

OFFICIAL RECORD OF PROCEEDINGS

Wednesday, 19 February 1997

The Council met at half-past Two o'clock

MEMBERS PRESENT

THE PRESIDENT

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

THE HONOURABLE SZETO WAH

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

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

THE HONOURABLE ALBERT CHAN WAI-YIP

THE HONOURABLE CHEUNG MAN-KWONG

THE HONOURABLE CHIM PUI-CHUNG

THE HONOURABLE FREDERICK FUNG KIN-KEE

THE HONOURABLE MICHAEL HO MUN-KA

DR THE HONOURABLE HUANG CHEN-YA, M.B.E.

THE HONOURABLE EMILY LAU WAI-HING

THE HONOURABLE LEE WING-TAT

THE HONOURABLE FRED LI WAH-MING

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

THE HONOURABLE JAMES TO KUN-SUN

DR THE HONOURABLE SAMUEL WONG PING-WAI, O.B.E., F.Eng., J.P.

DR THE HONOURABLE PHILIP WONG YU-HONG

DR THE HONOURABLE YEUNG SUM

THE HONOURABLE ZACHARY WONG WAI-YIN

THE HONOURABLE CHRISTINE LOH KUNG-WAI

THE HONOURABLE LEE CHEUK-YAN

THE HONOURABLE CHAN KAM-LAM

THE HONOURABLE CHAN WING-CHAN

THE HONOURABLE CHAN YUEN-HAN

THE HONOURABLE PAUL CHENG MING-FUN

THE HONOURABLE CHENG YIU-TONG

DR THE HONOURABLE ANTHONY CHEUNG BING-LEUNG

THE HONOURABLE CHEUNG HON-CHUNG

THE HONOURABLE CHOY KAN-PUI, J.P.

THE HONOURABLE DAVID CHU YU-LIN

THE HONOURABLE ALBERT HO CHUN-YAN

THE HONOURABLE IP KWOK-HIM

THE HONOURABLE LAU CHIN-SHEK

THE HONOURABLE AMBROSE LAU HON-CHUEN, J.P.

DR THE HONOURABLE LAW CHEUNG-KWOK

THE HONOURABLE LAW CHI-KWONG

THE HONOURABLE LEE KAI-MING

THE HONOURABLE LEUNG YIU-CHUNG

THE HONOURABLE BRUCE LIU SING-LEE

THE HONOURABLE LO SUK-CHING

THE HONOURABLE MARGARET NG

THE HONOURABLE NGAN KAM-CHUEN

THE HONOURABLE SIN CHUNG-KAI

THE HONOURABLE TSANG KIN-SHING

DR THE HONOURABLE JOHN TSE WING-LING

THE HONOURABLE LAWRENCE YUM SIN-LING

MEMBERS ABSENT

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

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

THE HONOURABLE ERIC LI KA-CHEUNG, O.B.E., J.P.

THE HONOURABLE HOWARD YOUNG, J.P.

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

THE HONOURABLE ANDREW CHENG KAR-FOO

THE HONOURABLE MOK YING-FAN

THE HONOURABLE MRS ELIZABETH WONG CHIEN CHI-LIEN, C.B.E.,
I.S.O., J.P.

PUBLIC OFFICERS ATTENDING

THE HONOURABLE DONALD TSANG YAM-KUEN, O.B.E., J.P.
FINANCIAL SECRETARY

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

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

MR CHAU TAK-HAY, C.B.E., J.P.
SECRETARY FOR BROADCASTING, CULTURE AND SPORT

MR GORDON SIU KWING-CHUE, J.P.
SECRETARY FOR TRANSPORT

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 JOSEPH WONG WING-PING, J.P.
SECRETARY FOR EDUCATION AND MANPOWER

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

MR LAM WOON-KWONG, J.P.
SECRETARY FOR THE CIVIL SERVICE

CLERKS IN ATTENDANCE

MR RICKY FUNG CHOI-CHEUNG, SECRETARY GENERAL

MR LAW KAM-SANG, DEPUTY SECRETARY GENERAL

MR RAY CHAN YUM-MOU, ASSISTANT SECRETARY GENERAL

PAPERS

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

Subject

Subsidiary Legislation	<i>L.N. No.</i>
Whaling Industry (Regulation) Regulation.....	48/97
Specification of Arrangements (Government of the Kingdom of the Netherlands Concerning Air Services) (Double Taxation) Order.....	49/97
Road Traffic (Public Service Vehicles) (Amendment) Regulation 1997.....	51/97
Road Traffic (Public Service Vehicles) (Amendment) (No. 2) Regulation 1997.....	50/97
Antiquities and Monuments (Declaration of Monument) Notice 1997	52/97
Control of Chemicals Ordinance (Amendment of Schedules) Order 1997	53/97
Securities and Futures Commission (Annual Returns) (Amendment) Rules 1997	54/97
Leveraged Foreign Exchange Trading (Annual Returns) (Amendment) Rules 1997	55/97
Companies (Amendment) Ordinance 1995 (83 of 1995) (Commencement) Notice 1997	56/97
Companies (Forms) (Amendment) Regulation 1995 (L.N. 375 of 1995) (Commencement) Notice 1997...	57/97

Companies (Amendment) Ordinance 1997 (3 of 1997) (Commencement) Notice 1997	58/97
Banking (Amendment) Ordinance 1997 (4 of 1997) (Commencement) Notice 1997	59/97
Employees Retraining (Amendment) Ordinance 1997 (5 of 1997) (Commencement) Notice 1997.....	60/97
Official Languages (Authentic Chinese Text) (Perpetuities and Accumulations Ordinance) Order	(C) 7/97
Official Languages (Authentic Chinese Text) (Evidence Ordinance) Order	(C) 8/97
Places of Public Entertainment (Amendment) Regulation 1997	61/97
Official Languages (Alteration of Text Under Section 4D) (No. 3) Order 1997	62/97
Official Languages (Alteration of Text) (Pharmacy and Poisons Ordinance) Order 1997	63/97
Administration of Justice (Miscellaneous Provisions) Ordinance 1997 (1 of 1997) (Commencement) Notice 1997	64/97
Official Languages (Authentic Chinese Text) (Pharmacy and Poisons Ordinance) Order	(C) 9/97
Employees Retraining Ordinance (Amendment of Schedule 2) Notice 1997	65/97
Ozone Layer Protection (Amendment) Ordinance 1997 (6 of 1997) (Commencement) Notice 1997	66/97

Sessional Papers 1996-97

- No. 64 — The Hong Kong Academy for Performing Arts Annual Report 1995-1996, Financial Statements and Auditor's Report for the year ended 30th June 1996
- No. 65 — Hong Kong Arts Development Council Annual Report April 1, 1995 - March 31, 1996
- No. 66 — Secretary for Home Affairs Incorporated Statement of Accounts for the year ended 31 March 1996
- No. 67 — Li Po Chun Charitable Trust Fund Annual Report for the period 1st September 1995 to 31st August 1996

ORAL ANSWERS TO QUESTIONS**Hawker Control Team Remuneration**

1. **MR JAMES TO** asked (in Cantonese): *With regard to recent reports that the remuneration for staff of the Hawker Control Force (HCF) is higher than that for the rank and file police officers, will the Government inform this Council:*

- (a) *of the starting and maximum points in the pay scales for various ranks in the HCF (and the former General Duties Team), as well as those for various ranks of the rank and file grades in the disciplined services (including the Police Force, Fire Services Department, Customs and Excise Department; Immigration Department and Correctional Services Department) in the past 10 years;*
- (b) *of the factors taken into consideration in determining the remuneration for staff of the HCF;*
- (c) *of the assessment mechanism adopted in determining the pay levels of the HCF; and*

- (d) *whether it will review the remuneration and benefits in respect of the rank and file police officers?*

SECRETARY FOR THE CIVIL SERVICE (in Cantonese): Mr President, the Hawker Control Force (HCF) was established in mid 1993, on the advice of the Standing Commission on Civil Service Salaries and Conditions of Service ("Standing Commission") and with the approval of the Finance Committee of this Council.

Prior to the establishment of the HCF, hawker control was undertaken by foreman grade staff in the municipal services departments. Unfortunately, as such staff were also required to undertake cleansing, pest control and other tasks, the Departments found great difficulty in effectively tackling what was then a growing problem. Members of the Municipal Councils, and indeed some Members of this Council, were very concerned about this issue. The HCF was set up to create a dedicated force to tackle the hawker issue effectively. As reflected in an informal estimate made by the Municipal Councils, since the establishment of the HCF, the overall number of unlicensed hawkers has been on the decline since 1994. The number of prosecutions has increased from just over 82 000 in 1993 to nearly 92 000 in 1996, and a number of hawker black spots have been eliminated.

The following is the information the Honourable Member requested for:

- (a) A comparison between the starting and maximum points in the pay scales of various ranks of the Hawker Control Officer (HCO) grade, of the former General Duties Team (GDT), and of the rank and file of disciplined services grades is set out in Annex A to the printed version of my reply. Information for each year from 1987 to 1996 is at Annex B;
- (b) The pay scales of the HCO grade were set according to the levels of responsibility of the job and took into account the following factors:
- (i) the need to secure expertise for the HCF by attracting the experienced staff from the former GDT to join the HCF;

- (ii) the need to improve the standard of new recruits to the HCF, without upsetting the internal relativity among related grades; and
 - (iii) the need to improve the morale of the officers concerned by having a dedicated hawkler control grade with a clear and reasonable career structure.
- (c) As I pointed out earlier, the pay scales for the HCF were formulated on the advice of the Standing Commission, and approved by the Finance Committee of this Council in mid 1993. The Standing Commission's advice is set out in Annex C to the printed version of my reply. The overall salary structure of the non-directorate civil service, other than the Judiciary and the disciplined services, is reviewed periodically by the Standing Commission. In addition, the pay scales of individual grades will be reviewed if and when there are significant changes in circumstance such as in the nature of work or in job factors.
- (d) The Junior Police Officer (JPO) pay scale has been revised twice over the last few years by the Standing Committee on Disciplined Service Salaries and Conditions of Service ("Standing Committee"). In 1990 there was an overall review of the pay scales of the disciplined services rank and file. This was followed in 1992 by a review of the JPO pay scales in response to recruitment and retention difficulties. The latter resulted in a pay revision. The question of a further review of the JPO pay scales was raised again last year, when the Standing Committee advised that there was no justification for a pay review for the JPOs. We accepted the Standing Committee's advice and have no plans to review JPO pay scales at this time.

Annex C

Appendix F (vi)

29 December 1992

The Right Honourable Chris PATTEN
Governor of Hong Kong
Government House
Hong Kong

Dear Sir,

Creation of New Grade of
Hawker Control Officer

We have been invited by the Administration to advise, under clause 1(b) of our Terms of Reference, on a proposal to create a new grade of HCO.

Background

The control of hawkers is at present the responsibility of General Duties Teams in the Urban Services Department and the Regional Services Department. These teams comprise mainly members of the Foreman Grade (Technician, Supervisory and Related Grades - Group I) who are supported by a small complement of Workmen. They work under the direction of and are managed by the Health Inspectorate (Polytechnic Higher Diploma Grades).

The Administration has informed us that a number of deficiencies had been identified in the existing organization, including:

- (a) lack of continuity, expertise and leadership due to the fact that Foreman Grade staff are transferable between different streams, such as hawker control, cleansing and pest control, in the departments concerned;

- (b) low staff quality because of poor educational background and lack of aptitude for law enforcement duties; and
- (c) declining morale as the teams face great difficulties in their law enforcement duties, particularly in comparison with the duties performed by their counterparts in the other streams. In addition, they suffer from a poor image because in most cases public sympathy lies with hawkers.

In 1990, a Working Group on Hawker Control proposed that, while the most cost-effective remedy would be the creation of a civilian grade dedicated to hawker control duties, in the interim members of the General Duties Teams directly involved in hawker control work should be given a special allowance to improve their morale and effectiveness. We were asked to advise on the proposal. Having regard to the problems faced by the General Duties Teams, we supported it. The payment of the allowance started on 1 August 1990.

The Administration's proposal

The Administration has now formally sought our advice on the creation of a separate grade to control hawkers. It considers that the creation of a new grade of HCO would have the following advantages:

- (a) members of the grade would have a better sense of belonging, since they will perform only hawker control duties. At the same time, their expertise and experience will be retained;
- (b) the pay scales of the new grade will be set having regard to job factors peculiar to hawker control work, and requirements such as shift duty and observance of a strict disciplinary code may be included in the terms of employment;

- (c) the quality of staff will improve as candidates with an aptitude for hawker control will be motivated to join the grade because of the better career structure it offers;
- (d) since senior officers in the new grade will take over hawker control and non-hygiene related market management duties from Health Inspectors I, the latter can be redeployed to perform hygiene related duties for which they are professionally trained.

The Administration has further proposed that the new grade should have the following structure and pay scales:

<i>Rank</i>	<i>Pay Scales</i>	
Assistant Hawker Control Officer	MPS	8 - 14
Hawker Control Officer	MPS	15 - 18
Senior Hawker Control Officer	MPS	19 - 22
Chief Hawker Control Officer	MPS	23 - 27
Principal Hawker Control Officer	MPS	28 - 30

The appointment requirements for direct entry will be Grade E in five subjects in the Hong Kong Certificate of Education plus two years' post-qualification experience, or completion of secondary education plus three years' post-qualification experience. However, the new grade will be placed within the "Other Grades" group since the main consideration for appointment will be aptitude, skills or experience rather than academic attainment.

The Administration has considered giving the proposed grade disciplined-service status, but concluded that it would not be appropriate. A disciplined service within the departments concerned would not be compatible with their management structure. Furthermore, illegal hawking is generally regarded as a nuisance rather than a crime. The nature of the enforcement duties to be performed by HCOs does not therefore justify the expense of setting up and maintaining a disciplined service.

Views of Urban Council and Regional Council

The Administration has advised us that members of the Urban Council unanimously endorsed the creation of the new grade and expressed the hope that this would be done as soon as possible. The vast majority of members of the Regional Council also supported the proposal.

Views and recommendation

We note that the creation of a separate grade to control hawkers has the firm support of the municipal councils. Our Terms of Reference require us to advise on the salary and structure proposed for the new grade.

Grade structure

The structure of the proposed grade is based on that of the Foreman grade. The latter is made up of four tiers, namely Foreman (MPS 7-11), Senior Foreman (MPS 12-15), Overseer (MPS 16-20) and Senior Overseer (MPS 21-25), which form the core of General Duties Teams. The proposed HCO grade consists of five tiers. The first four ranks, namely Assistant Hawker Control Officer, Hawker Control Officer, Senior Hawker Control Officer and Chief Hawker Control Officer, are comparable with the respective ranks of the Foreman grade in terms of duties and level of responsibility. The top rank of Principal Hawker Control Officer would, in addition to its supervisory and operational duties, take over the functions and responsibilities currently performed by Health Inspectors I. It would be accountable to Senior Health Inspectors in the overall implementation of policies and the enforcement of legislation on hawker control and non-hygiene related market duties.

We generally support the proposed structure. We agree that the addition of the Principal Hawker Control Officer rank properly reflects the transfer of duties and responsibilities from the Health Inspectorate to the new grade. It also provides better promotion prospects for members of the new grade which will, in turn, improve staff quality and enhance staff commitment and morale.

Pay scales

The Administration has advised us that like the existing General Duties Teams, members of the new grade would be required to wear uniform. They would also be subject to a strict disciplinary code and exposed to hardship elements such as shift work and unpleasant and hazardous duties associated with seizure and arrest.

Having regard to the entry requirements, the nature of work and the special job factors set out in paragraph 12 above, the proposed entry point of MPS 8 for Assistant Hawker Control Officer rank is appropriate.

We note that the proposed pay maximum of MPS 14 for Assistant Hawker Control Officer and the proposed pay scales of Hawker Control Officer (MPS 15-18), Senior Hawker Control Officer (MPS 19-22) and Chief Hawker Control Officer (MPS 23-27) are comparable to the pay scales of the respective ranks of the Foreman grade, including the interim special allowance currently payable to members of the General Duties Teams. The proposed pay scales are commensurate with the job factors involved.

We also agree that the pay scale of the proposed Principal Hawker Control Officer rank should be set at MPS 28-30, having regard to the level of responsibility. The Principal Hawker Control Officer in each district will be the direct supervisor of all hawker control staff. He will also assume overall responsibility for non-hygiene related market duties. Principal Hawker Control Officer is the top rank of the grade and it will take members many years to reach that level.

Classification of new grade

Because of the special nature of hawker control work, the main consideration for appointment will be special aptitude, skills or experience rather than academic attainment. Thus we support the classification of the new grade under the "Other Grades" group. We note the reasons put forward by the Administration in paragraph 7 above for not creating a disciplined service for hawker control.

