to a division.

CHAIRMAN: Would Members please proceed to vote?

CHAIRMAN: Are there any queries? If not, the result will now be displayed.

Mr HUI Yin-fat, Mr Martin LEE, Mr SZETO Wah, Mr TAM Yiu-chung Mr Andrew WONG, Dr LEONG Che-hung, Mr Jimmy McGREGOR, Mr Albert CHAN, Mr CHEUNG Man-kwong, Rev FUNG Chi-wood, Mr Frederick FUNG, Mr Michael HO, Dr HUANG Chen-ya, Mr Simon IP, Dr Conrad LAM, 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, Miss Christine LOH, Ms Anna WU and Mr LEE Cheuk-yan voted for the amendment.

The Chief Secretary, the Attorney General, the Financial Secretary, Mr Allen LEE, Mrs Selina CHOW, Mr NGAI Shiu-kit, Mr PANG Chun-hoi, Mr LAU Wong-fat, Mr Edward HO, Mr Ronald ARCULLI, Mr Martin BARROW, Mrs Peggy LAM, Mrs Miriam LAU, Mr LAU Wah-sum, Mr Peter WONG, Mr Vincent CHENG, Mr Moses CHENG, Mr Marvin CHEUNG, Mr Timothy HA, Dr LAM Kui-chun, Mr Eric LI, Mr Steven POON, Mr Henry TANG, Dr Samuel WONG, Dr Philip WONG, Mr Howard YOUNG, Dr TANG Siu-tong and Mr Roger LUK voted against the amendment.

Mrs Elsie TU abstained.

THE CHAIRMAN announced that there were 26 votes in favour of the amendment and 28 votes against it. He therefore declared that the amendment was negatived.

Clause 63

DR LEONG CHE-HUNG: Mr Chairman, I move that clause 63 be amended as set out under my name in the paper circulated to Members.

This amendment enables the EOC to carry out an investigation into named persons or organizations for any purpose connected with its functions, irrespective of whether it believes unlawful acts have occurred.

The proposed amendment is in line with the key recommendations of the United Kingdom EOC. The EOC is unlikely to investigate a person unless it believes the person has discriminated. Clause 63(4), as it is now requires the EOC to incorporate that belief expressly in the investigation's terms of reference. This undesirably restricts investigations: for if the investigation uncovers discrimination outside the EOC's initial belief, the EOC must redraft the terms of reference and restart the investigation. In the United Kingdom this has proved to cause unreasonable delay in the Commission's investigations.

Proposed amendment

Clause 63

That clause 63 be amended, by deleting subclause (4) and substituting —

"(4) Where the terms of reference of the formal investigation confine it to activities of persons named in them and the Commission in the course of it proposes to investigate any act which a person so named may have done, the Commission shall -

- (a) inform that person of its proposal to investigate the act; and
- (b) offer him an opportunity of making oral or written representations, within 28 days after the notification of the proposal to investigate, with regard to it (or both oral and written representations if he thinks fit),

and a person so named Who avails himself of an opportunity under this subsection of making oral representations may be represented -

- (i) by counsel or a solicitor; or
- (ii) by some other person of his choice, not being a person to whom the Commission object on the ground that he is unsuitable."

Question on the amendment proposed.

MS ANNA WU: Thank you again, Mr Chairman. This is in fact a very important clause because it refers to the Commission's power to conduct specific investigations. The proposed amendment deletes the requirement that the Commission has a suspicion that a person committed an unlawful act under the Bill before it can draw up terms of reference for investigating that named person. Can I just emphasize that the Commission must firstly have a suspicion, then it has got to proceed to draw up a terms of reference for a particular investigation of a particular person.

It is a matter of common sense that, with or without this particular kind of subclause, the Commission would not launch an investigation of a named person without some suspicion that there was something to investigate, that is, that the person or organization had acted unlawfully. The Commission is hardly likely to squander its resources investigating at random.

The statutory requirement that the Commission must suspect a person of unlawful acts before investigating that person adds very little to this common-sense approach.

The problem caused by the subclause is that it also requires the Commission to incorporate its initial suspicions in the terms of reference for its investigation. Should the investigation reveal acts that were not initially suspected, then the terms of reference must be rewritten to include them. That the subclause has this meaning may not be obvious, but it is how it is interpreted in the United Kingdom in decisions likely to be followed by the courts of Hong Kong.

Each time the Commission draws up new terms of reference, it must also hold new hearings at which the parties named in the proposed terms of reference are then entitled to oppose them, with assistance of counsel if they wish. The result is interminable delay in getting investigations started and in expanding them as they progress.

The consensus of experts in the United Kingdom is that the resulting opportunity for strategic delay very seriously undermines the effectiveness of the Commission's investigations. Investigations by the United Kingdom Commissions typically take years to complete. Both the United Kingdom Commissions afflicted by similar clauses have recommended that the language be modified or deleted. And I would like to emphasize to Members that this is a recommendation by the United Kingdom Equal Opportunities Commission itself, having gone through years of investigation and having come to this conclusion that it is actually quite hopeless to have a Commission, firstly form a suspicion, then formulate the terms of reference and then to find out that perhaps investigation should be a little wider, then rewrite the terms of reference, invite everybody to oppose the terms of reference and you will simply be spending all your time on writing the terms of reference, rather than doing what the Commission should be doing.

Now the Government describes this restriction as one of the checks and balances on the Commission. I do not describe it as checks and balances. I would describe it as padlocks. You really cannot move. In interpreting the provision, one of the Law Lords, Lord DENNING, has remarked as follows: "I am very sorry for the commission, but they have been caught up in a spider's web spun by Parliament, from which there is very little hope of escaping."

It is for this reason that I support this amendment and it is for this reason I urge Members to consider this very carefully because this goes to the core of the Commission. It is one of the very fundamental functions and if it does not work well, then we are taking away one of its limbs.

Thank you, Mr Chairman.

SECRETARY FOR HOME AFFAIRS: Mr Chairman, clause 63 of the Bill sets out the requirements with which the Equal Opportunities Commission must comply before embarking on a formal investigation. Two types of investigations are covered. First, investigations of a general nature where the terms of reference are not confined to the activities of particular persons; and secondly, investigations where the terms of reference are confined to the activities of persons named in them, that is, a named-person investigation. Under the present provisions in the Bill, before embarking on a named-person investigation, the Commission must have a suspicion or belief that the named person might have committed some unlawful act of discrimination and have at least some grounds for so suspecting. The amendment proposed by Dr LEONG would have the effect of removing this requirement. This is unacceptable. It is not a trivial matter for a person or organization to be made the subject of a named-person investigation because of the adverse publicity arising from it.

We believe that the Commission, like other regulatory bodies in Hong Kong, should have formed a belief and state so in the terms of reference of the investigation that a person has committed an unlawful act before singling him out for investigation, otherwise it would be unfair to the person concerned.

Mr Chairman, the Administration objects to this amendment and will vote against it.

Question on the amendment put.

Voice vote taken.

CHAIRMAN: Committee will proceed to a division.

CHAIRMAN: Would Members please proceed to vote?

CHAIRMAN: Are there any queries? If not, the result will now be displayed.

Mr HUI Yin-fat, Mr Martin LEE, Mr SZETO Wah, Dr LEONG Che-hung, Mr Jimmy MCGREGOR, Mr Albert CHAN, Mr Marvin CHEUNG, Mr CHEUNG Man-kwong, Rev FUNG Chi-wood, Mr Frederick FUNG, Mr Michael HO, Dr HUANG Chen-ya, Dr Conrad LAM, 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, Miss Christine LOH, Ms Anna WU and Mr LEE Cheuk-yan voted for the amendment.

The Chief Secretary, the Attorney General, the Financial Secretary, Mr Allen LEE, Mrs Selina CHOW, Mr NGAI Shiu-kit, Mr PANG Chun-hoi, Mr TAM Yiu-chung, Mr Andrew WONG, Mr LAU Wong-fat, Mr Edward HO, Mr Ronald ARCULLI, Mr Martin BARROW, Mrs Peggy LAM, Mrs Miriam LAU, Mr LAU Wah-sum, Mrs Elsie TU, Mr Peter WONG, Mr Vincent CHENG, Mr Moses CHENG, Mr Timothy HA, Mr Simon IP, Dr LAM Kui-chun, Mr Eric LI, Mr Steven POON, Mr Henry TANG, Dr Samuel WONG, Dr Philip WONG, Mr Howard YOUNG, Dr TANG Siu-tong, Mr Roger LUK and Mr Alfred TSO voted against the amendment.

THE CHAIRMAN announced that there were 24 votes in favour of the amendment and 32 votes against it. He therefore declared that the amendment was negatived.

SECRETARY FOR HOME AFFAIRS: Mr Chairman, I move that clause 63 be amended as set out under my name in the paper circulated to Members. This is a technical amendment to correct an error in the Chinese gazetted version of the Bill.

Proposed amendment

Clause 63

That clause 63(4)(a) be amended, by deleting "行爲" and substituting "作為".

Question on the amendment proposed, put and agreed to.

Question on clause 63, as amended, proposed, put and agreed to.

CHAIRMAN: Dr LEONG Che-hung, as your amendment to clause 63 is not agreed, you can no longer move your amendment to clause 64.

Clause 68

DR LEONG CHE-HUNG: Mr Chairman, I move that clause 68 be amended as set out under my name in the paper circulated to Members.

The proposed amendment to clause 68(3) and (4) empowers the District Court to order any appropriate remedy, including reinstatement.

During the scrutiny of the Bill, the Administration indicated acceptance of this in principle. However, subsequently, it said that this will be dealt with in the context of the general review of labour relations presently being conducted. The Bills Committee considers that since this has been accepted in principle, the provision should be amended without delay and I do hope Members will support it.

Clause 68(5) provides that there shall be no award of damages if the indirect discrimination was unintentional.

This clause is to be deleted as in the case of similar provision in United Kingdom law. It is preferable to leave the court flexible to take account of intentions by varying the size of awards.

Mr Chairman, I would like to stress again that as the principle of clause 68(3) and (4) has been accepted by the Administration to start with, I do hope Members will support it.

Proposed amendment

Clause 68

That clause 68 be amended —

- (a) in subclause (3), by deleting everything after "District Court" and substituting "and where the court is satisfied that the respondent has committed an unlawful act of discrimination or sexual harassment against the claimant in contravention of this Ordinance, the court may make an order which it considers just and appropriate in the circumstances."

- (b) by deleting subclause (4) and substituting -

"(4) Without limiting the generality of the power conferred by subsection (3), the District Court may -

- (a) make a declaration that the respondent has engaged in conduct, or committed an act, that is unlawful under this Ordinance, and

- order that the respondent should not repeat or continue such unlawful conduct or act;
- (b) order that the respondent should perform any reasonable act or course of conduct to redress any loss or damage suffered by the claimant;
 - (c) order that the respondent should employ or re-employ the claimant;
 - (d) order that the respondent should promote the claimant;
 - (e) order that the respondent pay to the claimant damages by way of compensation for any loss or damage suffered by reason of the respondent's conduct or act;
 - (f) order that the respondent pay to the claimant punitive or exemplary damages; or
 - (g) make an order declaring void in whole or part and either ab initio or from such other time as is specified in the order any contract or agreement made in contravention of this Ordinance."
- (c) by deleting subclause (5).

Question on the amendment proposed.

MS ANNA WU: Mr Chairman, the proposed amendments authorize the court to order an appropriate remedy, including reinstatement. So firstly I would like to emphasize that this is not a mandatory remedy. It is a discretionary remedy on the part of the court. Reinstatement orders are an essential remedy that is widely available in other jurisdictions. It is particularly necessary for the enforcement of legislation of this kind.

The Government initially agreed to this amendment in principle and this agreement in principle was in fact stated in writings to the Bills Committee. It later withdrew its agreement with the announcement that the availability of the remedy would instead be considered in a review by the Education and Manpower Branch.

The Government's proposed review encompasses the availability of reinstatement as a remedy under Hong Kong labour legislation in general. The proposed amendment to this Bill does not pre-empt the much wider scope of the Government's review.

The proposed amendment also deletes subclause 68(5), which prevents any damage awards for unintentional indirect discrimination.

There is no basis for this restriction. The courts are well-equipped to decide for themselves whether and how to reflect different degrees of fault in their awards of damages.

A nearly identical provision to subclause 68(5), that is, no damages for unintentional indirect discrimination remains, however briefly, part of United Kingdom law. It seems only a matter of time before the United Kingdom provision is also repealed, however. Similar provisions that cap or block remedies for discrimination have recently been struck out of United Kingdom law after the courts have judged them inconsistent with applicable international standards. I am disappointed that despite all the problems in the United Kingdom laws, which have been made known to the Government, the Government has failed to recognize these flaws and to remedy the situations knowing these problems to exist. If there are existent flaws in the United Kingdom law made known to the Government, there is no reason why we should enact a new law repeating those problems.

For these reasons, I support the amendment and I would urge Members to consider the amendment carefully. Thank you, Mr Chairman.

MR LEE CHEUK-YAN (in Cantonese): Mr Chairman, I strongly support the right to reinstatement as a remedial measure, because I feel that if a victim loses his job, the only remedy is to get him or her back to that job — the original post, the original job. No monetary compensation of any kind could take the place of remedy of this kind.

On the other hand, I hope the Government will tell us, since the Government would accept it in principle, how it would say that it is conducting an overall review on labour relations. Everybody knows that I follow closely on government's progress on labour relations, yet I have never learnt that the Government is going to conduct any overall review on labour relations. As far as we know, the Government conducted a review in the wake of the incident of Cathay Pacific's strike, and the review was concluded a year ago. In the Governor's Legislative Programme it was illustrated that a Bill would be tabled within this legislative session to improve labour relations, but in the end it has to be postponed until the next session.

I only know that much, and I have never learnt that the Government was going to conduct any review in addition to the review report on Cathay Pacific's strike incident, which has already been concluded. If such is not the case, I can hardly understand why it has given the Bills Committee such an answer.

SECRETARY FOR HOME AFFAIRS: Mr Chairman, clause 68 of the Bill provides that proceedings under the Ordinance are to be brought in the District Court and the remedies are an award of damages, a declaration or an injunction. Some Members of the Bills Committee are of the view that the District Court should be empowered to give reinstatement orders or orders to promote a particular person. We share Members' desire to uphold the rights of the aggrieved.

However, it is important to recognize that the question of reinstatement has been addressed in the review on labour relations and legislative proposals are now being worked out. They will be introduced into this Council in the next Legislative Session for Members' deliberation. The Administration therefore believes that it would be pre-mature at this stage to make any changes to the orders that the court can make under the Sex Discrimination Bill.

Mr Chairman, the Administration objects to this amendment and we will vote against it.

Question on the amendment put.

Voice vote taken.

THE CHAIRMAN said he thought the "Noes" had it.

Mr James TO claimed a division.

CHAIRMAN: Committee will proceed to a division.

CHAIRMAN: Would Members please proceed to vote?

CHAIRMAN: We seem to be one short of the head count. Are there any queries? If not, the result will now be displayed.

Mr HUI Yin-fat, Mr Martin LEE, Mr SZETO Wah, Mr TAM Yiu-chung, Mr Andrew WONG, Dr LEONG Che-hung, Mr Albert CHAN, Mr CHEUNG Man-kwong, Rev FUNG Chi-wood, Mr Frederick FUNG, Mr Michael HO, Dr HUANG Chen-ya, Dr Conrad LAM, 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, Miss Christine LOH, Ms Anna WU and Mr LEE Cheuk-yan voted for the amendment.

The Chief Secretary, the Attorney General, the Financial Secretary, Mr Allen LEE, Mrs Selina CHOW, Mr NGAI Shiu-kit, Mr PANG Chun-hoi, Mr LAU Wong-fat, Mr Edward HO, Mr Ronald ARCULLI, Mr Martin BARROW, Mrs Peggy LAM, Mrs Miriam LAU, Mr LAU Wah-sum, Mr Jimmy McGREGOR, Mrs Elsie TU, Mr Peter WONG, Mr Vincent CHENG, Mr Moses CHENG, Mr Marvin CHEUNG, Mr Timothy HA, Mr Simon IP, Dr LAM Kui-chun, Mr Eric LI, Mr Steven POON, Mr Henry TANG, Dr Samuel WONG, Dr Philip WONG, Mr Howard YOUNG, Dr TANG Siu-tong, Mr Roger LUK and Mr Alfred TSO voted against the amendment.

Mr CHIM Pui-chung abstained.

THE CHAIRMAN announced that there were 24 votes in favour of the amendment and 32 votes against it. He therefore declared that the amendment was negatived.

MRS PEGGY LAM (in Cantonese): Mr Chairman, I move that clause 68 be amended as set out under my name in the paper circulated to Members.

In the Second Reading of the Bill, I have already given my reasons for moving this amendment. Perhaps I spoke so fast that the Honourable Miss Emily LAU did not catch it. I will now repeat it. The upper limit of \$150,000 was not set arbitrarily. Instead, it was set after a similar act of Britain. When Britain formulated a similar discrimination act, she also set an upper limit. The maximum was set at 11 times the average monthly wage of the workers. The upper limit of \$150,000 that I suggested was set by taking the workers' last year monthly median wage, that is about \$8,000, and multiplying it by 18.75. I also pointed out that I hoped to have an upper limit in the initial stage after the ordinance comes into effect. After it has been implemented smoothly and steadily and after a judicial precedent has been set, we can then consider to revoke the limit.

Mr Chairman, I hope my amendment will receive all Members' support. Thank you.

*Proposed amendment***Clause 68**

That clause 68 be amended, by adding —

"(6A) No award of damages to a claimant shall exceed an amount of \$150,000 in the case of -

- (a) an act of discrimination against the claimant which is unlawful by virtue of Part III (including any case where the respondent is by virtue of section 39 or 40 to be treated as having committed such an act of discrimination against the claimant); or
- (b) an act of sexual harassment against the claimant which is unlawful by virtue of Part III.

(6B) The Governor in Council may, by notice in the Gazette, amend subsection (6A) by substituting another amount for the amount appearing in that subsection."

Question on the amendment proposed.

MS ANNA WU: Mr Chairman, I will be very brief. I would like to say that in sexual harassment cases some of these cases have resulted in severe consequences to the physical and psychological health of the victims. Damage is really designed primarily to be remedial, particularly where discrimination has been intentional leading to serious economic loss and cost. These will result in serious and excessive medical care bills, and if the person subjected to the discrimination is to bear that kind of cost, the victim is really out of pocket. So I would like to have Members consider that particular aspect.

Damages, of course, have to be proved. It is not any odd figure that you pull out and ask the court to award. It has to be supported. In the United Kingdom, limits on damages have been removed as a result of European law, and this particular type of ceiling no longer applies, and I feel that we will be going backward and adopting laws that are no longer valid elsewhere. This would not be the way forward for Hong Kong.

Thank you, Mr Chairman. I would ask Members to consider opposing that particular amendment.

SECRETARY FOR HOME AFFAIRS: Mr Chairman, the Administration appreciates that some Members of the Bills Committee, some employer organizations as well as women organizations hold that in the absence of

experience in enforcing anti-discrimination legislation, it would be prudent to impose a limit on the maximum amount of damages to be awarded by the court. The Administration endorses this view and agrees that the proposed upper limit of \$150,000, which amounts to more than 12 months of the average salary of a worker in Hong Kong, is reasonable.

Mr Chairman, the Administration supports this amendment and will vote for it.

Question on Mrs Peggy LAM's amendment put.

Voice vote taken.

CHAIRMAN: Committee will proceed to a division.

CHAIRMAN: Would Members please proceed to vote?

CHAIRMAN: Are there any queries? If not, the result will now be displayed.

The Chief Secretary, the Attorney General, the Financial Secretary, Mr Allen LEE, Mrs Selina CHOW, Mr NGAI Shiu-kit, Mr TAM Yiu-chung, Mr LAU Wong-fat, Mr Edward HO, Mr Ronald ARCULLI, Mr Martin BARROW, Mrs Peggy LAM, Mrs Miriam LAU, Mr LAU Wah-sum, Mr Jimmy McGREGOR, Mrs Elsie TU, Mr Peter WONG, Mr Vincent CHENG, Mr Moses CHENG, Mr Timothy HA, Mr Simon IP, Dr LAM Kui-chun, Mr Eric LI, Mr Steven POON, Mr Henry TANG, Dr Samuel WONG, Dr Philip WONG, Mr Howard YOUNG, Dr TANG Siu-tong and Mr Alfred TSO voted for the amendment.

Mr HUI Yin-fat, Mr Martin LEE, Mr SZETO Wah, Mr Andrew WONG, Dr LEONG Che-hung, Mr Albert CHAN, Mr CHEUNG Man-kwong, Rev FUNG Chi-wood, Mr Frederick FUNG, Mr Michael HO, Dr HUANG Chen-ya, Dr Conrad LAM, 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, Miss Christine LOH, Mr Roger LUK, Ms Anna WU and Mr LEE Cheuk-yan voted against the amendment.

Mr CHIM Pui-chung abstained.

THE CHAIRMAN announced that there were 30 votes in favour of the amendment and 24 votes against it. He therefore declared that the amendment was carried.

SECRETARY FOR HOME AFFAIRS: Mr Chairman, I move that clause 68 be further amended as set out under my name in the paper circulated to Members.

The amendment involves two technical matters: first, to correct an error in the gazetted Chinese version of the Bill and secondly, to remove the special arrangements in respect of proceedings relating to certain educational establishments. The latter amendment is made in response to the suggestions put forward by Members of the Bills Committee.

Proposed amendment

Clause 68

That clause 68 be amended, by deleting subclause (7).

That clause 68(1)(c) be amended, by adding "針對該申索人的，並" after "作出".

Question on the amendment proposed, put and agreed to.

Question on clause 68, as amended, proposed, put and agreed to.

Clause 74

DR LEONG CHE-HUNG: Mr Chairman, I move that clause 74 be amended as set out under my name in the paper circulated to Members.

Clause 74 concerns enforcement of the law against discriminatory advertisements (clause 36). The proposed amendment is to empower the court to make an order imposing a non-criminal financial penalty of \$10,000 for the first contravention and \$30,000 for a second and subsequent contraventions.

Clause 36 of the SDB makes discriminatory advertisements unlawful, but no penalty is provided for. The EOC can only apply to the court for an injunction to restrain a person from publishing more unlawful advertisements (Clause 74(4) refers). On application by the EOC, the court should also be able to impose a penalty as a deterrent. The proposed civil penalty is similar to that presently imposed by the Insider Dealing Tribunal under the Securities (Insider Dealing) Ordinance (Cap.395).

In proposing this amendment, the Bills Committee is very cautious in ensuring that no criminal record will result from such an unlawful act.

Proposed amendment

Clause 74

That clause 74 be amended, by adding -

"(5) Without prejudice to subsection (4), if it appears to the Commission that a person has done an act which was unlawful by virtue of section 36, the Commission may apply to the District Court for an order imposing a financial penalty on such persons; and the District Court, if satisfied that the application is well-founded, may make such an order.

(6) The financial penalty imposed under subsection (5) shall not exceed \$10,000 for the first occasion on which a penalty is imposed, and \$30,000 for the second and any subsequent occasion on which a penalty is imposed in respect of the same person."

Question on the amendment proposed.

MS ANNA WU: Mr Chairman, quite simply, without a penalty, the Bill's prohibition of discriminatory advertisements lacks any real teeth. Clause 74 as it stands authorizes no more than an injunction against future unlawful advertisements. The Bill lacks anything to dissuade a willful advertiser and publisher from continuing to behave unlawfully until they are actually brought before the court. Now only the Commission, and I emphasize only the Commission, can bring claims of unlawful advertising; as a practical matter, it cannot possibly police all advertising activity. Without a deterrent, this aspect of the Bill will be wholly ineffective.

Insofar as the fine is concerned, they are at a very low level and furthermore, there is nothing technically wrong with regard to this type of civil penalty. For these reasons, I support the amendment and I would urge Members to please consider this.

SECRETARY FOR HOME AFFAIRS: Mr Chairman, clause 36 of the Bill makes it unlawful to publish a discriminatory advertisement. The remedy is to be an injunction restraining a person from continuing such unlawful behaviour. A similar remedy is provided in the United Kingdom Sex Discrimination Act and throughout the 20 years of its operation, the Equal Opportunities Commission in the United Kingdom has had no difficulties in applying it. We consider this remedy appropriate.

We do not agree that the publication of a discriminatory advertisement is such a grave act to warrant the imposition of a financial penalty as proposed.

Mr Chairman, the Administration objects to it and will vote against the amendment.

Question on the amendment put.

Voice vote taken.

THE CHAIRMAN said he thought the "Noes" had it.

Mr James TO claimed a division.

CHAIRMAN: Committee will proceed to a division.

CHAIRMAN: Would Members please proceed to vote?

CHAIRMAN: We are three short of the head count. Are there any queries? If not, the result will now be displayed.

Mr HUI Yin-fat, Mr Martin LEE, Mr PANG Chun-hoi, Mr SZETO Wah, Mr TAM Yiu-chung, Mr Andrew WONG, Dr LEONG Che-hung, Mr Albert CHAN, Mr CHEUNG Man-kwong, Mr CHIM Pui-chung, Rev FUNG Chi-wood, Mr Frederick FUNG, Mr Michael HO, Dr HUANG Chen-ya, Mr Simon IP, Dr Conrad LAM, Miss Emily LAU, Mr LEE Wing-tat, Mr Eric LI, Mr Fred LI, Mr MAN Sai-cheong, Mr TIK Chi-yuen, Mr James TO, Dr YEUNG Sum, Mr WONG Wai-yin, Miss Christine LOH, Mr Roger LUK, Ms Anna WU and Mr LEE Cheuk-yan voted for the amendment.

The Chief Secretary, the Attorney General, the Financial Secretary, Mr Allen LEE, Mrs Selina CHOW, Mr NGAI Shiu-kit, Mr LAU Wong-fat, Mr Edward HO, Mr Ronald ARCULLI, Mr Martin BARROW, Mrs Peggy LAM, Mrs Miriam LAU, Mr LAU Wah-sum, Mr Jimmy McGREGOR, Mrs Elsie TU, Mr Peter WONG, Mr Vincent CHENG, Mr Moses CHENG, Mr Timothy HA, Dr LAM Kui-chun, Mr Steven POON, Mr Henry TANG, Dr Samuel WONG, Dr Philip WONG, Mr Howard YOUNG, Dr TANG Siu-tong and Mr Alfred TSO voted against the amendment.

THE CHAIRMAN announced that there were 29 votes in favour of the amendment and 27 votes against it. He therefore declared that the amendment was carried.

Question on clause 74, as amended, proposed, put and agreed to.

Clause 77

SECRETARY FOR HOME AFFAIRS: Mr Chairman, I move that clause 77 be amended as set out under my name in the paper circulated to Members.

This is a technical amendment which would facilitate the Equal Opportunities Commission to provide assistance to the aggrieved in proceedings before the District Court.

Proposed amendment

Clause 77

That clause 77(3) be amended, by adding "except to the extent permitted under rules made in accordance with section 73B of the District Court Ordinance (Cap.336)" after "in, any proceedings".

Question on the amendment proposed, put and agreed to.

DR LEONG CHE-HUNG: Mr Chairman, looking at the voting of the last vote, it looks as if Members are sort of a bit clouded. I would like to remind them that we are on page 34. *(Laughter)*

Mr Chairman, I move that clause 77 be further amended as set out under my name in the paper circulated to Members.

The proposed amendment enables the EOC to take over proceedings in its own name if a claimant receiving EOC assistance withdraws from the proceedings.

The Bills Committee considers that where the EOC has already provided assistance to a person litigating an important case under the SDB, the EOC should be able to pursue the case in its own name if the person withdraws.

*Proposed amendment***Clause 77**

That clause 77 be amended, by adding —

- "(5A)(a) Where any person, who has received assistance in respect of proceedings under this Ordinance under subsection (2), withdraws from those proceedings, the Commission may take over and maintain those proceedings.
- (b) As from the date of any such taking over of proceedings under paragraph (a) the Commission shall be deemed to be a party to those proceedings in lieu of the person who has withdrawn therefore."

Question on the amendment proposed.

SECRETARY FOR HOME AFFAIRS: Mr Chairman, the Administration does not agree with this amendment. We will be proposing amendments to empower the Secretary for Home Affairs to make regulations to allow the Commission to bring proceedings in its own name. The amendment proposed by Dr LEONG would empower the Commission to take over proceedings to which it is not a party, even though the plaintiff in question has decided to withdraw from such proceedings. Members would no doubt appreciate that a complainant receiving the Commission's assistance may have many reasons for withdrawing from an action, for example, he or she may have reached a settlement outside the court. It would be unfair to a defendant if he is forced to continue a case in the court when the claimant no longer wants to pursue the claim just because the Commission has decided to take over the proceedings. If the intention is to allow the Commission to establish points of principles relevant to a specific complaint, the Commission can achieve that objective by initiating a formal investigation. It would be too intervening for the Commission to take over proceedings from which the complainant has decided to withdraw.

Mr Chairman, the Administration objects to this amendment and will vote against it.

Question on Dr LEONG Che-hung's further amendment put.

Voice vote taken.

THE CHAIRMAN said he thought the "Noes" had it.

Mr James TO claimed a division.

CHAIRMAN: Committee will proceed to a division.

CHAIRMAN: Would Members please proceed to vote?

CHAIRMAN: Are there any queries? If not, the result will now be displayed.

Mr HUI Yin-fat, Mr Martin LEE, Mr SZETO Wah, Mr Andrew WONG, Dr LEONG Che-hung, Mr Albert CHAN, Mr CHEUNG Man-kwong, Mr CHIM Pui-chung, Rev FUNG Chi-wood, Mr Frederick FUNG, Mr Michael HO, Dr HUANG Chen-ya, Mr Simon IP, Dr Conrad LAM, 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, Miss Christine LOH, Ms Anna WU and Mr LEE Cheuk-yan voted for the amendment.

The Chief Secretary, the Attorney General, the Financial Secretary, Mr Allen LEE, Mrs Selina CHOW, Mr NGAI Shiu-kit, Mr PANG Chun-hoi, Mr TAM Yiu-chung, Mr LAU Wong-fat, Mr Edward HO, Mr Ronald ARCULLI, Mr Martin BARROW, Mrs Peggy LAM, Mrs Miriam LAU, Mr LAU Wah-sum, Mr Jimmy MCGREGOR, Mrs Elsie TU, Mr Peter WONG, Mr Vincent CHENG, Mr Moses CHENG, Mr Marvin CHEUNG, Mr Timothy HA, Dr LAM Kui-chun, Mr Eric LI, Mr Steven POON, Mr Henry TANG, Dr Samuel WONG, Dr Philip WONG, Mr Howard YOUNG, Dr TANG Siu-tong and Mr Alfred TSO voted against the amendment.

THE CHAIRMAN announced that there were 25 votes in favour of the amendment and 31 votes against it. He therefore declared that the amendment was negatived.

Question on clause 77, as amended by the Secretary for Home Affairs, proposed, put and agreed to.

Clause 78

SECRETARY FOR HOME AFFAIRS: Mr Chairman, I move that clause 78 be amended as set out under my name in the paper circulated to Members. The purpose of this amendment is to extend the time for bringing proceedings under the Ordinance from 12 to 24 months. This proposal was made in response to the request of Members of the Bills Committee.

Proposed amendment

Clause 78

That clause 78 be amended, by deleting subclause (1) and substituting —

"(1) The District Court shall not consider a claim under section 68 unless proceedings in respect of the claim are instituted before the end of the period of 24 months beginning -

- (a) when the act complained of was done; or
- (b) if there is a relevant report in relation to that act, with the day on which the report is published or made available for inspection under section 65,

whichever is the later."

That clause 78(2)(a) be amended, by deleting "12" and substituting "24".

That clause 78(2)(b) be amended, by deleting "行爲" and substituting "作為".

That clause 78(6) be amended —

- (a) by deleting "(a) or (b)".
- (b) by deleting "any" and substituting "the".

That clause 78 be amended, by adding —

"(7) In this section, "relevant report" (有關報告), in relation to an act referred to in subsection (1), means a report -

- (a) published or made available for inspection under section 65; and
- (b) from which it can reasonably be construed (and whether or not the report mentions, or was in any way prepared in consequence of, the act) that the Commission is of the opinion that the act, or the class of acts to which the act belongs, is unlawful under a provision of Part III, IV or V."

Question on the amendment proposed, put and agreed to.

DR LEONG CHE-HUNG: Mr Chairman, I move that clause 78 be further amended as set out under my name in the paper circulated to Members.

The proposed amendment is to provide that time in conciliation will not be taken into account in calculating the period within which proceedings under the Ordinance may be brought.

The Bills Committee consider that the SDB should clearly provide that time in conciliation does not count against the time allowed to bring legal proceedings. A complainant undergoing conciliation should not need to commence proceedings (possibly disrupting conciliation) merely to be certain of preserving the right to litigate if conciliation fails.

Proposed amendment

Clause 78

That clause 78 be further amended, by adding —

"(2A) For the purposes of determining the period under subsection (1) within which proceedings may be brought, where an act to which the claim relates was the subject of a complaint lodged under section 76(1), then the period that elapsed between the date when the complaint was lodged and the date when conciliation under section 76 was concluded, as certified in writing by the Commission, shall be disregarded."

Question on the amendment proposed.

MS ANNA WU: The proposed amendment provides simply that time for conciliation does not count towards the time allotted in which to bring legal proceedings. One of the main functions of the Commission is to provide conciliation services. If parties are affected in using that conciliation services, then we would no longer be supporting the main functions of the Commission. Lawyers of course will not always rely on a court's discretion to award extra time to a victim who had gone beyond the two-year period. It is for this reason that the amendment is made so that while conciliation is in process, that process and the time taken for it would not affect the counting of the two years. There is only a period of two years for someone to take the action in the court and if that two years should expire, the victim would then be jeopardized in terms of protection of his or her interest.

SECRETARY FOR HOME AFFAIRS: Mr Chairman, the Administration has already proposed an amendment to extend the period during which proceedings may be brought to 24 months. The Bill also provides that the District Court may consider any claim or application brought outside that period if it considers

that it is just and equitable to do so. An aggrieved party whose case is delayed because of the time taken by the Equal Opportunities Commission for conciliation can always ask for an extension of the time from the court. In any event, we expect that conciliation by the Commission would not take as long as two years. Therefore, we do not see the need to make an explicit provision stating that the time taken for conciliation will not be taken into account when considering the period within which proceedings may be brought.

Mr Chairman, the Administration objects to this amendment and will vote against it.

Question on Dr LEONG Che-hung's further amendment put.

Voice vote taken.

CHAIRMAN: Committee will proceed to a division.

CHAIRMAN: Would Members please proceed to vote?

CHAIRMAN: Are there any queries? If not, the result will now be displayed.

Mr HUI Yin-fat, Mr Martin LEE, Mr SZETO Wah, Mr TAM Yiu-chung, Mr Andrew WONG, Dr LEONG Che-hung, Mr Albert CHAN, Mr CHEUNG Man-kwong, Mr CHIM Pui-chung, Rev FUNG Chi-wood, Mr Frederick FUNG, Mr Michael HO, Dr HUANG Chen-ya, Mr Simon IP, Dr Conrad LAM, Miss Emily LAU, Mr LEE Wing-tat, Mr Eric LI, Mr Fred LI, Mr MAN Sai-cheong, Mr TIK Chi-yuen, Mr James TO, Dr YEUNG Sum, Mr WONG Wai-yin, Miss Christine LOH, Mr Roger LUK, Ms Anna WU and Mr LEE Cheuk-yan voted for the amendment.

The Chief Secretary, the Attorney General, the Financial Secretary, Mr Allen LEE, Mrs Selina CHOW, Mr NGAI Shiu-kit, Mr PANG Chun-hoi, Mr LAU Wong-fat, Mr Edward HO, Mr Ronald ARCULLI, Mr Martin BARROW, Mrs Peggy LAM, Mrs Miriam LAU, Mr LAU Wah-sum, Mr Jimmy MCGREGOR, Mrs Elsie TU, Mr Peter WONG, Mr Vincent CHENG, Mr Moses CHENG, Mr Marvin CHEUNG, Mr Timothy HA, Dr LAM Kui-chun, Mr Steven POON, Dr Samuel WONG, Dr Philip WONG, Mr Howard YOUNG, Dr TANG Siu-tong, Mr James TIEN and Mr Alfred TSO voted against the amendment.

THE CHAIRMAN announced that there were 28 votes in favour of the amendment and 29 votes against it. He therefore declared that the amendment was negatived.

Question on clause 78, as amended by the Secretary for Home Affairs, proposed, put and agreed to.

DR LEONG CHE-HUNG: Mr Chairman, as Standing Order 46(4) and (5) stipulate that new clauses shall be considered after the clauses of a Bill have been disposed of, may I seek leave to move that Standing Order 46(4) and (5) be suspended in order that the Heading before new clause 30A and new clause 30A may be considered ahead of the amendment to clause 80.

Council then resumed.

PRESIDENT: Dr LEONG, you have my consent.

DR LEONG CHE-HUNG: Mr President, I move that Standing Order 46(4) and (5) be suspended to enable the Committee of the whole Council to consider the Heading before new clause 30A and new clause 30A ahead of the amendment to clause 80.

Question on the motion proposed, put and agreed to.

Council went into Committee.

Heading before new clause 30A	Advisory bodies
New clause 30A	Discrimination in eligibility to vote for and to be elected or appointed to advisory bodies

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

DR LEONG CHE-HUNG: Mr Chairman, I move that the Heading before new clause 30A and new clause 30A as set out under my name in the paper circulated to Member be read the Second time.

The proposed amendment is to prohibit discrimination in public elections and appointments.

The Administration is of the view that it would be more appropriate to rely on persuasion and administrative means to foster the principle of "one person, one vote" in village elections. In regard to public appointments, a new provision will be made to provide that the Government cannot discriminate on a prohibited ground (for example, sex) in the performance of its functions and exercise of its powers. Such a provision would cover public appointments also.

The Bills Committee prefers to adopt the more specific clause in the Equal Opportunities Bill (clause 28) on "discrimination in eligibility to vote for and to be elected or appointed to advisory bodies". One of the key issues concerns Village Representatives and office-bearers of the Heung Yee Kuk. These may not be covered by a clause that prohibits discrimination by the Government in general terms because the court may hold that rural elections and the like are private activities, not government activities.

Question on the Second Reading of the clause proposed.

MR LAU WONG-FAT (in Cantonese): Mr Chairman, as far as the Village Representative elections are concerned, the Heung Yee Kuk started last year to take active steps to promote the "one person, one vote" election system for both men and women. The system has gained wide acceptance among the villages. This is an achievement to be applauded, given the short span of time in which promotion was done. Any proposal to regulate these elections by legislation is, to my mind, superfluous. Now, apart from the Heung Yee Kuk, there are many other institutions represented in the Legislative Council. To accord the same treatment to these institutions, should they be required to come under the jurisdiction of the Bill as well? Is it fair for the Bill to target only at the election of Village Representatives by the residents in the New Territories? The insertion of this clause in promoting anti-discrimination serves only to pose restrictions on the election of Village Representatives in the New Territories. Is this acceptable?

As I said, rural elections are undergoing changes. There is not the slightest need to employ legislative means to regulate. The employment of such means is an abuse of the legislative procedures. There are many major issues requiring the attention of this Council. I hope Honourable Members will spend more time looking into these issues, rather than stir up trouble and make a fuss, just, as I know some of you are minded, to make yourselves better known to the public in preparation for the Legislative Council election in September.

Mr Chairman, with these remarks, I oppose the motion.

CHAIRMAN: I do not think I need reminding Members that motives are not to be imputed.

MS ANNA WU: Thank you, Mr Chairman, quite simply that the system is almost certainly illegal under the Bill of Rights already. As far as I remember, the Heung Yee Kuk is in support of the principle of "one person, one vote" and since they are in consensus insofar as the principle is concerned, I had hoped that they would support statutory regulation of the elections. The election at the rural layer actually is part of our own election system and therefore should be regulated by law.

Thank you, Mr Chairman.

MR WONG WAI-YIN (in Cantonese): Mr Chairman, after the Government published the *Green Paper on Equal Opportunities for Women and Men*, the public has decried the various kinds of sex discrimination prevailing in our society and put forward many recommendations to improve the situation. People generally feel that there is considerable difference between the sexes in the degree of participation through the channels of political process. The Government should try its best to promote women's participation in political and community affairs, and such requests and cries have been widely echoed by the general public. The Government should, therefore, be duty-bound to eliminate the discrimination against women's right for political participation. However, when we look at the Sex Discrimination Bill, we cannot find any positive response from the Government in face of the sex discrimination inherent in rural elections. The Government has even adopted delaying tactics on this issue by claiming that legislation is not the best means to realize the principle of "one person, one vote" in rural elections and by insisting on persuading the villagers to accept this proposal.

Actually, the Government is entirely for the proposal of holding elections on the basis of "one person, one vote" which the Heung Yee Kuk also endorsed in May last year. The crux of this matter lies with the fact that rural committee chairmen will become ex-officio members of their respective district boards, members are elected through a method that is fair, open and in line with the principle of "one person, one vote". As I have just mentioned, both the Heung Yee Kuk and the Government entirely support the principle of "one person, one vote" which means equal voting rights for both men and women. However, they still want to bring it about by persuasion. Now, a year has passed and we can see that the effects of persuasion fall short of expectation. In fact, the Government has provided this Council with some information which indicates that there are still more than 100 villages that have yet to adopt the fair election principle of "one person, one vote". In this regard, the Government said that some villages have already accepted this principle although they cannot adopt this mode of election yet. With that said, all rural committee chairmen have been elected and now become ex-officio District Board Members.

As shown by the information provided by the Government, 29 villages flatly refused to elect their new village representatives through the "one person, one vote" method. After investigation, I found that 25 out of the 29 villages are in Yuen Long and the remaining four in Tsuen Wan. I can only investigate into the reasons why those 25 villages in Yuen Long do not adopt the "one person, one vote" mode of election, basing on the information I have gathered. I noted that all 25 villages have laid down no specific tenure for their village representatives. Whereas most of the villages that are willing to hold their elections on the basis of "one person, one vote" have a fixed tenure for their village representatives. It is because those villages which have a fixed tenure for their village representatives would be left with no village representatives this March if they did not hold an election as the incumbent village representatives could not hold on to their posts. For those villages which have no specific tenure for their representatives, the incumbent village representatives can continue to hold office as long as no election is held. If no arrangement is made for another election, these village representatives can remain in office for life. We have asked the Government whether any measures is on hand to fix a deadline for the villages to hold their elections. The answer from the Government is negative. If there is a fixed tenure for the village representatives, then when their tenure expires, the villages will have no representatives. If the villages want to have their representatives, there would have to be an election. For those villages which have no specific tenure for their representatives, they can really do without an election. It seems that the Government can do nothing about it.

Mr Chairman, despite the Government's boast of its success in persuading many villages to return their representatives by "one person, one vote", I have quite different views on this. I have looked into the particulars registered by electors of several villages and discovered that some are in fact preserving the former "one household, one vote" election system in a disguised form. For the electoral registers I have looked into, the villagers just entered the name of their former heads of households as potential voters and submitted the same names to the Home Affairs Department (HAD). In this way, they can legally proceed with an election on the basis of "one household, one vote" under the existing arrangement. I noted that some villages do not have any women registered as voters at all while some villages have one or two female voters put into the registers for show. It is obviously the "one household, one vote" mode of election in a disguised form which is not completely in line with the fair election principle of "one person, one vote". Furthermore, many villages have not undergone another voter registration exercise. I have enquired with the HAD for the reasons and they replied that if no one from the village raised any queries, the HAD would take no action. Unless someone does raise a query, the HAD would then consider looking into the matter and see whether a voter registration exercise or re-election is called for.

The HAD's handling of rural elections has confused some villagers and even myself. The HAD officials sometimes say that elections have to be held in accordance with traditional rules or custom of the villages. But at other times they say that resolutions of the villages' general meeting would have to be considered. However, in many cases, the HAD can disapprove such resolutions. When some villagers are against the traditional rules, the HAD officials would say that such rules must be observed. Will this kind of double standard adopted by the Government in holding rural elections cause any injustice and in mm disgrace the election principle of "one person, one vote"? In fact, we have discussed this issue many times in the past in Legislative Council panel meetings. We have been urging the Government to hold all rural elections before the elections for rural committee chairman. However, it is with regret that the Government has ultimately failed to do so.

On behalf of the Democratic Party, I have moved a Private Bill with the hope that the election principle endorsed by the Government, the Heung Yee Kuk and the community can actually be put into practice through legislation. Unfortunately, it seems that this Private Bill would not be gazetted this Friday owing to deliberate stalling efforts by the Government. The Bill will probably never materialize due to delays of the Administration. In order to ensure that rural elections are held in line with the principle of "one person, one vote", I would therefore urge any honourable colleagues to support the amendment put forward by Dr the Honourable LEONG Che-hung.

In fact, when we look at rural elections, we can see how serious the problem of sex discrimination is. We feel that we can no longer let the villages themselves make the decisions that exploit women's rights. We are of the view that the drive to eliminate sex discrimination should not merely start from the fronts of employment and education. Political participation is also an important step towards sexual equality. Therefore, the Democratic Party maintains that the inequalities in the Sex Discrimination Bill will have to be rectified so that elections by the general public will be in line with the principle of sexual equality. The Democratic Party will hence fully support the amendment put forward by Dr LEONG Che-hung.

Thank you, Mr Chairman.

MR MARTIN LEE: Mr Chairman, I think we are one short of a quorum.

THE CHAIRMAN directed the Clerk to summon Members to the Chamber.

MR MARTIN LEE (in Cantonese): Mr Chairman, I do not intend to speak; however, I cannot but voice my opinion after listening to the Honourable LAU Wong-fat's speech.

In fact, here and now in Hong Kong, it is actually a shame that this cosmopolitan city is still devoid of an "one person, one vote" election system held across the board. I cannot figure out why government officials cannot throw their support behind this amendment. Mr Chairman, "one person, one vote" practically means that men and women alike can cast their votes. If men can vote but women are denied the right, it would be tantamount to saying that women are not human beings. How can we tolerate that sort of obsolete values?

Mr Chairman, Mr LAU has said that the movers or the supporters of this amendment only aim at keeping a high profile and taking the advantages of gaining more votes during the elections. This is some sort of personal attack and I think that this is a very unfair remark, in particular for the Honourable Ms Anna WU. Ms WU has been devoting herself to pursuing this issue but we all know that she will, unfortunately, not be standing in the elections. I therefore feel that it is extremely unfair for Ms Anna WU. I do hope that Mr LAU can take back these personal attacks.

I support the amendment.

DR TANG SIU-TONG (in Cantonese): Mr Chairman, this motion calls to mind a reply given by the Government to the Legislative Council about two months ago, saying that Village Representatives in 29 villages out of some 700 of them were not elected through the "one person, one vote" system. This number represents less than 5% of all the villages. I am extremely delighted to see that the Heung Yee Kuk could exert its influence on so many of the 700 villages within a year so that they follow the "one person, one vote" policy, which it carried in the form of a resolution. As the Heung Yee Kuk has a long history, stubborn elements inevitably exist. However, I firmly believe that in time they will change to support the policy.

Regarding the issue of the tenure of office for Village Representatives, undoubtedly, some villages have a tradition of not fixing any tenure of office. As times change, however, the setting of tenure of office would gradually become a reality. I think the Home Affairs Department may also contribute in fostering changes in these villages to make tenure of office for their representatives a reality.

Regarding voter registers, the Honourable WONG Wai-yin said on the registers there was no women or there were fewer women than men. This is generally the case in Hong Kong. For example, how many Members from the Democratic Party now seated are women? This surely does not mean that the Democratic Party does not want women to join them. The point is: Women must first run the election to be elected before they can be a Member of this

Council. Similar things happen in the villages: Many women may be reluctant to register themselves as voters. I for one would not force them to register. We can only encourage them to register. Encouragement is persuasion. To encourage people to do something is better than to force them to do it. To encourage people to do something is more conducive to the stability and prosperity of the community. Therefore, what I mean to say today is that I do hope there is one vote for everyone. I am not saying the Heung Yee Kuk does not want men and women to have one vote for each of them. But I hope everyone will give the matter some thought. Give the village women some more time. It has been only one year since changes began to take place. Take the Legislative Council as an analogy. After a lapse of 10 years since the '80s, there are now just 18 directly-elected seats, which will increase to 20 after September. Would it not be better if we allow time for the women to make the change for themselves instead of forcing the changes upon them. Other than our own wishes, we need to accommodate those of others. We do not want to force any groups to do things, be they the Heung Yee Kuk, the Hong Kong Industry and Commerce General Association Limited, the Democratic Party, the Liberal Party, or any other groups. Letting these women make the changes for themselves is far better than forcing changes upon them.

At present, only less than 5% of the villages fall short of practicing "one person, one vote". However, in view of the fact that changes were successfully fostered in 95% of the villages in just a year, I am confident that before long, perhaps before the next election, all Village Representatives can be elected through a "one person, one vote" election. Although I dare not give Members a guarantee that this will happen, I think there are a lot of decisive means open to the Home Affairs Department to make this happen. So, I am of the view that legislative means need not be employed. We hope Honourable Members can appreciate this point, and give due considerations to the self-respect of others. Give others a chance to change themselves, and do not force changes upon them.

Thank you, Mr Chairman

DR YEUNG SUM (in Cantonese): Mr Chairman, it is by no means a high-handed approach to allow by legislative means female villagers to enjoy equal right of participation as their male counterparts do. Why is it considered high-handed to safeguard, by legislative means, their equal right of participation in politics? It is because they have long been deprived of such a right that this piece of legislation is needed to protect the right to which they are originally entitled and to reinstate the right they have been deprived of. This is all I want to point out.

Thank you, Mr Chairman.

REV FUNG CHI-WOOD (in Cantonese): Mr Chairman, I would like to get the idea straight, and that is we are merely giving back to women their right to vote and the right to be elected. We must bear in mind that even if this amendment is carried, in other words, if elections with "one person, one vote" are allowed to take place in certain villages, there might be only a very small number of women to vote or to stand as candidates. However, so long as there is one woman who wishes to stand as a candidate, we ought to give her the fight. It is really ridiculous to ask whether or not the villages are willing to have elections with "one person, one vote".

Mr Chairman, even if we have only one woman in a certain village who wishes to vote, we ought to give her the right to vote. Do we have to go around asking all the women whether or not they are unwilling to vote? This is simply impossible. It is most probable that we have at least one woman who wishes to vote, and so long as we have one woman who wishes to vote, we ought to give her the right to vote. So let us not confuse this idea.

Furthermore, we must bear in mind that this arrangement has been accepted by the rural committees. It is merely that resistance was encountered during the lobbying at that time. Another point is that it is the villages' tradition to have men as the centre of society. So how can it be possible for the women's wish to vote be represented with villages having men as the centre of society? Therefore, if Members are in support of equality between the sexes, please vote in favour of this amendment motion and give those women who wish to vote their rights. Thank you.

MR ANDREW WONG (in Cantonese): Mr Chairman, I rise to speak in support of the amendment.

I wish to point out that taking steps to ensure equality in elections is by no means as high-handed approach and such equality had always been my pursuit while I was Chairman of the Panel on Constitutional Development. Having said that, we must admit that progress in the past year has, as Dr the Honourable TANG said, been extremely good. As the Honourable WONG Wai-yin said, the crux of the problem lies in the term of office, which is an issue the present amendment cannot tackle. I suggest that the Government make efforts to persuade villages that are reluctant to accommodate a system whereby fixed terms of office are imposed on the elected representatives. The idea of having fixed terms of office has been endorsed by the Heung Yee Kuk, which intends to request all villages to accept the idea. However, if villages resist the idea, the Heung Yee Kuk cannot order them to comply, as villages are not directly subordinated to the Heung Yee Kuk.

Moreover, regarding the registration of women voters, I would like to clarify as follows: Only when the term of office of a Village Representative expires and someone wants to run for an election will village voters be asked to register. Some women might not have registered before because in the past

probably the "one family, one vote" system was adopted. When given the right to register now, some women may refuse to register, or they may not want to take the trouble to do so. Therefore, I would suggest that elections in the villages may take a more progressive approach than other elections in Hong Kong, that is, the Government should compile a register of indigenous residents containing information about voters of both sexes. This register will then be deemed the voter register. In fact, I hope all voter registers in Hong Kong may be compiled in this way to obviate the necessity of inviting residents to come forward to register. These are some of my personal opinions, which I hope will be heeded by the Government to enable more progressive elections to take place in the villages than other elections in the rest of the territory.

Thank you, Mr Chairman.

MR WONG WAI-YIN (in Cantonese): Mr Chairman, thank you for permitting me to speak again. I will try to be brief.

First, I want to talk about the issue of voter registration in villages. The fact is that to a certain extent, the voter registration in villages is somewhat "monopolized" at present, as most of the information in the voter register is filled out and handed in by the Village Representative and there is no need to put down the identity numbers in the voter registration. The Village Representative can submit a name list to the district office. After the name list has been posted, if no one objects, it is considered passed. Therefore, as regards the voter registration in the villages, if the district office has not given adequate publicity on the matter or the notice concerned has been torn off soon after it was posted, the villagers may never get to know the procedure or time of the registration. Of course, if some women do not wish to register, this is their freedom. But if they do not know that they can register and end up not registering, then it seems that they have been deprived of their rights.

Moreover, Dr the Honourable TANG Siu-tong has just said that in the case of some stubborn and die-hard villagers who actually refuse to adopt the "one person, one vote" method, the Government has many a lot of "decisive means" to force them to do so. I hope Dr TANG would tell us, as far as he knows, what "decisive means" the Government has. I just have no idea. If Dr TANG finds it inconvenient to answer, I hope that the Secretary for Home Affairs can tell us in his reply what "decisive means" the Government has exactly to make the villages, especially those whose Village Representatives have an indefinite term of office, elect a new Village Representative in a short time.

Thank you, Mr Chairman.

MR ANDREW WONG (in Cantonese): Thank you Mr Chairman, for allowing me to add one more point. In some of the villages in the New Territories, in the past, no one did own the land. Some places in the New Territories, such as

Hang Hau, were later recognized as villages. In some of the villages, some people own the land but some other people do not. For example, in those places which were once fishing harbours, the residents are indigenous fishermen but they do not enjoy the status of indigenous residents. Disregarding the issue of entitlement to small houses and focussing on the right to vote, I believe that these people should be entitled to vote. So, the Administration should include these people into the roll of indigenous residents if such a roll is to be prepared, I hope that the Government can give positive responses because it is meaningless just to keep opposing the amendment. On the contrary, the Administration should face up to and take a square look at the problem with a view to perfecting the system.

SECRETARY FOR HOME AFFAIRS: Mr Chairman, this new clause covers two matters, the proposal in relation to public appointments, and the proposal in respect of rural elections.

On public appointments, the provisions are not necessary. As I have mentioned in the Second Reading debate, I will be proposing new clauses to make it explicit that government activities will be bound by the provisions in the Bill. Public appointments would be one of the activities of the Government covered by the new provision. The proposal in relation to public appointments in the present new clause proposed by Dr LEONG is therefore redundant.

On rural elections, we are of the view that it would be more appropriate to rely on persuasion and administrative measures to foster the principle of "one person, one vote" in village election. As Members are aware, the Heung Yee Kuk has endorsed the principle of "one person, one vote". In fact, 80% of the 555 villages have already adopted this principle and the Government is continuing with its lobbying efforts. We do not see the need for legislation in this regard.

Mr Chairman, the Administration objects to this new clause and will vote against it.

Question on the motion put.

Voice vote taken.

CHAIRMAN: Committee will proceed to a division.

CHAIRMAN: Would Members please proceed to vote?

CHAIRMAN: Are there any queries? If not, the result will now be displayed.