In conclusion, we recommend the following structure and pay scales for the proposed grade of HCO which should be placed in the "Other Grades" group:

<i>Rank</i>	<i>Pay Scales</i>
Assistant Hawker Control Officer	MPS 8 - 14
Hawker Control Officer	MPS 15 - 18
Senior Hawker Control Officer	MPS 19 - 22
Chief Hawker Control Officer	MPS 23 - 27
Principal Hawker Control Officer	MPS 28 - 30

Yours faithfully,

(Sidney GORDON)

Chairman

For and on behalf of

Members of the Standing Commission

MR JAMES TO (in Cantonese): *Mr President, I would like to ask the Secretary for the Civil Service whether a detailed comparison between the Junior Police Officer (JPO) and the Hawker Control Officer (HCO) grades has been made, and whether consideration has been given to all relevant factors of the two grades and recommendations have been made to the Standing Committee on Disciplined Services Salaries and Conditions of Service when it received the request from the JPOs to conduct a review, as well as whether the reasons for giving such recommendations can be listed out.*

SECRETARY FOR THE CIVIL SERVICE (in Cantonese): Mr President, when the Standing Committee on Disciplined Services Salaries and Conditions of Service ("Standing Committee") compared the remuneration of the two grades, considerations were in fact given to all related factors, including their respective job nature, scopes of duties, problems encountered and difficulties of the two grades. In the last review of the Standing Committee on the need to adjust the remuneration of the Junior Police Officers (JPOs), it in fact took into account the salary relativity of the two grades once again. One of the reasons given by the Standing Committee for not conducting further reviews then was that the five-tier structure and job nature of the Hawker Control Force should not and could not be directly compared with those of the JPOs, since the job natures of the two grades were entirely different.

MR JAMES TO (in Cantonese): *Mr President, I think the Secretary for the Civil Service has not answered my question. Can he give a more detailed answer? He has only said that the two grades cannot be compared with each other and therefore it is not appropriate to make a comparison. However, the Secretary for the Civil Service definitely would not have given this justification only when making recommendations to the Standing Committee on Disciplined Services Salaries and Conditions of Service.*

SECRETARY FOR THE CIVIL SERVICE (in Cantonese): Mr President, if the Honourable James TO wants to see the detailed justifications of the Standing Committee, we can provide him with the text. (Annex I)

MR JAMES TO (in Cantonese): *Mr President, notwithstanding this, can the Secretary for the Civil Service tell us the basic reasons now?*

PRESIDENT (in Cantonese): Mr James TO, this is not the debate session. If you want to know whether such information has been listed out and compared, the Secretary for the Civil Service has already replied that he is willing to give Members the report of the Standing Committee, which sets out the relevant comparison.

MR JAMES TO (in Cantonese): *I understand that he will provide a detailed report. However, since this is the oral question time, I hope Mr President can give a ruling on whether a one-sentence reply by the Secretary for the Civil Service can be regarded as having answered my question. If so, I respect the ruling of Mr President. But I want Mr President to consider one point: If the Secretary has some other reasons, should he explain to Members right now, instead of providing the relevant information to us several months later?*

PRESIDENT (in Cantonese): Mr James TO, when an officer answers a Member's question, if the relevant officer is asked whether such comparison has been made and he replies that it has but he does not have the information at hand and will give it to Members after the meeting, this is an acceptable answer during the question time. However, if you want to discuss this issue, please propose it for discussion by the Panel on Public Service.

MR JAMES TO (in Cantonese): *Mr President, I have asked the Secretary for the Civil Service to list out the reasons just now but he has not done so. Can this be regarded as having answered my question?*

PRESIDENT (in Cantonese): He said the Standing Committee had made comparison with respect to all factors but he could not give you the results immediately. I hope all Members should bear in mind that this is question time, not discussion time for a specific topic.

MR TSANG KIN-SHING (in Cantonese): *Mr President, in part (d) of his main reply, the Secretary for the Civil Service has mentioned that there are difficulties in retaining Junior Police Officers. Regarding the higher remuneration of the Hawker Control Force (HCF), I would like to ask how many officers of other disciplined services have transferred to the HCF over the past few years. If there are such cases, what are the reasons? If not, why not?*

SECRETARY FOR THE CIVIL SERVICE (in Cantonese): Mr President, as at 1 February 1997, altogether 182 officers of other disciplined services have transferred to the Hawker Control Force. Regarding their reasons for transfer or otherwise, Mr President, I am sorry that we will never know.

PRESIDENT (in Cantonese): Mr TSANG Kin-shing, are you claiming that your question has not been fully answered?

MR TSANG KIN-SHING (in Cantonese): *Mr President, he has not given any answer about the reasons for transfer. Is the higher remuneration of the Hawker Control Force, which I mentioned earlier, one of the reasons?*

PRESIDENT (in Cantonese): Mr TSANG Kin-shing, the Secretary for the Civil Service has said that he does not know the reasons. Can you rephrase your question to: Is this because of the higher remuneration of the Hawker Control Force?

SECRETARY FOR THE CIVIL SERVICE (in Cantonese): Mr President, I believe all of you will agree that it is very difficult for us to reckon why a person joins the civil service or a specific rank of the civil service, or what attracts him or her to do so, just in the same way as I do not know why the Honourable TSANG Kin-shing joins the Legislative Council as a Member. In this case, therefore, I am sorry that I cannot make an assertion.

MR TSANG KIN-SHING (in Cantonese): *Mr President*

PRESIDENT (in Cantonese): Mr TSANG Kin-shing, this is not the debate session.

MR TSANG KIN-SHING (in Cantonese): *Mr President, I am not debating the question. Mr President, just now the Secretary for the Civil Service has asked me why I join the Legislative Council. I think all 60 Members here join the Legislative Council for the same purpose of serving Hong Kong people.*

PRESIDENT (in Cantonese): Mr TSANG Kin-shing, this is the time for Members to question the Government and not vice versa. You do not have to answer. *(Laughter)*

MR JAMES TO (in Cantonese): *Mr President, part (d) of the main reply mentions that in 1992, the Standing Committee on Disciplined Services Salaries and Conditions of Service reviewed the Junior Police Officer (JPO) pay scales in response to recruitment and retention difficulties encountered by the Police Force. The Secretary for the Civil Service has said that 182 officers of other disciplined services, including the Police Force of course, have transferred to the Hawker Control Force (HCF). I would like to ask about the wastage of experienced police officers. Under the present circumstance, does the Secretary for the Civil Service find it necessary to further review the ranks of the JPOs and the HCF?*

SECRETARY FOR THE CIVIL SERVICE (in Cantonese): Mr President, among the 182 former disciplined services officers who have transferred to the Hawker Control Force, 29 were police officers. This is relatively a rather small figure.

Mr President, I also want to point out that although several Members here often say that the remuneration of the Hawker Control Officer (HCO) grade is more attractive than that of other disciplined services, in fact this is not the case. Regarding the starting points for people with the same qualifications to join these two grades, for instance, those for an officer with three subjects passed in the HKCEE are \$11,880 for HCOs and \$13,735 for JPOs. Obviously, the starting

point of the latter is much higher than that of the former for officers with the same qualifications. In fact, the situations of other disciplined services are just the same.

MR JAMES TO (in Cantonese): *Mr President, the Secretary for the Civil Service draws his comparison on entry points for the same qualifications. Nevertheless, has he compared the promotion prospects of the Hawker Control Officer (HCO) and Junior Police Officer (JPO) grades, such as the numbers of Assistant Hawker Control Officers (AHCO) and HCOs who have been promoted to HCOs and Senior Hawker Control Officers (SHCOs) respectively, the average time for an HCO to be promoted to SHCO, and the respective time for a police officer to get promoted to Sergeant and Station Sergeant? Will the Secretary compare these promotion prospects and consider reviewing the two grades again? As far as I know, over the past several years, the promotion ratios of police officers to Sergeant and then to Station Sergeant ranks have been relatively lower than those of AHCOs to the HCO, SHCO and Chief Hawker Control Officer ranks.*

SECRETARY FOR THE CIVIL SERVICE (in Cantonese): Mr President, it is difficult to make such comparison mainly because the Hawker Control Officer (HCO) grade is a very "young" one. Its promotion record is based on very few cases only. From the establishment of this grade in May 1994 to the end of 1996, only one promotion board meeting was held for each promotion rank of the HCO grade. I can only cite that occasion as an example. It takes 13 years for an Assistant Hawker Control Officer (AHCO) to get promoted to HCO and another eight years to Senior Hawker Control Officer (SHCO). In other words, totally 21 years will be needed for an AHCO to be promoted to SHCO.

Regarding the Junior Police Officer grade, because of its long history, the time for promotion at different stage varies with the changing external environment. For example, I believe that the opportunities for promotion will be more when the Police Force expands rapidly.

However, Mr President, I want to point out that the promotion prospects of the Police Force are much better than those of the HCO grade in the long run.

Let me quote an obvious example. At present, half of the intake of the police inspector grade comes from JPOs. In other words, JPOs have quite good chances to get promoted to the inspector grade and subsequently to the senior management level of the Police Force. Such promotion does not exist in the HCO grade at all.

Health Care Plans for 2011

2. **MR MICHAEL HO** asked (in Cantonese): *According to the estimate of the Territorial Development Strategy Review, the population of Hong Kong will be close to 8.1 million by the year 2011, which represents an increase by one-third over the present population. In this connection, will the Government inform this Council:*

- (a) *of the plans in place to expand the local medical services so as to meet the demands from the future population;*
- (b) *whether any proposals have been submitted by the Hospital Authority to the Government regarding the provision of medical services to tie in with the increasing population; if so, what the specific details are; and*
- (c) *when it will publish the estimated figures on the distribution of population in various districts, and whether the Hospital Authority will implement its plans to build new hospitals after the publication of such information?*

SECRETARY FOR HEALTH AND WELFARE (in Cantonese): Mr President, although population projections are central to our planning process, the provision of public medical services is affected by a number of other factors such as geographical distribution, demographic profile, disease pattern, primary health care and ambulatory care developments, alternative service providers and historical trend of service utilization.

The Hospital Authority will regularly review the supply and demand for hospital beds in the light of changing community aspirations. Two exercises for

this purpose were conducted in 1992 and 1995 to project the hospital bed requirements by the year 2000. In submitting its annual resource bids for capital projects, the Authority will also examine the latest information available such as utilization statistics, population estimates, demographic profile and rationalization of services both within and between hospitals. These on-going planning mechanisms have resulted in our decision to go ahead with the construction of two new hospitals in the New Territories - North District Hospital and Tseung Kwan O Hospital - as well as a number of other major improvement or redevelopment projects which will provide 30 100 beds by the year 2000, an increase of over 4 600 beds when compared with the figure at the end of 1996.

The Department of Health adopts a similar mechanism to ensure the timely provision of facilities to meet projected population growth or movement. For example, a general out-patient clinic is planned for every 100 000 persons and the Student Health Service will cover all the students in Hong Kong. In the next three years, the department will provide 17 new polyclinics and health centres, bringing the total number of service units to 341.

Apart from existing services, we are also exploring new programmes to meet changing needs of the community. The introduction of elderly services centres and the setting up of outreach medical teams are some examples of this approach. The Hospital Authority will take into account results of the Territorial Development Strategy Review and population distribution forecasts in reviewing the need for hospital services. We understand that the population distribution forecasts made by the Planning Department will be available in late 1997.

MR MICHAEL HO (in Cantonese): *Mr President, when the Government decided to construct the Tseung Kwan O Hospital, North District Hospital and 17 other government clinics, it surely did not anticipate that the population of Hong Kong would grow to some 8 million after 10 years or so. Therefore, that part of the reply is not particularly relevant to the growth of our population to some 8 million. The most important thing is, with our population growing by one-third, and the increasing number of old people, more medical services will invariably be needed. Under these circumstances, when will the Government start planning for the expansion of such services?*

SECRETARY FOR HEALTH AND WELFARE (in Cantonese): Mr President, we already have an on-going mechanism to review the development of our medical services. Apart from taking into account such vital statistics as the growth and distribution of population, as well as the demographic profile, we also have to look into ways to tie in hospital services with the development in primary health care services and community services. Moreover, with the establishment of the Hospital Authority, many modern management techniques have been introduced into hospitals in recent years, and the services provided by all hospitals are now better co-ordinated. The territory is now divided into eight major districts, and each district is capable of providing balanced medical services to the local community. As to hospital beds, their provision is dependent on the prevailing utilization rate and disease pattern. On the development of community services, the geriatric outreach service that I mentioned just now has been quite successful. Subject to resources available, we would like to expand our services in this area, particularly community geriatric medical teams and psychogeriatric medical teams, in order that not so many old people need to go to hospital so soon.

Furthermore, we also note that in the field of medical technology, rapid development is made each year all over the world. Many different kinds of technology are now available to reduce the need for hospitalization. In recent years, efforts have been made by hospitals in Hong Kong and other countries to develop day surgical and day-patient services to reduce the needs for long stays in hospital.

Services in different areas will be developed in the light of actual demands. Of course, if there is a sharp increase in our population, we must take note of this factor. However, apart from the size of population, we have to look at factors such as the demographic profile, the state of health of our population, and the disease pattern and geographical distribution of diseases.

DR LEONG CHE-HUNG (in Cantonese): *Mr President, will the Government inform this Council of the proportion taken up by new immigrants in the projected increase of population? As we all know, the kinds of diseases new immigrants are prone to and their health indicators might be different from those*

of Hong Kong people. Under such circumstances, what specific plan does the Government have in place to expand the medical services for new immigrants? If there is no such plan, will the Government consider this course of action; if there is such a plan, will the Government inform us now of the details of this new plan and how it will be implemented to provide the medical services required by the growing population?

SECRETARY FOR HEALTH AND WELFARE (in Cantonese): Mr President, when new immigrants arrive in Hong Kong, we do not specify an area for them to live in. However, we have recently carried out some surveys at the district level and have a general idea of the various areas in which more new immigrants have settled. We will pay particular attention to the medical services they need. From our experience, new immigrants are generally in good health and their age distribution is relatively lower than that of the local people. We discover that a particularly large number of new immigrants are children at primary and secondary school age. We find that many students who make use of our Student Health Service are new immigrants. We will provide special services in this respect.

DR HUANG CHEN-YA (in Cantonese): *Mr President, we all know that the construction of a clinic or hospital would take at least four to five years from planning to completion. Therefore, should the Government start planning until there are "long queues" waiting at hospitals or when patients cannot be admitted into hospitals even though they wish to, I am afraid it will take several years before the problem can be resolved. From the reply of the Government, it seems that its decisions are based on impression only. Can the Government tell us whether its decisions are based on impression only or some specific objective criteria are adopted? For instance, will planning for additional services be set in gear once the utilization rate has reached a given level or a certain ratio between hospital beds and the population in a district has been reached? If such quantifier are used, what are they; and what are the criteria for setting such quantifiers? If not, when will these objective criteria be made?*

SECRETARY FOR HEALTH AND WELFARE (in Cantonese): Mr President, apart from the major factors I have mentioned just now, other factors such as

waiting time are also important indicators in our planning process. We would like to see the services provided by different specialties achieving a certain level or target, and we will increase our services according to population growth and waiting time. However, we must not forget that, in addition to waiting time and population growth, the ever-increasing demand is another factor. Therefore, no matter what we do to shorten waiting time, we must take the factor of population growth into account. As regards the detailed figures, I would like to provide them to Dr HUANG in a written reply. (Annex II)

MR LAW CHI-KWONG (in Cantonese): *Mr President, when giving her reply just now, the Secretary for Health and Welfare has repeatedly mentioned that, in addition to population statistics, other factors will also be taken into consideration. On reviewing the demand for medical services, she has mentioned the needs of local districts. Has the Government conducted any survey at district level to ascertain different demands for medical services in various districts? If so, could the Government provide this Council with the findings of such surveys?*

SECRETARY FOR HEALTH AND WELFARE (in Cantonese): Mr President, our reviews conducted in 1992 and 1995 were based upon population statistics of districts. However, the figures I quoted in my reply to the original question earlier on are the latest information which have not yet been published. Anyway, we have always based on population statistics of districts.

MR LAW CHI-KWONG (in Cantonese): *Mr President, I think the Secretary for Health and Welfare has misunderstood my question. My question is: Given that people living in different districts may, apart from being different in population sizes, have different needs in terms of medical services; for example, the demand for health services of those living in the Mid-Levels may be different from those living in Sham Shui Po, has the Government conducted any survey to ascertain different needs for medical services in various districts? If so, will the Government provide us with such information?*

SECRETARY FOR HEALTH AND WELFARE (in Cantonese): Mr President, we have in the past conducted surveys on the different demands of people living

in various districts. For example, we have found that the demand of convalescence beds is greater on Hong Kong Island than in other districts. Therefore, we have already made plans to convert a number of general hospital beds into convalescence beds. As for the New Territories, we have also found that it is necessary to transfer some of our services from Hong Kong and Kowloon to some districts in the New Territories where the population is growing.

PRESIDENT (in Cantonese): Mr LAW Chi-kwong, has she provided you with the information you want?