Mr HUI Yin-fat, Mr Martin LEE, Mr SZETO Wah, Mr Andrew WONG, Dr LEONG Che-hung, Mr Jimmy McGREGOR, Mr Albert CHAN, Mr Vincent CHENG, Mr Marvin CHEUNG, Mr CHEUNG Man-kwong, Mr CHIM Pui-chung, Rev FUNG Chi-wood, Mr Frederick FUNG, Mr Timothy HA, Mr Michael HO, Dr HUANG Chen-ya, Mr Simon IP, Dr Conrad LAM, 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, Miss Christine LOH, Mr Roger LUK, Ms Anna WU and Mr LEE Cheuk-yan voted for the motion.

The Chief Secretary, the Attorney General, the Financial Secretary, Mr Allen LEE, Mrs Selina CHOW, Mr NGAI Shiu-kit, Mr PANG Chun-hoi, Mr TAM Yiu-chung, Mr LAU Wong-fat, Mr Edward HO, Mr Ronald ARCULLI, Mr Martin BARROW, Mrs Peggy LAM, Mrs Miriam LAU, Mr LAU Wah-sum, Mr Peter WONG, Mr Moses CHENG, Dr LAM Kui-chun, Mr Eric LI, Mr Steven POON, Dr Samuel WONG, Dr Philip WONG, Mr Howard YOUNG, Dr TANG Siu-tong and Mr James TIEN voted against the motion.

THE CHAIRMAN announced that there were 30 votes in favour of the motion and 25 votes against it. He therefore declared that the motion was carried.

Clause read the Second time.

DR LEONG CHE-HUNG: Mr Chairman, I move that the Heading before new clause 30A and new clause 30A be added to the Bill.

Proposed addition

Heading before new clause 30A and new clause 30A

That the Bill be amended, by adding —

"Advisory bodies

30A. Discrimination in eligibility to vote for and to be elected or appointed to advisory bodies

(1) In this section, a reference to a relevant body means a public body, a public authority, a statutory advisory body, or a prescribed body.

(2) In this section, a reference to a relevant position includes membership of a public body, a public authority, and a prescribed position, and the positions of Village Representative or member or office-holder of a Rural Committee within the meaning of the Heung Yee Kuk Ordinance (Cap.1097).

- (3) It is unlawful for a person to discriminate against another person in -
- (a) determining the eligibility of a person to stand for election to a relevant body or relevant position, or to be selected for a relevant position;
 - (b) the terms or conditions on which a person is considered eligible to stand for election to a relevant body or relevant position, or to be selected for a relevant position;
 - (c) determining the eligibility of a person to vote in elections of members of a relevant body or the holder of a relevant position, or to take part in the selection of the holder of a relevant position;
 - (d) the terms or conditions on which a person is considered eligible to vote in elections of members of a relevant body or the holder of a relevant position, or to take part in the selection of the holder of a relevant position;
 - (e) considering whether a person should be appointed as a member of a relevant body, where some or all of the members of that body are appointed; or
 - (f) considering whether a person should be appointed to a relevant position, approved as a member of a relevant body or recognized as holding a relevant position.

(4) This section shall have effect, notwithstanding the provisions of any Ordinance which provide that a person of a particular sex or marital status is not eligible to stand for election, or to be selected for, a relevant body or position, or to vote in elections for or to take part in the selection of members of a relevant body or the holder of a relevant position.

(5) Notwithstanding anything in the Heung Yee Kuk Ordinance (Cap.1097) or in any other Ordinance, the Secretary for Home Affairs shall not -

- (a) approve a person as a Village Representative;
- (b) issue a certificate recognizing a body as a Rural Committee;

- (c) approve a person as a Special or Co-opted Councillor,

where that person or body (or any of its members) has been elected or otherwise chosen by a procedure in which women have not been able to participate on equal terms with men, whether as candidates, nominees, electors or in some other relevant capacity."

Question on the addition of the Heading before new clause 30A and new clause 30A proposed, put and agreed to.

Clause 80

DR LEONG CHE-HUNG: Mr Chairman, I move that clause 80 be amended as set out under my name in the paper circulated to Members. This is a consequential amendment to the new clause 30A.

Proposed amendment

Clause 80

That clause 80(I) be amended, by adding —

"(aa) prescribing the bodies and positions for the purposes of section 30A;"

Question on the amendment proposed, put and agreed to.

Question on clause 80, as amended, proposed, put and agreed to.

Clause 81

SECRETARY FOR HOME AFFAIRS: Mr Chairman, I move that clause 81 be amended as set out in the paper circulated to Members. This technical amendment is related to the previous amendment to clause 10. The purpose is to empower the Governor in Council to amend Schedule 1A which would set out the provision in relation to death or retirement to which the Sex Discrimination Ordinance would apply.

*Proposed amendment***Clause 81**

That clause 81(1) be amended by adding "1A," after "Schedule I,".

Question on the amendment proposed, put and agreed to.

Question on clause 81, as amended, proposed, put and agreed to.

CHAIRMAN: We have now disposed of all the amendments to the clauses in the Bill except the amendment to clause 59. The Clerk will call the numbers of the clauses, except clause 59, which have not been amended, other than the clauses which already stand part of the Bill as agreed by Members, so that Members may decide whether they should also stand part of the Bill.

Clauses 1, 51, 54, 57 and 64 were agreed to.

New clause 3A	Act done because of sex, and so on and for other reason
New clause 18A	Discrimination against commission agents
New clause 28A	Exceptions from section 25(1) for health and safety considerations
Heading before New clause 3 1A	Clubs
New clause 3 IA	Discrimination by clubs
New clause 40A	Special measures

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

SECRETARY FOR HOME AFFAIRS: Mr Chairman, I move that new clauses 3A, 18A, 28A, the Heading before new clause 31A, new clauses 31A and 40A as set out in the paper circulated to Members be read the Second time.

New clause 3A clarifies that where an act is done for two or more reasons, one of which involved discrimination on the grounds of sex, marital status or pregnancy of the person concerned, then such a discriminatory act is regarded as having been done because of the sex, marital status or pregnancy of the person concerned.

New clause 18A makes it unlawful to discriminate against commission agents on the grounds of sex, marital status, or pregnancy in the context of employment. Usually, commission agents would be regarded as employees or contract workers. However, there may be circumstances where a commission agent works so independently that he or she would not so be regarded. This new clause is therefore proposed to protect commission agents from such discrimination.

New clause 28A provides that in relation to the provision of services, differential treatment of pregnant persons would not constitute unlawful discrimination if such treatment is done in order to comply with health and safety considerations which are reasonable in the circumstances.

New clause 31A makes it explicit that the activities of clubs are covered under the Bill. The provisions are proposed in response to concerns raised by Members of the Bills Committee. This new clause provides that it would be unlawful for a club to discriminate against a woman or a man in terms of accepting her/his application for membership, his/her access to benefits, services and facilities.

New clause 40A provides that any special measures taken in respect of persons on the grounds of their sex, marital status or pregnancy, for example, to meet their special needs or to give them equal opportunities, shall not be unlawful.

Question on the Second Reading of the clauses proposed, put and agreed to.

Clauses read the Second time.

SECRETARY FOR HOME AFFAIRS: Mr Chairman, I move that new clauses 3A, 18A, 28A, the Heading before new clause 31A, new clauses 31A and 40A be added to the Bill.

Proposed additions

New clause 3A

That the Bill be amended, by adding —

**"3A. Act done because of sex, etc.
and for other reason**

If-

- (a) an act is done for 2 or more reasons; and
- (b) one of the reasons is the sex, marital status or pregnancy of a person (whether or not it is the dominant or a substantial reason for doing the act),

then, for the purposes of this Ordinance, the act shall be taken to be done for the reason specified in paragraph (b)."

New clause 18A

That the Bill be amended, by adding —

"18A. Discrimination against commission agents

(1) This section applies to any work for a person ("the principal") which is available for doing by individuals ("commission agents") as the agents of the principal and who are remunerated, whether in whole or in part, by commission.

(2) It is unlawful for the principal, in relation to work to which this section applies, to discriminate against a woman who is a commission agent -

- (a) in the terms on which he allows her to do that work;
- (b) by not allowing her to do it or continue to do it;
- (c) in the way he affords her access to any benefits, facilities or services or by refusing or deliberately omitting to afford her access to them; or
- (d) by subjecting her to any other detriment.

(3) The principal does not contravene subsection (2)(b) by doing any act in relation to a woman at a time when if the work were to be done by a person taken into his employment being a man would be a genuine occupational qualification for the job.

(4) Subsection (2)(c) shall not apply to benefits, facilities or services of any description if the principal is concerned with the provision (for payment or not) of benefits, facilities or services of that description to the public, or to a section of the public to which the woman belongs, unless that provision differs in a material respect from the provision of the benefits, facilities or services by the principal to his commission agents.

New clause 28A

That the Bill be amended, by adding —

"28A. Exceptions from section 25(1) for health and safety considerations

Section 25(1) shall not be construed as rendering unlawful discrimination falling within section 7 if the discrimination is imposed in order to comply with health and safety considerations which are reasonable in the circumstances."

Heading before new clause 31A and new clause 31A

That the Bill be amended, by adding —

"Clubs

31A. Discrimination by clubs

(1) It is unlawful for a club, the committee of management of a club or a member of the committee of management of a club to discriminate against a woman who is not a member of the club -

- (a) by refusing or failing to accept her application for membership; or
- (b) in the terms or conditions on which the club is prepared to admit her to membership.

(2) It is unlawful for a club, the committee of management of a club or a member of the committee of management of a club to discriminate against a woman who is a member of the club-

- (a) in the terms or conditions of membership that are afforded to her;

- (b) by refusing or failing to accept her application for a particular class or type of membership;
- (c) by denying her access, or limiting her access, to any benefit, service or facility provided by the club;
- (d) by depriving her of membership or varying the terms of membership; or
- (e) by subjecting her to any other detriment.

(3) Nothing in subsection (1)(b) or (2) renders it unlawful to discriminate against a woman if the discrimination occurs in relation to the use or enjoyment of any benefit provided by the club where -

- (a) it is not practicable for the benefit to be used or enjoyed -
 - (i) simultaneously; or
 - (ii) to the same extent, by both men and women; and
- (b) either-
 - (i) the same, or an equivalent, benefit is provided for the use of men and women separately from each other; or
 - (ii) men and women are each entitled to a fair and reasonable proportion of use and enjoyment of the benefit.

New clause 40A

That the Bill be amended, by adding before clause 41 —

"40A. Special measures

Nothing in Part III, IV or V shall render unlawful an act that is reasonably intended to -

- (a) ensure that persons of a particular sex or marital status, or who are pregnant, have equal opportunities with other persons in circumstances in relation to which a provision is made by this Ordinance;
- (b) afford persons of a particular sex or marital status, or who are pregnant, goods or access to services, facilities or opportunities to meet their special needs in relation to -
 - (i) employment, education, clubs or sport; or
 - (ii) the provision of premises, goods, services or facilities;
- (c) afford persons of a particular sex or marital status, or who are pregnant, grants, benefits or programmes, whether direct or indirect, to meet their special needs in relation to -
 - (i) employment, education, clubs or sport; or
 - (ii) the provision of premises, goods, services or facilities."

Question on the additions of the new clauses 3A, 18A, 28A, the Heading before new clause 31A, new clauses 31A and 40A proposed, put and agreed to.

Heading before Government
New clause 18B

New clause 18B Government

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

SECRETARY FOR HOME AFFAIRS: Mr Chairman, I move that the Heading before new clause 18B and new clause 18B as set out in the paper circulated to Members be read the Second time.

Clause 18B covers government activities. As I have mentioned in the Second Reading debate, the Government is already bound by the Bill of Rights Ordinance not to discriminate in the discharge of its duties and the performance of its functions. Government activities, insofar as they relate to employment, education, provision of goods and services and the disposal and management of premises, are already covered by the provisions of the Bill. The purpose of

new clauses 18B is to put this beyond any doubt. The same explanation applies to clause 31B which I shall put to Members later. Clause 18B largely reflects the principles in the Bill of Rights Ordinance, including the specific exception in respect of immigration control.

Question on the Second Reading of the clause proposed.

MS ANNA WU: Thank you, Mr Chairman, the Genesis to the Administration proposing clause 18B is this. The Government had originally thought that the Bill would cover government services. It was upon pointing out to the Government that the word "services" as defined by United Kingdom case law only related to market place activities and do not relate to government services and therefore the Government was asked to amend the provisions of the Bill to cover government services and programmes specifically.

The Government and the Bills Committee agreed in principle that a new clause should be added to the Ordinance to cover expressly the full range of government and quasi-government activities. The amendments proposed by the Government — this one and the next one — unfortunately have serious deficiencies. The Bills Committee is therefore proposing an alternative one under clause 31C, to achieve the same end but without the same loose ends.

One of the major problems with the government clause is this: The Government's proposed clause includes an exception for statutory compliance by government officials. This means that if a government official has undertaken an unlawful act but he was undertaking an act under a law, and if the law were unlawful itself, then you would not be able to challenge the government programme. This statutory defence is pretty absolute. If the person undertaking the function is in compliance with the law, which itself is unlawful, then that would be a defence to the Government conduct which really nullifies the effect of the principal provision and therefore the provision advanced by the Government intended to protect victims does not really do that. And there is no parallel in the Bill of Rights with this insofar as the same arrangement is concerned and the Bill's effect is therefore much reduced because of it. And in fact the Sex Discrimination Bill with this type of clause gives less protection than what the Bill of Rights would provide in terms of standard. I really feel that insofar as government sincerity is concerned, this one is particularly weak. You cannot offer a protection to a victim and then seek to remove it through its statutory defence protecting the Government. That seems to me to be very wrong. And I would ask Members to bear that in mind not to support the Government but to support the alternative Bills Committee's amendment under 31C which is far clearer.

Thank you, Mr Chairman.

MR JAMES TO (in Cantonese): Mr Chairman, the Democratic Party agrees with the arguments of the Honourable Ms Anna WU and opposes this motion of the Government.

Question on the motion put.

Voice vote taken.

THE CHAIRMAN said he thought the "Noes" had it.

MRS MIRIAM LAU: I claim a division.

CHAIRMAN: Committee will proceed to a division.

CHAIRMAN: Would Members please proceed to vote?

CHAIRMAN: Are there any queries? If not, the result will now be displayed.

The Chief Secretary, the Attorney General, the Financial Secretary, Mr Allen LEE, Mrs Selina CHOW, Mr NGAI Shiu-kit, Mr PANG Chun-hoi, Mr TAM Yiu-chung, Mr Andrew WONG, Mr LAU Wong-fat, Mr Edward HO, Mr Ronald ARCULLI, Mr Martin BARROW, Mrs Peggy LAM, Mrs Miriam LAU, Mr LAU Wah-sum, Mr Jimmy MCGREGOR, Mrs Elsie TU, Mr Peter WONG, Mr Vincent CHENG, Mr Moses CHENG, Mr Marvin CHEUNG, Mr Timothy HA, Mr Simon IP, Dr LAM Kui-chun, Mr Eric LI, Mr Steven POON, Dr Samuel WONG, Dr Philip WONG, Mr Howard YOUNG, Dr TANG Siu-tong, Mr James TIEN and Mr Alfred TSO voted for the motion.

Mr HUI Yin-fat, Mr Martin LEE, Mr SZETO Wah, Dr LEONG Che-hung, Mr Albert CHAN, Mr CHEUNG Man-kwong, Mr CHIM Pui-chung, Rev FUNG Chi-wood, Mr Frederick FUNG, Mr Michael HO, Dr HUANG Chen-ya, Dr Conrad LAM, 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, Miss Christine LOH, Mr Roger LUK, Ms Anna WU and Mr LEE Cheuk-yan voted against the motion.

THE CHAIRMAN announced that there were 33 votes in favour of the motion and 24 votes against it. He therefore declared that the motion was carried.

Clause read the Second time.

SECRETARY FOR HOME AFFAIRS: Mr Chairman, I move that the Heading before new clause 18B and new clause 18B be added to the Bill.

Proposed addition

Heading before new clause 18B and new clause 18B

That the Bill be amended, by adding —

Government

18B. Government

(1) Subject to subsection (2), without prejudice to the operation of the other provisions of this Part in relation to the Government, it is unlawful for the Government to discriminate against a woman in the performance of its functions or the exercise of its powers.

(2) Subsection (1) shall not render unlawful -

- (a) as regards a woman not having the right to enter and remain in Hong Kong, any act done under any immigration legislation governing entry into, stay in and departure from Hong Kong; or
- (b) any act done in relation to a woman if it was necessary for that act to be done in order to comply with a requirement of an existing statutory provision."

Question on the addition of the Heading before new clause 18B and new clause 18B proposed, put and agreed to.

Heading before Government
New clause 31B

New clause 31B Government

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

SECRETARY FOR HOME AFFAIRS: Mr Chairman, I move that the Heading before new clause 31B and new clause 31B as set out in the paper circulated to Members be read the Second time.

For the same reasons that I have explained in moving new clause 18B, I recommend new clause 31B which covers the activities of the Government to Members.

Question on the motion put.

Voice vote taken.

THE CHAIRMAN said he thought the "Ayes" had it.

MR WONG WAI-YIN: I claim a division.

CHAIRMAN: Committee will proceed to a division.

CHAIRMAN: Would Members please proceed to vote?

CHAIRMAN: Are there any queries? If not, the result will now be displayed.

The Chief Secretary, the Attorney General, the Financial Secretary, Mr Allen LEE, Mrs Selina CHOW, Mr NGAI Shiu-kit, Mr PANG Chun-hoi, Mr TAM Yiu-chung, Mr Andrew WONG, Mr LAU Wong-fat, Mr Edward HO, Mr Ronald ARCULLI, Mr Martin BARROW, Mrs Peggy LAM, Mrs Miriam LAU, Mr LAU Wah-sum, Mr Jimmy McGREGOR, Mrs Elsie TU, Mr Peter WONG, Mr Vincent CHENG, Mr Moses CHENG, Mr Marvin CHEUNG, Mr Timothy HA, Mr Simon IP, Dr LAM Kui-chun, Mr Eric LI, Mr Steven POON, Dr Samuel WONG, Dr Philip WONG, Mr Howard YOUNG, Dr TANG Siu-tong, Mr Roger LUK and Mr Alfred TSO voted for the motion.

Mr HUI Yin-fat, Mr Martin LEE, Mr SZETO Wah, Dr LEONG Che-hung, Mr Albert CHAN, Mr CHEUNG Man-kwong, Rev FUNG Chi-wood, Mr Frederick FUNG, Mr Michael HO, Dr HUANG Chen-ya, Dr Conrad LAM, 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, Miss Christine LOH, Ms Anna WU and Mr LEE Cheuk-yan voted against the motion.

THE CHAIRMAN announced that there were 33 votes in favour of the motion and 22 votes against it. He therefore declared that the motion was carried.

Clause read the Second time.

SECRETARY FOR HOME AFFAIRS: Mr Chairman, I move that the Heading before new clause 31B and new clause 31B be added to the Bill.

Proposed addition

Heading before new clause 31B and new clause 31B

That the Bill be amended, by adding —

Government

31B. Government

(1) Subject to subsection (2), without prejudice to the operation of the other provisions of this Part in relation to the Government, it is unlawful for the Government to discriminate against a woman in the performance of its functions or the exercise of its powers.

(2) Subsection (1) shall not render unlawful -

- (a) as regards a woman not having the right to enter and remain in Hong Kong, any act done under any immigration legislation governing entry into, stay in and departure from Hong Kong; or
- (b) any act done in relation to a woman if it was necessary for that act to be done in order to comply with a requirement of an existing statutory provision."

Question on the addition of the Heading before new clause 31B and new clause 31B proposed, put and agreed to.

Heading before	Laws and Government
New clause 31C	programmes

New clause 31C Discrimination in the
administration of laws and
government programmes

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

DR LEONG CHE-HUNG: Mr Chairman, I move that the Heading before new clause 31C and new clause 31C as set out under my name in the paper circulated to Members be read the Second time.

The proposed new clause prohibits discrimination in the administration of laws and government programmes.

The Administration agrees with the proposal but its proposed Committee stage amendments incorporate new and unnecessary exceptions. The Bills Committee prefers the wording in clause 27 of the Equal Opportunities Bill.

In essence, clause 31C is very similar to clause 18B and 31B which have just passed but has a much better connotation to that effect.

Question on the Second Reading of the clause proposed.

SECRETARY FOR HOME AFFAIRS: Mr Chairman, Members have already accepted the new clauses 18B and 31B which make it explicit that the Government will be bound by the provisions of the Bill. The Administration objects to this new clause which relates to the administration of laws and government programmes for two reasons.

First, new clauses have already been added to ensure that the Government cannot discriminate in the performance of its functions or the exercise of its powers. Furthermore, the generality of the phraseology of Dr LEONG's proposed new clause means that this clause could apply to any person, including a private individual, who exercises any power under any law, even when such exercise of power is not pursuant to the conduct of activities by the Government.

More importantly, this proposed new clause renders unlawful any exercise of the royal prerogative powers or legislative powers that is discriminatory under the Sex Discrimination Ordinance. It provides no exception whatsoever. Members will be aware that under the Bill of Rights Ordinance, specific exception is provided for with respect to the exercise of immigration control pursuant to immigration legislation against persons not having the right to enter or remain in Hong Kong. This exception reflects a reservation entered for Hong Kong in respect of the International Covenant on

Civil and Political Rights. The proposed new clause 31C does not except the exercise of immigration control from the Sex Discrimination Ordinance. As such, it goes beyond the parameters of the ICCPR as applied to Hong Kong. This is clearly unacceptable.

Mr Chairman, the Administration objects to this new clause and will vote against it.

MS ANNA WU: Mr Chairman, I was not going to speak on this particular clause as in many ways the substance would be the same as clause 18B. But I would like to say that 31C and 18B are not duplicative in the sense that one takes the place of the other. They cover a different sort of function. But in terms of what was said earlier by the Administration that prerogative powers, if they are discriminatory, should not be covered by a law such as this. I found most peculiar. If prerogative powers are discriminatorily exercised, then all the more they should be covered by a law of this sort. I find it also peculiar that there should be emphasis paid to the immigration aspects of the Sex Discrimination Bill. The clause 31C provisions relating to government laws and programmes insofar as immigration control is concerned do not affect the fundamentals of those aspects. There is also an added reason to have clause 31C which clause 18B would not cover and this is one aspect which is already acknowledged in the deliberation of the Disability Discrimination Bill. Issues such as examination, training programmes, parties requested or delegated to run training programmes might not be covered anywhere else except under a provision such as this and therefore I would urge Members to also vote in favour clause 31C.

Thank you, Mr Chairman.

Question on the motion put.

Voice vote taken.

THE CHAIRMAN said he thought the "Noes" had it.

MR JAMES TO: I claim a division.

CHAIRMAN: Committee will proceed to a division.

CHAIRMAN: Would Members please proceed to vote?

CHAIRMAN: Are there any queries? If not, the result will now be displayed.

Mr HUI Yin-fat, Mr Martin LEE, Mr SZETO Wah, Dr LEONG Che-hung, Mr Albert CHAN, Mr CHEUNG Man-kwong, Mr CHIM Pui-chung, Rev FUNG Chi-wood, Mr Frederick FUNG, Mr Michael HO, Dr HUANG Chen-ya, Dr Conrad LAM, 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, Miss Christine LOH, Ms Anna WU and Mr LEE Cheuk-yan voted for the motion.

The Chief Secretary, the Attorney General, the Financial Secretary, Mr Allen LEE, Mrs Selina CHOW, Mr NGAI Shiu-kit, Mr PANG Chun-hoi, Mr TAM Yiu-chung, Mr Andrew WONG, Mr LAU Wong-fat, Mr Edward HO, Mr Ronald ARCULLI, Mr Martin BARROW, Mrs Peggy LAM, Mrs Miriam LAU, Mr LAU Wah-sum, Mr Jimmy MCGREGOR, Mrs Elsie TU, Mr Peter WONG, Mr Vincent CHENG, Mr Moses CHENG, Mr Marvin CHEUNG, Mr Timothy HA, Mr Simon IP, Dr LAM Kui-chun, Mr Eric LI, Mr Steven POON, Dr Samuel WONG, Dr Philip WONG, Mr Howard YOUNG, Dr TANG Siu-tong, Mr Roger LUK and Mr Alfred TSO voted against the motion.

THE CHAIRMAN announced that there were 23 votes in favour of the motion and 33 votes against it. He therefore declared that the motion was negated.

New clause 68A Commission may bring
proceedings in its
own name

New clause 68B Commission may
intervene in
proceedings

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

DR LEONG CHE-HUNG: Mr Chairman, for the comfort of Members and the Administration, this will be the last clauses I would have moved for this Bill this morning. Mr Chairman, I move that new clauses 68A and 68B as set out under my name in the paper circulated to Members be read the Second time.

New clause 68A empowers the EOC to bring proceedings in its own name with respect to any act or practice made unlawful by the Ordinance.

The point has been agreed by the Administration in principle but it has proposed to empower the Secretary for Home Affairs to make regulations, subject to the Legislative Council's approval. The Bills Committee considers

that it will be more proper to make a new clause for this provision in the principal Ordinance.

New clause 68A(2) gives the EOC the function of applying to court for declaration that legislation has been repealed by reason of inconsistency with the Bill of Rights Ordinance (BORO) as it relates to sex, marital status or pregnancy discrimination.

Unlike the BORO, the SDB does not expressly repeal inconsistent laws. The proposed amendment therefore empowers the EOC to challenge discriminatory laws by using the BORO.

New clause 68B empowers the EOC to act by leave of court as *amicus curiae* in relation to claims under section 68(1) of the Ordinance.

The Bills Committee considers that when an individual is litigating an important test case under the SDB, the EOC should be able to participate (to the extent permitted by the court) in order to assist in shaping the law's development. Similar provisions exist in Australian equal opportunity laws.

Question on the Second Reading of the clauses proposed.

MS ANNA WU: Thank you, Mr Chairman. I would not repeat what Dr LEONG has already said about these two clauses, 68A and 68B. They should be looked at jointly. New clause 68A refers to the Commission's power to undertake litigation in its own name whereas new clause 68B refers to the Commission's power to intervene in legal proceedings. I would like, however, to draw Members' attention to a case in the United Kingdom. It is a House of Lord case called Equal Opportunities Commission and another v. the Secretary of State for Employment. This is a 1994 case and it is reported and this particular one is extremely important because it was decided that the United Kingdom Commission, the same Commission with the same power and the same structure as that is currently proposed by the Sex Discrimination Bill, had *locus standi*, that is the right and the standing to bring judicial review proceedings in its own name, pursuant to the identical provisions in the United Kingdom, and these provisions relates to the functions of the Commission under clause 56(1) referring to the Commission's responsibility to work towards elimination of discrimination and to promote equality and opportunity between men and women generally.

These two functions appear in identical language in the Sex Discrimination Bill and it was decided in that particular case that even based on these provisions alone, the Equal Opportunities Commission could bring actions in its own name and could bring actions together with another and I believe this type of principle should also apply to the *amicus curiae* situation where you act as someone like a friend to an important case. The case also reflects the fact that the proceedings brought related not only to the Commission's power to seek

a judicial review, it also related to the seeking of a declaratory order on the laws in the United Kingdom breaching a community law. So the case is quite significant and it is based on this case that clauses 68A and 68B were drafted.

As Dr LEONG had pointed out, the Government had, in fact, agreed in principle to these provisions but rather than providing for these in the Sex Discrimination Bill in clear terms, it did the same trick as it did with other provisions and that is to load any right so heavily with conditions and preconditions so as to make it very difficult to operate. In the case of the equivalent provisions provided by the Government, it provided in the alternative clause 80A that the Secretary for Home Affairs will be empowered to make regulations and therefore we do not really know what regulations these will be and what scope will be covered and this is the rationale and the reason to clauses 68A and 68B as proposed. They are within the current functions of the Commission. They are within the United Kingdom case decided upon which are exactly on all fours for the current situation. The Government had, in fact, despite having agreed to these provisions, challenged 68A and 68B with charging effect. Mr Chairman, you ruled upon them and decided to the contrary that there was no charging effect. These particular provisions are particularly important in lower development areas wherefrom the Commission feels the scenario is problematic. The Commission should be able to take action in its own name quite clearly. I would also remind Members that whatever happens on this particular Bill will also affect the Disability Discrimination Bill. Provisions such as these are of particular importance to the discrimination area and particularly with regard to discrimination arising from disability. Thank you, Mr Chairman. I would urge Members to support clause 68A and 68B.