MR LAW CHI-KWONG (in Cantonese): *Mr President, she still misunderstands my question. I am asking about medical services, not hospital services. The scope of medical services is wider than that of hospital services.*

SECRETARY FOR HEALTH AND WELFARE (in Cantonese): Mr President, regarding general medical services, we follow the same principles in general, with the exception of certain services which are territory-wide rather than at district level. For instance, the Student Health Service is a territory-wide service covering all students. Another example is the services for treating general diseases, which are also planned on a territory-wide basis. As regards health education services, they are centrally planned and implemented through various means at district level. In general, our medical and hospital services are planned to cater for the needs of people living in each district.

PRESIDENT (in Cantonese): There are two more names on the list. I will draw a line there.

MR LEE WING-TAT (in Cantonese): *Mr President, according to the Territorial Development Strategy Review, the potential population capacity of Tung Chung/Tai Ho is 230 000, whereas the estimated population of North Lantau Extension will be 110 000, making a total population of 350 000. As there is a time lag between the planning and completion of a hospital, has the Government started planning for hospital services or other medical services on*

Lantau Island as a whole, so as to ease the overall demand for hospital and medical services in the area within the next 10 to 15 years?

SECRETARY FOR HEALTH AND WELFARE (in Cantonese): Mr President, as far as planning for Tung Chung and Lantau Island is concerned, we already have some population estimates on hand. Such figures, however, do not suggest a need for the construction of a hospital there. But plans are already in place to develop other medical services such as out-patient service in the area.

DR JOHN TSE (in Cantonese): *Mr President, I would like to follow up on the Honourable LEE Wing-tat's question. Given that North Lantau is the site for the new airport, and if there is no plan for the construction of hospitals in the area, what medical services would be provided by the Government in case of emergency or catastrophes?*

SECRETARY FOR HEALTH AND WELFARE (in Cantonese): Mr President, we have set up a special team to look into the matter concerning emergency services to be provided at the new airport. Our initial view is that on-the-spot treatment might be required in such cases and it is not something that could be provided merely by having the facilities there. It might also be necessary to take the injured persons to other places for treatment. Nevertheless, our special team is still looking carefully into the matter concerning rescue operation in case of emergency at the new airport.

Colonial Regulations

3. **DR ANTHONY CHEUNG** asked (in Cantonese): *Mr President, according to the Civil Service Personnel Statistics published annually by the Civil Service Branch, within the eight-year period from 1987-88 to 1994-95, a total of 844 civil servants were required by the Government to go on compulsory retirement under Colonial Regulations (the Regulations). Of these 844 civil servants, 812 (96%) were local officers and 32 (4%) were overseas officers. Moreover, more than 200 officers were on compulsory retirement each year from 1990-91 to 1992-93. In this connection, will the Government inform this Council:*

- (a) *of the main reasons for the comparatively greater number of civil servants required to go on compulsory retirement from 1990-91 to 1992-93 than those in other years within the above mentioned period;*
- (b) *which salary groups the above mentioned 800-plus officers on compulsory retirement were in mostly, and how many of them were of directorate and disciplined grades respectively; and*
- (c) *of the major factors taken into consideration when applying the Regulations to ask these officers to go on compulsory retirement?*

SECRETARY FOR THE CIVIL SERVICE (in Cantonese): Mr President, the number of civil servants required to retire fluctuates from year to year as they may be retired for disciplinary, administrative or other reasons. The larger number of civil servants required to go on compulsory retirement from 1990-91 to 1992-93 was mainly the result of officers who were retired in the interests of localization and in connection with constitutional change during this period.

Of the 691 officers who were compulsorily retired from 1990-91 to 1992-93, 38 were retired on disciplinary grounds under Colonial Regulations 57, 58 or the respective Discipline Services Legislation, comprising 13 officers in 1990-91; 13 officers in 1991-92; and 12 officers in 1992-93. The number of officers required to retire on disciplinary grounds during this period was therefore relatively stable.

The officers who were compulsorily retired from 1990-91 to 1992-93 were from various grades. The main groups were remunerated on the police Pay Scale Points 1-28 (from \$13,330 to \$30,165 per month), and the Master Pay Scale Points 1-25 (from \$7,630 to \$28,490 per month). There was one directorate officer; 600 disciplined grades officers; and 90 civilian grades officers.

Civil servants may be compulsorily retired:

- (a) under Colonial Regulations 57, 58 or the respective Disciplined Service Legislation if they are found guilty of serious misconduct or convicted of criminal offences;

- (b) under Colonial Regulation 59 if their retirement is desirable in the public interest; and
- (c) under Colonial Regulation 93 in the interests of localization and in connection with constitutional change.

Officers who are compulsorily retired under Colonial Regulations 57, 58, 59 or the respective Discipline Services Legislation will receive deferred pensions payable on their respective normal retirement dates. Officers who are compulsorily retired under Colonial Regulation 93 will receive their pensions immediately on leaving the service. I wish to stress that there are no adverse, disciplinary, or misconduct implications relating to retirements under Colonial Regulation 93. This regulation simply provides the formal covering authority to direct an officer to retire.

DR ANTHONY CHEUNG (in Cantonese): *Mr President, the Secretary for the Civil Service has mentioned in his answer earlier that only 38 civil servants were retired on disciplinary grounds in the three-year period from 1990-91 to 1992-93. 691 to be subtracted by 38, in other words, the compulsory retirement of more than 650 civil servants appears to be unrelated to disciplinary grounds. They appear to have been directed to retire under Colonial Regulation 93, which is adopted in line with the localization policy implemented by the Government or as a result of constitutional change. What kind of constitutional change was so significant that more than 600 civil servants were directed to retire within this three-year period?*

SECRETARY FOR THE CIVIL SERVICE (in Cantonese): *Mr President, at that time we were of the view that, in preparation for the impending change of sovereignty, there was a need to arrange early retirement for a small number of officers for two reasons, that is, in the interests of localization and the need to disband the former Special Branch.*

DR ANTHONY CHEUNG (in Cantonese): *Mr President, I believe we all know what localization means, but I wish the Secretary for the Civil Service could make further clarification as to whether no other constitutional change has taken place apart from the one mentioned earlier.*

SECRETARY FOR THE CIVIL SERVICE (in Cantonese): Mr President, I have mentioned earlier the two reasons concerning constitutional change.

PRESIDENT (in Cantonese): Do they have anything to do with the Special Branch?

SECRETARY FOR THE CIVIL SERVICE (in Cantonese): Mr President, I have mentioned just now that we needed to prepare for localization in view of the impending change of sovereignty. This was one of the two reasons. Another one was that we were of the view that there was a need to disband the former Special Branch and arrange early retirement for some officers of that Branch.

MR CHEUNG MAN-KWONG (in Cantonese): *Mr President, under Colonial Regulation 93, among the grounds which can be invoked by the Governor for directing a civil servant to retire, in addition to localization or constitutional change as mentioned earlier, the Governor can also direct a civil servant to retire if he is of the opinion that the continued employment of that civil servant is unreasonable or inappropriate, as provided in Colonial Regulation 93(a). Mr President, if "unreasonable or inappropriate" can be used as a reason for directing an officer to go on compulsory retirement, is such a judgement which is based on these grounds too subjective? Is this an example of "ruled by person" in reality in the name of "rule of law"? Does the Government agree that this reason for directing a civil servant to go on compulsory retirement is so vague and gives so much power to the Government that it can easily be abused? Is there any mechanism for the Government to prevent 93(a) from being abused or will the Government abolish 93(a) all together?*

SECRETARY FOR THE CIVIL SERVICE (in Cantonese): Mr President, under the present system, the Public Service Commission is responsible for monitoring the Government's implementation of the Civil Service Regulation and Colonial Regulations and it does play an effective role in this respect. Moreover, affected officers can, of course, appeal to the Governor or even the

British Government through proper channels. As the last resort, they can also apply to the court for judicial review.

MR CHEUNG MAN-KWONG (in Cantonese): *Mr President, the Secretary for the Civil Service has not answered the crux of the question and that is whether the Government agrees that the Regulation is too vague and gives excessive power to the Government. If the Government directs a civil servant to go on compulsory retirement on the ground that his continued employment is unreasonable and inappropriate, does it mean that there is in fact no concrete justification?*

PRESIDENT (in Cantonese): Mr CHEUNG Man-kwong, the Secretary for the Civil Service has not expressed the Government's views as requested by you in his answer. In fact, your original question was argumentative and in the form of making an inference. Therefore, he has answered your question by not answering you. If the Secretary for the Civil Service is willing to answer in detail the question raised by Mr CHEUNG Man-kwong, which is argumentative in nature, he can do so now.

SECRETARY FOR THE CIVIL SERVICE (in Cantonese): Mr President, when we apply the Civil Service Regulation and Colonial Regulations, we have a complete internal mechanism and have established in every detail the procedures which the Government must go through when directing an officer to retire. Such a decision can only be made after careful examinations by the superiors of the officer concerned at various ranks. Mr President, I can assure every Member of this Council that when we exercise these powers, the chances of a judgement being made by a single person or an individual officer are nearly non-existent, as the affected officer has the chance to appeal to his superiors at each rank of the hierarchy.

MISS EMILY LAU (in Cantonese): *Mr President, I wish to raise a question concerning the mechanism for lodging an appeal. Of these 844 officers, how many have made an appeal? It is apparent that all appeals were unsuccessful and all appellants were compelled to retire. During this eight-year period, was there any officer who was directed to retire but was able to remain in the job after making a successful appeal? Mr President, my question also covers*

judicial review as mentioned by the Secretary for the Civil Service. Can he provide statistics on this?

SECRETARY FOR THE CIVIL SERVICE (in Cantonese): Mr President, I wish to stress again that, during the three-year period from 1990-91 to 1992-93, of the more than 800 cases involving compulsory retirement, most officers involved were in fact not directed to retire on disciplinary grounds or because of other misconduct. Their retirement was mainly related to the impending change of sovereignty. Under such circumstances, there is generally no need to make an appeal or apply for judicial review as those arrangements are not a form of punishment. As for other cases in which the officers concerned were directed to retire on disciplinary grounds, Mr President, I need to check the relevant information before I can be sure of the number of cases in which an appeal or an application for judicial review was made. I will reply to the Honourable Miss Emily LAU in writing (Annex III).

MISS EMILY LAU (in Cantonese): *Mr President, may I raise a supplementary as the Secretary for the Civil Service appeared to indicate that appeals were allowed in some cases while no appeal was allowed in some other cases. Could he elaborate a bit on this?*

PRESIDENT (in Cantonese): Appeals are allowed under Colonial Regulations 57, 58 and 59 while no appeals are allowed under Colonial Regulation 93. Can the Secretary for the Civil Service confirm this?

SECRETARY FOR THE CIVIL SERVICE (in Cantonese): Mr President, I have not said that no appeals are allowed under Colonial Regulation 93. What I have said was that the decision to ask some officers to go on compulsory retirement under Colonial Regulation 93 was made in connection with constitutional change instead of any misconduct on the part of each of the officer himself. In other words, the officer involved would be compensated. Therefore, in my opinion, under such circumstances, there is little need for the officer to make an appeal, although I do not have the relevant information right

now.

MR JAMES TO (in Cantonese): *Mr President, the Honourable CHEUNG Man-kwong has expressed concern earlier that Colonial Regulation 93 might be abused. However, this regulation is not applicable to a few dozen detectives of the Special Branch. Will the Secretary for the Civil Service inform us whether these officers can ask him to direct them to retire, that is, early termination of their service, so as to receive their pensions immediately even though they have not been found guilty of any misconduct? Is this also the consensus reached in this Council?*

SECRETARY FOR THE CIVIL SERVICE (in Cantonese): Mr President, the management is very careful when considering whether Colonial Regulation 93 should be invoked. For each officer who might be affected, we would carefully consider the nature of the job he has carried out before and whether there is a need to direct him to retire under Colonial Regulation 93. Each case must be carefully examined. I am aware of the concern of a small number of officers as mentioned earlier by Mr TO. In fact, we have considered the cases of these officers time and again. As far as I understand, the Government, with very strong grounds, is of the view that it is not appropriate to apply Colonial Regulation 93 to these officers.

MR JAMES TO (in Cantonese): *Mr President, if the officer accepts compulsory retirement directed by the Government as provided in Colonial Regulation 93, will the Government consider the grounds for applying Colonial Regulation 93? Actually, these officers strongly wish to be treated this way.*

PRESIDENT (in Cantonese): Mr TO, this question is not the one you have raised just now. What you have asked concerns those persons, i.e. some officers of the Special Branch, to whom the Government has refused to apply Colonial Regulation 93 when directing their retirement.

SECRETARY FOR THE CIVIL SERVICE (in Cantonese): Mr President, I

hope all of you can understand that we cannot approve of an officer's application for retirement solely on his own wish. We must take into account the nature of the job the officer has carried out. The appropriateness of an officer's retirement should be judged from the management's point of view.

MR MICHAEL HO (in Cantonese): *Mr President, the right conferred upon the Government to direct a civil servant to retire under Colonial Regulations can only remain in force until 30 June this year. What stage, up to this moment, has been reached on the question of whether such a right can remain in force thereafter and what changes in legislation have been made?*

PRESIDENT (in Cantonese): This is an interesting and meaningful question, but unfortunately it has gone beyond the scope of the original question.

MR MICHAEL HO (in Cantonese): *Mr President, I wish to revise my question.*

PRESIDENT (in Cantonese): Please raise another question.

MR MICHAEL HO (in Cantonese): *Mr President, the original question mentions some civil servants who were directed to retire. According to the Civil Service Branch's estimate, how many more civil servants will be directed to retire in connection with the change of sovereignty from this day to 30 June?*

SECRETARY FOR THE CIVIL SERVICE (in Cantonese): Mr President, according to the cases that we are aware of right now, another nine of my colleagues will be directed to retire under Colonial Regulation 93.

Unemployment among Young People

4. **MR LEE CHEUK-YAN** asked (in Cantonese): *As revealed in the findings of the General Household Survey, the problem of unemployment is particularly serious among young people, with an unemployment rate as high as 12% for the 15-19 age group. In this connection, will the Government inform this Council, whether it has formulated any comprehensive plan to solve the problem of high*

unemployment rate among young people?

SECRETARY FOR EDUCATION AND MANPOWER (in Cantonese): Mr President, although the unemployment rate of those aged 15 to 19 is higher than the overall unemployment rate, this should not be taken to mean that the unemployment problem is particularly serious for this age group. In fact, this is not the most vulnerable group of unemployed persons for the following reasons:

First, this group consists of a higher percentage share of first-time job-seekers than that for other groups. For example, for the three months of September to November 1996, such job-seekers accounted for 51% of this group.

Second, the majority of this group have been unemployed because they leave the job of their own accord. For the three months of September to November 1996, such unemployed persons accounted for 64% of the unemployed in this age group, as compared with the overall rate of 40% for all the unemployed.

Third, the duration of unemployment for this group is significantly shorter than those for other groups. For the three months of September to November 1996, 70% of this group have been unemployed for less than three months and only 7% have been jobless for six months or more. In comparison, the corresponding rates are 59% and 23% for those unemployed at the age of 30 or above.

In tackling the unemployment problem, the Government's objective is to help the unemployed workers re-enter the labour market through the provision of both employment services and appropriate training in the skills required. These services are available to unemployed workers of all age groups, including those of the 15-19 age group.

For employment services, the Local Employment Service (LES) of the Labour Department provides free employment assistance and counselling service for job-seekers of all ages. While we do not have separate statistics on LES registrants of the 15-19 age group, our statistics show that out of a total of

118 844 job seekers registered at the LES in 1996, 55 507 belonged to the age group of 15-29, and 12 185 job offers were secured for them, representing a placement rate of 22%, which is broadly in line with the overall placement rate for all registrants.

The Labour Department also provides advisory and guidance service specifically for teenagers through a variety of programmes such as the Careers Information Centres and Careers Expos.

As regards the provision of manpower training, the Vocational Training Council, the Construction Industry Training Authority and the Clothing Industry Training Authority offer a wide range of courses to provide skills training to prepare people with secondary education standard for employment. They also provide skills upgrading courses so that the trainees can meet the changing demands of their jobs and sustain their employment.

MR LEE CHEUK-YAN (in Cantonese): *Mr President, besides the main reply, the Secretary for Education and Manpower has provided some supplementary information, and I have already passed it to Honourable Members. According to the supplementary information, the unemployment rate of the 15-19 age group is as high as 15%. However, the Secretary for Education and Manpower has pointed out in his main reply that such a rate should not be taken to mean that the unemployment problem is particularly serious for this group. This reply is indeed very shocking. If 15.2% of the people are unemployed and the situation still should not be considered particularly serious, what should?*

PRESIDENT (in Cantonese): Mr LEE Cheuk-yan, please state your question.

MR LEE CHEUK-YAN (in Cantonese): *As revealed by the statistics provided by the Secretary for Education and Manpower, 10% of all those in the 15-19 age group who are unemployed, that is, almost 10 000 people, have either failed to secure any jobs or remained unemployed for more than one month. I am in fact referring to these 10 000 young people who have failed to secure any jobs for more than one month. Why has it been so difficult for them to secure jobs? Is the Administration going to find out the reasons?*

SECRETARY FOR EDUCATION AND MANPOWER (in Cantonese): Mr President, in my main reply, I have already analysed the reasons behind the relevant figures and statistics and come to the conclusion that these young people are not the most vulnerable group of the unemployed. I do not wish to repeat the three reasons which I have already stated very clearly in my main reply. However, I am still prepared to conduct further discussions on this issue on other occasions, including the meetings of the Legislative Council Panel on Manpower.

That said, has the Government really ignored the unemployed persons in the 15-19 age group? The answer is of course "no". As I have explained in detail in my main reply, these young people can approach the Labour Department for employment assistance. The relevant figures do show that with the assistance provided by the Local Employment Service (LES), the placement rate for LES registrants belonging to the 15-19 age group is broadly in line with that for all registrants.

Besides, as I have already mentioned in my main reply, people belonging to the 15-19 age group are mostly first-time job-seekers, and they usually do not have to wait too long before they can secure jobs. That is why we have concentrated on assisting them in the form of skills training. Actually, there are quite a number of different skills training institutions in the territory, including the Vocational Training Council, the Construction Industry Training Authority and the Clothing Industry Training Authority, which offer them the skills training necessary for securing jobs. Therefore, it can be seen that the Government has actually put in place many policies and measures to assist the unemployed persons in the 15-19 age group to re-join the workforce.

PRESIDENT (in Cantonese): Mr LEE Cheuk-yan, are you claiming that your question has not been fully answered?

MR LEE CHEUK-YAN (in Cantonese): *Mr President, the Secretary has not answered the "why" part of my question, because he has simply emphasized that*

the young people in this age group are not the most vulnerable group of unemployed persons. The point is that I have asked him why it has become so difficult for the people in the 15-19 age group to secure jobs. Has he really answered my question? If he really does not know the reasons, please tell me directly.

SECRETARY FOR EDUCATION AND MANPOWER (in Cantonese): Mr President, there are actually several reasons. First, as I have explained in my main reply, 64% of these young people actually leave their jobs of their own accord. A possible reason is that since people in this age group have just started their working life, and since they are still very young, they may not be able to find any jobs which they think are most suitable for them.

As for other reasons, the LES has deduced from actual experience that in general, some individual employers may think that people aged between 15 and 19 are either too young or not steady enough, or lack working experience. This is indeed a very significant reason, because people in the 15-19 age group are in fact the youngest and least experienced among all age groups. This explains why the unemployment rate of this particular age group is higher than those of all other age groups.

MR LAU CHIN-SHEK (in Cantonese): *Mr President, according to the information provided by the Government, the statistics of the Vocational Training Council indicate that in 1996, a total of 5 843 youngsters applied for admission to the apprenticeship training scheme, but eventually only 3 460 of them managed to get their contracts of apprenticeship. The number of successful applications was just 3 460, smaller than that of five years before by 1 000. What was the reason for this? Does the Government have any measures in place to increase the number of apprenticeship places?*

PRESIDENT (in Cantonese): Mr LAU, can you specify what information you are referring to?

MR LAU CHIN-SHEK (in Cantonese): *The Secretary for Manpower and Education has given us a number of information papers for reference. One of these papers, which the Honourable LEE Cheuk-yan has distributed to all Honourable Members, concerns the statistics of the apprenticeship training*

scheme operated by the Vocational Training Council.

PRESIDENT (in Cantonese): Mr LAU, I am sorry. The original question is: " ...the problem of unemployment is particularly serious among young people, with an unemployment rate as high as 12% for the 15-19 age group. In this connection, will the Government inform this Council whether it has formulated any comprehensive plan to solve the problem of high unemployment among young people?". Therefore, I am afraid that the statistics you have quoted are not relevant to this question, and I must add that I do not have the information paper to hand. If we go on like this, our question time will be turned into a discussion on the information paper in question. I would think that it will be more appropriate to discuss the contents of the information paper in the relevant Panel.

MR LAU CHIN-SHEK (in Cantonese): *Let me then rephrase my question. According to paragraph five of the main reply, the Vocational Training Council, the Construction Industry Training Authority and the Clothing Industry Training Authority are offering a wide range of training courses. However, with respect to apprenticeship training, why has there been an actual decrease in the number of places? Are there any measures to increase the number of such places?*

SECRETARY FOR EDUCATION AND MANPOWER (in Cantonese): Mr President, the information which I have given to the Honourable LEE Cheuk-yan and the Honourable LAU Chin-shek does indeed show that the number of trainees under the apprenticeship training scheme has actually decreased over the past few years. This is precisely the question which has aroused our great concern recently. Given the economic restructuring of Hong Kong, we doubt whether the apprenticeship training scheme will remain popular among employers and apprentices. A recent consultancy report of the Vocational Training Council has also raised such a question. I can now tell Mr LAU very briefly that as decided in a recent meeting, the Vocational Training Council will establish a working group to conduct a comprehensive review on the apprenticeship training scheme. As regards further details of this review, should suitable opportunities arise, I will be happy to exchange views with the

Panel on Manpower and Mr LAU.

MR LEE KAI-MING (in Cantonese): *Mr President, in paragraph 5 of the Secretary's reply to the Honourable LEE Cheuk-yan's question, it is pointed out that with respect to the provision of manpower training, the Vocational Training Council, the Construction Industry Training Authority and the Clothing Industry Training Authority are offering a wide range of courses to provide skills training to those with secondary education standard. However, from the Annexes which he has given to us, I notice that the highest unemployment rate is actually found among those aged between 15 and 24 who have received senior secondary education. And, for the training courses the Secretary has referred to, junior secondary school-leavers have already satisfied the admission requirements. May I therefore ask the Secretary for Education and Manpower whether vocational training courses tailor-made for senior secondary school-leavers will be provided?*

SECRETARY FOR EDUCATION AND MANPOWER (in Cantonese): *Mr President, on the basis of what I have managed to get from the question, I will answer as follows. The courses offered by the Vocational Training Council, the Construction Industry Training Authority and the Clothing Industry Training Authority are actually not intended solely for junior secondary school-leavers; senior secondary school-leavers are also the intended targets. There are many training institutions under the Vocational Training Council, and some of them, such as the technical colleges, are offering courses mainly for senior secondary school-leavers.*

MR LEUNG YIU-CHUNG (in Cantonese): *Mr President, when the Secretary for Education and Manpower replied to the question asked by the Honourable LEE Cheuk-yan, he has pointed out in particular that one reason for the high unemployment rate of the 15-19 age group is that many of these young people leave their jobs of their own accord. He has also explained why these young people resign of their own accord, referring to adaptation as a possible cause.*

Has the Secretary for Education and Manpower ever attempted to find out why these young people have the problem of adaptation? Has he ever tried to find out why they want to resign of their own accord shortly after taking up their

jobs? Actually, has the Administration ever considered the possibility of providing some channels in our secondary school curriculum to assist these young people in adapting themselves to society, their occupations and jobs? For example, will the Administration conduct a review on our existing school curricula, including those of technical schools, so as to find out whether they are still in line with our economic developments? Will the Administration carry out a review on our grammar school education, so as to find out whether it is still compatible with the needs of the present day society?

SECRETARY FOR EDUCATION AND MANPOWER (in Cantonese): Mr President, I do not think that it is at all necessary for us to seek any expert advice on the reasons why the rate of voluntary resignation is so high among young people aged between 15 and 19. These young people have just started to work, and at such an early stage, it is only natural that they will still need some more time before they can identify their life-long career. I just do not know how many of Members serving on the Legislative Council now have actually clung to their first jobs as their life-long career.

Let me also point out that the Labour Department actually offers many types of counselling services, such as those available at career exhibitions and career information centres. It is hoped that through these counselling services, the unemployed persons of this particular age group who have resigned from their first jobs out of a lack of interest may manage to find the jobs which they like when they choose their second jobs.

PRESIDENT (in Cantonese): Mr LEUNG Yiu-chung, are you claiming that your question has not been fully answered?

MR LEUNG YIU-CHUNG (in Cantonese): Yes, Mr President. *The Secretary has not answered my question. May I ask the Secretary for Education and Manpower how he interprets the problem of adaptation? And, will the Administration carry out a review on our school curricula, including those of technical colleges and grammar schools? I also want to answer the question asked by the Secretary just now. I started my working life as a school teacher, and I have remained a school teacher ever since. I have never changed my career.*

PRESIDENT (in Cantonese): Why do Legislative Council Members and government officials swap their roles so often? *(Laughter)*

SECRETARY FOR EDUCATION AND MANPOWER (in Cantonese): I very much appreciate Mr LEUNG's single-mindedness.

PRESIDENT (in Cantonese): It had better not be a stay for the go.

SECRETARY FOR EDUCATION AND MANPOWER (in Cantonese): Mr President, there are actually two main points in my reply. First, we think that it is relatively natural for this particular age group to have a high resignation rate, and, for this reason, there is no need to fuss over the problem.

Besides, although many persons belonging to this age group change their jobs shortly after taking up their first employment, we do not think that this has anything to do with problems with our education system, grammar education or technical education.

Let me also add that before the trainees enrol on the courses offered by the Vocational Training Council, the Construction Industry Training Authority and the Clothing Industry Training Authority to start their training, they are all required to indicate their interest in the trades and occupations concerned, and, after graduation, most of them do look for jobs which are relevant to their training. In other words, we can say that experience, occupational training and the employment services offered by the Labour Department will all help young people understand what choices are open to them. This will prevent them from changing their jobs very frequently in future.

MR LEE CHEUK-YAN (in Cantonese): *Mr President, the Secretary for Education and Manpower has in fact pointed out another problem in his reply just now. This problem relates to how employers look at young people. Employers tend to think that young people are not steady enough. That being the case, does the Secretary plan to provide any training courses and counselling services for these young school drop-outs, so that they can be equipped with the skills required in the market and improve their image in the mind of employers,*

who think that they are not steady enough?

SECRETARY FOR EDUCATION AND MANPOWER (in Cantonese): Mr President, if we are to change these young people's image in the mind of employers, who think that they are not steady enough, nothing will be better than encouraging them to receive professional and occupational training. In this connection, as I have pointed out clearly in my main reply, the Vocational Training Council, the Construction Industry Training Authority and the Clothing Industry Training Authority are already offering many different courses, which provide different types of occupational training for over 10 000 young people in this age group each year.

WRITTEN ANSWERS TO QUESTIONS

Control on Construction of Tertiary Institution Campus Facilities and Residential Halls

5. **MR CHEUNG MAN-KWONG** asked (in Chinese): *It is learned that the Hong Kong University of Science and Technology (HKUST) solicited bank loans to build residential halls for renting to postgraduates. It has also made new arrangements that postgraduates receiving the grants of studentship are required to reside in such halls and the University will later deduct monthly hall fees from the grants of studentship. For those postgraduates who refuse to reside in the residential halls, they will receive less amount of grants of studentship. In this connection, does the Government know:*

- (a) *whether the University Grants Committee (UGC) has monitored the loans raised by tertiary institution from outside organizations for construction of campus facilities and residential halls, as well as the manner in which the debts concerned will be repaid; and*
- (b) *given that the deduction of hall fees from the grants of studentship might be regarded as a disguised move to subsidize the institution to repay its debts incurred from bank loans for building residential halls at the public expense, whether the authority concerned will regulate such practice so as to avoid the abuse of resources for higher education?*

SECRETARY FOR EDUCATION AND MANPOWER (in Chinese): Mr President, the University Grants Committee (UGC) has well-established practices and procedures for monitoring the financing and construction of campus facilities and residential halls, including such projects totally financed through private sources such as bank loans. In the case of the research postgraduate residential halls at Hong Kong University of Science and Technology (HKUST), it has sought prior approval from the UGC by providing detailed information on the projected supply and demand of residential units, the design of the residential halls and the source of finance. Having carefully considered the proposal, the UGC endorsed the proposal in principle subject to the following conditions:

- (a) should the HKUST decide to secure a bank loan for the project, it may not assign any interest in the site and the superstructure for the loan;
- (b) the HKUST should be responsible for repaying the loan, but may not do so using the public funds which the HKUST receives from the UGC or Government;
- (c) the HKUST may not charge the recurrent costs of the residential halls to the recurrent block grants provided by the UGC; and
- (d) in accordance with the UGC Notes on Procedures, the HKUST has to submit sketch plans and other documents relating to the building design and finishes of the project to the UGC for information and comment.

The UGC subsequently received an assurance from HKUST that it accepted these conditions. A bank loan of \$250 million was then raised and the proposal implemented. The practice and procedures followed in this case were in line with other capital projects financed from private sources by other UGC-funded institutions.

Student hostels in the UGC-funded institutions, whether they are constructed by means of public funds or private funds, have to operate on a self-financing basis, through rent charged to students. The level of rent is determined by the institutions themselves. In the case of the research postgraduate residential halls at HKUST, the level of rent is set by the University having regard to both the loan repayment schedule and operating costs.

How rent should be collected from students is for the institutions themselves to determine. In this case, HKUST, which on academic grounds, wishes to encourage students to live on campus, arranges, for the sake of administrative simplicity and with students' agreement, for the amount of rent to be deducted from the studentship received by each postgraduate student who occupies a residential hall unit. For students who choose not to occupy a hostel unit, they will still be eligible for studentship. The number and amount of studentships awarded by the institutions may vary according to different circumstances taking into account academic objectives and the availability of resources. But these are matters within the autonomy of institutions.

Public Hospital Magnetic Resonance Imaging Scanners

6. **DR HUANG CHEN-YA** asked (in Chinese): *Is the Government aware of the following:*

- (a) *the total number of magnetic resonance imaging scanners in public hospitals and their distribution;*
- (b) *the respective percentages of time when these scanners were in operation, inactive, under maintenance and out of order in the past year;*
- (c) *the average and longest waiting time in-patients and out-patients have to wait for scanning service respectively in the past year;*
- (d) *the number of patients scanned in the past year, together with the number of scannings identified to have been inappropriately utilized; and*
- (e) *of the plans put in place by the Hospital Authority to improve its scanning service?*

SECRETARY FOR HEALTH AND WELFARE (in Chinese): Mr President,

the Hospital Authority is currently providing three magnetic resonance imaging scanners in Queen Mary Hospital, Queen Elizabeth Hospital and Prince of Wales Hospital to serve the patients in Hong Kong, Kowloon and the New Territories respectively. The percentages of time when these scanners were in operation, out of order and under maintenance in the past year are at Annex. Our present plan is to provide two new scanners in Tuen Mun Hospital and Princess Margaret Hospital respectively this year, and the sixth one at Kwong Wah Hospital in 1998-99.

The priority of patients referred for magnetic resonance image scanning is determined in the light of their clinical needs. While all emergency cases will be handled immediately, the average waiting time for urgent cases is less than two weeks, while that for non-urgent cases ranges from eight to 24 weeks, depending on prevailing circumstances. The condition of all patients awaiting scanning service will be monitored and assessed to ensure that they are accorded with the necessary medical treatment without delay.

A total of 22 709 magnetic resonance image scans were performed in the past year. All cases of referral are vetted by the attending doctor and senior medical staff at the diagnostic radiology department involved to prevent inappropriate service utilization.

Annex

		<i>Queen Mary Hospital</i>	<i>Queen Elizabeth Hospital</i>	<i>Prince of Wales Hospital</i>
(A)	in operation	84.75%	96.01%	96.53%
(B)	out of order	2.47%	2.75%	1.84%
(C)	under maintenance	*13.78%	1.24%	1.63%

* inclusive of 11.2% (that is 480 hours) for equipment upgrading works

Parking Demand Study

7. **MRS MIRIAM LAU** asked (in Chinese): *In its report on the "Parking Demand Study", the Government forecast that the number of motorcycles would still be on the rise and that there would be an acute shortage of parking spaces for motorcycles. In this connection, will the Government inform this Council:*

- (a) *whether, given that motorcycles are generally not accepted by private car parks at the moment, it will specify the proportion of parking spaces for various categories of vehicles when land is granted for vehicle parking purpose in future; if not, why not; and*
- (b) *whether, in reviewing the standards for the provision of parking and loading/unloading facilities laid down in the "Hong Kong Planning Standards and Guidelines",*
 - (i) *it will increase the number of motorcycle parking spaces in both public and private residential developments and specify the minimum number of motorcycle parking spaces in commercial developments; if not, why not; and*
 - (ii) *it will revise the standards for the dimensions of parking spaces for motorcycles so as to accommodate larger motorcycles; if not, why not?*

SECRETARY FOR TRANSPORT (in Chinese): Mr President, in processing future land grants for car parks, we will specify the proportion of parking spaces for various categories of vehicles, taking into consideration parking demand in the district and the size and layout of the lot concerned.

As recommended in the report on the "Parking Demand Study", the Hong Kong Planning Standards and Guidelines (HKPSG) was revised in November 1996. The new HKPSG sets out that, as a general guideline, in all types of developments, whether residential, commercial or industrial, additional parking spaces should be provided for motorcycles at a rate of 5% - 10% of the total provision for private cars and no fewer than 5 motorcycle parking spaces should be provided at any one location.

The existing standard dimension of motorcycle parking spaces is 2m by 1m. We have just completed a survey on the size of motorcycles used in Hong

Kong. In the light of the survey findings, we are considering increasing the length of motorcycle parking spaces to suit current requirements.