MR MARTIN LEE: Mr Chairman, good morning. I would like to take this opportunity to show my appreciation, first of all to Ms Anna WU, for having done so much in this field of anti-discrimination laws. I think her name will go down in history as the champion of anti-discrimination laws in Hong Kong. I also would like to take this opportunity to thank Dr LEONG Che-hung for having chaired this Bills Committee. I think from now on we should use the word "Herculean" and apply it both to a woman, Anna, and to a man, C.H., equally.

Of course Anna did not get all that she wanted, or C.H. either, but they were able to force many concessions from the Government. For example, the club rules of many of our clubs will have to be changed and I shall be able to take my wife to visit every room in quite a few clubs in Hong Kong except the Men's Room.

I support these two clauses.

SECRETARY FOR HOME AFFAIRS: Mr Chairman, the Administration will propose a new clause to empower the Secretary for Home Affairs to make regulations to allow the Equal Opportunities Commission to bring proceedings in its own name. We do not agree with Dr LEONG's proposed new clauses because we believe that they have not adequately addressed certain legal issues, for example, the appropriate remedy in proceedings where there is no claimant. We also need to make clear in the legislation the circumstances under which the Commission can bring proceedings. Dr LEONG's new clauses only state that where any person may bring proceedings under the Ordinance but has not done so, the Commission may bring proceedings as if the Commission were that person. This may allow, for example, the Commission to bring proceedings even though the aggrieved person does not do so because he or she is reaching a settlement with the defendant. Such powers are obviously too wide.

Furthermore, the effect of Dr LEONG's clause 68A would be to enable the Equal Opportunities Commission to challenge any piece of legislation for alleged inconsistency with the Bill of Rights Ordinance, even though such legislation is not inconsistent with the Sex Discrimination Ordinance. As I have mentioned before, the Equal Opportunities Commission is set up to work towards the elimination of discrimination as defined in the Sex Discrimination Ordinance. It is not appropriate for the Commission to assume a role in enforcing provisions of the Bill of Rights Ordinance and the ICCPR.

Mr Chairman, the Administration objects to these new clauses and will vote against them.

MS ANNA WU: Mr Chairman, I was not going to delay Members any further than would be necessary. However, Mrs HUNG mentioned that under the proposed clauses 68A and 68B the Commission would have power to bring and maintain proceedings as if the Commission were that particular person, that is, the person suffering from the unlawful act. But that is the way the Government clause is drafted as well. The Government clause says: "where any person may bring proceedings under section 68(1)," which is duplicated in terms of cross-reference to that section under 68A and 68B, "but has not done so, empowering the Commission in such circumstances as are specified in the regulations, to bring and maintain those proceedings as if the Commission were that person." So, how would that differ at all?

And, Mr Chairman, I must say that the problem that Mrs HUNG identified is not really there. She said if the Commission is going to take declaratory action the Government does not know what the remedies or orders would be. But those remedies and orders already exist in common law. They are there. We do not need to re-define them, and in the United Kingdom action that I referred to, they use the existing common law power. There was nothing new to it. I see no reason why the Government keeps on defining and re-defining remedies so that you give away the least possible, particularly in the

case of the reference to the Commission taking action as if it were that person. How is that different from your provision?

MR JAMES TO (in Cantonese): Mr Chairman, I would like to respond to the Government's statements. The Government noted that under the proposed new clause 68A, the Commission may seek a declaratory order from the court on the laws that contravene the Hong Kong Bill of Rights. I wish to point out one thing: according to clause 68A(2)(a), the Commission can seek a declaratory order on the laws that contravene those stipulations in the Bill of Rights concerning sex, marital status and pregnancy only, not all provisions in the Bill of Rights.

Question on the motion put.

Voice vote taken.

CHAIRMAN: Committee will proceed to a division.

CHAIRMAN: Would Members please proceed to vote?

CHAIRMAN: Are there any queries? If not, the result will now be displayed.

Mr HUI Yin-fat, Mr Martin LEE, Mr SZETO Wah, Mr TAM Yiu-chung, Dr LEONG Cheung, Mr Jimmy MCGREGOR, Mrs Elsie TU, Mr Albert CHAN, Mr CHEUNG Man-kwong, Mr CHIM Pui-chung, Rev FUNG Chi-wood, Mr Frederick FUNG, Mr Michael HO, Dr HUANG Chen-ya, Mr Simon IP, Dr Conrad LAM, 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, Miss Christine LOH, Ms Anna WU and Mr LEE Cheuk-yan voted for the motion.

The Chief Secretary, the Attorney General, the Financial Secretary, Mr Allen LEE, Mrs Selina CHOW, Mr NGAI Shiu-kit, Mr PANG Chun-hoi, Mr Andrew WONG, Mr LAU Wong-fat, Mr Edward HO, Mr Ronald ARCULLI, Mr Martin BARROW, Mrs Peggy LAM, Mrs Miriam LAU, Mr LAU Wah-sum, Mr Peter WONG, Mr Vincent CHENG, Mr Moses CHENG, Mr Marvin CHEUNG, Mr Timothy HA, Dr LAM Kui-chun, Mr Eric LI, Mr Steven POON, Mr Henry TANG, Dr Samuel WONG, Dr Philip WONG, Mr Howard YOUNG, Dr TANG Siu-tong, Mr Roger LUK, Mr James TIEN and Mr Alfred TSO voted against the motion.

THE CHAIRMAN announced that there were 27 votes in favour of the motion and 31 votes against it. He therefore declared that the motion was negatived.

New clause 80A Regulations to empower
 Commission to bring
 certain proceedings

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

SECRETARY FOR HOME AFFAIRS: Mr Chairman, I move that new clause 80A as set out in the paper circulated to Members be read the Second time.

The purpose of this clause is to empower the Secretary for Home Affairs to make regulations in respect of the circumstances in which the Equal Opportunities Commission may bring proceedings in its own name, and to specify the relevant remedies. For the reasons I have given earlier, I recommend this new clause to Members.

Question on the Second Reading of the clause proposed, put and agreed to.

Clause read the Second time.

SECRETARY FOR HOME AFFAIRS: Mr Chairman, I move that new clause 80A be added to the Bill.

Proposed addition

New clause 80A

That the Bill be amended, by adding —

**"80A. Regulations to empower Commission
to bring certain proceedings**

- (1) The Secretary for Home Affairs may make regulations -
 - (a) where any person may bring proceedings under section 68(1) but has not done so, empowering the Commission, in such circumstances as are specified in the regulations, to bring and maintain those proceedings as if the Commission were that person;

- (b) specifying which of the remedies referred to in section 68(3) shall be obtainable by the Commission in any such proceedings;
- (c) for the purposes of enabling the Commission to bring and maintain any such proceedings (including any related purposes), specifying modifications to which any provisions of this Ordinance (including any subsidiary legislation) shall be read.

(2) Any regulations made under this section shall be subject to the approval of the Legislative Council."

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

Clause 59

SECRETARY FOR HOME AFFAIRS: Mr Chairman, I move that clause 59(2) be amended as set out under my name as circulated to Members.

This is a technical amendment which will require the Equal Opportunities Commission not to delegate its functions under the regulations made under section 80A in respect of the Commission bringing proceedings in its own name.

Proposed amendment

Clause 59

That clause 59(2) be amended, by adding —

"(aa) any provisions of any regulations made under section 80A which are specified in the regulations as provisions which shall not be subject to subsection (1);".

Question on the amendment proposed, put and agreed to.

Question on clause 59, as amended, proposed, put and agreed to.

Schedules 3 and 6 were agreed to.

Schedules 1, 5 and 7

SECRETARY FOR HOME AFFAIRS: Mr Chairman, I move that Schedules 1, 5 and 7 be amended as set out in the paper circulated to Members. These are technical amendments.

The amendments to Schedule 7 empower the District Court Rules Committee to relax the rules of evidence in relation to proceedings brought under the Bill. They also make it explicit that the District Court has power to vary the rule of costs, with no award of costs as the general rule.

I recommend these amendments to Members.

Proposed amendments

Schedule 1

That Schedule 1 be amended, by deleting Part 2.

Schedule 5

That Schedule 5, section 1, be amended, by deleting "Chairman" wherever it appears and substituting "Chairperson".

That Schedule 5, section 3(3)(a) be amended, by deleting "Chairman" wherever it appears and substituting "Chairperson".

That Schedule 5, section 6(2) be amended, by deleting "Chairman" wherever it appears and substituting "Chairperson".

That Schedule 5, section 7(b)(i) be amended, by deleting "Chairman" wherever it appears and substituting "Chairperson".

That Schedule 5, section 13(3)(a) be amended, by deleting "chairman" and substituting "chairperson".

That Schedule 5, section 19 be amended —

- (a) in subsection (1), by deleting "and efficiency" and substituting ", efficiency and effectiveness".
- (b) by adding -

"(5) Subsection (1) shall not operate to entitle the Director of Audit to question the merits of the policy objectives of the Commission."

Schedule 7

That Schedule 7 be amended —

- (a) by adding -

**"Dangerous Goods (General)
Regulations**

**12A. Supervisors to be employed
in danger buildings**

Regulation 36 of the Dangerous Goods (General) Regulations (Cap.295 sub. leg.) is amended by repealing "male" where it twice appears."

- (b) in item 14, in the proposed section 73B -

- (i) in subsection (2), by deleting "rules as to proceedings by or against the Crown." and substituting -

"rules -

- (a) as to proceedings by or against the Crown;
- (b) as to the persons who may appear in, conduct, defend and address the Court in, any proceedings therein;
- (c) to make special provision for any proceedings in the Court where regulations made under section 80A of the Sex Discrimination Ordinance (of 1995) apply to the proceedings.";

- (ii) by adding -

"(2A) Each party to any proceedings in the Court in the exercise of its jurisdiction under the Sex Discrimination Ordinance (of 1995) shall bear its own costs unless the Court otherwise orders on the ground that -

- (a) the proceedings were brought maliciously or frivolously; or

- (b) there are special circumstances which warrant an award of costs.";
- (iii) in subsection (3) -
 - (A) in paragraph (c), by deleting the semicolon at the end and substituting a full stop;
 - (B) by deleting paragraph (d);
- (iv) by adding -
 - "(3A) The Court in the exercise of its jurisdiction under the Sex Discrimination Ordinance (of 1995) shall not be bound by the rules of evidence and may inform itself on any matter in such manner as it sees fit, with due regard to the rights of the parties to proceedings therein to a fair hearing, the need to determine the substantial merits of the case and the need to achieve a prompt hearing of the matters at issue between the parties.";
- (v) in subsection (4), by deleting "Any" and substituting "Subject to subsection (3A), any";
- (vi) in subsection (6), by adding -
 - "(aa) where there is any conflict or inconsistency between -
 - (i) any rules made under subsection (2)(b); and
 - (ii) any law and practice regulating the description of persons who may appear in, conduct, defend and address the Court, in any proceedings therein,

then those rules shall, to the extent of that conflict or inconsistency, as the case may be, prevail over that law and practice;"

That Schedule 7 be amended —

- (a) in the Chinese text, by deleting sections 4 and 5 and substituting -

"4. 審裁處的司法管轄權

《勞資審裁處條例》(第 25 章)第 7 條現予修訂,加入 —

“(3) 第(2)款的施行不阻止按照根據《地方法院條例》(第 336 章)第 73B 條訂立的規則將申索轉移至審裁處。”。

5. 拒絕行使司法管轄權

第 10 條現予修訂,加入 —

“(3) 本條不適用於按照根據《地方法院條例》(第 336 章)第 73B 條訂立的規則轉移至審裁處的申索。”。

- (b) in the Chinese text, by deleting section 8 and substituting -

"8. 入境事務主任及入境事務助理員的各項權力

《人民入境條例》(第 115 章)第 56(3)條現予修訂,廢除 “女子進行,否則不得根據本條搜查任何女子” 而代以 “性別相同的人進行,否則不得根據本條搜查任何人”。

- (c) in the Chinese text, by deleting section 12 and substituting -

"12. 公共機構

《防止賄賂條例》(第 201 章)的附表現予修訂,加入 —

“75. 平等機會委員會。”。

Question on the amendments proposed.

MS ANNA WU: Mr Chairman, I promise I will be very short. I thank Members for sitting through all these hours. I am in particular very grateful to Dr LEONG, the Chairman of the Bills Committee. I, of course, should congratulate the Government for their effort, in particular with their lobbying style. I really should learn from them the next time round!

Although the Bills Committee did not get all the amendments that it would have liked, nevertheless the Government had accepted a lot of the significant proposals, not a 100% but almost close in some cases. I am, of course, happy that the Government had proceeded with the gazettal and the introduction of the Sex Discrimination Bill.

Insofar as these relaxations of rules of evidence and other matters are concerned, under this last set of amendments, I would urge Members to support them because they are quite important. They relate to relaxation of rules of evidence and matters relating to costs. I wish, however, the Government will be more generous the next time round.

And thank you very much, Mr Chairman.

Question on Schedules 1, 5 and 7, as amended, put and agreed to.

BANKING (AMENDMENT) BILL 1995

Clauses 1, 6 to 11, 15, 16, 19 to 23, 25, 27 to 30, 32, 33, 34, 36, 38, 40, 42, 43, 44 and 49 were agreed to.

Clauses 2 to 5, 12, 13, 14, 17, 18, 24, 26, 31, 35, 37, 39, 41 and 45 to 48

SECRETARY FOR FINANCIAL SERVICES: Mr Chairman, I move that the clauses specified be amended as set out in the paper circulated to Members. I shall briefly highlight to Members the more important amendments.

Section 3 is amended by new clause 3(a) to remove any potential doubt arising from the taking of margin deposits by licensed leveraged foreign exchange traders. This is consistent with existing exemptions granted to margin deposits taken by licensed securities and commodities dealers.

On the powers of temporary suspension, section 24(1)(b) is amended by new clause 5(f) so that the powers become exercisable only when the Monetary Authority considers it necessary in the interests of depositors or potential depositors of the institution. Alternatively, there would be a public interest test before such powers can be invoked: in such case the Monetary Authority must be advised by the Financial Secretary that it is in the public interest for urgent action to be taken. This would be consistent with section 52(1)(d) of the Ordinance (concerning the Monetary Authority's powers of control) and would reflect the fact that the Financial Secretary would be in a better position than the Monetary Authority to judge the public interest.

On the suggestion of the Hong Kong Association of Banks, section 53C(10) is amended by new clause 14(e) to afford protection to any third party who deals with the manager of an institution in good faith and for good consideration.

On returns and information to be submitted by institutions, the new section 63(2A) as amended by new clause 18(b) requires the holding company and sister companies of an institution, among others, to submit the appropriate information to the Monetary Authority. Such a request for information will

only be made by the Monetary Authority when he considers it reasonable to do so for the purpose of exercising his functions under the Ordinance. Furthermore, a new criterion has been introduced so that the Monetary Authority must consider that the information is necessary in the interests of the depositors or potential depositors of the institution concerned.

Institutions are at present required to limit their exposure to a single party or to a group of connected parties to an amount equivalent to 25% of their capital base, in accordance with section 81 of the Ordinance. The new section 81(4A) as amended by new clause 24 will mean that institutions will not have to add together, and regard as group exposure for the purposes of section 81, their exposures to individual public sector entities which are wholly owned by the Government, such as the Kowloon-Canton Railway Corporation, or by the Financial Secretary Incorporated in trust on behalf of the Government, such as the Mass Transit Railway Corporation. This would remove a potential impediment to the fund-raising efforts of such public sector entities when they issue debt instruments in future to finance infrastructural projects. However, exposures to the public sector entities, taken individually, will still be subject to the section 81 limit. The new clause 24(b) allows the Financial Secretary to amend section 81(6) which sets out the types of exposure which are exempted from section 81.

Regarding the limitation on unsecured advances to directors, controllers and certain employees of institutions, section 83(4)(c) is amended by new clause 26(a) to clarify that the relevant limitation is applied to employees of an institution who are responsible for approving the loan, instead of to all employees who have a role in the process of determining the loan application.

In the proposed Eighth Schedule, a new paragraph 20 is added to the grounds for revocation of authorization, that is where the institution engages in business practices which would be likely to prejudice the interests of Hong Kong as an international financial centre. Illegal activities such as money laundering, which it might be argued do not directly harm the interests of depositors or potential depositors, would fall into the category of such practices.

Mr Chairman, I beg to move.

Proposed amendments

Clause 2

That 2(b) be amended, by adding —

"(10) In sections 18(4), 22(4), 24(5) and 25(3), the term "continuing to hold a deposit" includes renewing a deposit."

Clause 3

That clause 3 be amended, by deleting the clause and substituting —

"3. Application

Section 3 is amended -

(a) in subsection (1), by adding -

"(ka) a person who is a licensed leveraged foreign exchange trader within the meaning of the Leveraged Foreign Exchange Trading Ordinance (53 of 1994) where such deposit is taken from a client in the ordinary course of its business as a trader;"

(b) in subsection (2)(b), by repealing "licensed under this Ordinance" and substituting "an authorized institution".

3A. Banking business restricted to licensed banks

Section 11(1) is amended by adding "(other than a bank the banking licence of which is for the time being suspended under section 24 or 25)" after "a bank".

Clause 4

That clause 4 be amended, by adding before paragraph (a) —

"(aa) in subsection (1), by adding "(other than an authorized institution the authorization of which is for the time being suspended under section 24 or 25)" after "institution";".

Clause 5

That clause 5 be amended —

(a) in the proposed section 16(5), by adding "but subject to section 134A" after "subsection (1)(a)".

(b) in the proposed section 16(9)(b)(iii), by deleting "where the institution is a company limited by shares or limited by guarantee,".

- (c) in the proposed section 21(4), by deleting "this Ordinance" and substituting "section 24 or 25".
- (d) in the proposed section 22(4)(b), by deleting ", 14".
- (e) in the proposed section 23(2), by deleting "the former authorized" and substituting "that".
- (f) by deleting the proposed section 24(1)(b) and substituting -
- (b) the Monetary Authority -
- (i) considers that it is necessary in the interests of depositors or potential depositors of the institution; or
- (ii) is advised by the Financial Secretary that he considers that it is in the public interest,
- that urgent action be taken,".
- (g) in the proposed sections 24(5)(b) and 25(3)(b), by adding "11, 12 or" after "section".
- (h) in the proposed section 26, by adding "ground or" before "grounds".

Clause 12

That clause 12 be amended —

- (a) in paragraph (a), by deleting subparagraph (i) and substituting -
- (i) in paragraph (c) -
- (A) in subparagraph (i), by adding "or potential depositors" after "depositors";
- (B) by repealing subparagraph (iv) and substituting -
- (iv) has contravened or failed to comply with any condition attached under section 16 to its authorization, the condition specified in section 49(1), the condition specified in section

50(1), the condition specified in section 50(2) or the condition specified in section 51A(2); or";".

(b) by adding -

"(ca) by repealing subsection (3);".

(c) in paragraph (d), in the proposed subsection (3D)(b), by deleting "(including any shares)".

(d) in paragraph (d), by adding -

"(3I) Any person aggrieved by the exercise by the Monetary Authority of any power conferred on him by subsection (1)(A), (B) or (C) or (3A) may appeal to the Governor in Council against the exercise of that power, but the exercise of that power shall take effect immediately, notwithstanding that an appeal has been or may be made under this subsection."

Clause 13

That clause 13(a) be amended, by adding before subparagraph (i) —

"(ia) in paragraph (b), by repealing "52(3)" and substituting "52(3I)";".

Clause 14

That clause 14 be amended —

(a) by deleting the proposed section 53A(3) and substituting -

"(3) A direction in writing given under section 52(1)(C), and a variation in writing under section 52(3A) of such a direction, include a copy of the direction or variation, as the case may be."

(b) by deleting the proposed section 53B(6) and substituting -

"(6) Where-

(a) any member or director or an authorized institution requests the Manager of the institution to give a consent referred to in subsection (4)(a)

in relation to the institution, the Manager shall not unreasonably refuse to give such consent;

- (b) such consent is given, the Manager shall attend the meeting of the institution to which such consent relates."
- (c) by deleting the proposed section 53C(7)(a) and substituting -
 - "(a) the institution or a member, director, chief executive, manager or officer of the institution, whether by -
 - (i) this Ordinance or the Companies Ordinance (Cap.32);
 - (ii) the memorandum or articles of association (including, in the case of an authorized institution incorporated outside Hong Kong, the equivalent, in the place where it is incorporated, of the memorandum or articles of association); or
 - (iii) any other instrument under which it is incorporated;"
- (d) in the proposed section 53C(8)(b), by adding "chief executive," after "director,".
- (e) in the proposed section 53C(10), by deleting "value" and substituting "good consideration".
- (f) in the proposed section 53C(17), by deleting "Monetary Authority" and substituting "Financial Secretary".
- (g) in the proposed section 53D(4)(a), by deleting "the chief" and substituting "any chief".

Clause 17

That clause 17 be amended —

- (a) in the proposed section 60(3)(c), by deleting "where the institution is a company limited by shares or limited by guarantee and having a share capital,".

- (b) in the proposed section 60(4), by deleting "(including, where applicable, the report of the director)".
- (c) by deleting the proposed section 60(5)(c) and substituting -
 - "(c) a copy of the report of the directors with respect to the profit or loss of the institution for that year and the state of the institution's affairs as at the end thereof where the law of the place in which the institution is incorporated requires such a report."
- (d) in the proposed section 60(11) -
 - (i) in paragraph (a), by deleting "in respect of which the institution's auditor has made a report" and substituting "which are subject to a report by the institution's auditor";
 - (ii) in paragraph (b), by deleting "has expressed" and substituting "expresses".

Clause 18

That clause 18(b) be amended, by deleting the proposed subsection (2A)(i) and substituting —

- "(i) in any case, as he may reasonably require for the exercise of his functions under this Ordinance;
- (ia) in the case of paragraph (a) or (b), that the Monetary Authority considers is necessary to be submitted in the interests of the depositors or potential depositors of the authorized institution concerned; and"

Clause 24

That clause 24 be amended, by adding before paragraph (a) —

- "(aa) in subsection (1), by adding "(4A)," after "subsections (4),";

(ab) by adding-

"(4A) Where -

- (a) the holding company referred to in subsection (1)(b)(i) is The Financial Secretary Incorporated established under the Financial Secretary Incorporation Ordinance (Cap.1015);
- (b) the controller referred to in subsection (1)(b)(ii) is the Government;
- (c) the holding company referred to in subsection (1)(c) is The Financial Secretary Incorporated; or
- (d) the controller referred to in subsection (1)(d) is the Government,

then subsection (1)(b)(i) or (ii), (c) or (d), as the case may be, shall not apply for the purpose of determining the financial exposure of the authorized institution concerned and, accordingly, that subsection shall not apply.";

That clause 24(b) be amended, by deleting the proposed subsection (6A) and substituting —

"(6A) The Financial Secretary may, by notice in the Gazette, amend subsection (6).".

Clause 26

That clause 26 be amended —

(a) in paragraph (a), by adding before subparagraph (i) -

"(ia) in paragraph (c), by repealing

"determining" and substituting "approving";".

(b) in paragraph (b), by deleting the proposed subsection (8) and substituting -

"(8) Where, at any time before the commencement of the Banking (Amendment) Ordinance 1995 (of 1995), an authorized institution has lawfully provided a facility specified in subsection (3) to or on behalf of -

- (a) a minority shareholder controller of the institution;
- (b) any relative of such a controller;
- (c) any firm, partnership or non-listed company in which such a controller or any relative of his is interested as director, partner, manager or agent; or
- (d) any individual, firm, partnership or non-listed company of which such a controller or any relative of his is a guarantor, then, in so far as that facility is concerned, this section shall operate as if the references to minority shareholder controller or minority shareholder controllers, as the case may be, in subsection (4)(e), (f), (g) and (h) were deleted."

Clause 31

That clause 31 be amended —

- (a) in paragraph (b), in the proposed subsection (2), by adding "or former authorized institution" after "institution".
- (b) by adding-
 - "(ba) in subsection (3), by adding "or former authorized institution" after "institution";".

Clause 35

That clause 35(a) be amended —

- (a) in the proposed subsection (3), by deleting "court" where it twice appears and substituting "High Court".
- (b) in the proposed subsection (4), by deleting "it under the direction of the Manager of the institution" and substituting "the Manager of the

institution, or by the institution under the direction of the Manager,".

Clause 37

That clause 37 be amended, in the proposed subsection (5), by adding "or (8)" after "53C(7)".

Clause 39

That clause 39 be amended, by adding —

"(aa) by repealing subsection (3) and substituting -

"(3) Subject to subsection (5), any sum recoverable under this section at the suit of the Attorney General shall be a debt due to the Crown within the meaning of section 265(1)(d) of the Companies Ordinance (Cap.32) and section 38(1)(d) of the Bankruptcy Ordinance (Cap.6).";".

Clause 41

That clause 41 be amended —

- (a) in the proposed section 134(2), by adding "52(2)(b)(i)," after "in section".
- (b) in the proposed section 134A(1), by deleting "this Ordinance" and substituting "section 16".

Clause 45

That clause 45(f) be amended, by deleting "item 6" and substituting "items 6 and 7".

Clause 46

That clause 46 be amended, by deleting paragraph (a) and substituting —

"(a) by repealing the definition of "bank" and substituting -

""bank" means -

- (a) any authorized institution (other than any authorized institution the authorization of which is for the time being suspended under section 24 or 25 of this Ordinance); and
- (b) any bank incorporated outside Hong Kong which is not an authorized institution, except such a bank -
 - (i) which, in the opinion of the Monetary Authority, is not adequately supervised by the relevant banking supervisory authority; or
 - (ii) the licence or other authorization of which to carry on banking business is for the time being suspended;";".

Clause 47

That clause 47 be amended, by deleting paragraph (a) and substituting —

- "(a) in paragraph (a), by repealing "registration or licence of which is for the time being suspended under" and substituting "authorization of which is for the time being suspended under section 24 or 25 of";".

Clause 48

That clause 48, proposed Seventh Schedule be amended —

- (a) in paragraph 1(6)(b), by adding "memorandum or" after "conferred by the".
- (b) in paragraph 6(d), by adding "and maintain" after "have".
- (c) in paragraph 11(b)(iii), by deleting "if it is limited by shares or limited by guarantee,".
- (d) in paragraph 13(a)(i)(B), by deleting "banking centre" and substituting "financial centre".

That clause 48, proposed Eighth Schedule be amended —

- (a) in paragraph 7, by adding "section 16 of" after "under".
- (b) in paragraph 18, by deleting "way" and substituting "manner".
- (c) by adding -

"20. The Monetary Authority is satisfied that the authorized institution engages in business practices which would be likely to prejudice the interests of Hong Kong as an international financial centre."

Question on the amendments proposed, put and agreed to.

Question on clauses 2 to 5, 12, 13, 14, 17, 18, 24, 26, 31, 35, 37, 39, 41 and 45 to 48, as amended, proposed, put and agreed to.

New clause 16A	Notification in respect of auditors
New clause 23A	Interpretation and application
New clause 40A	Use of language

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

SECRETARY FOR FINANCIAL SERVICES: Mr Chairman, I move that new clauses 16A, 23A and 40A as set out in the paper circulated to Members be read the Second time.

New clause 16A addresses a drafting point. It seeks to replace the word "shareholders" with the word "members" in section 59A(1)(a) in order to be consistent with other provisions in the Ordinance.

New clause 23A provides for a new definition of the term "relative", for use in section 83 which imposes restrictions on unsecured advances to directors, controllers and certain employees of institutions and their relatives. It seeks to narrow the new coverage of the definition of "relative" to take account of practical difficulties which authorized institutions have encountered in applying it.

To enable the Monetary Authority to react quickly to address any problem that may arise from the proposed revision of the definition, the Financial Secretary will be empowered to amend the definition by notice in the Gazette, should it be found necessary.

New clause 40A provides for the use of either the Chinese or the English language in keeping the books and accounts of an institution, and in furnishing forms, information and returns by the institution to the Monetary Authority. This will place both languages on an equal footing.