As pointed out in the report on the "Parking Demand Study", parking for motorcycles is not a major problem because, due to their relatively smaller size and manoeuvrability, they can be accommodated in different locations without causing obstruction. The additional provision mentioned above should further improve the situation.

Residential Services for Disabled Persons in Residential Care Homes

8. **MR LAW CHI-KWONG** asked: *Regarding residential services provided for disabled persons in residential care homes, will the Government inform this Council:*

- (a) *whether residential services such as the community assessment service and the provision of visiting medical officers — which are provided in the majority of care and attention homes for elderly people — will be extended to residential care homes for disabled persons, including aged blind homes, care and attention homes for severely disabled persons and long-stay care homes for ex-mentally ill persons; if not, of the reasons for the disparity between the service provision in residential care homes for disabled persons and that for able-bodied persons;*
- (b) *whether the disabled persons in residential care homes are required to receive annual medical examination as stipulated under section 34 of the Residential Care Homes (Elderly Persons) Regulation, if so, of the measures taken by the Government to facilitate the disabled persons in residential care homes receiving such examination; and*
- (c) *of the plans in place to strengthen community assessment and medical support services for disabled persons in residential care homes?*

SECRETARY FOR HEALTH AND WELFARE: Mr President,

- (a) Subject to resources being available, the Administration is seeking to extend the community assessment services and the provision of visiting medical officers to residential care homes for disabled elderly persons, including care and attention homes for the aged blind and long-stay care homes for ex-mentally ill persons.
- (b) In respect of disabled persons in residential care homes, residents of homes for the aged blind, care and attention homes for the aged blind and long-stay care homes for ex-mentally ill persons are subject to section 34 of the Residential Care Homes (Elderly Persons) Regulation.

Arrangement has already been made for residents of the Wong Chuk Hang Long Stay Care Home to receive medical services, including medical examination, from visiting medical officers (VMOs), a community geriatric assessment team (CGAT) and a psychogeriatric team (PGT) on a regular basis.

For homes for the aged blind, care and attention homes for the aged blind and long-stay care homes other than the Wong Chuk Hang Long Stay Care Home, staff of the homes make appointments for residents to receive treatment at outpatient clinics of the Department of Health, Hospital Authority or any clinics with which the homes have connection or prior agreement. The residents are transported by vans with facilities for people with a disability and escorted by staff of the homes for such visits.

- (c) To strengthen the community assessment and medical support services for disabled elderly persons in residential care homes, the Administration is, subject to resources being available, seeking to extend VMO, CGAT and PGT services to all care and attention homes for the aged blind and long-stay care homes for ex-mentally ill persons.

9. **MR CHEUNG MAN-KWONG** asked (in Chinese): *Upon the completion of the consultation period of the Education Commission Report No. 5, the Education Commission proposed that there should be a library in every primary school. In this connection, will the Government inform this Council of the following:*

- (a) the number of primary schools provided with a library at present;*
- (b) whether the Government still maintains that the above proposal is necessary and worthwhile;*
- (c) whether consideration will be given to formulating policy to implement the above proposal; if so, of the estimated amount of funds to be allocated for this purpose, and whether sufficient funds will be provided for each primary school; and*
- (d) whether a relevant programme for the implementation of this proposal has been drawn up; if so, what the details are?*

SECRETARY FOR EDUCATION AND MANPOWER (in Chinese): Mr President, in the light of the public response to the Education Commission Report No. 5, the Education Commission recommended and the Government accepted in 1994 to provide a library/learning centre in new primary schools and, where possible, in existing schools.

- (a) Forty-five public sector primary schools have been provided with a library under Phase I of the School Improvement Programme (SIP). Another 57 public sector primary schools have used private funds to set up a library in their school premises.
- (b) As mentioned above, it has been the Government's policy to provide a school library in all public sector primary schools where possible. We believe that school libraries play an important role in improving the quality of education by promoting good reading habits in pupils, improving pupils' language proficiency, widening pupils' knowledge base, and fostering pupils' ability to study independently.
- (c) & (d)

Starting from 1995, a library has been incorporated in the schedule of accommodation for standard design primary schools. The first batch of four standard design primary schools which have a library will be completed in August 1997. For a new standard design primary school, the cost of constructing a library forms part of the school building project estimates for which adequate funding will be provided as a package.

Also starting from 1995, and where technically feasible, a number of existing public sector primary schools have been provided with a library under the first two phases of the SIP. About \$65 million was spent on constructing 45 libraries in Phase I of the SIP and another \$110 million has been approved by the Finance Committee of the Legislative Council for constructing 70 libraries in Phase II. Subject to availability of funds, the Government plans to extend the SIP to cover all public sector schools. If the plan is implemented, a further 470 libraries would be provided in existing primary schools in the subsequent phases of the SIP. The additional funds required are estimated to be \$1,044 million.

Child Workers Distributing Promotional Materials

10. **MR ALBERT CHAN** asked (in Chinese): *To take advantage of the recent boom in the property market, many real estate agents step up publicity by hiring children of 10 or so to distribute promotional leaflets to passers-by in busy districts during holidays. In this connection, will the Government inform this Council:*

- (a) *whether it is in breach of the law for the real estate agents to hire children under the age of 13 to distribute promotional materials; if so, of the number of prosecutions brought against real estate agents for such offences in the past year together with the number of successful prosecutions; and*
- (b) *of the measures that will be taken to prevent employers from hiring children under the age of 13?*

SECRETARY FOR EDUCATION AND MANPOWER (in Chinese): Mr President, according to regulation 4(1)(a) of the Employment of Children Regulations (the Regulations) under the Employment Ordinance, no person shall employ a child who is under the age of 13 in any establishment or a child who is under 15 in any industrial undertaking. However, non-industrial establishments, which include property agencies, may employ children aged 13 or 14, provided that they comply with a number of conditions stipulated under the Regulations. These conditions include the requirements that the child must have completed Form 3 secondary education (as certified by his parents), or that the child has a valid School Attendance Certificate from his parents and that his employment is consented in writing by his parents.

My reply to the specific parts of the question is as follows:

- (a) It is in contravention of regulation 4(1)(a) of the Regulations for any real estate agent to employ children under the age of 13 for distribution of promotional materials. Any person who contravenes this regulation commits an offence and is liable to a maximum fine of \$50,000. In 1996, no prosecution was taken against any property agent for employing a child under the age of 13 for distributing publicity materials.
- (b) To prevent employers from employing children under the age of 13, the Government has been taking a series of enforcement, education and publicity measures.

The Labour Department has been enforcing the Regulations vigorously through conducting site inspections and paying visits to employers. In 1996, the Labour Department conducted 149 769 inspections, of which 33 892 were made to establishments in the non-industrial sector. Prosecutions were taken against illegal employment of children resulting in 16 convictions. Visits to targeted employers such as real estate agents have also been conducted recently.

As regards education and publicity, the Labour Department maintains regular contacts with the Education Department to ensure that schools are well aware of the Regulations, especially in respect of employment of school children. The Education Department issues an advisory circular to all schools annually drawing their attention to the Regulations.

In addition, the Labour Department disseminates publicity pamphlets near the summer vacation each year to warn employers against employing children under the age of 13, and to remind students as well as their parents of the conditions governing the employment of children aged 13 to 14 as stipulated under the Regulations.

Bilateral Agreements on Surrender of Fugitive Offenders

11. **MISS CHRISTINE LOH** asked: *Hong Kong has arrangements with some 90 countries for the surrender of fugitive offenders, and these arrangements will lapse on 1 July this year. It is learnt that the Government has set a target of establishing 20 bilateral agreements with the countries concerned before that date, but so far only six such agreements have been signed and the remaining 14 are still under negotiation. In this connection, will the Government inform this Council:*

- (a) *of the progress of the on-going negotiations with the 14 countries concerned, and the number of bilateral agreements expected to be signed before 1 July this year;*
- (b) *of the reasons for the delay in completing the negotiation with the United Kingdom which is among the 14 countries mentioned above; and whether the Government will give an assurance that the negotiation will be successfully completed; and*
- (c) *whether the existence of a bilateral agreement for the surrender of fugitive offenders after 30 June 1997 is a pre-condition set by some countries before they would consider granting visa-free entry status for British National (Overseas)/Hong Kong Special Administrative Region passport holders; if so, which countries are these?*

SECRETARY FOR SECURITY: Mr President, with the agreement of the Chinese side in the Joint Liaison Group (JLG), we are now negotiating a network of bilateral agreements for the surrender of fugitive offenders which will remain in force after 30 June 1997. To date, we have signed agreements with six countries (the Netherlands, Canada, Australia, Malaysia, the Philippines and the United States), and are awaiting signature with India and Indonesia. The agreement recently signed with the United States is of particular importance because the great majority of requests for surrender received by Hong Kong comes from the United States (10 out of 11 in 1995 and 13 out of 17 in 1996). Other negotiating partners are Singapore, New Zealand, Germany, France, South Korea, Thailand, Japan, Italy, Switzerland, Belgium and the United Kingdom.

The specific answer to the three parts of the question is as follows:

- (a) We are pressing ahead with negotiations with other negotiating partners. Negotiations are well advanced with some of them. We hope to conclude as many bilateral agreements as possible before the handover, and will make known the initialled agreements once they have been approved by the JLG for signature.

We will give effect to the new bilateral agreements once the Fugitive Offenders Bill, which is being examined by a Bills Committee, has been enacted. The Administration will propose a minor amendment to the definition of "arrangements for the surrender of fugitive offenders" in the Bill at the Committee stage. The purpose of the proposed amendment is to permit arrangements to be made with a jurisdiction with which Hong Kong does not have a bilateral agreement, for the surrender of a particular person (an "ad hoc surrender").

The provision of ad hoc surrender in the Bill would increase the number of jurisdictions with which we can co-operate on surrender of fugitive offenders. Firstly, it would enable us to bridge a gap on surrender of fugitive offenders immediately after the handover and before the comprehensive network of agreements is in place. It will enable action to be taken on requests by any jurisdictions, in particular those with which we have signed agreements but which

are not yet ratified, and those with which we at present have arrangements for surrender of fugitive offenders but are not able to conclude agreements before the handover. Secondly, many jurisdictions do not require the existence of an agreement and are prepared to extradite if they receive assurances that the requesting jurisdiction is able to reciprocate. Examples are Australia, Switzerland, Brazil, Republic of Ireland, and the Scandinavian countries. If Hong Kong were to request surrender from such a jurisdiction, it would be in a position to give an assurance of reciprocity based on its capacity to grant ad hoc surrender. For practical purposes therefore the number of jurisdictions from which Hong Kong could request surrender will be increased.

- (b) An agreement between the Hong Kong Special Administrative Region (SAR) and the United Kingdom cannot enter into force whilst Hong Kong is still part of the United Kingdom. However, we recognize the importance to the SAR of having an agreement in place with the United Kingdom on this important subject as soon as possible after 30 June 1997. We are confident that we can achieve that as we have made good progress in our negotiations with the United Kingdom. Once an agreed text is settled with the United Kingdom, we will then proceed with the necessary consultations in the JLG.
- (c) We are not aware that having extradition arrangements is a pre-condition for any country before visa-free status for British National (Overseas) and/or SAR passport holders can be considered.

Subsidy for Primary School Electricity Charges

12. **MR LEUNG YIU-CHUNG** asked (in Chinese): *It is learnt that in order to abate the nuisance caused by noises, the Education Department has installed air-conditioning systems in the affected primary schools and provided a limited amount of subsidy for such schools to pay the electricity charges. Despite the ever increasing electricity charges, the authorities concerned have neither reviewed the situation nor raised the amount the subsidy. As a result, measures such as cutting back on air-conditioning time and even abandoning the use of air-conditioning have been adopted by the management of some primary schools*

so as to avoid excessive payment on electricity charges. In view of this, will the Government inform this Council whether it will consider:

- (a) reviewing the amount of subsidy for paying the electricity charges in connection with the use of air-conditioning in the above-mentioned primary schools so as to solve the financial problem brought about by the adjustments of electricity charges; and*
- (b) increasing the amount of the subsidy on a temporary basis so as to alleviate the financial burden on schools due to the adjustments of electricity charges if the review mentioned above cannot be completed before this summer?*

SECRETARY FOR EDUCATION AND MANPOWER (in Chinese): Mr President,

- (a) Under the Noise Abatement Programme, the Government has been installing air-conditioners and double glazed windows in the classrooms, staff rooms and special rooms of public sector schools exposed to aircraft or traffic noise above 65dB(A). These schools are given a recurrent Noise Abatement Grant to pay for electricity charges and routine maintenance. Approved in 1988, the existing rates of the grant are as follows:

<i>Type of room</i>	<i>Rate per room per annum</i>
Classroom and staff room	\$3,950
Special room	\$13,890

The rates of the grant are kept under regular review to ensure that the relevant schools, by and large, have sufficient funds to meet the necessary electricity and maintenance expenses. However, despite periodic adjustments of electricity charges, our record shows that the average utilization rates of the grant have been consistently below 100% by a significant margin. For example, the average utilization rates for primary schools from 1990-91 to the 1995-96 school years were as follows:

<i>Average Utilization Rate (%)</i>					
1990-91	1991-92	1992-93	1993-94	1994-95	1995-96

64.3 81.3 91.8 86.7 79.6 80.4¹

As regards the minority of primary schools whose actual expenditure exceeded the grants², the deficits were covered by their General Funds³. We are not aware of schools encountering financial problems in this respect.

The Government will continue to review the rates of the grant annually and will make necessary adjustments where justified.

- (b) From past experience, we do not expect schools to have financial difficulties in meeting the electricity and maintenance expenses relating to the use of air-conditioners. Where necessary, expenses in excess of the Noise Abatement Grant can be met from the schools' General Funds. In exceptional cases, the schools can also apply for special approval to charge the expenses to their School and Class Grant. Pending the findings of the next review which is expected to be completed before this summer, we do not see the need to revise the rates of the grant on a temporary basis.

Mass Transit Railway Corporation Dividend to Government

13. **MR WONG WAI-YIN** asked (in Chinese): *It is learnt that the Mass Transit Railway Corporation (MTRC) plans to pay a dividend to the Government this year. In this connection, does the Government know:*

- (a) *whether the decision to pay a dividend was made by the MTRC on its own initiative or in response to the Government's request, and what the major reasons for such decision are;*

1 Not all of the schools have submitted their accounts. The average utilization rate is based on the accounts submitted by 77 out of 132 schools.

2 To illustrate, in 1994/95 where the average utilization rate was about 80%, the actual expenditure of 25 schools (or 26%) exceeded the grant.

3 General Funds are income of aided primary schools derived from non-government sources, for example rental income from the operation of a canteen, donation from sponsoring/outside bodies, and so on. Schools have full discretion in the use of the General Funds for educational purposes.

- (b) *of the total amount of the dividend to be paid; and*
- (c) *in view of the plans of the MTRC to spend more than a billion dollars on a phased refurbishment of its train cars in the middle of the year, to carry out improvement works to ease congestion at the Quarry Bay station, to raise funds for the construction of the Tseung Kwan O extension, as well as to repay the loan for the Airport Railway, whether the decision to pay a dividend to the Government this year will result in additional financial burdens on the MTRC and cause the company to run into greater debts?*

SECRETARY FOR THE TREASURY (in Chinese): Mr President,

- (a) The Mass Transit Railway Corporation (MTRC) is a statutory body required by law to operate in accordance with prudent commercial principles. As with other commercial organizations, the decision on the declaration and payment of a dividend is made by the MTRC Board, under the MTRC Ordinance, having regard to its operating results, overall financial position as well as its immediate and long term funding requirements. This also takes into account the rational expectation of MTRC's shareholder of an acceptable level of return on the public investment in the Corporation. It is expected that dividend payments would be made to the Government, starting 1997, now that the accumulated losses of MTRC are fully eliminated. This expectation is also recorded in Clause 2(J) of the Financial Support Agreement between the MTRC and Government, which forms the basis for financing the Airport Railway project.
- (b) It is premature at this point in time to discuss details of the amount of dividend payment when the 1996 accounts for the MTRC are still being audited for review and approval by the Board in March this year. However, the provisional figure in the Financial Support Agreement's cashflow is for \$700 million to be paid as dividend in 1997.
- (c) On the basis for its financial projections, we anticipate that the decision to pay a dividend to Government will cause the MTRC no additional financial burden, as it has prudently taken into account

this requirement in its overall financial planning, which includes the potential commitments for the capital projects mentioned.

Closure of Parks Prior to Transfer of Sovereignty

14. **MISS EMILY LAU** asked: *Will the Government inform this Council whether there are plans to close off Victoria Park, other parks and open areas in June this year prior to the transfer of sovereignty; if so, of the details of such plans and the justifications for the closure?*

SECRETARY FOR BROADCASTING, CULTURE AND SPORT: Mr President, the management of Victoria Park and other public pleasure grounds falls outside the Government's direct policy responsibility and is the direct responsibility of the two Municipal Councils. I have obtained the information sought by the Honourable Member from the two Councils' executive departments, that is, the Urban Services Department and the Regional Services Department.

According to the Urban Services Department, there is no plan to close off Victoria Park in June this year. According to the two Departments, out of a total of over 1 300 parks and open spaces managed by the Urban Council (UC) or the Regional Council (RC), four are closed and another seven will be closed in June this year; and these closures are necessitated by improvement/maintenance works or public works and the details are at Annexes A and B respectively.

Annex A

Venues Currently Closed

<i>Venue</i>	<i>Closure Dates</i>	<i>Justifications</i>
Pokfulam Road Playground (UC venue)	1 March 95 - 31 March 98	Partial closure for construction of an underground road
Sycamore Playground (UC venue)	1 September 96 - 30 June 97	Closure for improvement works
Ap Lei Chau Bridge Road Playground (UC venue)	15 January 97 - 15 June 97	Closure for slope works

Tung Chung Playground (RC venue)	17 February 97 - 15 June 97	Closure for improvement works
----------------------------------------	--------------------------------	-------------------------------

Annex B

Venues to be Closed

<i>Venue</i>	<i>Tentative Closure Dates</i>	<i>Justifications</i>
Moray Road Children's Playground (UC venue)	20 February 97 - 30 November 97	Closure for improvement works
Tin Hau Temple Road Park (UC venue)	1 June 97 - 31 March 98	Partial closure for slope works
Wan Tsui Lane Sitting-out Area (UC venue)	1 June 97 - 30 June 99	Partial closure for construction of a footbridge
Hong Kong Stadium (UC venue)	14 April 97 - 7 June 97	Closure of grass pitch for maintenance
Wo Yi Hop Road Sports Ground (RC venue)	1 June 97 - 31 August 97	Closure for improvement works
Hin Tin Playground (RC venue)	1 June 97 - 30 June 97	Closure for maintenance
Tsuen Wan Riviera Park (RC venue)	1 June 97 - 31 July 97	Closure of grass pitch for maintenance

Public Hospital Intensive Care Units

15. **DR HUANG CHEN-YA** asked (in Chinese): *Is the Government aware of the following data in respect of intensive care units (general and specialist services) in public hospitals:*

- (a) *the respective number of beds in each of these units and the number of patients admitted into these units in each of the past three years;*
- (b) *the establishment and strength of medical practitioners and nursing staff in each of these units respectively;*
- (c) *the year of service of the electronic monitoring system in each of these units, and*
- (d) *which of these units are not provided with separate offices and storerooms?*

SECRETARY FOR HEALTH AND WELFARE (in Chinese): Mr President, the number of general intensive care beds in the last two years and the staffing position of these units as at end of March 1996 are summarized at Annex A. Similar information on other types of intensive care beds such as those in coronary care units, neonatal care units, special care baby units and paediatric intensive care units is not readily available and is being collated. Since the computer system in the Hospital Authority captures statistics covering general as well as other types of intensive care beds, the total number of patients admitted into all these units is provided at Annex B.

The staffing level of intensive care units will vary according to the service scope, delineated role and mix of facilities available at individual hospitals. While the expected life span of electronic monitoring equipment is seven to 10 years, most of such equipment being used at the intensive care units of public hospitals have been in service for less than seven years. The need for new and

replacement monitoring equipment will be reviewed by each hospital in the context of its annual planning. All public hospitals with designated intensive care units are provided with separate offices, storerooms or storage facilities.

Annex A

General Intensive Care Beds and Staffing Position

<i>Hospital*</i>	<i>ICU beds as at end of 3/1995</i>	<i>ICU beds as at end of 3/1996</i>	<i>Doctors as at end of 3/1996</i>	<i>Nurses as at end of 3/1996</i>
QMH	16	16	10	64
PYNEH	8	8	4	33
RH	4	4	1.75	19
GH	16	20	5	49
QEH	16	18	12	71
KWH	16	16	6	50.5
UCH	13	14	6	53
PMH	12	14	6	51
CMC	8	8	4.5	31
YCH	6	8	5	35.5
PWH	14	14	12	80
TWH	9	10	6	42

*QMH	:	Queen Mary Hospital
PYNEH	:	Pamela Youde Nethersole Eastern Hospital
RH	:	Ruttonjee Hospital
GH	:	Grantham Hospital
QEH	:	Queen Elizabeth Hospital
KWH	:	Kwong Wah Hospital
UCH	:	United Christian Hospital
PMH	:	Princess Margaret Hospital
CMC	:	Caritas Medical Centre

YCH	:	Yan Chai Hospital
PWH	:	Prince of Wales Hospital
TWH	:	Tung Wah Hospital

Annex B

Patients Admitted into All Types of Intensive Care Beds

<i>Hospital</i>	<i>Patients Admitted in 1994/95*</i>	<i>Patients Admitted in 1995/96*</i>
QMH	791	1 040
PYNEH	305	560
RH	28	232
GH	776	890
QEH	555	673
KWH	953	1 304
UCH	1 229	1 161
PMH	460	592
CMC	392	488
YCH	159	381
PWH	1 055	1 104
TWH	374	411

* include patients admitted into other types of intensive care beds such as those in coronary care units, neonatal care units, special care baby units and paediatric intensive care units.

Stock and Shares Transacted with "Legal Tender in Cash"

16. **MR CHIM PUI-CHUNG** asked (in Chinese): *Does the Government know:*

- (a) *whether all dealings in the stock market transacted with "legal tender in cash" would not be considered by the Securities and Futures Commission as manipulating the market;*

- (b) *of the currencies regarded as "legal tender in cash" and*
- (c) *whether there are legislation or regulations which allow dealings in stock and shares not being transacted with "legal tender in cash"?*

SECRETARY FOR FINANCIAL SERVICES (in Chinese): Mr President,

(a)&(c)

The Securities and Futures Commission (SFC) has advised that the term "legal tender in cash" is a colloquial term and has no legal definition. It is normally used in general discussion to express the view that transactions should be honest and not fraudulent. Sections 135 and 136 of the Securities Ordinance, Cap. 333, prohibit the intentional creation of false and misleading appearances of active trading in the Stock Exchange and the use of fraudulent devices in the purchase and sale of securities. The SFC has further advised that all dealings in the stock market which fully comply with the Rules of the Stock Exchange of Hong Kong and all relevant laws are recognized by the SFC as lawful transactions.

- (b) The SFC considers acceptable any currency which may be legally used in Hong Kong for the purpose of payment.

Dissemination of Information by the Information Services Department

17. **MR MICHAEL HO** asked (in Chinese): *Regarding the unfounded press release issued by the Information Services Department on 21 January this year concerning the Hospital Authority, will the Government inform this Council of:*

- (a) *the ranking of officers in the Information Services Department who are usually responsible for issuing "press releases" and "service items";*
- (b) *how the mechanism monitoring the dissemination of information by*

the Information Services Department operates;

- (c) whether, in order to avoid mistakes and omissions during the process of information dissemination which could cause public alarm, the Information Services Department has arranged for reports on certain sensitive or important events or news to be examined by higher ranking officers before their release; and*
- (d) whether it has investigated the above-mentioned incident; if so, when and in what ways the investigation results will be published?*

SECRETARY FOR HOME AFFAIRS (in Chinese): Mr President, a press release was issued on behalf of the Hospital Authority through the facsimile network of the Information Services Department on 21 January 1997, announcing the death of a member of the Hospital Authority Board. The release reached the media accurately and in good time.

To facilitate the work of the media, the department sends out at the end of each day an index through its computer network listing the headings of press releases issued earlier so that editors can confirm if all items have been received. A mistake was made in the index of 21 January 1997 with regard to the heading of the press release in question. Subsequently, a correction was made over the same network and a letter of apology was sent to the Chairman of the Hospital Authority.

Although those indices are not meant for publication but as a checklist for editors, experienced officers, usually at Senior Information Officers level, are assigned to check them before dissemination.

I can assure members that every effort is made to ensure the accuracy of all press releases issued through the department for publication, be they government releases or announcements issued as service items. All copies are processed by experienced officers on behalf of other institutions. They are checked by proof-readers and cross checked by editors before release. Particularly sensitive and important press releases are referred to more senior officers, up to and including the Director.

40-year Mortgage Loans for Properties

18. **MR SIN CHUNG-KAI** asked (in Chinese): *It is reported that some banks are offering 40-year mortgage loans to property buyers. In this connection, will the Government inform this Council whether:*

- (a) the Government has laid down any guidelines on mortgage repayment terms offered by banks to property buyers; if so, of the longest mortgage repayment term at present; if not, of the longest mortgage repayment terms offered by banks in each of the past three years;*
- (b) it has information on the longest mortgage repayment terms offered by banks to property buyers in countries like Britain, the United States and Japan;*
- (c) the offering of a 40-year mortgage repayment term will increase the risks of banks; if so, what the risks are; if not, why not; and*
- (d) the offering of a 40-year mortgage repayment term will give rise to more speculations on newly completed flats?*

SECRETARY FOR FINANCIAL SERVICES (in Chinese): Mr President,

- (a) There is no guideline issued by the Hong Kong Monetary Authority on the term (that is, duration) of mortgage loans in Hong Kong. In the past three years, most banks offered mortgage loans with a maximum term of 20 to 25 years. The recent offer of 40-year mortgage loans for a specific new property development by an individual bank is an isolated case so far.

Banks generally set a cap, ranging from 30 to 40 years in most cases, on the sum of the loan term and the age of the property in question. For example, if the bank sets the cap at 40, it will normally offer a maximum of a 25-year mortgage to an applicant if the property is 15 years old. Most banks also take into account the age of the

applicant in determining the maximum mortgage term. Normally, the loan term will not extend beyond the retirement age of the applicant.

- (b) Our understanding is that the bank mortgage repayment terms offered in the United Kingdom, United States and Japan mostly fall within the range of 25 to 40 years. Individual non-bank institutions are understood to have offered mortgage terms of 45 years or longer.
- (c) All other things being equal, the risk of a loan will in theory increase with the length of the term. More uncertainties will come into play during the life of a longer term mortgage loan, for example the borrower's financial position may change, interest rates may be subject to wider fluctuation, maturity mismatch may be more significant, and so on.
- (d) It is unlikely that the offer of a 40-year mortgage repayment term will give rise to more speculations on newly completed flats. Borrowers who apply for a 40-year mortgage loan tend to be genuine home-buyers who cannot afford a large amount of monthly repayment in the early life of the mortgage loan. In general, speculators are believed to be less dependent on long-term bank financing.

GOVERNMENT BILLS

First Reading of Bills

NURSES REGISTRATION (AMENDMENT) BILL 1997

MIDWIVES REGISTRATION (AMENDMENT) BILL 1997

IMMIGRATION (AMENDMENT) BILL 1997

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

Second Reading of Bills

NURSES REGISTRATION (AMENDMENT) BILL 1997

THE SECRETARY FOR HEALTH AND WELFARE to move the Second Reading of: "A Bill to amend the Nurses Registration Ordinance."

SECRETARY FOR HEALTH AND WELFARE (in Cantonese): Mr President, I move that the Nurses Registration (Amendment) Bill 1997 be read the Second time.

The Nurses Registration Ordinance (the Ordinance) was enacted in 1961 to provide a legislative framework for the registration of nurses and the practice of nursing in Hong Kong. Though various provisions in the Ordinance, such as the restriction on the use of the title "nurse" and the introduction of a practising certificate, have been amended in the past two years, certain legislative provisions of the Ordinance have to be amended to meet current day needs. The proposals of the Bill cover matters including the naming, the composition and the operation of the Nursing Board, as well as matters concerning the disciplinary power of the Board.

The first proposal of the Bill is to rename the "Nursing Board" as the "Nursing Council". This is line with statutory bodies of other medical and health care professionals, which are called "councils". Another proposal of the Bill is to expand the membership of the present Board. Currently, the Board comprises 17 members, most of whom are appointed by the Governor. In order to broaden its representation, we propose to increase the number of lay members from one to two, and six members shall be elected from all registered and enrolled nurses. To encourage a greater involvement of the profession in the affairs of the Board, we also propose to select two members from a pool of persons consisting of one person nominated by each of the tertiary institutions which have a nursing programme. In addition, the number of appointed registered nurses should be reduced from 10 to six, and the appointment of State registered nurses of the United Kingdom to the Board will be cancelled. The above changes will bring the number of members on the Nursing Council of Hong Kong to 20.

The existing Nursing Registration Ordinance does not provide for limited registration. In order to enable nurses who have engaged in the training of nurses overseas and those trained outside Hong Kong to practise nursing while

undertaking short term post-registration training courses in Hong Kong, we propose to provide for this registration arrangement.

Another proposal of this Bill is related to the existing penalties. In order to maintain the deterrent effect and reflect better the seriousness of the offences, we propose to increase the level of fines and imprisonment prescribed in the Ordinance.

Under the existing Ordinance, the regulation-making power is vested with the Governor in Council. In order to encourage greater involvement of the profession in its own affairs, we propose that the power to make regulations for registration and disciplinary procedures should be transferred to the Secretary for Health and Welfare and the Nursing Council, subject to the approval of the Secretary for Health and Welfare. The power to make regulations on duties of the Legal Adviser and the Secretary to the Nursing Council should be transferred to the Secretary for Health and Welfare. The Governor in Council will continue to make regulations related to fees and charges.

Thank you, Mr President.

Question on the motion on the Second Reading of the Bill proposed.

Debate on the motion adjourned and Bill referred to the House Committee pursuant to Standing Order 42(3A).

MIDWIVES REGISTRATION (AMENDMENT) BILL 1997

THE SECRETARY FOR HEALTH AND WELFARE to move the Second Reading of: "A Bill to amend the Midwives Registration Ordinance."

She said (in Cantonese): Mr President, I move that the Midwives Registration (Amendment) Bill 1997 be read the Second time.

The Midwives Registration Ordinance (the Ordinance) was enacted in 1960 to provide a legislative framework for the registration of midwives and the practice of midwifery in Hong Kong. Certain legislative provisions of the Ordinance are outdated as a result of changes in circumstances over time. The proposals of the Bill cover matters including the English name, composition and

disciplinary power of the Midwives Board of Hong Kong.

One of the proposals of the Bill is to expand the composition of membership of the Midwives Council of Hong Kong. The present Board comprises 14 members. Currently, only the midwives training schools established in private or previously subvented hospitals are represented. In order to broaden its representation, we propose to increase the number of members of the Council to 19 to include the representation for all hospitals (including public hospitals) with training schools for midwives and to increase the number of lay members from one to two.

Another proposal is related to the current level of fines and length of imprisonment. In order to maintain the deterrent effect and reflect the seriousness of the offences, we propose to increase the level of fines and the length of imprisonment. Meanwhile, we also propose to provide penalties where a person makes use of any certificate of registration with the intent to deceive. In order to maintain an up-to-date record, we propose to require registered midwives to obtain practising certificates before they can practise midwifery in Hong Kong. We also propose that an applicant for a practising certificate should supply information on any criminal conviction that is punishable by imprisonment. This is in line with the practice of other medical and related professionals.

The Midwives Registration Ordinance prohibits persons without suitable qualifications from attending a woman in childbirth for profit-making. We propose to amend relevant provisions to make it clear that only registered medical practitioners or registered midwives can attend a woman in childbirth. The only exceptions would be in the case of an emergency or when the person attending the woman in childbirth is undergoing training with a view to becoming a registered medical practitioner or a registered midwife, and is under the direction and personal supervision of a registered medical practitioner or a registered midwife.

At present, the regulation-making power is vested with the Governor in Council under the Ordinance. In order to encourage a greater involvement of the profession in its own affairs, we propose that the power to make regulations for registration and disciplinary procedures should be transferred to the Secretary for Health and Welfare and the Midwives Council, subject to the approval of the Secretary for Health and Welfare. The power to make regulations prescribing

for the functions of the Legal Adviser and the Secretary to the Council should be transferred to the Secretary for Health and Welfare. The Governor in Council will continue to have the power to make regulations in relation to fees.

Thank you, Mr President.

Question on the motion on the Second Reading of the Bill proposed.

Debate on the motion adjourned and Bill referred to the House Committee pursuant to Standing Order 42(3A).

IMMIGRATION (AMENDMENT) BILL 1997

THE SECRETARY FOR SECURITY to move the Second Reading of: "A Bill to amend the Immigration Ordinance."

SECRETARY FOR SECURITY: Mr President, I move the Second Reading of the Immigration (Amendment) Bill 1997. The Bill seeks to remove the right to land of resident British citizens, to grant them the unconditional stay status in lieu, and to abolish the procedures applicable only to the removal or deportation of British citizens.

The immigration status of British citizens in Hong Kong is at present different from that of other foreign nationals. This reflects the special relationship between Hong Kong and the United Kingdom. As this special relationship will change on 1 July 1997, it is natural to expect that there will be a change in the immigration status of British citizens. British citizens themselves, as well as their employers, have also expressed concern about such changes; in particular, they would wish such changes to be clarified, decided, and put in place in advance of 1 July 1997, so that those affected would be given a reasonable, but not overly long period within which they can make adjustments.