Mr Chairman, I beg to move.

Question on the Second Reading of the clauses proposed, put and agreed to.

Clauses read the Second time.

SECRETARY FOR FINANCIAL SERVICES: Mr Chairman, I move that new clauses 16A, 23A and 40A be added to the Bill.

Proposed additions

New clause 16A

That the Bill be amended, by adding —

"16A. Notification in respect of auditors

Section 59(1)(a)(i) and (ii) is amended by repealing "shareholders" and substituting "members".

New clause 23A

That the Bill be amended, by adding —

"23A. Interpretation and application

Section 79 is amended -

(a) in subsection (1), in the definition of "relative", by repealing paragraphs (a),(b)and (c) and substituting -

"(a) any immediate ascendant, any spouse or former spouse of any such ascendant, and any brother or sister of any such spouse or former spouse;

- (b) any immediate descendant, and any spouse or former spouse of any such descendant;
- (c) any brother or sister, aunt or uncle and any nephew or niece and any first cousin;
- (d) any spouse or former spouse, any immediate ascendant of any such spouse or former spouse, and any brother or sister of any such spouse or former spouse,";

(b) by adding-

"(5) The Financial Secretary may, by notice in the Gazette, amend the definition of "relative".".

New clause 40A

That the Bill be amended, by adding —

"40A. Use of language

Section 132(1) and (2) is amended by adding "Chinese or" before "English".

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

Schedule

SECRETARY FOR FINANCIAL SERVICES: Mr Chairman, I move that the Schedule be amended as set out in the paper circulated to Members. The Schedule consists of a list of purely consequential amendments to other Ordinances arising from the Bill. Most of these are standardized various terms and definitions. It needs to be amended to cater for the various amendments I have just proposed.

Mr Chairman, I beg to move.

*Proposed amendment***Schedule**

That schedule be amended —

- (a) by deleting section 7.
- (b) by deleting sections 15 to 19 and substituting -

"Employment Ordinance**15. Manner and place of payment of wages**

Section 26(2)(b) of the Employment Ordinance (Cap.57) is amended -

- (a) by repealing "licensed under" and substituting "within the meaning of section 2 of";
- (b) in the Chinese text, by repealing "根據《銀"行業條例》(第 155 章)獲發牌者 and substituting "《銀行業條例》(第 155 章)第 2 條所指的銀行".

16. Making of severance payment

Section 310(2)(b) is amended -

- (a) by repealing "licensed under" and substituting "within the meaning of section 2 of";
- (b) in the Chinese text, by repealing "根據《銀"行業條例》(第 155 章)獲發牌者 and substituting "《銀行業條例》(第 155 章)第 2 條所指的銀行".

17. Making of long service payment

Section 31ZD(1)(b) is amended -

- (a) by repealing "licensed under" and substituting "within the meaning of section 2 of";

- (b) in the Chinese text, by repealing "根據《銀"行業條例》(第 155 章)獲發牌者 and substituting "《銀行業條例》(第 155 章)第 2 條所指的銀行".

Urban Council Ordinance

18. Delegation of powers

Section 36(4)(e) of the Urban Council Ordinance (Cap.101) is amended -

- (a) by repealing "licensed under" and substituting "within the meaning of section 2 of";
- (b) in the Chinese text, by repealing "根據《銀"行業條例》(第 155 章)領有牌照 and substituting "《銀行業條例》(第 155 章)第 2 條所指".

19. Investment of surplus funds

Section 43(a) is amended -

- (a) by repealing "licensed under" and substituting "within the meaning of section 2 of";
 - (b) in the Chinese text, by repealing "根據《銀"行業條例》(第 155 章)領有牌照 and substituting "《銀行業條例》(第 155 章)第 2 條所指".
- (c) in section 21, by adding -
- "(c) in the Chinese text -
 - (i) in subsection (1), in the definition of 財務機構" -
 - (A) in paragraph (a), by repealing "根據《銀"行業條例》(第 155 章)領牌或註冊"and substituting "《銀行業條例》(第 155 章)第 2 條所指";
 - (B) in paragraph (b), by repealing "領牌或註冊，則有法律責任根據該條例領牌或註冊 and substituting"，則有法律責任根據該條例獲認可";

- (ii) in subsection (2), by repealing the definition of "相聯法團" and substituting -
- "相聯法團(associated corporation)在與任何認可機構有關時，指 —
- (a) 受該機構控制的任何法團；
 - (b) 控制該機構的任何法團；
或
 - (c) 受控制該機構的同一人所控制的任何法團；
- (d) in section 24, by adding -
- (c) in the Chinese text -
- (i) in the definition of "接受存款公司", by repealing "的涵義與《銀行業條例》(第 155 章)第 2(1)條中該詞的涵義相同" and substituting "指《銀行業條例》(第 155 章)第 2(1)條所指的接受存款公司或有限制牌照銀行";
 - (ii) in the definition of "銀行" in paragraph (b)(ii), by repealing "根據《銀行業條例》(第 155 章)第 16 條而取得牌照" and substituting "《銀行業條例》(第 155 章)第 2(1)條所指".
- (e) in section 25, by adding -
- (c) in the Chinese text -
- (i) in the definition of "接受存款公司", by repealing "的涵義與《銀行業條例》(第 155 章)第 2(1)條中該詞的涵義相同" and substituting "指《銀行業條例》(第 155 章)第 2(1)條所指的接受存款公司或有限制牌照銀行";
 - (ii) in the definition of "銀行" in paragraph (b)(ii), by repealing "根據《銀行業條例》(第 155 章)第 16 條而取得牌照" and substituting "《銀行業條例》(第 155 章)第 2(1)條所指".

(f) by adding -

"36A. Membership of Association

Section 7(1) is amended by repealing "licence" and substituting "authorization".

Question on the amendment proposed, put and agreed to.

Question on the Schedule, as amended, proposed, put and agreed to.

Council then resumed.

Third Reading of Bills

THE ATTORNEY GENERAL reported that the

INLAND REVENUE (AMENDMENT) (NO.2) BILL 1995

SEX DISCRIMINATION BILL and

BANKING (AMENDMENT) BILL 1995

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.

PRIVATE MEMBER'S MOTIONS

PRESIDENT: I have accepted the recommendations of the House Committee as to the time limits on speeches for the motion debates and Members were informed by circular on 26 June. The movers of the motions will have 15 minutes for their speeches including their replies and another five minutes to reply to proposed amendments. Other Members, including mover of amendments, 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.

CONSULTATION PAPER ON LEGAL SERVICES

PRESIDENT: Mr Simon IP, in view of the lateness of the hour, has decided not to proceed with his motion and has instructed the Clerk under Standing Order 26(2) that his motion be withdrawn.

PROVISIONAL LEGISLATURE

DR YEUNG SUM moved the following motion:

"That this Council opposes the establishment of the provisional legislature as it is in contravention of the Sino-British Joint Declaration and the Basic Law as well as in violation of the principles of "one country, two systems" and "high degree of autonomy"."

DR YEUNG SUM (in Cantonese): Mr President, Members can speak out freely today, whether they are for or against my motion. In two years time, when the provisional legislature will have established itself amidst citizens' vehement opposition, many colleagues might not be able to enter into this hall. By then the so-called "Councillors" will no longer need to be accountable to the public, and debates on public affairs will no longer be needed - since debates will not be necessary. The Legislative Council will have become a "Council of a sole voice" or "Council of no voice"! The spirit of the Legislative Council will have died!

A "provisional legislature" has all along been absurd and undemocratic. In October last year the Political Affairs Sub-group of the Preliminary Working Committee (PWC) threw out a proposal on "provisional legislature". Sub-group leader Mr LEUNG Chun-ying remarked that they were compelled to "this option when the situation is such that no throughtrain will be in place". He further remarked that that was the best way out if compared to having the Chief Executive enacting legislations by issuing executive orders, or having the PWC or the National People's Congress enacting legislations for Hong Kong. According to this logic, having a provisional legislature might as well be the best way out if compared to having Beijing appointing Beijing Mandarins to rule Hong Kong or having military rule. How ridiculous!

"Authoritative sources" from the Hong Kong and Macau Affairs Office remarked also that since the Legislative Council would not be able to transit, and that it would not be possible to stage an election immediately after the formation of the Hong Kong Special Administrative Region (SAR), a provisional legislature would have to be set up to fill the "legal vacuum" and to assume functions of a legislature in areas like enacting legislation, controlling finances and making appointments and so on. However, this is only a fallacious argument. In fact, the constitution of the '95 Legislative Council is entirely in accordance with the relevant provisions as contained in the Method for the

Formation of the First Legislative Council passed by the National People's Congress, thus it satisfied the criteria for direct transition. Furthermore, Members elected by the public in the September election will have sufficient credibility to handle the business of the Legislative Council. They are far more appropriate candidates who are also in a better position to safeguard the interest of the people of Hong Kong than those appointed by the Selection Committee which is itself without any democratic basis. Therefore, not only is setting up a provisional legislature a redundancy, but it also contravenes blatantly the principles of democracy!

Until now, the provisional legislature can be described as fleeting and mysterious. Nobody knows exactly when it will be set up, what will be its terms of reference, method of appointment, term of office or how it will operate. Every now and then members of the PWC or officials from the Hong Kong and Macau Affairs Office would say there would be stringent provisions as regards the terms of reference of the provisional legislature, and every now and then they would say Members of the original Legislative Council would be absorbed as far as is practicable. Yet these are all embroideries which cannot cover up an iron-clad fact — that the provisional legislature is not going to be set up through democratic elections.

So long as the provisional legislature is not set up through democratic elections it contravenes the Joint Declaration and the Basic Law. Article I, Annex I of the Joint Declaration states that "The legislature of the Hong Kong Special Administrative Region shall be constituted by elections". In the Decision of the National People's Congress on Method for the Formation of the First Government and the First Legislative Council of the Hong Kong Special Administration Region it is stated also that "The first Legislative Council of the Hong Kong Special Administrative Region shall be composed of 60 members, with 20 members returned by geographical constituencies through direct elections, 10 members returned by an election committee, and 30 members returned by functional constituencies". Obviously, the provisional legislature does not satisfy these requirements.

The Democratic Party takes the very decision of forming a provisional legislature as an contravention of the Joint Declaration and the Basic Law, and holds that this very act is, in itself, a trample on the principles of "one country, two systems" and "a high degree of autonomy"; a sabotage on the solemn promise the Chinese Government has pledged to the people of Hong Kong; and an objectionable precedent paving the way for the Central Government to intervene into the affairs of the SAR in the future. In the meantime, forming a provisional legislature will deprive Hong Kong people their right to vote, leaving the legislators unbounded by elections to the effect that they could be spared from being monitored by the public, and thereby rendering the legislature susceptible to deviating from public opinions and enacting legislations not acceptable to the public at large. Backpedaling on the road to democratization will jeopardize the foundations upon which the people of Hong Kong will rule Hong Kong.

Leafing through major newspapers issued on 8 August last year we found editorials harshly criticizing the provisional legislature and that public opinions unequivocally set against the proposal. *Oriental Daily News* says "Provisional Legislature Erodes High Degree of Autonomy, Hong Kong People Disturbed". *Hong Kong Economic Times* questions "Why Provisional Legislature? PWC Superfluous". *Express* criticizes it as a "Mainstream opinion abounds in loopholes". *Ming Po* says "It is hard to understand why the PWC has to make a detour by setting up a designated provisional legislature".

Therefore, the Democratic Party's objection to the provisional legislature is strongly supported by public opinions. We oppose it not only because it contravenes the stipulations as contained in the constitutional papers, nor because we take it as sour grapes since we will probably not be able to join the provisional legislature; no more is it what is described by some as electioneering. Nobody who knows well enough about the nature and the cause of the Democratic Party, and the personal history of Members of the Party, who have participated in various social campaigns, will ever hazard such a guess. We oppose it because we do not want Hong Kong's political development to beat a full scale retreat at a time when the whole world is striding towards the 21st Century. We oppose it because we do not want to see the SAR to bear such an undemocratic and disgraceful birthmark which will dash all our hopes when the people of Hong Kong have wanted to celebrate with much enthusiasm the long-awaited high degree of autonomy as its reversion to the motherland.

Mr President, I am no political prophet, nor can I write prophetic political novel like Geogre ORWELL, author of 1984, did I could not have envisaged what he has envisaged: that in the future there will be a totalitarian country where an omnipresent party will keep watch over everybody everywhere, that everybody will have to chant: "**WAR IS PEACE**", "**FREEDOM IS SLAVERY**", "**IGNORANCE IS STRENGTH**", and that the whole community will have gone crazy and the distinction between what is right and what is wrong blurred. Nevertheless, based on the reports about the provisional legislature and the remarks from the Chinese sides and the PWC, we may envisage what will be like two years later in the SAR. We think that the provisional legislature will bring with it three major retrogressions.

First, retrogression in the area of the Legislative Council. This is because while the Selection Committee of the PWC will "co-opt" the Chief Executive, members of the existing Selection Committee will, as reported by the press, be responsible for "co-opting" the so-called "Councillors". If voters are not required to vote, the Selection Committee will very probably impose political censorship and "disembark" Members unwelcomed by the Chinese side. As such, there will be no dissenting voices in the legislature, whereas political homogeneity between members of the legislature and the executive can be ensured, thus ascertaining that the legislature will be incapable of or will no cause for challenging the dictatorial authority of the Chief Executive, and that the so-called "executive-led" (system) will maintain.

Meanwhile, since the legislature will no longer be able to play its roles as the public's mouthpiece to relay public opinions, to monitor the Government and to exercise its power of checks and balances, there is actually no need to impose voting restrictions like adopting the "bi-system model" and so on. By that time the legislature will truly become a rubber stamp. As I said right in my opening remark, by then the legislature will probably have no need to debate on anything, because the spirit of the legislature will have already died!

Second, retrogression in the area of right to vote. The formation of the provisional legislature will deprive citizens' right to stand for elections and their right to vote. Efforts made during the past 10 years or so in developing a representative government will go in vain just overnight. This will be a thunderbolt to people's confidence in political development. If the people of Hong Kong cannot, through elections, choose those they deem as the most competent, the most reliable and the most appropriate persons to safeguard their interests, then how could Hong Kong possibly be allowed to develop "a high degree of autonomy"? Meanwhile, the lack of adequate channel for political participations will compel citizens to resort to more direct and more radical actions to air their grievances about the Government, and this will bring into Hong Kong unstable elements.

Third, retrogression in the area of protection of human rights. The Legal Sub-group of the PWC advocated last October that amendments to the Public Order Ordinance and the Societies Ordinance should be rescinded after 1997. Because of the insularity in the constitution of the provisional legislature, not only will it be manipulated by pro-China elements, but it will also not challenge the authority of the Government. So the provisional legislature will very probably adopt the proposal put forward by the Legal Sub-group to rescind the amendments made to the Public Order Ordinance over the past few years. As a result, the Government will be able to lapse into the '70s when peaceful demonstrations and marches could be suppressed. Amendments made to the Societies Ordinance over the past few years will also be rescinded. Forming a society will have to go through many more vettings, which may be political ones. Freedom of assembly will be restricted. If these are left unchecked, will the scanty amendments made over the past few years to the Ordinances which restrain freedom of the press also be rescinded? Will the SAR Government be able to suppress freedom of the press by the almighty sword which appears in the form of legislations? Further, many rights, freedoms and life styles which we often take for granted will probably be undermined by the legislature and vanish tracelessly virtually overnight when government departments will no longer be subject to any checks and balances at all.

Mr President and dear Members, this is no alarmist talk. The fact before us is that it may actually happen. We should have no illusion of whatever kind towards this undemocratic idea of a provisional legislature. It blatantly contravenes the Joint Declaration and the Basic Law, undermines the power of the legislature, endangers the rights and interests of the public, or might even go so far as to jeopardize the existing way of life and the prospect of developing a

"one country, two systems" and "a high degree of autonomy" in Hong Kong. We oppose to the formation of a provisional legislature.

Mr President, with these remarks, I beg to move.

Question on the motion proposed.

PRESIDENT: Mr Frederick FUNG has given notice to move an amendment to the motion. Mr Allen LEE has also given notice to move an amendment to Mr Frederick FUNG's proposed amendment. As Members were informed by circular yesterday, I will call upon Mr FUNG to move his amendment to the motion first. After Mr FUNG has moved his amendment, I will call upon Mr LEE to move his amendment to Mr FUNG's proposed amendment. After Members have debated the main motion as well as the amendments listed in the Order Paper, Mr LEE's amendment to Mr FUNG's amendment to the motion will be voted on first. I now call upon Mr Frederick FUNG to speak and to move his amendment.

MR FREDERICK FUNG moved the following amendment to Dr YEUNG Sum's motion:

"To delete "this Council opposes the establishment of the provisional legislature as it is in contravention" and substitute by ", in order to adhere to the provisions"; to delete "in violation of" and substitute by "to safeguard"; and to add at the end of the motion the following ", this Council is of the opinion that there is no need for the establishment of the Provisional Legislature and is in support of the smooth transition of the three-tier councils in 1997"."

MR FREDERICK FUNG (in Cantonese): Mr President, when I received the motion of Dr the Honourable YEUNG Sum, my immediate feeling was one of great surprise. Firstly, why can a motion debate on the proposal made by the Preliminary Working Committee (PWC) for the Special Administrative Region Preparatory Committee under the Chinese Government be carried out in the Legislative Council of Hong Kong, which is still a British colony? Secondly, the motion does not urge the Hong Kong Government to ask the British Government to reflect our views to the Chinese Government. So with regard to the original motion, this debate can only be an affectation with no practical action. Thirdly, the tone of the original motion is completely negative, filled with dazzling words like "opposes", "contravention" and "trampled". But after the hurling of such abuses, how will the remaining problems and situation be handled? Unlike the motions used to be moved by the Democratic Party, which have made refutations and provided suggestions, the original motion says nothing about a solution. Fourthly, an article in today's *Hong Kong Economic Journal* quoted the two vice chairmen of the Democratic Party, Dr YEUNG

Sum and Dr CHEUNG Bing-leung. It reported that when they were asked whether they would join the future provisional legislature if invited, they both said that the Democratic Party did not have a set position on this issue. Dr CHEUNG Bing-leung even said that since the establishment of a provisional legislature was the proposal of the PWC and a final decision had not yet been reached, it would not be too late for the Democratic Party to consider the issue of whether to join it or not until the National People's Congress (NPC) had decided on this. Now, the problem is: the Democratic Party at one time condemned the proposal on the provisional legislature and treated it as a great scourge, but at another time it would not confirm whether it would join that legislature. What are the reasons for such behaviour? I really do not understand. Furthermore, the Democratic Party considers a proposal made by the PWC, which is of a lower status, to be trampling on the principles of "one country, two systems" and "high degree of autonomy". But regarding a decision to be made by the NPC, which has a much higher status, the Party becomes undecided. So what kind of logic does the Democratic Party have towards the provisional legislature?

Mr President, two years later Hong Kong will face up to the 1997 transition and its return to China. Whether we approve or disapprove of certain issues, different conclusions may be reached by people or parties because of different positions or views. However, in general, I think that any view given should be constructive to the transition. If we just "refute an opinion and make no suggestion" or if we "make only criticisms but no suggestions", it would only make people think that we are being destructive rather than constructive. Twenty-five months and three days later, the Hong Kong Special Administration Region (SAR) Government will come into being. The time left is really very limited. Therefore, I believe Hong Kong people hope that the Legislative Council will move constructive motions, in addition to expressing its views.

Mr President, when Mr Christopher PATTEN, the Governor, came to Hong Kong in mid-1992, he put forward the 1992 constitutional package immediately. This triggered off the confrontation and contradiction between China and Hong Kong. At that time, the Association for Democracy and People's Livelihood (ADPL) and I proposed a constitutional package to China, Britain and the Governor, Mr Christopher PATTEN. This package was in fact proposed in early 1992, before Mr PATTEN took his office. The suggestion was made in accordance with and on the basis of the Basic Law and public participation was promoted to the greatest extent within the limit of the Basic Law. As far as I know, many Hong Kong people and political parties had also made submissions to the Chinese and Hong Kong Governments. However, these proposals were accepted by neither of the two governments. Confrontation went on. Eventually, no agreement could be reached and this resulted in the deterioration of Sino-British relationship. Since no agreement was reached between China and Britain, it was noted that the existing political system would not have a smooth transition. In view of the hostile relationship between China and Britain and the lack of a smooth transition for the political system, China decided to set up the PWC for the Special Administrative Region Preparatory

Committee. The PWC even proposed setting up a provisional legislature to guard against a possible legislative vacuum. Under the circumstances, the commitments which the Chinese and British Governments made to the Hong Kong people before their confrontation have fallen flat. Those commitments cover two aspects:

- (1) the smooth transition of the three-tier councils according to the mechanism stipulated in the Basic Law to straddle 1997; and
- (2) the establishment of the first Legislative Council of the SAR in 1997.

The trauma left over from the Sino-British row would affect neither China nor Britain. Every time, it was the Hong Kong people who had to suffer all the detrimental effects of the conflict. This is really unfair to the Hong Kong people. China and Britain owe a debt to the Hong Kong people and I have to stress that Britain, in particular, owes us more.

Mr President, since there was no agreement or fruitful results from the Sino-British row on the political reform issue, it seems inevitable that China will set up the provisional legislature to fill the legislative vacuum. However, for the following three reasons, both the ADPL and I think that these suggestions are really poor and will affect the stability of Hong Kong after 1997:

- (1) Since the source of authority of the provisional legislature is being questioned continuously and that it is not an elected legislature, arguments will inevitably arise among the people of Hong Kong;
- (2) Formation of the provisional legislature will certainly delay the establishment of the first SAR Legislative Council and the development of democratic election of the Legislative Council after 1997, and this would only increase public grievances against the Government of the SAR; and
- (3) This suggestion will lead a constant rift and incessant disputes among the Hong Kong people.

Therefore, taking account of the Sino-British confrontation, both the ADPL and I think that China should adhere to the Basic Law and formulate principles and method for the establishment of the SAR Legislative Council first in accordance with the provisions in the Basic Law. This will have the following three advantages:

- (1) Hong Kong people will have greater confidence in the Basic Law;

- (2) Hong Kong people will have greater trust in and more information about the Chinese Government's determination to let Hong Kong people rule Hong Kong; and
- (3) the public will be more convinced.

Therefore, both the ADPL and I suggest that we should follow the provisions in the sixth paragraph of the "Decision of the National People's Congress on the Method for the Formation of the First Legislative Council" in the Basic Law, which states that, "If the composition of the last Hong Kong Legislative Council before the establishment of the Hong Kong Special Administrative Region is in conformity with the relevant provisions of this Decision and the Basic Law of the Hong Kong Special Administrative Region, may, upon confirmation by the Preparatory Committee, become Members of the first Legislative Council of the Region." Therefore, the ADPL and I believe that everything that conforms with the Basic Law should be accepted. With regard to the district organizations, Article 98 of the Basic Law says, "The powers and functions of the district organizations and the method for their formation shall be prescribed by law." Furthermore, the two-tier councils, basically, is only a consultative system and there should be less controversy over it. Therefore, both the ADPL and I think that the Basic Law has already provided a mechanism explicitly for the transition of the three-tier councils. With this mechanism and situation, which can maintain the stability of our society and appeal to the Hong Kong people, there is no need to set up a provisional legislature at all.

As for the Honourable Allen LEE's amendment to the motion, it is only a "back-to-the past" amendment. Furthermore, China has never said that the 1994 package will be allowed to go beyond 1997. Therefore, basically, his amendment is meaningless and it has not stated his position on the issue concerning the transition of the Legislative Council. For this reason, I will not support his amendment. With regard to the original motion of Dr YEUNG Sum, I will abstain from voting.

With these remarks, I move the amendment.

Question on Mr Frederick FUNG's amendment proposed.

PRESIDENT: As Mr Allen LEE has given notice to move an amendment to Mr Frederick FUNG's amendment, I now call upon Mr Allen LEE to speak and to move his amendment.

MR ALLEN LEE moved the following amendment to Mr Frederick FUNG's amendment:

"To delete "in order to adhere" and replace by "this Council is of the opinion that had the "1994 constitutional package" proposed by the Liberal Party and others been passed by this Council, the 1995 electoral arrangements would have adhered"; to delete "to safeguard" and replace by "safeguarded"; to delete "this Council is of the opinion that there is" and replace by "and there would be"; and to delete "and is in support of" and replace by ", thereby enabling"."

MR ALLEN LEE (in Cantonese): Mr President, on hearing the speeches delivered by Dr the Honourable YEUNG Sum and the Honourable Frederick FUNG, we would probably think at first that what they said sounded convincing, but both of them failed to explain how the provisional legislature had come about. Many Members of this Council should bear a major share of responsibility for such a development. The political parties to which Dr YEUNG and Mr FUNG belong both voted in favour of Governor Chris PATTEN's political reform package at that time.

The Liberal Party has all along advocated the convergence of political systems and a through-train arrangement. The amendments to the Governor's political reform package proposed by the Liberal Party on 29 June last year were aimed at achieving these ends. Unfortunately, it was defeated by merely one vote in this Council, resulting in the present state of affairs. The Chinese side announced immediately that the three-tier councils would be reorganized on 1 July 1997.

When China and Britain signed the Sino-British Joint Declaration years back, they intended to have a smooth transition for Hong Kong as a whole. The important basis for such an intention was that various systems of the territory would converge smoothly at the time of the transfer of sovereignty. Mrs Margaret THATCHER, the British Prime Minister at that time, had made it clear on a number of occasions. Though this happened many years ago, this had been Britain's policy all along. As a matter of fact, I am well aware that in the process of drafting the Basic Law, the British side had a great influence on the Chinese side, and this was reflected in the diplomatic documents delivered between the two countries. The design of the entire political system is based on the concept of a through-train arrangement. Upon the appointment of Mr Chris PATTEN as the Governor of Hong Kong, Britain changed its policy towards Hong Kong and China, and rashly ruined in no time the accepted foundation of "stable transition, smooth convergence" which had been in place for years. Britain also looked upon the understanding reached during the drafting of the Basic Law as though it had never existed.

Mr President, in analyzing the present state of affairs in Hong Kong, we should not merely promote the sections that serve our own interests and deceive the people of Hong Kong, but should analyze it as a whole. What I have said are historical facts, and part of Hong Kong's history, which should not be erased as though they were merely chalk-written words.

In the absence of a through-train arrangement for the political system, what should be done to ensure a stable transition for Hong Kong has become an extremely important issue. Therefore, when members of the Liberal Party, including the Honourable James TIEN, The Honourable Ronald ARCULLI and myself visited Beijing on 26 October last year, we had an in-depth discussion with Mr LU Ping, Director of the Hong Kong and Macau Affairs Office. The Chinese side believes that, since a legislature must be in place on 1 July 1997, there could be only four options, namely (1) legislation by the National People's Congress; (2) legislation by the Preparatory Committee of the Hong Kong Special Administrative Region under the authorization of the National People's Congress; (3) legislation by the Chief Executive; or (4) the setting up of a provisional legislature. In view of the circumstances in Hong Kong, the only practicable solution when there is no other choice is to set up a provisional legislature.

The Liberal Party will again visit Beijing soon. We will express to the Chinese side our views on several aspects concerning the provisional legislature. The first is about the composition of the Selection Committee. We believe its members should be nominated by four sectors, namely the industry, commerce and finance sector, the professionals sector, the labour sector, and a sector composed of members from social services and other social sectors and the original political sector, and not to be decided by way of appointment. Only in this way can they be representative, and the people of Hong Kong will accept the members of the provisional legislature nominated and elected by them. Secondly, we will suggest to the Chinese side that although Members of the Legislative Council elected in the 1995 elections will not be able to remain in office beyond 1997 owing to the lack of convergence in political systems, the Selection Committee should consider giving priority to the nomination of these Councillors as members of the provisional legislature. Thirdly, in case the Chinese side considers anyone ineligible to become a member of the legislature, there must be clearly laid down criteria so that the public will know clearly the reasons thereof.