In November 1996, we consulted the public, including the British community in Hong Kong on the package of changes. Our proposals are based on three considerations:

- (i) Firstly, any change should put British citizens broadly on par with, but not in a disadvantaged position vis-à-vis other foreign nationals;
- (ii) Secondly, reference should be made to how Hong Kong residents will be treated by the United Kingdom; and
- (iii) Thirdly, there should be transitional arrangements to minimize the disruption caused to British citizens in Hong Kong.

Briefly, we proposed, firstly, that with effect from the implementation date, British citizens coming to Hong Kong should have conditions imposed on their stay. Those coming for visits would enjoy a visa-free period of six months and be given visitor conditions, that is, they cannot work, study or take up long-term residence in Hong Kong. British citizens coming to Hong Kong for employment, to establish or join in a business, to study or for settlement would need to apply for the appropriate visa. Secondly, the right to land status now enjoyed only by British citizens who have resided in Hong Kong continuously for seven years or more should be abolished and replaced by the unconditional stay status. Thirdly, British citizens should no longer be subject to special removal and deportation arrangements. Fourthly, we propose transitional arrangements whereby British citizens already residing in Hong Kong but are subject to a limit of stay should be able to continue to reside in Hong Kong without conditions until their limit of stay expires, after which the current policy applicable to foreign nationals should be used to assess their applications for extension of stay at that time. Finally, we also proposed that these changes should be implemented from a common date in advance of the change of sovereignty so as to allow time for those persons affected to adjust to the new arrangements.

Imposing conditions of stay on British citizens and requiring those who wish to come to Hong Kong to work, study or settle does not need legislative changes. At present, British citizens are exempted from conditions of stay and visa requirement by the Director of Immigration. By simply withdrawing this exemption administratively, the privileged treatment of British citizens in this respect will be removed. Abolishing the right to land of British citizens,

replacing this right by unconditional stay and deleting the special removal and deportation arrangements of British citizens do require legislative changes, as the right to land and the special removal and deportation arrangements are provided for by law. To avoid confusion, however, we propose that both legislative and administrative changes should be implemented from a common date.

The consultation period lasted about two months. We put our proposals to the Manpower Panel of this Council, the British Chamber of Commerce, the General Chamber of Commerce, civil servants and other British citizen groups. We are also grateful to the British Trade Commission, which looks after the present and future interests of British nationals in Hong Kong, for helping with reaching out to British citizens from different walks of life.

We received considerable response on the proposed changes during the consultation period. Most of the respondents from the British community accepted the need for such changes. The majority of their concerns centred around the implementation of actual changes and adjustments which British citizens living here would face. To address their concerns, we have fine-tuned the transitional arrangements to avoid disruption to their normal life in Hong Kong as much as possible.

The majority view of the British community, including their employers, is that these inevitable changes should be implemented well before 1 July 1997, so that they would have sufficient time to adjust to the changes before the transfer of sovereignty. We appreciated the need for the required legislation to be scrutinized carefully by this Council. We have therefore taken action to finalize our proposals and put forward the Immigration (Amendment) Bill 1997 as soon as we possibly could. We hope that this Council would give priority to this Bill, and have it enacted before 1 April 1997 so that the changes can be implemented on that date — a date which we believe strikes the right balance.

We believe that the Bill, coupled with the administrative changes we proposed, is the simplest and the most precise way to achieve our objective of removing the privileged immigration status of British citizens. We do not think that it is desirable to complicate the matter by introducing amendments to the Immigration Ordinance which will fundamentally change our approach to immigration control in Hong Kong. We hope that this Council would focus attention on the Immigration (Amendment) Bill 1997 first, since the privileged immigration status of British citizens is our more immediate concern. The

Immigration (Amendment) (No. 2) Bill 1997, which I understand will be introduced later today by the Honourable Miss CHAN Yuen-han, affects a different and much bigger issue of the Director of Immigration's discretion, which forms the fundamental basis of our long-established system of immigration control. There may be a time and a place to debate the wider issue of the fundamental basis of our immigration policy. But given the need to remove the privileged immigration status of British citizens well before the change of sovereignty, I hope Honourable Members would appreciate the uncertainties that would arise if the implementation of proposals, which have been accepted by the majority of those affected, were to be delayed by being drawn into a more complicated debate.

Thank you, Mr President.

Question on the motion on the Second Reading of the Bill proposed.

Debate on the motion adjourned and Bill referred to the House Committee pursuant to Standing Order 42(3A).

MEMBERS' MOTIONS

PRESIDENT (in Cantonese): Two non-binding motions. I have accepted the recommendations of the House Committee as to the time limits on the speeches for the motion debates and Members were informed by circular on 28 January. The movers of the motions will each have 15 minutes for their speeches including their replies, and another five minutes to speak on the proposed amendments, if any. Other Members, including the movers of the amendments, will each 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.

EMPLOYEES' COMPENSATION SYSTEM

MR LEE CHEUK-YAN to move the following motion:

"That this Council urges the Government to carry out a comprehensive review of the employees' compensation system in Hong Kong so as to achieve the following policy objectives:

- (a) to ensure that the family members of those who suffer injuries or die in work-related accidents are given a reasonable level of compensation, by amending the Employees' Compensation Ordinance;
- (b) to establish a central employees' compensation fund so that the victims of industrial accidents can have more comprehensive protection;
- (c) to set up a work-related injuries adjudication tribunal to settle relevant disputes in an expeditious, inexpensive and simple manner; and
- (d) to improve the existing assistance system for victims of work-related injuries so that they can be given adequate assistance in circumstances where employers have not taken out insurance and are unable to pay compensation."

MR LEE CHEUK-YAN (in Cantonese): Mr President, I move the motion standing in my name on the Order Paper.

Mr President, Mencius saith, "The sense of pity is in everyone."

Hong Kong is a community full of compassion. The plight of the families of victims in work-related accidents in the social services columns of newspapers never fails to draw donations from well-doers in Hong Kong. When tragedies happen, such as last year's Garley Building fire and the karaoke fire, the whole community moans in grief. Today's motion merely seeks to give manifestation to this compassion and pity that is inside the hearts of individual members of our society, so that such virtues can be incorporated into our institutions, in the form of a comprehensive employees' compensation system.

In 1996, there were 59 465 work-related accidents, of which 278 were fatal. The fate of employees involved in work-related accidents may be different. Some suffered from only minor injuries, while others had to stay in hospital for treatment. Some had permanent partial incapacity and faced an uncertain future as they could no longer make a living with their skills and were forced to change jobs. Some who suffered from permanent incapacity could no longer work and

lost their dignity as a human being. Some were maimed or even lapsed into a vegetative state, and of course, some lost their lives.

Mr President, when the Governor boasts that the success of our economy has surpassed that of Britain or even America, have we ever thought of the suffering faced by the victims of work-related injuries who can no longer work, or the sorrow and dread for the future felt by the surviving widows and orphans? To all these people, our existing employees' compensation system is like a torn thin blanket which is beyond further mending and offers no protection whatsoever against the cold bitterness that the future holds. The present motion seeks to sew in a thicker layer to this blanket by offering a more reasonable level of compensation to those affected by work-related accidents, so that they can be financially secure for a longer time, and to ensure that compensation will be given out promptly and additional assistance extended to those who are in dire situation. The "working class" has contributed much to the prosperity of the territory. However, instead of endeavouring to improve industrial safety, the Government puts a cap on the amount of compensation to which employees who suffer injuries or even die in work-related accidents are entitled.

The four points advocated in my motion aim at giving effect to the objectives mentioned above. I will explain in details these four proposals put forward by the Hong Kong Confederation of Trade Unions (HKCTU).

Firstly, the Employees' Compensation Ordinance should be amended to ensure that family members of those workers who suffer injuries or die in work-related accidents are given a reasonable level of compensation.

Under the existing legislation, the amount of compensation for work-related death and permanent incapacity is calculated according to a three-tier scale based on the age and monthly earnings of the employee concerned as provided in the Employees' Compensation Ordinance. In fatal cases, the amount of compensation payable is equal to seven years' earnings if the deceased employee is under 40 years of age, five years' earnings if he or she is aged between 40 and 56, and three years' earnings for employees over 56 years of age. Thus the amounts of the compensation range from three to seven years' earnings of the deceased employee. In cases of incapacity, the compensation for permanent incapacity amounts to four to eight years' earnings of the employee concerned. To put it simply, the younger the victim is, the more the compensation will be. Since its implementation in 1980, the existing "three-tier

compensation scale" has undergone no major amendments. The ceiling of seven years' earnings has been in force since the said year. However, the economy of Hong Kong has seen a substantial growth in real terms within the same period. Hence, the HKCTU proposes that the Government should revamp the whole compensation system to bring about material improvements so as to ensure a more reasonable level of compensation for victims of work-related accidents and their families.

The levels of compensation for work-related injuries in Hong Kong are obviously too low. Taking Singapore as an example, its compensation system is similar to that of Hong Kong. However, the maximum compensation amount payable for work-related deaths is nine years' earnings of the employee concerned. We should also bear in mind that Singapore has in place a central provident fund system.

The HKCTU proposes to increase the amount of compensation payable by an employer in cases of work-related death or permanent incapacity. The details are as follows:

- (1) To change the age-based "three-tier" scale to "five-tiers", with the maximum compensation amount for fatal cases increased from seven years' earnings to 13 years' earnings of the employee concerned, and for permanent incapacity cases increased from eight years' earnings to 14 years';
- (2) To raise the ceiling of monthly earnings for calculating compensation amounts from \$18,000, which is lower than the ceiling provided under the Employment Ordinance, to \$25,000;
- (3) To do away with the different amounts of compensation payable to the families members concerned who are wholly dependent or partially dependent on the earnings of employees who die in work-related accidents;
- (4) To provide that employers shall be responsible for the funeral expenses of the deceased, up to the limit of \$50,000; and

- (5) To provide that before any compensation could be paid out, employers shall advance part of the compensation amount to the dependants of the deceased by instalments.

Let's look at an example. Under the existing legislation, if an employee who is under 40 years old dies in a work-related accident, his dependants are entitled to a maximum compensation amount equivalent to seven years' earnings of the employee. What will happen if this victim is just in his thirties and is survived by one or two children about four to five years old? How can the seven years' earnings see them through to their adulthood? As to cases of permanent total incapacity, the family of a victim who is under 40 years of age is only entitled to a compensation amount equivalent to eight years' earnings under the existing legislation. How can such an amount meet the living expenses for the rest of his life? Employees' compensation is not their "welfare"; it is compensation for injuries they sustained in work-related accidents. For this reason, the law should be relaxed in this respect to care for these hardworking "innocent victims" in our society.

As for compensation in fatal cases, the surviving family members may not be able to get maximum compensation as the final sum would depend on how financially dependent the family is on the deceased. This method not only drastically reduces the amount of compensation the dependants get, but also makes the calculation very complicated and may give rise to disputes easily. Let's look at a case that can illustrate this point clearly. In the 1993 "Cage Lift" accident in North Point, one of the 12 persons killed was an 18 year old worker on a summer job. As his family was not financially dependent on him at that time, they only got \$160,000 as compensation. Is a human life just worth \$160,000?

Hence, the existing legislation must be revised accordingly, so that the amount of compensation payable would no longer be calculated according to the level of dependency.

As for the funeral expenses of \$50,000, we propose that it should be paid by the employer to the family of the worker killed in work-related accidents. We should bear in mind that under the existing legislation, the employer does not have to pay a dime towards the funeral expenses unless the deceased employee has no family. The family of the deceased has to bear all the expenses while the employer needs to pay nothing at all. To the surviving family members, this is misfortune coming on the neck of another.

As to our proposal for advance payment of compensation, it stems from the fact that at present, the dependants usually have to wait for a year or so before any compensation can be paid out and during that period, they can get nothing at all. We hope that with this arrangement, the livelihood of the dependants during that period can be taken care of. No extra burden will be imposed on the employer as any money that is paid out as provisional compensation can be deducted from the final compensation.

The second proposal of the HKCTU is to set up a central employees' compensation fund so that victims of work-related accidents can have more comprehensive protection.

As a matter of fact, this proposal has already been endorsed by this Council. On 3 November 1993, the Honourable Mr LAU Chin-shek, Chairman of the HKCTU, moved a motion "urging the Government to set up a central compensation fund for employees". The motion was unanimously endorsed by this Council. However, the Government has never studied the proposal.

The objective of establishing a central compensation fund for employees which operates like a central insurance system is to bring all the work in relation to labour insurance, such as its administration, the collection of premium and payment of compensation, under one central fund management organisation, instead of leaving them to individual insurance companies.

Roughly speaking, the proposal has the following advantages:

Firstly, it rectifies the existing erroneous situation where the provision of labour insurance and industrial safety are treated as totally independent concepts. As it will be stipulated that the central compensation fund for employees will levy premiums for labour insurance according to the safety records of various industries and organizations, employers will pay more attention to industrial safety.

Secondly, a centralized insurance fund can effectively monitor the employers' compliance with insurance requirements and ensure that situations where no insurance companies are willing to provide coverage will not arise. In this way, the number of cases in which employers are prosecuted for failing to take out insurance for their employees, currently standing at more than 700 cases a year, can be greatly reduced. In turn, effective protection can be assured for

employees who are injured or die in work-related accidents.

Thirdly, a central compensation fund for employees will greatly reduce the commission and administrative expenses for taking out insurance. On the one hand, the costs for employers taking out labour insurance can be reduced. On the other hand, the compensation for employees can be increased. It will bring benefits to both employers and employees. In fact, the total amount of labour insurance premium stands at \$2 billion at present, but the compensation payout totals less than \$1 billion. Most of the premium is not actually paid out to the victims. Instead, it is taken up by the insurance companies for re-insurance, payment of commission, administrative expenses and so on.

Fourthly, a centralized compensation fund will streamline the existing procedures for processing compensation claims by speeding up the vetting and assessment process for claims made by employees. To say the least, it could prevent deliberate procrastination of some insurance companies in making compensation payments.

The third proposal of the HKCTU is to set up a work-related injuries adjudication tribunal to settle relevant disputes in an expeditious, inexpensive and simple manner.

It is tragic enough to fall victim to work-related accidents, but the injured workers are forced into even deeper misery as they are often denied prompt payment of the statutory compensation they are rightfully entitled to for various reasons. Some employers do not admit their employee status, some say that their injuries are not work-related, and others dispute on the calculation of their earnings. The only way to resolve these disputes is to go to court, which means a long wait for the employees who, understandably, are thus pushed into deeper plight. According to the statistics of the Legal Aid Department, there were more than 1 200 cases of legal aid application involving employees' compensation disputes in 1995. We can see that many of these disputes have to be settled by court.

Hence, we propose the setting up of a work-related injuries adjudication tribunal, which is similar to the Labour Tribunal set up in 1973 for the resolution of labour disputes, so that these disputes can be settled in an expeditious, inexpensive and simple manner, and the victims can get their compensation promptly to help them out of their plight.

Lastly, the HKCTU urges the Government to improve the existing assistance system for victims of work-related injuries so that they can be given adequate assistance in circumstances where employers have not taken out insurance and are unable to pay compensation.

As regards the existing system, at present we have a loan fund which provides loans of up to \$15,000 for victims of work-related accidents. How long can \$15,000 last? Why cannot the limit of this interest-free loan be increased? We hope that the limit of this interest-free loan will be raised as soon as possible to ensure that the victims can maintain their original standard of living before their compensation is paid out. Besides, the Government will have to monitor the balance of the employees' compensation fund to ensure that it can meet the claims.

Mr President, I so submit, and beg to move.

Thank you, Mr President.

Question on the motion proposed.

PRESIDENT (in Cantonese): Mr CHAN Kam-lam has given notice to move an amendment to this motion. His amendment has been printed on the Order Paper and circularized to Members. I propose that the motion and the amendment be debated together in a joint debate.

Council shall debate the motion and the amendment together in a joint debate. I now call on Mr CHAN Kam-lam to speak and to move his amendment. After I have proposed the question on the amendment, Members may express their views on the motion and the amendment.

MR CHAN KAM-LAM to move the following amendment to Mr LEE CHEUK-YAN'S motion:

"To delete "carry out a" and substitute with "make"; to delete "review of" and substitute with "improvement to"; to delete "so as to achieve the following policy objectives" and substitute with "which should include the following"; to delete "to ensure that the family members of those who suffer injuries or die in work-related accidents are given a reasonable level of compensation, by amending the Employees' Compensation Ordinance" and

substitute with "to expeditiously implement the recommendations of the Labour Advisory Board regarding amendments to the Employees' Compensation Ordinance"; to add "and their family members" after "so that the victims of industrial accidents"; to delete "to set up a work-related injuries adjudication tribunal to settle relevant disputes in an expeditious, inexpensive and simple manner" and substitute with "to streamline the existing procedures in respect of compensation claims for work-related injuries".

MR CHAN KAM-LAM (in Cantonese): Mr President, I move that the Honourable LEE Cheuk-yan's motion be amended as set out under my name on the Order Paper.

The wording of Mr LEE Cheuk-yan's present motion appears to be neutral. It merely calls on the Government to review the existing employees' compensation system.