Mr President, when the Sino-British Joint Declaration was signed and when the Basic Law was drawn up, nobody ever thought that the political systems of Hong Kong would fail to converge in 1997, that Sino-British relations would be in such a deadlock and that there would be a Preliminary Working Committee and a provisional legislature, just as nobody would ever imagine that the Hong Kong Government would openly agree to the proposals of the Preliminary Working Committee. That is not because we do not have a crystal ball to foresee the future, but because the political situation in Hong Kong changes along with the relations between and attitudes of the two sovereign states. That is Hong Kong's political reality. Amid such unpredictable circumstances, Members of the Legislative Council should consider in the first place the interests of Hong Kong as a whole and put forward feasible suggestions, in the hope of ensuring that Hong Kong will progress steadily, instead of stirring up public opinion by provocative means

and making suggestions not in the least constructive, thus causing anxiety among the Hong Kong people.

Mr President, just as Mr Frederick FUNG has said, and as I have learned from the newspapers, the leaders of the Democratic Party are divided as to whether they should join the provisional legislature or not. As the original motion is moved by Dr YEUNG Sum, he has a responsibility to explain clearly to other Members of this Council whether Members from the Democratic Party will accept the offer if they are invited to join the provisional legislature. I believe this is highly relevant to whether the motion moved by Dr YEUNG Sum is convincing. I hope Dr YEUNG Sum can answer this question.

Mr President, the Liberal Party firmly believes in "looking at the truth in a realistic way". With these remarks, I move the amendment.

Question on Mr Allen LEE's amendment to Mr Frederick FUNG's amendment proposed.

MRS ELSIE TU: Thank you, Mr President. Ever since we began this term of office, I have been trying to remain politically neutral, trying to judge issues on their intrinsic value rather than for their political orientation. I am sure that other Members besides myself have faced that difficult task, difficult because a party which claims to be democratic, will not allow such freedom of thought. If we do not toe their political line we are smeared by their political bias.

This motion today is just one more attempt to try to force all Members into a difficult decision, either to side with the party or be smeared as being what they call "pro-China".

Some Members, including myself, just want to do the best we can for Hong Kong, now, and beyond 1997. Doing our best for Hong Kong does not require us to confront China on every issue, but it does require us to insist on keeping our own way of life while leaving China to keep hers. In fact, by confronting China on every issue we would be doing our worst, not our best, for our community.

We are bound by the Basic Law, a fact that the motion today clearly endorses.

Late in 1992, the Honourable Martin LEE asked me to support Governor PATTEN's political package, which I believed then and still do believe, to be in breach of the Basic Law in some respects. Mr LEE's argument then was that if we adopted a tough attitude, China would cave in to our demands, and we would be backed up by the Governor and the international community. I knew then that Mr LEE had misread China. He had even misread the international community, which is more concerned with trade than political systems, to which they pay only lip service. I found it difficult to understand how an intelligent

person like Mr LEE could imagine that the Basic Law could be turned upside-down by a new Governor, with very little knowledge of Asia, China, or Hong Kong and with the assistance of a handful of Hong Kong politicians who had taken part in burning the Basic Law. After all, it had taken many years of consultation with Hong Kong and Britain to enact it, and it was not likely to be changed at the drop of a hat.

It is well known that I was a democrat long before this party took that name, and I remain a democrat. I have learned from experience that genuine democracy does not drop suddenly from heaven: it grows gradually from deep roots. I have learned from history that sudden democracies usually lead to destruction and death for multitudes of people. The end result of any sudden democracy is usually a new dictatorship. This is a historical fact, as anyone who studies past or recent history can see.

This motion today opposes the establishment of a provisional legislature in 1997. I doubt if anyone in this Chamber likes the idea of a provisional legislature. This was not included in the Basic Law, probably because no one anticipated that the Basic Law would be turned on its head to mean something very different from what was passed into law by the People's Republic of China in 1990. Those who imagine they can put their own interpretation into the Basic Law are, in the words of Mr Douglas HURD before he did his U-turn, "out of touch with reality".

The sponsors of this motion are reported to have taken part in burning copies of the Basic Law in 1990. Now, when it suits their purpose, they claim to be upholding the Basic Law and warning that it cannot be breached. Furthermore, they are the ones who created the need for the alternative arrangements that have resulted in the proposal to set up a provisional legislature. They have changed the composition of the first legislature as set out in Annex II, and echoed in Article 68 of the Basic Law. Moreover, Article 69 makes it clear that the first term of office in 1997 will be for two years. It was intended that the through-train, which this party took part in derailing last year, would have made it possible for the 1995 legislature to pass through those two years without the need for a provisional legislature in 1997. Those who are moving this motion have created that situation.

I still hope that it may be possible to avoid setting up a provisional legislature, but there would have to be some sort of miracle to make that possible now. If ultimately we have to have a temporary legislature, I would hope that the preparations made before June 1997 would be such that Article 70, to dissolve and re-elect within three months, might be possible. Provisional legislatures are always in danger of being prolonged, but for this unsatisfactory situation full responsibility must be borne by those who deliberately derailed the through-train last June.

For sponsors of this motion to complain that something contravenes the Basic Law which they have always rejected, and which they reportedly burned in public, is nothing short of hypocrisy.

So what I told Mr Martin LEE in late 1992 has now come to pass. His idea that, with the Governor's support and with international encouragement, his party would be able to change the Basic Law was only a pipedream. But it has fooled unsuspecting people, especially young people, for years.

I deeply regret that we shall probably have a provisional legislature, but I pledge that I will stand by Hong Kong and urge that it should be as short as possible. However, I cannot take part in the hypocrisy of this motion.

I think that the amendment by Mr Allen LEE is reasonable and I will support it.

MR MARTIN LEE (in Cantonese): Mr President, the establishment of the Preliminary Working Committee (PWC) of the Preparatory Committee of the Hong Kong Special Administrative Region (SAR) and the provisional legislature (PL) it proposes underline a change of China's policy towards Hong Kong in the second half of the transitional period. At the 4th plenary session of the PWC, Chinese Foreign Minister QIAN Qichen reiterated the call of President JIANG Zemin for the "perseverance of a we-centred policy in realizing a smooth transitions". This "we-centred" sentiment is precisely what is central to the thinking of members in the PWC and behind the establishment of the PL.

What is meant by "we-centred"? Who does "we" refer to? From the behaviours manifested by the PWC, "we" refers to Chinese officials and their intentions. "We" may be construed as "egotistic". As such, "we" may be placed above everything, including the Joint Declaration, the Basic Law and the opinion of Hong Kong residents.

Paragraph 4 of the Joint Declaration clearly states that ". during the transitional period between the date of the entry into force of this Joint Declaration and 30 June 1997, the Government of the United Kingdom will be responsible for the Administration of Hong Kong with the object of maintaining and preserving its economic prosperity and social stability; and that the Government of the People's Republic of China will give its co-operation in this connection".

While I held office as a member of the Basic Law Drafting Committee, I had a wish of making sure no significant changes would take place in Hong Kong after 1 July 1997 when China resumes the exercise of sovereignty over Hong Kong and things would basically remain the same as before 30 June 1997. At the time, members from the Chinese side endorsed this wish of mine.

But today, PWC members would stop at nothing to please China. They would change everything to suit China's taste. They have become more leftist. Their behaviour has scared Hong Kong people. What they are doing is against the basic policy of the Joint Declaration and the consensus of the original Basic Law Drafting Committee.

Recently, China and PWC members have been generating a weird theory about vacuums. They say there is going to be a judicial vacuum and a legislative vacuum. Through such a theory about vacuums, they find a reason to bring about enormous changes to the existing Hong Kong system. China also indulges herself in the sovereign power she enjoys, the exercise of which would now mean that she would turn everything up-side down. So, she created fictitious vacuums and then pompously steps into intervention. All these have given birth to this meaningless monster called the PL.

At a policy level, we can see from the deeds of the PWC and the proposal for the setting up of a provisional legislature that the Chinese Government is gradually reneging on promises contained in the Joint Declaration — promises for Hong Kong to be governed by Hong Kong people and for "a high degree of autonomy". The Chinese Government is putting under its control the executive, legislative and judicial power to be enjoyed by Hong Kong by 1997.

On the executive front, the appointment of Secretaries is interpreted as substantive appointment in which appointees are required to pay homage to Beijing and undergo political velting.

As regards the judiciary, a Sino-British agreement on the Court of Final Appeal was reached, as a pretext for avoiding a judicial vacuum. Thus, Chinese legal concepts were introduced into the common law system of Hong Kong, making it one with a Chinese flavour. Hong Kong's independent judicial system has also been tempered with using the acts-of-state clause.

As regards the legislature, the proposal for a provisional legislature to be set up was put forward on the pretext that there is going to be a "legislative vacuum". That such a proposal is in breach of the Joint Declaration and the Basic Law has been ignored. By 1997, when the government of the SAR is formed, Hong Kong residents will be deprived of the right to vote. Appointed "sick parrots" will take the place of representatives of public views to implement China's policies designed to gain complete control of the SAR. Hong Kong will be closely supervised rather than enjoy a high degree of autonomy. "One country, two systems" will become "one country, one centralized leadership".

Chinese Foreign Minister QIAN Qichen indicated at a PWC plenary session that on the question of intervention there must not be indiscriminate opposition. What matters, according to QIAN, is whether what is being done is beneficial to the prosperity and stability of Hong Kong. QIAN's words reveal that China now starts to ignore accusations of intervention in the domestic

affairs of the SAR of Hong Kong. She is now blatantly trying to make intervention legitimate. In a nutshell, it is QIAN who defines what sort of intervention is good for Hong Kong and then goes ahead with it, even though Hong Kong residents may think otherwise. The views of Hong Kong residents may well be ignored.

The proposal for a provisional legislature to be set up was made under the guise of "intervention for a good cause". To defend the Joint Declaration, and the principles of "one country, two systems" as well as "a high degree of autonomy" for Hong Kong, we must expose the trick and vehemently oppose the proposal.

Mr President, somebody has apparently regarded democracy as an effortless thing. It seems to her one only has to sit back and democracy will be served on a silver plate. The Honourable Member even said she did not like the idea of a provisional legislature, but she heavily criticized us for putting forward the present motion. She criticized us for burning copies of the Basic Law at one time and for indicating support for the Basic Law at others. I am not sure whether she has misread our actions. There are many provisions in the Basic Law which conform completely to the Joint Declaration. The Democratic Party, the democratic camp, and I myself are in consistent support of such provisions. However, there are certain provisions in the Basic Law that are completely at variance with the Joint Declaration. In such a case, we think that as Legislative Council Members, we have a duty to push for amendments. We should not simply accept what comes before us; otherwise why bother to hold office as a Member at all? Why do we not just sit back and watch TV at home? There are indeed those who call themselves democrats but relentlessly criticize others.

Mr President, I feel that we, as Legislative Council Members, have a duty to courageously put forward this motion in the best interests of Hong Kong residents. We have a duty, and I hope we have the courage too, to demand amendments to be made to those provisions in the Basic Law that run counter to the Joint Declaration. Making such demands is not unprecedented. On 4 April 1990, at around 11.30 am, when the Basic Law was passed in Beijing, I put forward a motion in this Chamber in the afternoon on the same day demanding that the Chinese Government make substantial changes in the Basic Law, basing on the terms of a report compiled by the Legislative Council and the Executive Council. At that time, the motion was carried by a large majority. Indeed, we are still working hard to make our demand come true. I feel we have a duty to do so. People who do not have guts should go home.

MR CHIM PUI-CHUNG (in Cantonese): Mr President, first of all, I would like to thank Dr the Honourable YEUNG Sum for moving this motion, because I have not spoken in any motion debate for three weeks.

A moment ago, Dr YEUNG Sum and the Honourable Martin LEE, being leaders of the Democratic Party, made a number of attacks against the Chinese Government as well as groundless criticisms against the Basic Law and the principle of "one country, two systems" in their speeches. We must however understand what causes the establishment of the provisional legislature. We must first of all understand the fact. I remember on the same date last year — it should be 29 June now — when the political package was endorsed. Because of that, the throughtrain for the transition beyond 1997 has disappeared and the provisional legislature emerged.

Mr President, we must know that if according to the Basic Law and the original wishes of both China and the United Kingdom, the last session of the Legislative Council would be dovetailed to the first session of the legislature. In other words, after 1997, the first session of the legislature would take a throughtrain to 1999. However, when Governor PATTEN arrived in Hong Kong on 9 July 1992, the British Government had already got a target. It aimed to produce this unfair "1992 package on political reforms", as it is called. The Democratic Party thought that the Saviour had come and thus supported the package. Subsequently, the throughtrain to 1997 was gone. Under the circumstances, since the Chinese Government cared about the integrity of Hong Kong as the Hong Kong Special Administrative Region (SAR) Government, would it not be necessary for the Chinese Government to think of another set of arrangement for Hong Kong to be effective from 1 July 1997 onwards? We have to judge things fairly and objectively. We cannot say that the British Government is all correct while the Chinese Government is all wrong.

I think that Mr Martin LEE's speech earlier will puzzle a lot of foreign politicians. They may wonder: What is the nationality of Mr LEE? What passport does he hold? He appears to be yellow-skinned and is a real Chinese from any angle. But how come he makes that kind of criticism against the Chinese Government? Of course, as I have indicated all the time, the Chinese Government has still got plenty of room for reform and improvement. What is most successful on the part of the Democratic Party is that the mass media in Hong Kong do not label them as "anti-China". As a matter of fact, this political party is absolutely anti-China in nature. People criticize that I am pro-China. But in fact, they are anti-China. That the mass media do not label them as "anti-China" is what is most successful of them.

As a matter of fact, I personally do not believe that the people in Hong Kong will cherish a kind of anti-China mentality. They definitely do not have such kind of mentality. They are just being led by the so-called Democratic Party. I sincerely hope that the Hong Kong people will wake up to that. It is because no matter how Hong Kong will change, it is certainly not going to become independent. If you want to have a war, can it be fought at the Peak? That is impossible. Hong Kong has to co-operate well with the Central Government after 1997. It is only when unity has been strengthened that Hong Kong can have a better future. I always say to people, if they do not have confidence in the principle of "one country, two systems", the Basic Law, and

the party in power or the leadership in China, they can leave. What is the point of trying to create any conflicts here?

Mr President, Dr YEUNG Sum once remarked clearly in the Legislative Council that the new set-up of the nine Functional Constituencies was direct election in disguise. That is what he said. I believe that as a university lecturer, he definitely has to bear the responsibility. That is also a fact. Therefore, I believe that he himself will also understand clearly how the provisional legislature has developed today. Differences in political views shall not be the excuse that people can cover up their wisdom and conceal the fact. As a lecturer, he should be responsible to his students. He should say that it is because he is anti-China today that he says this. But may be one day after 1997, or perhaps when he is appointed to the provisional legislature, he may take a U-mm to acknowledge this fact. It is possible that this may happen in two years' time.

Mr President, since the Democratic Party has some definite public support at present, I personally hope that they can take on their own positions. They have to understand that if they still want to do anything beneficial to the public in Hong Kong after 1997, they should put more efforts in improving the financial and economic aspects of Hong Kong. It is because Hong Kong is a financial and economical centre after all. If they can make good use of their motive force or public support, this will be of great benefits to the future of Hong Kong. If they only take pains unnecessarily to criticize things insignificant, not only that their party will have no future, but the Hong Kong people will also be led to a future full of uncertainties. His party can always repeal or change its policies. Nevertheless, the majority of the public are blind followers who will easily be misled by them and thus form an erroneous understanding.

Because of this motion debate, we are able to understand that it is the Hong Kong British Government which has rendered the establishment of the provisional legislature inevitable. Of course, the Hong Kong people may be misled by quite a number of objective factors and think that the provisional legislature is an illegal set-up. I personally think that this is totally prejudice. It is because if we are going to have a complete SAR Government after 1 July 1997, it will be necessary to have a legislature. Since there will be no formal election, it is thus natural that the legislature is provisional in nature. The word "provisional" is certainly not in violation of the Basic Law.

Mr President, I therefore will surely not support the original motion of Dr YEUNG Sum and the amendment moved by the Honourable Frederick FUNG. I, of course, also have some reservations about the Honourable Allen LEE's amendment, because the Chinese Government has never said that the 1994 package can definitely go beyond 1997.

MR LAU WONG-FAT (in Cantonese): Mr President, the motion moved by a Member from the Democratic Party was originally meant to attack both the Preliminary Working Committee (PWC) and the provisional legislature (PL). Now it turns out that the motion only bears down upon the latter, and the reason is not apparent. However, I think the reasons and objectives for setting up the PWC and the PL are the same, and the PWC approves of the setting up of the PL. If we want to have the matter cleared up, we will have to take both the PWC and the PL as one and the same subject for the purpose of discussion.

The PWC as a working body was set up because the situation then so required. Similarly, the proposal to set up the PL was put forward for precisely the same reason, which is to ensure the smooth transition of Hong Kong as well as the effective and smooth operation of the Hong Kong Special Administrative Region (SAR), Government when it is set up.

After the Joint Declaration was signed, people from various quarters thought that, through the co-operation of both the Chinese and the British sides, the throughtrain for our political system could be realized. Therefore, the conception of having to set up the PWC and the PL never occurred to anyone. However, as the arrangement for a political throughtrain was scuppered, under these circumstances, the Chinese side was forced to set up another stove. In view of this abrupt turn, the work of the SAR Preparatory Committee of Hong Kong (scheduled to be set up in 1996) would become very heavy and pressing. These were the circumstances under which the PWC was formed. Its objectives include studying as soon as possible the issues that affect the smooth transition of Hong Kong and the changeover, and making recommendations to the Preparatory Committee. This is precisely a responsible and pragmatic way of doing things and is in Hong Kong's interest.

According to the "throughtrain" arrangement, the legislature constituted by the 1995 elections could straddle 1997. However, as this arrangement is no longer in place, it is only logical that Hong Kong's legislature will have to be re-organized after the reversion of sovereignty. The PWC's political affairs subgroup recommended, after repeated and careful consideration, that a provisional legislature be set up on 1 July 1997 so as to ensure the effective and smooth operation of the SAR Government.

Mr President, there are views to the effect that after the reversion of sovereignty over Hong Kong, the SAR Government should immediately hold elections to the first SAR Legislative Council. But I think this proposal is neither practical nor workable. The reason is that when the SAR is first established, conditions for territory-wide large-scale elections are not yet ripe. Other things aside, it takes a rather long time just to prepare for an election; work in this regard includes the formulation of rules and regulations for election, the registration of voters and so on. I think Members will recall that

several months ago when it was still a year or so before the scheduled 1995 Legislative Council election, the Government had to push through the rather controversial electoral legislation. It can be seen from this that elections take time to prepare.

Under such circumstances, we are faced with two options. That is to say, after the SAR has come into being, will Hong Kong need a legislature during the interim period of a year or so before the first Legislative Council is constituted? In order that Hong Kong will carry on as usual, the role played by the legislature is a very important one. Should there be no legislature for a long time, the SAR would not be able to enact the necessary legislation. This would have very adverse consequences.

There are views to the effect that as a temporary measure, the Chief Executive of the Hong Kong SAR could make laws by the SAR equivalent of order in Council, or that the job could be done on our behalf by the Standing Committee of the National People's Congress of China. But, if the former option be adopted, there would be a lack of monitoring by the legislature, so that the executive would have all the important powers vested in it. As for the latter option, it would mean requesting institutions of the central government of China to handle the internal affairs of Hong Kong. As such, these recommendations are not in keeping with the provisions of the Basic Law nor the principle of "Hong Kong people ruling Hong Kong". Neither of these recommendations are desirable.

Overall, the setting up of the PL is a contingent measure that takes care of the real situation and is more desirable. I recall that before the Regional Council of Hong Kong came into being, there had been a Provisional Regional Council. Obviously, both provisional bodies arose out of practical need.

The proposed PL will be elected by a selection committee of 400 people. Its terms of reference will include the enactment and amendment of laws according to the Basic Law. It will mainly be responsible for enacting laws that are essential to the establishment of the SAR (including laws that define the status of permanent residents), approving the appointment of the President of the Court of Final Appeal and the Chief Justice of the Supreme Court, and nominating six Hong Kong members to sit on the Basic Law Committee. These are tasks that cannot be taken up by other institutions for us.

Mr President, it is easiest just to criticize without making any useful suggestions. It is most regrettable that those who criticize the PL hardest cannot suggest any practical and workable alternatives. They are living in fantasy and insisting on a throughtrain arrangement that does not exist any more. This is not helpful to solving problems, nor is it the right thing for pragmatic politicians to do.

Just like most people, I think it would be most desirable to have a "throughtrain" arrangement. But why has the throughtrain arrangement been scuppered? And why have we to work out other practical and workable ways? I think those who freely attack the PWC and the PL in the name of "the wish of the people of Hong Kong" are duty-bound to give an account to the public of the cause and effect of this saga and tell them the whole truth. Otherwise, they will be misleading and cheating the public.

The buzzer sounded a continuous beep.

PRESIDENT: Mr LAU, you have to stop.

DR PHILIP WONG (in Cantonese): Mr President, as my views on the establishment of the provisional legislature have been published in a number of newspapers, I now speak on this issue just for the sake of putting it on record.

First, Reason for the Proposal

In 1990, a Sino-British agreement was reached on the political system of Hong Kong. Under the agreement, our political system had to dovetail with the Basic Law and the British Government had to consult China in regard to the three-tiers of elections. Under such circumstances, the National People's Congress, in regard to its decision on the method for the formation of the first Government and the first Legislative Council of the Hong Kong Special Administrative Region (SAR), worked out a "throughtrain" arrangement. Had this arrangement been put into practice, there would not have been any proposal for the establishment of the provisional legislature. The failure of this arrangement was entirely a result of Mr PATTEN's reform package, a consequence of Britain's breaking faith with China. It is just natural for China to reject the political arrangement unilaterally put forth by the British side. After the British side wrecked the "throughtrain" arrangement, China has to face a series of problems brought about by the fact that the first Legislative Council cannot be formed in time. These problems include the nomination of members from Hong Kong to the Committee for the Basic Law, the appointment of judges of the Court of Final Appeal and the Chief Judge of the High Court and other important issues on which legislation is urgently required upon the formation of the Government of the SAR. All these issues are vital to the normal functioning of the SAR and the implementation of the Basic Law. After considering the opinions of the Hong Kong people very carefully, the Preliminary Working Committee (PWC) proposed the formation of the provisional legislature.

Second, Our Best Choice

There was a suggestion that the above-mentioned problems should be dealt with by means of transitional arrangements adopted by the Standing Committee of the National People's Congress. It was also suggested that in the absence of a Legislative Council of the SAR, business to be handled or participated in by the legislature as laid down in the Basic Law can be dealt with by the Preparatory Committee. Some also suggested that before the formation of the first Legislative Council, business to be dealt with or participated in by the legislature can be performed by means of administrative orders issued by the Chief Executive.

After a careful comparison of these alternatives, the establishment of the provisional legislature seems to be the best amongst various proposals. Firstly, it will enable the Government of the SAR, on establishment, to operate in accordance with the provisions in the Basic Law. Secondly, provisions laid down in the Basic Law concerning the legislature on the establishment of the SAR can be implemented on 1 July 1997. No alternative provision or transitional arrangement is required. The third and the most important point is that it will uphold the principles of "Hong Kong people ruling Hong Kong" and "high degree of autonomy". After the British side has dismantled the "through-train", China has the right to adopt all measures to deal with problems thus arisen. But amongst all these measures, the establishment of the provisional legislature is the only one which can fully manifest the principles of "Hong Kong people ruling Hong Kong" and "high degree of autonomy". These principles are highly treasured by us.

Third, Sufficient Legal Backing

Provisions relating to the formation of the Legislative Council of the HKSAR are contained in three documents in the Basic Law, namely the main text of the Basic Law, Annex II of the Basic Law and Decision of the National People's Congress on the Method for the Formation of the First Government and the First Legislative Council of the Hong Kong Special Administrative Region.

Article 68 of the Basic Law contains provisions related to the principles. The Legislative Council, whether it is the provisional one, or the first one or otherwise, will not infringe on these provisions provided that it is formed by election and the method of formation is in line with the actual situation in Hong Kong and in accordance with the principle of gradual and orderly progress.

Annex II of the Basic Law mainly provides for the method of the formation of the Legislative Council in the second and third terms and the procedures for voting on bills and motions in the Council. It also provides that the first Legislative Council shall be formed in accordance with the method of the formation of the first Government and the first Legislative Council of the SAR as decided by the National People's Congress. Hence, the formation of the provisional legislature will not have any impact on Annex II.

Will the formation of the provisional legislature violate the decision of the National People's Congress in 1990? The decision stipulated that there are conditions that must be fulfilled should the current members of the last Legislative Council of Hong Kong be the members of the first Legislative Council of the SAR. However, there is no mention of what if the conditions are not met. In my opinion, the answer is straightforward: the National People's Congress, being the supreme legislature of the sovereign state, has the authority to adopt any measure to materialize the spirit of "one country, two systems" and "Hong Kong people ruling Hong Kong". Should any legislative procedure be required for the PWC to put forth its proposal of forming the provisional legislature, it should be a matter within the jurisdiction of the National People's Congress and not the business of this Council.

As a sovereign state, China has the right to decide on matters within its sovereignty. For the sake of the long-term prosperity and stability of Hong Kong, that China is willing to make the "throughtrain" arrangement with Britain should be regarded as a special arrangement for China to exercise its sovereignty. Now that the "throughtrain" cannot be brought to fruition, the decision to form the provisional legislature is another arrangement for China to exercise its sovereignty. If we challenge its legitimacy, we are in fact challenging the sovereignty of China. How can such an act be regarded as a "patriotic" one?

Mr President, I so submit.

DR TANG SIU-TONG (in Cantonese): Mr President, with no throughtrain, the Legislative Council to be constituted by the election in 1995 cannot become the first legislature of the Hong Kong Special Administrative Region (SAR) Government. If no efforts are made to solve the resulting problem of legal vacuum, the smooth return of sovereignty is bound to be hampered. The Chinese Government's decision to set up a "provisional legislature" to fill this legal vacuum is in keeping with practical needs. Some people have held that the establishment of the "provisional legislature" is not the only way out. An expedient alternative that can be considered is to vest the Chief Executive with special power including the provisional power to enact laws and the power to appoint judges to courts at all levels as a contingency measure on the one hand, and to hold an election for the first legislature as soon as possible to shorten the period of legal vacuum to a minimum on the other hand. Besides alleviating the

heavy workload of the Preparatory Committee when it organizes the first SAR Government, this alternative has the merit of clearing up the public's confusion about the SAR Government structure. However, the demerits of this alternative lie in the added workload to the Chief Executive, the excessive centralization of powers in the executive branch and thus undermining public monitoring of the Government. In this connection, I believe that setting up the "provisional legislature" is a fundamental measure to deal with the contingency. It is actually a way out with no other solution available.

Regrettably, some people merely level wanton and even malicious criticisms at the provisional legislature to the total neglect of actual needs. If we are to find out who are to blame and trace the origin of trouble, no one but Mr Chris PATTEN and those who voted in favour of the constitutional package with "the three violations" are to bear the full responsibility as everything is their intention. Taking advantage of all the loopholes found in the Basic Law and the Joint Declaration, Mr PATTEN ended up with a farce involving the 1995 constitutional package with the three violations. Together with those people who claim themselves to be pro-democracy beating the drums, they derailed the throughtrain for the Legislative Council. There is no hope for the legislature to pass through. As to whether they did it in order to hamper the smooth transition of Hong Kong, to fish in troubled waters or to further their own interests, I dare not speculate.

Mr President, the wording of the original motion is indeed high-sounding. However, does the explicit meaning really reflect the implicit meaning? Safeguarding the Joint Declaration, defending the Basic Law and maintaining the principles of "one country, two systems" as well as "high degree of autonomy" are in full accord with the wishes of the people of Hong Kong. However, shouting empty slogans alone without living up to their words will not do any good to the well-being of the people of Hong Kong. As for those who yell the aforesaid slogans today, let us take a look at what they did and said in the past. They described the Basic Law as a piece of long and stinking foot-binding cloth or a leash to tie down a dog. They also said that the Basic Law was used to bully the people of Hong Kong. While advocating amending the Basic Law, they burnt it like firewood. Moreover, they depicted the through-train as a pig truck leading to hell. They also criticized those safeguarding the throughtrain and insisting on convergence as enemies of the people of Hong Kong. Now that the hope for a throughtrain has vanished, they say that another stove should not be built. Comparing what they said and did over the past and at present, we really do not know whether to laugh or to cry.

"Speaking out loud does not represent democracy whereas having a multitude of people is not tantamount to having righteousness". There do exist certain objective criteria to distinguish between black and white. Right and wrong are not to be arbitrarily confused as a result of the presence of a multitude of people and loud voices. As the old Chinese saying goes, "If the name is not right, then speech will be not in order; and if speech is not in order, then nothing will be accomplished." Those people who once supported the

constitutional package with the three violations and took part in the burning of the Basic Law have somehow turned to advocate "upholding the Basic Law". It is unbelievable to witness such a drastic U-turn in their attitude. Indeed, the Basic Law has to be safeguarded, but we would not allow people to proclaim a stag to be a horse and to stubbornly accuse the provisional legislature as lacking in legal basis. Nor would they be allowed to avail themselves of the political means to confuse right and wrong in the name of safeguarding the Basic Law with the ultimate effect of hampering the smooth transition, stability and prosperity of Hong Kong.

Mr President, those who oppose everything supported by their enemies are called Messrs Everything. They by no means suit the Hong Kong society. By making no distinction between right and wrong and opposing China in every aspects, they even do harm to Hong Kong. What Messrs Everything try to do is to please the public with claptrap. Although they may obtain short-term political gains, their true colours will definitely be revealed one day. I would like to advise these people not to use public interests as bargaining chips to achieve their political ends for doing so will do harm not only to others but also to themselves. The provisional legislature is a comparatively good option subsequent to the derailing of the throughtrain. It will be unwise to topple it.

Verse 23, Chapter 10 of I Corinthians reads, "Everything is permissible, but not everything is beneficial. Everything is permissible, but not everything is constructive." The message is to advise people to make good use of their freedom, be careful in their speech and acts, and not to act at will so as to cause harm to others. I hope that everyone can adopt this attitude of life, exercise self-discipline and make appropriate contribution to the society.

Mr President, these are my remarks.

MR JAMES TIEN (in Cantonese): Mr President, the Honourable CHIM Pui-chung is very clear-headed, he has suddenly recalled that it is now already 29 June. It has been exactly a year since we debated on the political reform package. When we discussed the political reform package on the same day last year, the Liberal Party and the independent Members from the breakfast club proposed the 1994 package. The special feature of our package is that the nine New Functional Constituencies are very similar to the current 21 Functional Constituencies, which means one company, one vote, or one group, one vote. Another special feature is that the 10 Legislative Council Members elected by the Election Committee are actually elected from the four categories. As the Honourable Allen LEE has just mentioned, it is different from the Government's 1992 package which stipulates that all these seats shall be taken up by elected District Board Members.

The Honourable Frederick FUNG, of course, also questioned whether or not the 1994 package recommended by the Liberal Party and the independent Members would definitely be accepted by the Chinese side and that we would be allowed to smooth over the transition. A couple of days before 29 June 1994, I went personally to Beijing. The Chinese leaders, upon listening to our proposal, indicated that it could be supported. Of course, they did not guarantee that we would be allowed to smooth over the transition. However, since the 1994 package proposed by our Liberal Party and the moderate Members was negatived, there is no point in discussing it again. On the contrary, the 1992 package proposed by the Government was passed with the threat from the Chinese side that it would come to an end by 1997. But the Government said that it was only a hypothesis and that all hypothetical situations would not happen. We could rest assured that there would not be any problem.

One year has lapsed and the preparations of the Chinese side have demonstrated that the hypothesis is certain to come into reality. Their timetable has been properly set. By the end of this year when the Preparatory Committee is established, the Selection Committee comprising 400 members will be constituted. The Liberal Party thinks that these 400 members in the Selection Committee should be constituted by election and members of the provisional legislature should be elected by these 400 members.

Under these circumstances, members of the Liberal Party, whether they are Members of this Council or not, will be happy to join the provisional legislature in order to continue to serve Hong Kong. When Mr Frederick FUNG of the Hong Kong Association for Democracy and People's Livelihood questioned the Democratic Party, he was eager to force them into saying: Even if seats are reserved for the Democratic Party, the Democratic Party is not going to join it. Does that mean that it would be marvelous to have only the Hong Kong Association for Democracy and People's Livelihood left to take up all of the seats for the democrats? I want to ask Mr FUNG here. If the 400 members of the Selection Committee are going to select representatives from your party and you have to take a stand, will you still accept the offer? If you are going to accept the offer, then what is the meaning of the opposition you have just raised?

Mr President, with these remarks, I support Mr Allen LEE's amendment.

MR SZETO WAH: Mr President, those who defend the provisional legislature have many absurd arguments.

First, the theory of "a possibility to make something out of nothing". They said that though the Sino-British Joint Declaration and the Basic Law say nothing about the provisional legislature or do not have any explicit provisions on this issue, the setting up of the provisional legislature is not in breach of them. According to this logic, if you do things that are not provided for in the legislation, you are doing such things in compliance with the legislation. If we

can set up anything that is not explicitly provided for, there are lots of things that we can set up. Does it mean that we can set up a "Supreme Chief Executive", a "Backstage Legislature", an "Invisible Executive", and a "Remote-control Court of Final Appeal" based on this logic?

Second, the theory of "an eye for an eye". The inventor of this absurd theory is frank. He sincerely said that he has to "repay violence with violence". There was no evidence to support whether the other party was "violent", but he asserted that the other party was "violent". He admitted that he himself would use "violence" to take revenge. He is making a confession without being pressed. The other party has not admitted that he has made "triple violations", but he himself confessed that what he used to attack the counterpart were the "triple violations". In fact, "the setting up of another stove" was the "first blow" and the provisional legislature was the "returning blow". Whether it was because you punched me first, so I had to fight back or because I wanted to fight back, so I asked you to punch me first? This is worth considering.

Third, the theory of "the best choice among the worst". This theory of the best choice among the worst is also confession made without being pressed. If even he himself admitted that this is the worst plan, how would it be possible for the best plan to be implemented? We are to find the best plan among the worst? It is worth studying whether the best choice does exist among the worst. It is only what he claimed. Is the finding of a plan among the worst choices really good for the prosperity, stability and smooth transition of Hong Kong?

By reviewing the relationship between Hong Kong and China since the emergence of the 1997 issue, we can learn the guiding ideology of the policy of China towards Hong Kong from the changes in their relationship that her policy is not "one country, two systems and a high degree of autonomy". Her attitude has changed from "investor should rest assured" to that of a "we-centred" one.

Up to now, the change in relationship between China and Hong Kong can be divided into three stages. The first stage started from the Sino-British negotiation and ended with the signing of the Joint Declaration. During this period, what China worried most was that investors might flee because of the return of Hong Kong's sovereignty to China. China then talked glibly about "one country, two systems and a high degree of autonomy". The well-received Joint Declaration was signed under these circumstances. The second stage started from the signing of the Joint Declaration and ended with the promulgation of the Basic Law. After the signing of the Joint Declaration, China has adopted an open policy in economic matters. Therefore, minds of Hong Kong investors were mostly put at rest. Owing to this, control over politics was tightened during the drafting of the Basic Law and a conservative political system in line with preferences of investors was set up. The third stage started from the promulgation of the Basic Law and leads up to now. During this period, the whole world can see China going towards the free economy of capitalism and this has become a trend that cannot be reversed. Moreover, China is a profitable market. Investors rush to invest in China, and certainly

they will invest in Hong Kong. China knows the psychology of the investors well. Owing to this advantage, China becomes more imperious. The policy of "one country, two systems and a high degree of autonomy", previously used to rest investors' hearts, is now to be arbitrary interpreted and trampled by China, who have a "we-centred" belief. The Preliminary Working Committee and the provisional legislature are the outcome of the third stage.

Mao Zedong published "On New Democracy" in January 1940 and "On Coalition Government" in April 1945 to unite the majority and to isolate a handful of enemies, so as to eliminate the enemies and to seize political power. However, in June 1949, on the eve of Communist victory, he published "On People's Democratic Dictatorship" which suggested of bloodshed. After the seizure of political power, have the New Democracy and coalition government ever been implemented? During the Cultural Revolution, even LIU Shaoqi's opinion on strengthening the development of new democratic system was criticized as sinister materials. This is a historical fact and this is a piece of history that cannot be forgotten.

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

The buzzer sounded a continuous beep.

PRESIDENT: Mr SZETO Wah, you have to stop, I am afraid.

MR LEE CHEUK-YAN (in Cantonese): Mr President, the idea of forming a provisional legislature is an "overt plot". It attempts to use illegal means to violate openly the principle of "Hong Kong people ruling Hong Kong and a high degree of autonomy" as promised by the Chinese Government to the people of Hong Kong some years ago. Such idea is also contrary to the spirit of the Basic Law drawn up by the National People's Congress (NPC) of China. In view of the widespread damage the provisional legislature (PL) will cause, not only should we strongly oppose its establishment right now, I hope the people of Hong Kong will continue their vigorous fight against it and boycott it in case it is really formed in 1997.

Ruining the principle of "Hong Kong people ruling Hong Kong and a high degree or autonomy"

Both the Sino-British Joint Declaration and the Basic Law state clearly in black and white that the Hong Kong Special Administrative Region (SAR) will be given "a high degree of autonomy" (see paragraph 3(2) of the Joint Declaration, Article 2 of the Basic Law), and that the Legislative Council of the SAR shall be constituted by election (see Annex I to the Joint Declaration, Article 68 of the Basic Law). The proposal to establish a provisional legislature was made by the Preliminary Working Committee (PWC) of the Preparatory Committee, an operating mechanism of the Standing Committee of the NPC,

without openly and widely consulting the people of Hong Kong, let alone being endorsed through a democratic process. It is an obvious instance of trampling on the SAR's high degree of autonomy. The Chinese Government and its hand-picked persons, by setting up a provisional legislature, will deprive the people of Hong Kong of the right of choice they are entitled to, so as to put a stranglehold on the SAR's legislature with the ultimate aim of allowing the Chinese Government to have total control over the affairs of Hong Kong.

Violating the Basic Law

The establishment of the PL not only goes against the spirit of "high degree of autonomy" but also violates specific provisions in the Basic Law. The Basic Law provides in unequivocal terms that the legislative power of the SAR rests with its Legislative Council constituted by election. The formation of the first to third terms of the Legislative Council, in which directly elected Members are included, has also been stipulated in the Basic Law and the resolutions of the NPC. Therefore, any legislature constituted otherwise than by direct election cannot justifiably be vested with the legislative power SAR, no matter what disguise it comes under in an attempt to "pass off fish eyes for pears".

Under the Joint Declaration and the Basic Law, the SAR's Legislative Council shall be constituted by election. However, as there is no open election process for the setting up of a provisional legislature, the people of Hong Kong are thus deprived of the right to vote and to stand as a candidate in an open and fair election. This is contrary to the basic principles of election. It is nothing short of an "appointment" system. The PL to be set up through appointment will be a stark violation of the Joint Declaration and the Basic Law.

Democratization process being emasculated

The "appointment system in disguised form" of the PL is basically a major setback in Hong Kong's democratization process. The provisions on political structure laid down in the Basic Law have already put up numerous barriers against Hong Kong's democratization development. Who would have imagined that a wholly appointed provisional legislature would emerge upon the resumption of sovereignty by China in 1997? The pace of democratization in Hong Kong has been moving rather slow. With a further emasculation brought about by the PL, our return to China, our motherland will bring great shame!

A legislature without any mandate from the people and going against their will

In the election of the new Legislative Council this September, all of the 60 seats will be returned through open election. Under the provisions of the relevant law, legislators will have a tenure of four years in the new Legislative Council term. In other words, through the election this September, the people of Hong Kong will give Members of the new Legislative Council the mandate to serve them for four years. In that capacity is a "provisional legislature" without

any mandate from the public and constituted otherwise than by open election to seize power from the Legislative Council constituted by open election?

Article 160 of the Basic Law provides that, upon the establishment of the SAR, the laws previously in force in Hong Kong shall be adopted as laws of the region except for those which the Standing Committee of the NPC declares to be in contravention of the Basic Law. While the SAR is yet to be established and the Standing Committee of the NPC has not declared the law governing the Legislative council election passed in 1994 to be in contravention of the Basic Law, what are the legal bases for violating the existing law by forming a provisional legislature, thus kicking Members of the Legislative Council returned in the 1995 election off the through-train?

The provisional legislature will uphold draconian laws

The PL, no matter whether it is given the right to legislate wholly or partially, could make draconian laws that the future Legislative Council, constituted by election, would find it difficult to abolish. As a matter of fact, the Basic Law stipulates that Members of the Legislative Council of the SAR must seek the prior approval of the Chief Executive before introducing any "private bills" relating to government policies (see Article 74 of the Basic Law). If the puppet PL enacts various laws relating to public policy, which are in favour of an executive-led system and in violation of human rights, then even if all of the 60 elected Members of the Legislative Council are of the same opinion that these unfair laws need to be amended, they simply cannot do that without the approval of the Chief Executive who is not chosen in a general election.

Apparently, not only is the establishment of the PL illegal, it will also bring, undoubtedly, irreparable damage to the future SAR's Legislative Council.

The Legislative Council must be constituted by election

I reiterate that Members of the SAR's Legislative Council must be elected through a genuinely open process. To achieve this, one of the options is to allow those Members returned in the 1995 election to serve beyond 1997, or to amend the Basic Law so that all 60 Members will be elected by universal suffrage when China resumes sovereignty over Hong Kong in 1997.

Boycott the illegal establishment

The PL is an out-and-out "illegal" establishment. I call on those Members returned in the 1995 election to adhere to their stance in safeguarding the high degree of autonomy for Hong Kong, to boycott the PL and reject the offer of appointment as its member.

Mr President, these are my remarks.

MR TAM YIU-CHUNG (in Cantonese): Mr President, in his speech; the Honourable Martin LEE remarked that those who were "gutless" should go home. I believe many Members have already gone home, but they are not "gutless". Rather, they are "listless" as it is already very late at night. I merely wish to briefly state certain principles that we from the Democratic Alliance for the Betterment of Hong Kong (DAB) follow with regard to the provisional legislature.

It is true that neither the Sino-British Joint Declaration nor the Basic Law has mentioned the provisional legislature, but if we rashly so conclude that the provisional legislature is a violation of the Joint Declaration and the Basic Law, and raise the matter to the higher plane of principles, criticizing that the provisional legislature has trampled on the principles of "one country, two systems" and "a high degree of autonomy", then we would have completely disregarded the political changes in Hong Kong over the past two or three years, and have also passively dodged the issue that there are changes to be faced by Hong Kong people over the next few years.

It is well known that one of the political platforms of the DAB is "smooth transition", and therefore the DAB will try its best to achieve anything that is conducive to the smooth transition in the later transition period. Looking back at the political row over the past few years, first of all, there was the political reform package with "three violations" proposed by Mr PATTEN. Although the DAB had on the one hand highlighted those aspects where he had violated the Joint Declaration and the Basic Law, and on the other hand endeavoured to urge both the Chinese and the British sides to resolve their differences through discussions, it was unfortunate that at the end both sides were unable to reach any agreement after 17 rounds of talk. It is all because Mr PATTEN is bent on having his own way and going it alone that we have come to this state in which there is no through train for our political system. I think it will not do any good to find out who is to blame in this state of affairs, but if one is to trace the main culprit, then it is nobody but Mr PATTEN who should be blamed.

At present, the Chinese Government has stated clearly that the three tiers of representative government will not have a smooth transition to 1 July 1997. This has increased the uncertainty in the later transition period and it is a great pity. At the same time, the Preliminary Working Committee for the Hong Kong Special Administrative Region (SAR) already proposed to have a provisional legislature set up to solve the problem of a legislative vacuum at the initial stage when the first SAR Government is formed in 1997. Of course, the National People's Congress has not made any provisions regarding its composition, terms of reference and term of office. But what significance is there if we are just making an opposition? And in what way is it constructive? The DAB proposes that Members returned in the election of 1995 will be candidates for the provisional legislature. So, would it not be too hasty for the Democratic Party to completely reject the provisional legislature at this stage? Would it not be imposing restrictions on itself?

Mr President, if an election for the first Legislative Council of the SAR can be held before 1 July 1997 in Hong Kong, and Members so elected can have their term of office from 1 July 1997 to 1999, then the provisional legislature will not be necessary. However, in doing so, co-operation of the British side is essential. Judging from the kind of Sino-British relationship at present, it is quite unlikely that it would happen. But times change. There are signs that the Sino-British relationship is beginning to thaw. For this reason, when the Chairman of the DAB and I went to Beijing for a meeting last week, we took the opportunity to write to Mr QIAN Qichen, Vice Premier and Foreign Minister of China, and recommended to him 10 points on how the problem in relation to Hong Kong's transition could be solved. These include urging the Preparatory Committee for the SAR to prepare for the election of the first Legislative Council, and the co-operation of the Government of Hong Kong is sought through discussions between the Chinese and the British sides so as to ensure that the first Legislative Council can be elected within a short time, and the instability that may arise during the later transition period can be minimized.

Of course, it would be premature at this stage to say that this can be achieved. But the DAB believes that it all depends on whether we want it to happen or not. Also, it is after all more meaningful than passively rejecting the provisional legislature.

With these remarks, I oppose the original motion as well as Mr Frederick FUNG's amendment motion. Thank you, Mr President.

DR CONRAD LAM (in Cantonese): Mr President, I would like to take this opportunity to make a brief response to the speeches made by some Members.

The Honourable Allen LEE questioned a moment ago whether the Democratic Party would join the provisional legislature since they were against it. I am not prepared to answer on behalf of the Democratic Party now because the Democratic Party always seeks Party members' views on major issues of principles before making a decision. However, I would like to point out a fact: although the Liberal Party and the Democratic Alliance for the Betterment of Hong Kong have strongly opposed Chris PATTEN's political reform package, they are very actively participating in the forthcoming Legislative Council Elections in September. So this is their standpoint.

Many people have critically asked the question: who should be responsible for the situation leading up to the creation of a provisional legislature? I wish to cite an example so that we can look into the question of responsibility. There is a hungry child whose mother says he will be given a sandwich of democracy". After having been eating the sandwich for two days, the little child likes it very much and asks his mother if he can have one more. Scolding that he is greedy, the mother takes the sandwich back from him and gives him two slaps in the face.

The people of Hong Kong, having been living under the rule of the colonial Government for so many years, are eager to see Hong Kong's sovereignty returned to the motherland and are very happy to achieve some democracy. They will not give up any chance of striving for more democracy. But the leaders of our motherland said, "There is only so much for democracy and you cannot have any more. We control the provisional legislature." Who should be held responsible for this? Should we the Democratic Party be held responsible? Or should those who are striving for more democracy be held responsible for this?

I wish to make a brief response to the amendment put forward by the Honourable Frederick FUNG. The amendment he puts forward gives me an impression that his standpoint is no different from that of the Hong Kong Association for Democracy and People's Livelihood, showing a lack of firm standpoint on major issues of principles by dodging them. Let us take a look at the amendment: "there is no need for the establishment of the provisional legislature" as a replacement for "this Council opposes the establishment of the provisional legislature". If the provisional legislature is considered to be something wrong, he should not use "there is no need". He should be "against" its establishment. It is wrong to commit murder. So you will not say that "there is no need" to commit murder. What we should say is we are "against" murder. Otherwise it carries to some extent the connotation that you tacitly consent to it. Therefore, I feel that there is a difference between Mr FUNG's amendment and my point of view.

Regarding the adjective "provisional", how should it be defined? Mr FUNG has been a member of the Hong Kong Housing Authority for years. I believe that he must be able to perceive that there are many "Temporary Housing Areas" in Hong Kong which have been "temporarily existing" for several decades. This is very dangerous. Mr FUNG has been with the Housing Authority for many years. Is he going to define and keep defining "temporary" as "unchangingly temporary"? If Mr FUNG is to join the provisional legislature, will he be "provisional" for 50 years? This is what I am worried about.

Mr President, it is a saddening fact that there had been countless number of cases in history of failure in striving for freedom and democracy. But the most saddening thing is that we do not even bother to strive for freedom and democracy. In the Legislative Council, we have done nothing to strive for freedom and democracy. If we do not speak up against what we think are obstacles to the progress of freedom and democracy, it would be more than saddening. The reason behind Dr YEUNG's motion today is to have those things which we think may hinder the progress of freedom and democracy brought up for discussion. Whether it will be successful or doomed to failure is not the main point. The crucial point is that we have to do it since it is better than leaving a blank page in the history of this Council.

Mr President, with these remarks, I support Dr YEUNG's motion.

MR ANDREW WONG (in Cantonese): Mr President, before I start to deliver my speech, I would like you to give a ruling on the remarks made by a number of Members just now concerning the winning of votes. Mr President, you have ruled in a previous debate that Members should not impute motives to others, I mean impure motive, to be exact. However, so far as I can remember, Lord WILSON, the then President of the Legislative Council, made a ruling some time around 1991 that the winning of votes is not an impure motive, it can even be said to be the bounden duty of Members, especially the elected Members. Hence I hope, Mr President, you will give the same ruling.

PRESIDENT: Mr WONG, I will not rule in a hypothetical case. I have heard nothing so far which would cause me to intervene. A great deal depends on the context, and on how the speeches are delivered. I shall intervene when I think fit.

MR ANDREW WONG (in Cantonese): Mr President, just now I was referring to the speech delivered by the Honourable LAU Wong-fat and the response made by the Honourable Martin LEE to his speech. I only want to state that in a council, one constituted by election in particular, if anyone accuses others of saying a certain thing or taking a certain stand just for the purpose of winning votes, for most of the time it is no doubt a case of the kettle calling the pot black. The debate today seems to have the atmosphere of an electioneering forum, and can even be said to be an electioneering debate. Maybe I am also winning votes now, whereas for other Members who may not want to enter the election, it is possible that they have to elucidate or make known their position in order to win over other things, which we never can tell. Yet, none of them has an impure motive. Such acts may be for finding a position where they can continue to serve the people of Hong Kong, and so are the Democratic Party, the Association for Democracy and People's Livelihood, the Liberal Party and the Democratic Alliance for the Betterment of Hong Kong, and other Members may also be in a similar position.

Besides, I would like to talk about the matter on investigating and affixing responsibility. As regards the theory of "returning like for like", or to investigate who gave the first punch after the concept of "three violations" was proposed, these are indeed meaningless. This way of expression concerning who gave the first punch, is basically a way to affix responsibility. In my view, such kind of arguments are not all practical and realistic, and they have no bearing on the subject being discussed, that is whether there should be a provisional legislature or whether it is a good or bad idea. As regards the argument that a conclusion has been reached, under the atmosphere of an electioneering debate in particular, it is hard to arrive at a conclusion.

I would like to mention about the theory of "a possibility to make something out of nothing" suggested by the Honourable SZETO Wah. In fact, there is a better way of saying this which I guess many of you may have heard of before. It is a joke from Eastern Europe, or it may be one made up by the CIA. It says that in England, whatever not prohibited by law is permitted; in Germany, whatever not permitted by law is prohibited; in France, whatever prohibited by law is still permitted; whereas in Russia, whatever permitted by law is still prohibited. The last two scenarios are no wonder a joke, but the first two are not, and they reflect the spirit behind two systems of laws.

The aforesaid are about the power which the Government, vis-a-vis the people, can exercise. The problem which we are facing now concerns with the central government vis-a-vis the local government, but if the central government vis-a-vis the people also has the same condition, granting their people freedom, then everything will be permitted provided that they are not prohibited by law. It is also true for central government vis-a-vis the local government, that is whatever not prohibited is permitted. However, in relation to the power of the government to do certain things, the effect of our legislation must be on the contrary, and it should follow the mode of Germany. All laws are enacted to restrict the power of the Government, therefore as it is specified in the Basic Law that the legislature is to be constituted by election, no matter how we name the proposal now, say a provisional legislature, legally speaking, it has already violated the taboo. If such a legislature not constituted by election is still valid, that means the Basic Law apparently does not impose any restriction on the composition of government, and this is totally unacceptable.

I originally intended to touch on Articles 67 and 68, and sections 1 and 6 of the National People's Congress (NPC) Decision, but as the Honourable LEE Cheuk-yan has already spent a lot of time on these provisions, hence I do not want to elucidate further. I only want to point out that, overall speaking, it may be very simple to have the proposal legalized. All the NPC has to do is to make a new decision to replace its original decision and allow the provisional legislature not to be constituted by election for the first session. We cannot be sure whether these NPC decisions possess the same power and status as the Basic Law, as under such a condition, they may all be legalized. Therefore, I would like to bring up the problem concerning Article 18 of the Basic Law, which specifies that "The laws in force in the Hong Kong Special Administrative Region shall be this Law, the laws previously in force in Hong Kong as provided for in Article 8 of this Law, and the laws enacted by the legislature of the Region". In other words, there are only three sources of laws. The NPC Decision is not part of the laws of Hong Kong. If all of you take my point, then any further alterations decided by the NPC even without amendment to the Basic Law itself, can be regarded as illegal. Therefore, I have blocked that way up also. I am not saying that it has not followed any decisions made, like decisions in the Basic Law and the NPC Decision, nor has it violated these decisions. According to sections 1 and 6 of the NPC Decision, the future legislature can be altered into another mode, or even into a provisional legislature. However, by referring to the provision of Article 18 and the

preamble of the Joint Declaration, it can be found that such an arrangement, basically, does not conform with the provisions of the Basic Law and the Joint Declaration. Therefore, it is impossible for me to assent to the establishment of the provisional legislature.

Among the three options, namely the motion moved by the Honourable YEUNG Sum, the amendment proposed by the Honourable Frederick FUNG and further amendment proposed by the Honourable Allen LEE, I opt to support the original motion moved by Mr YEUNG Sum.

MR RONALD ARCULLI: Mr President, I had not intended to speak so I will be as brief as possible and to the point. The Democratic Party has openly acknowledged that the nine new so-called Functional Constituencies is direct election. If the Democratic Party is right, and I have no doubt that they are, then the composition of this Council after September's election this year does not conform with the Basic Law. How then do they claim that the provisional legislature is in breach of the Basic Law on the one hand, and maintain that the new Legislative Council is not in breach of the Basic Law? I suppose the answer might lie in the fact that any position can be justified in the name of democratic development.

Mr President, the Democratic Party prides itself as the champion of the people of Hong Kong, always fighting for their interests. If that is its true belief and mission then I implore them to tell the people of Hong Kong in the clearest possible terms that the composition of the Legislative Council after the 1995 elections is in breach of the Basic Law and let the people judge.

My colleague, Mr Allen LEE, has urged the Democratic Party to declare whether its members would be prepared to be members of the provisional legislature despite asserting in its motion, moved by Dr the Honourable YEUNG Sum, that such a legislature is in breach of both the Basic Law and the Joint Declaration. I can give Mr Allen LEE the answer. I have no doubt that the Democratic Party would be prepared to be part of the provisional legislature. After all, what difference does it make? As successful candidates this year, in this year's Legislative Council elections, will be Members of this Council — a legislature that contravenes the Basic Law. But in conclusion the question that I would really like to ask, but really is this the picture that the Democratic Party wants to project of itself?

Thank you, Mr President.

MR HOWARD YOUNG (in Cantonese): Put mildly, today's motion is ridiculous. Put seriously, the motion reflects the fact that a number of people have been caught with amnesia currently prevalent in Hong Kong. Just a year ago, while we were debating in this Council about constitutional matters, a number of Members pronounced that people in Hong Kong wanted a smooth

transition and continuity in our constitutional system. At the time, a number of Members from the Liberal Party and Members who did not belong to any political party said that if PATTEN's 1992 constitutional package was accepted without any amendments, there would surely not be any through-train or constitutional continuity. However, the United Democrats of Hong Kong (then still not yet merged with Meeting Point to form the Democratic Party) maintained that there was no need to be frightened, and if PATTEN's constitutional package was accepted and a successful election accomplished, China would certainly accept the *fait accompli*. Not many people could expose the fallacy of the idea, although there were some who cast doubt on it. Such an idea was based on the assumption that we could ignore China's sovereignty by bluffing. Now we see that Hong Kong people have been fooled.

Members may have noticed, as I do, that no official from the Hong Kong Government or Britain was prepared to challenge the sovereign power of China by saying that the Provisional Legislature (PL) was in contravention of the Basic Law, when China said that she had to set up a provisional legislature as there was not going to be any through-train or constitutional continuity. Maybe the Secretary for Constitutional Affairs dares to say the same later. I note that the Hong Kong Government only said that China should give a full explanation to convince the people of Hong Kong about the setting up of a provisional legislature. I recall that Mrs Anson CHAN also said the same thing. From this, we know that Britain, as the present sovereign state, is aware of a limit. The limit is 1 July 1997, beyond which China will be the sovereign state. Would the present sovereign state challenge the future one? I do not think Britain would do that. It would be absolutely dangerous if in this Council anyone, as a Hong Kong citizen, thinks that he or she is capable of doing or entitled to do just that.

Last year, a number of Members claimed that all we needed to do was to hold an election regarded as successful and China would cave in, and so on and so forth. What if China would not? At that time, not many Members could have told us that some of them were holding Canadian or Australian passports, which could enable them to easily flee the territory and forget about the place. But how about those who stay? What are they going to do without a smooth transition? From today's debate, we can see that a lot of the hopes a year ago have been dashed. This results from the fact that some Members were so childish as to think that China was not serious when she said there was not going to be a through-train and that China would change her mind and give in when the time came. As things turn out, all this is wishful thinking.

The PL mentioned by some Members is definitely not what I would like to see created. In fact, I am saddened that it should exist at all. We must, however, ask why it should be established and who should be responsible for the events that lead to its establishment. Indeed, the PL is the result of a constitutional package passed last year in this Council, in which an enormous amount of responsibility was involved. Although some may say that the PL is a necessary evil, I feel that Members would be going too far if they wanted to say by way of a motion that it is in contravention of the law or if they even wanted

to oppose it. My advice to such Members is that they should refrain from being too extreme. I do not know whether what the Honourable Frederick FUNG said is true or not because I have not been able to read the relevant newspaper. If, as Mr FUNG said, a vice-chairperson of the Democratic Party announced that he or she would not take part in the work of the PL, while another said he or she would consider doing so, then probably the Democratic Party is doing a U-turn; or some of its party members are. Would they join the PL if it is established? Would they say "no" unanimously? Or would they say "yes" if this helps to bring about a smooth transition for Hong Kong?

In the absence of other means than the establishment of a provisional legislature, I hope, in whatever form it may take, the PL will as far as possible accept as its members those Members to be elected in the 1995 election. I hope, in the absence of a throughtrain and at the same time as she exercises her sovereign power, China may accept Members mentioned above with the minimal amount of restrictions. It would be ideal if all elected Members were accepted; otherwise the Chinese Government should explain why to the public. As the Honourable Allen LEE said, there are certain things that cannot be realistically done, while there are those that are obviously against the Basic Law. One obvious example in the 1995 election is the Election Committee, whose sheer existence is in contravene of the Basic Law. In any case, China should explain where necessary. Members will recall that the Election Committee contained in the 1994 constitutional package exceeds the present team of 200 to 300 District Board Members in number, representativeness and democracy.

Mr President, I support Mr Allen LEE's amendment, in which he clearly points out why we have come to where we are, why we have today's topic for debate, and which party should be held responsible for everything. Members in this Chamber were once vigorously lobbied by the Administration into supporting the package. Bolstered by three votes from the three *ex officio* Members, the package was carried by a bare majority with a razor thin margin of just one vote. This was a result we have to accept and we are jointly responsible for it. In the face of such a reality, however, I hope we can do our best to ensure there is a smooth transition, which is what Hong Kong people really need.

MR JAMES TO (in Cantonese): Mr President, there are some points I want to respond to the Honourable Howard YOUNG. I did not speak in the debate on the political reform package held last year. But I have a conviction that rationality is the foundation of any discussion. I may be naive, because — I am not unaware of it — if the reality was set in a confrontational scene we may have to talk about violence, about political power arising from gun barrels, or even about ubiquitous manifestation of sovereignty. Nevertheless, it is my belief that if we believe certain systems are good for a place, that it could in the long run bring forth stability and prosperity, protect citizens' human rights and the rule of law, then we should work hard on this direction.

When I cast my vote on the political reform package I would not have told the public what China would have to do. I just said if the leadership of the Chinese Government was equipped with rational basis, they should also understand the trend of the global changes, including that of China and Hong Kong; and that they should accept a more democratic open society and move ahead along this line. No more will I be so naive to assume that China did not have the determination to block the through-train. China definitely was resolute, because, being a permanent member of the United Nations, and, having nuclear weapons, China has high international status. Why should she not have reason to be resolute? She is very resolute. The only thing is that I hope the resolution of my own country would direct more towards enhancing the living standards of its own citizens than against them.

Second, I agree to the legal analysis of the Honourable Andrew WONG's arguments, particularly those that may be feasible in the legal point of view. But finally we come to look at clause 8. That is nothing short of illegal. China is not deprived of sovereignty. She has sovereignty. But through drafting the Basic Law she has defined her own sovereignty. If even she might want to amend clause 8 of the Basic Law, she definitely could. But the point is whether it is politically justifiable.

Third, I think the major problem of the provision legislature, even if it will have a lifespan of one month or only one week, is that: if it is going to be responsible for the drafting of election laws, that would bring forth the most biased basis and an undemocratic setting upon which the first legislature of the Hong Kong Special Administrative Region (SAR) will be formed. Of course, the Honourable TAM Yiu-chung says since we do not even know the constitution or the structure of the provisional legislature, how would we know what kind of laws it will come up with? We oppose it in principle, because the Basic Law status very clearly that when reverted to the motherland all members of the Legislature of the SAR will be elected rather than appointed. Any appointment, even if only for one day, would be an undemocratic beginning.

The Democratic Party did not discuss this, but I myself have an idea, which I may as well tell everybody openly: If there will ever be a provisional legislature, I will not accept any appointment even if I will be able to get into this hall through winning in the next election. But I will pledge my words to both the party and the public, that no matter how harsh the election rules for the first legislature will be, I will try my best to be a member of the first legislature.

PRESIDENT: Dr YEUNG Sum, you have a total of five minutes to speak to all the amendments.

DR YEUNG SUM (in Cantonese): Thank you, Mr President. It is already half past three o'clock in the morning while the debate started at about half past one. I really want to thank you all for staying up so late for the sake of this debate, and for speaking so enthusiastically on this topic despite your tiredness. I am in a very good mood recently. And so even though Members might speak in a tit-for-tat manner, I would only take it lightly. As a matter of fact, I am grateful to Members for speaking in spite of such tiredness and for staying in this Chamber for such a long time. Therefore, instead of making a vigorous response, I would rather discuss with you the two amendments moved to this motion with my heart full of ease and gratitude.

First of all, I would like to talk about the amendment moved by the Honourable Frederick FUNG. A moment ago, he mentioned about "with refutation as well as establishment". But let us look at his amendment. The wording of my original motion is, "That this Council opposes the establishment of the provisional legislature as it is in contravention of the Sino-British Joint Declaration and the Basic Law as well as in violation of the principles of 'one country, two systems' and 'high degree of autonomy'." This is my original motion. The motion after being amended by Mr Frederick FUNG is, "That, in order to adhere to the provisions of the Sino-British Joint Declaration and the Basic Law as well as to safeguard the principles of one country, two systems and high degree of autonomy, this Council is of the opinion that there is no need for the establishment of the provisional legislature and is in support of the smooth transition of the three-tier councils in 1997." I wonder what is "being refuted" and what is "being established"? How is it significantly different from my original motion? Dr the Honourable Conrad LAM remarked that the standpoint of Mr Frederick FUNG's amendment was not very clear, and advocated that whatever was wrong should be opposed. What actually is his meaning of "there is no need for the establishment of the provisional legislature"? Although this criticism itself has its own meaning, since Mr Frederick FUNG, who represents the Hong Kong Association for Democracy and People's Livelihood, does not agree very much to the establishment of the provisional legislature, so basically I will not oppose strongly his amendment to the motion. In the event that a division is requested, Mr FUNG will also vote against the establishment of a provisional legislature. Hence, the standpoint of Mr FUNG is basically similar to mine, except that mine is clearer than his.

As regarding the amendment moved by the Honourable Allen LEE on behalf of the Liberal Party, I think there is no need to talk too much about it. According to his amendment, had the "1994 constitutional package" actively proposed by the Liberal Party and others been passed by this Council, the 1995 electoral arrangements would have adhered to the Sino-British Joint Declaration as well as the principle of "one country, two systems", and there would have been no need for the establishment of the provisional legislature. If history could be turned back, everyone would think that he is very smart. However, history can neither allow us to go back to all those things that have happened nor allow us to walk backwards in the tunnel of time. As a matter of fact,

everyone knows very clearly the result of the debate on the 1994 package, and I do not want to criticize the Liberal Party too much.

Basically, we can accept Mr Frederick FUNG's amendment, but we will oppose Mr Allen LEE's amendment.

Thank you, Mr President.

SECRETARY FOR CONSTITUTIONAL AFFAIRS: Mr President, in discussing the arrangements for the post-1997 legislature, the key points are that the Joint Declaration provides for the legislature of the Hong Kong Special Administrative Region (SAR) to be constituted by election; and that the Basic Law and the associated National People's Congress Decision set out the manner in which the first SAR legislature is to be composed. The Chinese Government have, on many occasions, affirmed their commitment to abide by the Joint Declaration and the Basic Law.

It is clearly in Hong Kong's interests that the Legislative Council to be elected in September 1995 is able to serve its full term to 1999. In that way, we will have an experienced legislature in place on 1 July 1997 which commands the confidence of the community. This, in our judgement, is the best way to avoid confusion or disruption in our legislative affairs. And there is no reason why that should not be. The electoral arrangements for 1995 are open and fair. They are also consistent with the Joint Declaration and the Basic Law. They meet the community's wish for credible representative institutions which are capable of achieving continuity after 1997. They have, of course, been approved by this Council, on behalf of the people of Hong Kong.

The results of this year's voter registration exercise amply underlines public support of the electoral arrangements. They lay a solid foundation for the election of a broadly-based and representative legislature in September. I have no doubt that on polling day, electors will exercise their right responsibly and maturely, as they have done in all previous elections. Equally, I have no doubt that, like its predecessors, the new Legislative Council will act in the long-term interests of Hong Kong.

No doubt, China can make other arrangements in 1997 if they so wish. That would be within their powers. But if the Chinese Government were to do so, it would be for them to explain to the people of Hong Kong why that is necessary, what precisely the new arrangements are, how they are compatible with the Joint Declaration and the Basic Law, and why such changes are conducive to a smooth transition and the maintenance of Hong Kong's stability and prosperity.

For these reasons, Mr President, *ex officio* Members of this Council will:

- (a) abstain from voting on Dr YEUNG's motion;

- (b) support Mr FUNG's amendment as it is consistent with our position on the matter; and
- (c) oppose Mr LEE's amendment since in our judgement the electoral package passed by this Council last year is the best arrangement for open and fair elections which are consistent with the Joint Declaration and the Basic Law.

Question on the amendment moved by Mr Allen LEE to Mr Frederick FUNG's amendment put.

Voice vote taken.

PRESIDENT: Council will proceed to a division.

PRESIDENT: Would Members please proceed to vote?

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

Mr Allen LEE, Mrs Selina CHOW, Mr NGAI Shiu-kit, Mr LAU Wong-fat, Mr Edward HO, Mr Ronald ARCULLI, Mrs Peggy LAM, Mrs Miriam LAU, Mr LAU Wah-sum, Mrs Elsie TU, Mr Peter WONG, Mr Moses CHENG, Mr CHIM Pui-chung, Dr LAM Kui-chun, Mr Steven POON, Mr Henry TANG, Mr Howard YOUNG, Dr TANG Siu-tong, Mr James TIEN and Mr Alfred TSO voted for the amendment.

The Chief Secretary, the Attorney General, the Financial Secretary, Mr HUI Yin-fat, Mr Martin LEE, Mr SZETO Wah, Mr Andrew WONG, Dr LEONG Che-hung, Mr Albert CHAN, Mr CHEUNG Man-kwong, Rev FUNG Chi-wood, Mr Frederick FUNG, Mr Michael HO, Dr HUANG Chen-ya, Dr Conrad LAM, Mr LEE Wing-tat, Mr Eric LI, Mr Fred LI, Mr MAN Sai-cheong, Mr TIK Chi-yuen, Mr James TO, Dr YEUNG Sum, Mr WONG Wai-yin, Miss Christine LOH, Ms Anna WU and Mr LEE Cheuk-yan voted against the amendment.

Mr TAM Yiu-chung and Dr Philip WONG abstained.

THE PRESIDENT announced that there were 20 votes in favour of Mr Allen LEE's amendment and 26 votes against it. He therefore declared that the amendment was negatived.

PRESIDENT: Now that Mr Allen LEE's amendment has been negatived, we will take a vote on Mr Frederick FUNG's amendment to Dr YEUNG Sum's motion.

Question on Mr Frederick FUNG's amendment put.

Voice vote taken.

PRESIDENT: Council will proceed to a division.

PRESIDENT: Would Members please proceed to vote?

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

The Chief Secretary, the Attorney General, the Financial Secretary, Mr HUI Yin-fat, Mr Martin LEE, Mr SZETO Wah, Dr LEONG Che-hung, Mr Albert CHAN, Mr CHEUNG Man-kwong, Rev FUNG Chi-wood, Mr Frederick FUNG, Mr Michael HO, Dr HUANG Chen-ya, Dr Conrad LAM, 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, Miss Christine LOH, Ms Anna WU and Mr LEE Cheuk-yan voted for the amendment.

Mr Allen LEE, Mrs Selina CHOW, Mr NGAI Shiu-kit, Mr TAM Yiu-chung, Mr Andrew WONG, Mr LAU Wong-fat, Mr Edward HO, Mr Ronald ARCULLI, Mrs Peggy LAM, Mrs Miriam LAU, Mr LAU Wah-sum, Mrs Elsie TU, Mr Peter WONG, Mr Moses CHENG, Mr CHIM Pui-chung, Dr LAM Kui-chun, Mr Eric LI, Mr Steven POON, Mr Henry TANG, Dr Philip WONG, Mr Howard YOUNG, Dr TANG Siu-tong, Mr James TIEN and Mr Alfred TSO voted against the amendment.

PRESIDENT: The result is 24 for the "Ayes" and 24 for the "Noes". In accordance with convention, I cast my vote against the motion as the Presiding Officer's vote should not be used to create a majority in support where one is not forthcoming on the vote itself.

PRESIDENT: Dr YEUNG Sum, you are now entitled to reply and you have five minutes 33 seconds out of your original 15 minutes.

DR YEUNG SUM (in Cantonese): Mr President, I would like to respond to the speeches just delivered by some colleagues. It seems to me that many Members have remarked that the support given to Mr PATTEN's political reform package earlier has resulted in the emergence of this provisional legislature today, and therefore we have to bear the responsibility for that. But I cannot help thinking, when those Members made such a comment, what kind of mentality did they have and what position did they hold? Have they ever strived for a democratic system for the Hong Kong people in order to make sure that human rights and freedom in Hong Kong are well protected? If they are to fight for democracy, human rights and freedom for the Hong Kong people, they should fight for a political system which is better, more democratic and more open. If the Chinese side wants to abolish the three-tier councils because of that and establish the provisional legislature, then they should continue to oppose the establishment of this provisional legislature by the Chinese side. But instead, they have now put the blame on those Members who supported a more open and democratic political system earlier for the emergence of this provisional legislature. Sometimes I really wonder by which side do these Members stand? Are they standing by the Chinese side or by the side of the Hong Kong people, upholding democracy and human rights? Naturally, we have to fight for more democracy and freedom for the Hong Kong people under difficult circumstances, and it is impossible for us to give it up. Therefore, we have to base our position on democracy, human rights and freedom, and strive for more democratic development among the Hong Kong people.

Meanwhile, the Honourable CHIM Pui-chung asked whether the Democratic Party was against China or not. Here I can cite some history. As a matter of fact, during the Sino-British negotiations, many members of the Democratic Party have stepped forward and expressed support for China regaining its sovereignty over Hong Kong. It is because we believe that there ought to be a time when the colonial history should come to an end. We do not accept that Hong Kong should be ruled forever by a colonial government. And this position is still very clear up till now. Of course, to the many things done or decisions made by the Chinese side which we do not find right, we will criticize and in fact will not hesitate to do so. Because of this, we may not be too welcomed by the Chinese side. But that does not mean that we are against China. Our position is crystal clear. And we will continue to voice our different opinions. All in all, as long as something is in violation of the principles of "Hong Kong people ruling Hong Kong" and "high degree of autonomy", we will definitely point it out, as in the present case when we find the provisional legislature full of problems.

Briefly speaking, the establishment of the provisional legislature will surely lead to retrogression in Hong Kong in three major areas. One of these is the right of election. At present, elections are held in Hong Kong. The district boards, the Urban and Regional Councils and the Legislative Council in 1995 are all returned by elections. One can hardly imagine that when China resumes its sovereignty over Hong Kong on 1 July 1997, not a single seat in the provisional legislature is to be returned by election. This basically is a major

blow to the right of election, and will greatly damage the enthusiasm and confidence of the public in participating in politics.

Secondly, this will lead to retrogression in our legislature. The provisional legislature to be set up in the future will, in fact, have no credibility, representativeness and trustworthiness. No one has any idea how these Members will be returned and who they will represent. They will totally be devoid of any public mandate and trustworthiness. Then how can they represent the public to exercise any checks and balance against the Government? How is it possible that such a legislature will not function as an out-and-out rubber stamp? This lack of public support and public mandate is another kind of retrogression. This is certainly a major retrogression in the checks and balance exercised by the legislature against the executive branch of government.

Thirdly, there will be a great retrogression in human rights and freedom. Since the provisional legislature will have no credibility, democratic elements and representativeness, it may enact some legislation against human rights and freedom. In this way, human rights and freedom of the Hong Kong people will not be safeguarded. A moment ago, the Honourable Andrew WONG was not sure whether it was a good thing or a bad thing to establish the provisional legislature. I can assure him that it is something bad.

In addition, I would like to respond briefly to some Members queries. It seems that a lot of Members are interested to know whether the Democratic Party will join the provisional legislature. This also shows that our mentality is indeed very different from theirs. Apart from stating our strong opposition, we still earnestly hope that it will respect the aspirations of the Hong Kong people by carrying on with the system established in the 1995 election. However, they are already thinking of letting it pass and accepting what is laid before them. To them, since the provisional legislature will be established anyway, they would rather try to guess who will join and who will not. But sorry, we are not thinking this way. We have never thought about that question. All the way, we believe that the establishment of the provisional legislature will bring about retrogression in three major areas of Hong Kong and is a bad decision. Therefore, apart from expressing opposition, we have never thought about whether joining it or not. However, maybe some Members in this Chamber have already been thinking about "registering" or "occupying a better position", or when his turn will be to join the provisional legislature. If that is the case, they can always take this opportunity. But that is their business. The attitude of our Democratic Party is very clear. The establishment of the provisional legislature will definitely deal a heavy blow to Hong Kong.

Thank you, Mr President.

Question on the motion put.

Voice vote taken.

PRESIDENT: Council will proceed to a division.

PRESIDENT: Would Members please proceed to vote.

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

Mr HUI Yin-fat, Mr Martin LEE, Mr SZETO Wah, Mr Andrew WONG, Dr LEONG Che-hung, Mr Albert CHAN, Mr CHEUNG Man-kwong, Rev FUNG Chi-wood, Mr Michael HO, Dr HUANG Chen-ya, Dr Conrad LAM, 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, Miss Christine LOH, Ms Anna WU and Mr LEE Cheuk-yan voted for the motion.

Mr Allen LEE, Mrs Selina CHOW, Mr NGAI Shiu-kit, Mr TAM Yiu-chung, Mr LAU Wong-fat, Mr Edward HO, Mr Ronald ARCULLI, Mrs Peggy LAM, Mrs Miriam LAU, Mr LAU Wah-sum, Mrs Elsie TU, Mr Peter WONG, Mr Moses CHENG, Mr CHIM Pui-chung, Dr LAM Kui-chun, Mr Eric LI, Mr Steven POON, Mr Henry TANG, Dr Philip WONG, Mr Howard YOUNG, Dr TANG Siu-tong, Mr James TIEN and Mr Alfred TSO voted against the motion.

The Chief Secretary, the Attorney General, the Financial Secretary and Mr Frederick FUNG abstained.

THE PRESIDENT announced that there were 21 votes in favour of the motion and 23 votes against it. He therefore declared that the motion was negated.

PRIVATE MEMBER'S BILL

First Reading of Bill

DIRECTOR OF UNIVERSITIES SERVICE CENTRE INCORPORATION (REPEAL) BILL 1995

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

Second Reading of Bill

DIRECTOR OF UNIVERSITIES SERVICE CENTRE INCORPORATION (REPEAL) BILL 1995

MR ANDREW WONG moved the Second Reading of: "A Bill to repeal the Director of the Universities Service Centre Incorporation Ordinance."

MR ANDREW WONG: Mr President, the Universities Service Centre (USC) was first set up in 1963 and incorporated by Ordinance in 1965, the Director of the Universities Service Centre Incorporation Ordinance (Cap.1113). This independent constitutional structure was required when USC was owned by overseas bodies, for example, successively by the Education and World Affairs, the International Council for Educational Development and the American Council of Learned Societies. Since July 1988, the functions of the USC have been taken over by The Chinese University of Hong Kong.

With effect from 1 July 1991, ownership of USC has been transferred in full to The Chinese University of Hong Kong. Consequent upon such a change of ownership and having regard to the University's experience of managing and developing the USC all by itself during the three-year transitional period from 1988 to 1991, the Advisory Committee of USC, the Director of USC as well as the Council of the University all agreed that Independent Incorporation of USC would no longer be necessary, and that the Director of Universities Service Centre Corporation should be wound up, so that the USC which is wholly funded by the University can be fully integrated with the University.

Under paragraph 22 of the Regulations of Universities Service Centre, Hong Kong, "The Corporation may be wound up with the approval of the Registrar of Companies by a notice of winding up filed with the Registrar of Companies by (The Chinese University of Hong Kong). On such dissolution and winding-up but only after all outstanding debts and liabilities have been settled, the whole assets of the Corporation shall devolve to and for the benefit of (The Chinese University of Hong Kong)."

Mr President, all formalities, namely the consent of the last owner, the American Council of Learned Societies, and the University's resolution to wind up the incorporation and the requisite notice to the Registrar of Companies, have now been completed.

As the Director of the Universities Service Centre has been wound up and dissolved and the Universities Service Centre is now owned and managed by The Chinese University of Hong Kong, the Director of the Universities Service Centre Incorporation Ordinance (Cap.1113) no longer serves any purpose. I hereby introduce this Bill to repeal the said Ordinance.

Mr President, I beg to move.

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

ADJOURNMENT AND NEXT SITTING

PRESIDENT: In accordance with Standing Orders, I now adjourn the Council until 2.30 pm on Wednesday, 5 July 1995.

Adjourned accordingly at six minutes to Four o'clock on 29 June 1995.

Note: The short titles of the Bills/motions listed in the Hansard, with the exception of the Interpretation and General Clauses Ordinance, Interpretation and General Clauses (Amendment) Bill 1995 and Inland Revenue (Amendment) (No.2) Bill 1995, have been translated into Chinese for information and guidance only; they do not have authoritative effect in Chinese.

WRITTEN ANSWERS

Annex I

Written answer by the Secretary for Security to Dr HUANG Chen-ya's supplementary question to Question 1

The equipment and medications carried on emergency ambulances are as follows:

(1) *Emergency ambulance vehicles are equipped with the following:*

(a) *Equipment*

	<i>Quantity/unit</i>
1. structural aluminium malleable splint (SAM splint) - for treating patients with upper arm fracture	2
2. cervical collar and long spinal board - for treating cervical and spinal fracture	1 spinal board and 6 cervical collars of various sizes
3. orthopaedic stretcher	1 set
4. defibrillator - for treating and monitoring patients with cardiac arrests. (At present, 62 ambulances are equipped with defibrillators. We will be equipping the full fleet of 160 ambulances with defibrillators by 1998.)	1 set
5. oxygen resuscitator, bag and mask resuscitator	1 set
6. blood pressure meter - for measuring blood pressure of the patient	1 set
7. oropharyngeal airways of various sizes	2 sets
8. portable suction unit with various catheters for resuscitation	1 set
9. masks for various purposes, including paediatric oxygen masks	2 sets of 6 sets

WRITTEN ANSWERS — *Continued*

	<i>Quantity/unit</i>
10. various types of bandages and dressings, including bum sheets	see appendix
11. instant ice pack and protocol for management of severed limbs	4 packs
12. Dyna Med Disposable Obstetrical Kit	1 box
 (b) <i>Medications</i>	
1. Entonox - analgesic mixture of nitrous oxide and oxygen for pain relief.	1 cylinder
 (II) <i>EMA-II ambulances are further equipped with the following:</i>	
 (a) <i>Equipment</i>	
1. Traction Splint - immobilization equipment for treating patient with lower limb fracture. except fracture of head of femur.	1 set
2. Kendrick Extrication Device - for extrication	1 set
3. Glucometer - for measuring blood sugar level of the patient	1 set
 (b) <i>Medications</i>	
1. Dextrose solutions - to be administered to diabetes mellitus patients by intravenous infusion	3 packs of D5 solution (250 c.c.) 3 packs of D10 solution (500 c.c.)
2. Normal saline - to be administered to patients with clinical signs of shock due to blood loss by intravenous infusion	3 bottles (500 c.c.)

WRITTEN ANSWERS — *Continued*

	<i>Quantity/unit</i>
3. Thiamine hydrochloride - for treating diabetes mellitus patients and administering in conjunction with dextrose solution	1 bottle
4. Ventolin - for treating respiratory distress patients with history of asthma and chronic obstructive airway disease	10 ampoules

Annex II**Written answer by the Secretary for the Treasury to Mr James TO's supplementary question to Question 5**

Under section 52(4) of the Inland Revenue Ordinance (Cap.112), any employer who commences to employ in Hong Kong an individual who is or is likely to be chargeable to salaries tax shall give notice to the Commissioner of Inland Revenue not later than three months after the date of commencement of such an employment. There is thus no obligation for an employer to notify the Commissioner in respect of an employee whose income is exempt from salaries tax.

In relation to employees, section 51(1) authorizes an assessor to give notice in writing to any person requiring him to furnish a return. Section 51(2) provides that every person chargeable to tax for any year shall inform the Commissioner in writing that he is so chargeable not later than four months after the end of the year unless he has already been required to furnish a return under subsection (1). It follows then that unless called upon by an assessor to do, there is no requirement for an employee whose income is exempt from tax to file a return.

The relevant provisions are as follows:

51. Returns and information to be furnished

(1) An assessor may give notice in writing to any person requiring him within a reasonable time stated in such notice to furnish any return which may be specified by the Board of Inland Revenue for:

- (a) property tax, salaries tax or profits tax; or
- (b) property tax, salaries tax and profits tax;

WRITTEN ANSWERS — *Continued*

under Parts II, III, IV, XA, XB, and XC, containing such particulars and in such form as may be specified by the Board of Inland Revenue.

(2) Every person chargeable to tax for any year of assessment shall inform the Commissioner in writing that he is so chargeable not later than four months after the end of the basis period for that year of assessment unless he has already been required to furnish a return under the provisions of subsection (1).

52. Information to be furnished by officials and employers

(4) Where any person who is an employer commences to employ in Hong Kong an individual who is or is likely to be chargeable to tax under Part III, or any married person, he shall give notice thereof in writing to the Commissioner not later than three months after the date of commencement of such employment, stating the full name and address of the individual, the date of commencement and the terms of employment.

(8) Notwithstanding anything to the contrary in subsections (4) and (5) an employer shall not be required to give notice under those subsections in respect of a married person if he has reasonable grounds for believing that neither that person nor his or her spouse are, or are likely to be, chargeable to tax under Part III.