Although the Secretary for Education and Manpower has not yet spoken, I know for certain that the Government will reply that any amendment has to be discussed by the Labour Advisory Board (LAB) first. As such, I am not going to comment on the specific proposals made by Mr LEE Cheuk-yan. I would only like to point out one thing. According to Mr LEE Cheuk-yan, the employees' compensation system has not undergone any substantial improvement since its implementation in 1980. However, there have been adjustments to the ceiling for monthly earnings for the purpose of calculating the amounts of compensation payable, such as the present ceiling of \$18,000 which has been in effect since early 1996.

By introducing an amendment to the first point of Mr LEE Cheuk-yan's motion, I hope the Government will no longer take the LAB as a "protective shield". As my proposed amendment has already been discussed and supported by the LAB, I believe the Government should be under no pretext to defer its implementation.

First of all, under the existing Employees' Compensation Ordinance (ECO), only dependants of an employee who dies in a work-related accident can claim compensation. If the deceased employee is survived by no dependants, his employer does not have to pay any compensation at all. As to who are the

dependants, this has to be determined by the court. Moreover, it often takes quite a long time to complete the procedure for making a claim. Also, no matter how close the relationship is, members of the family of the deceased employee who are not dependent upon his earnings are not entitled to compensation, which is very harsh and unreasonable. As such, I am of the view that the beneficiary of employee's compensation should be amended from the dependants of the deceased to members of the family of the deceased. The LAB has in fact put forward a series of proposals on the definition of the term "members of the family" and the proportions of compensation payable to family members of different extents of kinship to the deceased. These proposals are also in line with the provisions of international labour conventions. I hope that the Government will introduce amendments to the ECO as soon as possible so that Members of this Council will have the opportunity to further deliberate on the details of the proposals.

Secondly, under the present arrangement, claims for compensation can only be determined by the court. As disputes always arise from who the dependants are and the extent to which the deceased employee's dependants are dependent upon his earnings, it takes almost two years to recover compensation in many cases. To some family members who have lost their breadwinner all of a sudden, having to wait for two years pending the ruling of the court is far too long. Moreover, even if a ruling is made, it is still possible that the employer of the deceased employee does not pay compensation on time. This is very inhumane to the family of the deceased. Therefore, I support the proposals put forward by the LAB and Mr LEE Cheuk-yan which require the employer of the deceased to make advanced payment on a monthly basis to the beneficiary of the employee's compensation pending his recovery of the compensation payment. As the amount prepaid will be deducted from the actual amount of compensation payable, there is no need for the employer to worry about duplicated compensation.

With regard to the second point of the original motion, which urges the Government to establish a central compensation fund for employees, this has been a long-standing demand of trade unions. The Democratic Alliance for the Betterment of Hong Kong is also very supportive of it. However, I am afraid that government officials have all got a "central-phobia". They are scared out of their wits upon the mere mentioning of the word "central". I really do not want to see the abortion of the central compensation fund for employees in the same way as the Central Provident Fund.

In fact, the idea of a central employees' compensation system has been discussed for a long time. In a report on occupational safety and health published in 1991, the Government undertook to study the system. In 1993, this Council passed a motion on this matter. As the merits of a central compensation fund for employees were thoroughly discussed at that time, which have also been mentioned by Mr LEE just now, I am not going to repeat them. However, the Government has all along stressed that the existing employees' insurance system has been operating well and that central co-ordination may not necessarily bring about greater efficiency or cost-effectiveness. I will not feel surprised at all if the Secretary for Education and Manpower raises objection on the same grounds. However, I hope that the Government will seriously consider this option. I would like to make one point only. If the Government looks at the existing employees' compensation system merely from the perspective of insurance, it will fail to see the problems involved. The reason is very simple. As a matter of fact, insurance companies nowadays only regard employees' compensation as general insurance business. As a result, employees' insurance is often of no relevance to occupational safety. Let me illustrate this point by citing the following examples. Firstly, insurance companies do not offer something like the "no-claim bonus", as in the case for car insurance, to encourage employers to step up occupational safety. Secondly, for employees in high-risk trades, such as those who work on suspended working platforms, no insurance companies will offer any insurance at all, which in turn forces their employers to break the law. Thirdly, when a ruling is made in favour of the injured employee, the employer may default on his payment of compensation with the excuse that the insurance company has not made the payment yet. As a result, the injured employee suffers physically and mentally. Fourthly, over half of the premium is spent on administrative costs and commission for the agents. As a result, money is spent but occupational safety is not enhanced.

Finally, I would like to respond to Mr LEE Cheuk-yan's proposal to set up a work-related injuries adjudication tribunal. As far as I understand it, Mr LEE's intention is to settle relevant disputes in an expeditious, inexpensive and simple manner. However, as all disputes are subject to adjudication, I am afraid the above objectives may not be achieved. I will rather suggest the Government amend the ECO to empower the Commissioner for Labour to deal with simple, direct and non-controversial cases and to decide on the amounts of compensation payable by employers, so as to streamline the existing time-consuming and cumbersome judicial procedure and to ensure that the disputes can be resolved as soon as possible. Therefore, I hope that the Commissioner for Labour can be

vested with the power to make a ruling.

With these remarks, I beg to move.

Question on the amendment proposed.

MR MICHAEL HO (in Cantonese): Mr President, back in 1996, a number of serious industrial accidents took place, resulting in the death and injury of many workers. This Council has time and again held motion debates on industrial safety and is now scrutinizing the brand new Occupational Safety and Health Bill, the purpose of which is to extend the area covered by industrial safety to non-industrial trades.

Even if our legislation can provide better protection, industrial accidents are still bound to happen. Hence, there is a need to carry out a comprehensive review of the employees' compensation system of Hong Kong in the light of the present social situation.

The first objective of the Honourable LEE Cheuk-yan's motion is to amend the Employees' Compensation Ordinance (ECO) so as to ensure that family members of workers who suffer injuries or die in work-related accidents are given a reasonable level of compensation. For the time being, we will put aside the discussion on what "reasonable" means. The Democratic Party gives its support in this respect. As regards the Honourable CHAN Kam-lam's amendment which suggests that the recommendations of the Labour Advisory Board (LAB) regarding amendments to the ECO be implemented, we think this should be the minimal improvement.

We reckon some differences between the improvements suggested by the LAB and the provisions to be introduced by Mr LEE Cheuk-yan. There is a range between maximal and minimal improvements. If supporting Mr LEE Cheuk-yan's proposal for improvement represents the maximal end, supporting the proposal of the LAB will then represent the minimal end. Within this range, we would very much like to listen again to the opinions of the workers, employers and other sectors in pursuit of an equilibrium which will be reasonable or more reasonable to all. Hence, we do not want to throw our immediate support behind Mr CHAN Kam-lam's amendment at this moment because this would certainly mean the minimal improvement within that range. Of course, I am sure that the Government will point out again that the proposal of the LAB represents an agreement reached between the employers and the employees.

What I want to reiterate here is that the LAB is a consultative organization of the Government. The Democratic Party of course respects the LAB and will surely make reference to the amendments it proposes. However, we must not forget that this Council, and not anything else, is the legislature. It is no good telling us that what the LAB has laid down is infallible and nothing can be done to change it. The Legislative Council is not a rubber-stamp. Since the proposal requires introducing legislation which has to be scrutinized by the Legislative Council, we will give it due consideration before coming to a decision. So, I hereby state clearly that we will study the proposal carefully but no one should tell us that we cannot amend what the LAB has compromised. You have freedom of thought and freedom of speech but obviously, if you were to expect that the Legislative Council would be a rubber-stamp, you might have to wait until after 1 July before your expectation could realize.

The second suggestion of Mr LEE Cheuk-yan's motion is to establish a central employee's compensation fund. In fact, the Honourable LAU Chin-shek proposed a similar motion on 3 November 1993. Members belonging to the United Democrats of Hong Kong gave full support to the motion then. The position of the Democratic Party remains unchanged; that is, we are of the opinion that the existing fragmented insurance system should be changed to a central social security system so as to improve the present procedure for handling compensation as well as to speed up processing workers' claims for compensation.

The third suggestion of the motion is to set up a work-related injuries adjudication tribunal. The information provided by Mr LEE Cheuk-yan shows that he is proposing to establish a tribunal similar to the existing Labour Tribunal which will expedite the handling of disputes arising from employees' compensation. We do support the setting up of a work-related injuries adjudication tribunal to settle disputes in an expeditious, inexpensive and simple manner but we do not have high hope for it. We of course would like to see such cases settled by a tribunal of one kind or another. Thus, we are asking the Government to devote resources in this direction as soon as possible to study the proposal.

The Democratic Party supports the original motion which suggests that the existing assistance system for victims of work-related injuries be improved so that they can be given adequate assistance in circumstances where employers have not taken out insurance and are unable to pay the compensation. It will

generally take some time to process applications for employees' compensation. In the meantime, employees and their family members may be thrown into serious difficulties. In view of this, the Democratic Party once suggested the setting up of an industrial accident victims compensation fund which would not require applicants to undergo any means test. Such a fund would enable victims of industrial accidents and their family members to obtain provisional compensation immediately or within a short period before they are awarded employees' compensation. Once they receive compensation, the amount should be reimbursed.

Mr President, we will object to Mr CHAN Kam-lam's amendment today and support the original motion.

Thank you, Mr President.

MR LEUNG YIU-CHUNG (in Cantonese): Mr President, neither employers nor employees want to see the occurrence of industrial accidents. No matter you are employees, employers or the Government, you have to find ways to improve the local industrial safety measures to keep the number of unnecessary accidents to the minimum. The improvement to the compensation system is just a remedial measure after the occurrence of the accidents, and this actually will not make up for the physical and mental trauma suffered by the injured employees, and it is also impossible to bring back the precious lives of the employees who have died in work-related accidents. Nevertheless, after the occurrence of accidents, especially of unavoidable accidents, both the Government and the employers have the obligation to provide the victims with a reasonable level of subsidies and compensation. Both the Government and the employers have unshrinkable responsibilities in this aspect.

At present, the compensation on work-related injuries is obviously on the low side. For example, the maximum compensation which an employee who suffers from permanent total incapacity because of work-related accident can receive is equivalent to eight years of his earnings. How can such an amount of compensation sustain the future living of this employee and his family members? Is such a small amount of compensation fair to this victim of work-related injuries?

As what the Honourable LEE Cheuk-yan has mentioned, if you read

through the social service columns of the newspapers, you will always find reports on providing assistance to the victims of work-related injuries through charity funds and readers' donations. This is indeed a kind of good deed or a piece of good news in times of distress to the employees and their families who can receive the compensation or donations. However, if the existing compensation system is good enough, it is not necessary for us to rely on these donations. We also understand that even if we have such kind of additional assistance, actually only when the victim is injured or die in especially serious accidents can the victim or his family members of employees receive the assistance. Is it possible for those workers who are affected in the some 60 000 industrial accidents every year to solve their problem of living by relying merely on the assistance of these charity funds? If the Government can give due consideration to facts and face up the reality, it really has an inescapable responsibility to improve the existing assistance and compensation system as soon as possible. Therefore, the Government should immediately amend the legislation to increase the assistance and compensation comprehensively for victims of work-related injuries.

Mr LEE Cheuk-yan proposes to increase the amount of compensation considerably. It looks as if the labour sector is making excessive demands on the employers and imposing a heavy burden on them. However, I have to clarify that the purpose of his proposal is to put back what has been wrong in the past, so as to enable the victims of work-related accidents to obtain more reasonable compensation payments to which they are entitled. Also, this proposal will only slightly increase the cost to be borne by employers on labour insurance. This will not impose a heavy burden on them. I can see no justifications for employers to object to this proposal. I hope local employers understand that providing compensation to victims of accidents is not a kind of welfare. It is their responsibility. The cost of labour insurance in fact should be a cost items of employers.

In addition to the difficulties in their living and suffering from both physical and mental trauma, victims of the accidents have to deal with some unscrupulous employers who will delay payments of compensation intentionally, making their living even more difficult and miserable. The Neighbourhood and Workers Service Centre, the labour organization I am serving, has received many complaints from workers against unscrupulous employers who adopt delaying tactics in making compensation payment to the workers suffering from

work-related injuries. They usually delay making payment with the excuse that the insurance companies have not yet paid the money. Although there are now many laws to penalize the behaviour of these unscrupulous employers, we understand that these penalties are not strict enough to have any deterrent effect.

In fact, even if the victims can sue their employers successfully, how can their problems be solved? Who will offer a helping hand in times of their difficulties? Actually, this Council has already endorsed the Honourable LAU Chin-shek's motion in 1993 to set up a Central Employees Compensation Fund. I sincerely hope that the Government will re-consider this proposal which has already had Members' consensus for some years. Why has it not implemented the proposal up to this moment?

Lastly, I would like to talk about the Honourable CHAN Kam-lam's amendment. Mr CHAN requests the Government to expeditiously implement the recommendations of the Labour Advisory Board (LAB) regarding amendments to the Employees' Compensation Ordinance. It is believed the idea behind this amendment is the respect for the LAB's agreement or decision on labour relations. I, of course, would not go against the consensus reached by employers, employees and the Government on the labour issue. However, I think we should not ignore the reality and consider the decision of the LAB only. We should pay heed to practical problems. As a matter of fact, I understand that in the LAB, the proposals of employees are always neglected by employers, and therefore employees have no choice but to accept the proposals of employers. This is a pattern that has been repeated time and again in the LAB, and the decision made this time is no exception. Therefore, the proposals of the LAB are actually not a decision wholeheartedly supported by employees.

As a result, I think we should not blindly respect or accept and carry out the decision of the LAB. As a Member has mentioned, the Legislative Council is the legislature. Why must we be taken by the nose by such an advisory body and fail to have our own opinions, stance and ideas?

If this is the case, what is the purpose of having such a legislature? It is better to ask the LAB to make all decisions and there is no need for us to be here. For this reason, I hope Mr CHAN Kam-lam should not focus on respecting the decision of the LAB only. He should pay special attention to the reality and the present situation, support Mr LEE Cheuk-yan and withdraw his own amendment.

Thank you, Mr President.

MR FREDERICK FUNG (in Cantonese): Mr President, as at September 1996, 193 workers died of work-related injuries in Hong Kong and over 43 000 workers were injured at work. Of those who died at work, about one-third were employed in the construction industry, followed in number by those in the catering industry. These figures reflect that manual workers do not have the kind of occupational safety protection they are entitled to. Of course, the most fundamental solution to the problem is to promote occupational safety and improve the working environment and conditions of the labour. Nevertheless, I do not believe that accidents can be avoided altogether. Therefore, after the occurrence of an accident, not only should we inquire into the cause and course of event, we have to look into ways to prevent the accident from recurring. Another important task is to provide adequate compensation to victims of industrial accidents and their relatives, so that they do not have to suffer from tremendous hardship.

In fact, workers killed or injured in industrial accidents, as well as their relatives, are subjected to tremendous physical and mental agony. Yet, what is even more tormenting and deplorable is that they have to cope with financial hardship. If the injured or deceased worker is the major breadwinner of the family, the situation is even more desperate. In early 1993, the Association for Democracy and People's Livelihood (ADLP) requested the Government to replace the practice of taking out workers' compensation insurance policies from private insurance companies by setting up a unified system, with the Government acting as the insurer. In the Legislative Council motion debate held on 3 November of the same year, the ADLP also supported the establishment of a central employee compensation system. The motion was carried, and the Government was requested to present the findings of its study to the Council. However, so far the Government has not paid heed to the request. We are greatly disappointed and regretful about such a situation.

The existing industrial injuries compensation scheme is far from prefect. In particular, the meagre temporary loan provided to the injured workers and their relatives is capped at \$15,000. This sum of money is totally insufficient and cannot meet their pressing needs. Therefore, the ADLP thinks that the ceiling of the loan has to be raised to enable workers and their relatives to

maintain their original standard of living.

As regards the two other proposals put forward by Mr LEE Cheuk-yan, that is to conduct a comprehensive review of the Employees' Compensation Ordinance, as well as the criteria and level of compensation for various kinds of injuries and to establish a work-related injuries adjudication tribunal to settle all disputes relating to compensation, the ADLP supports them after careful examination. Let us take the compensation payable to a deceased worker as an example. The existing legislation provides that the maximum amount of compensation payable is equivalent to the 84 months' earnings of the worker. For the construction industry which has the highest number of industrial accidents, the medium monthly income in the third quarter of 1996 was \$10,000. In other words, the relatives of the deceased worker can only receive \$840,000 as compensation. This seems to be a great amount but is it really sufficient if the entire family is to depend on \$840,000 for their living?

As regards the procedures for claiming compensation for work-related injuries, the Employees' Compensation Division of the Labour Department will adjudicate on the amount of compensation six to eight weeks after the expiry of the injured worker's sick leave. However, at present, after a worker has been injured, he is often involved in disputes involving his employer's denial of having ever employed him or denial that he was actually injured at work, so that he cannot receive his entitled compensation at an opportune moment. Therefore, the ADLP agrees that a work-related injuries adjudication tribunal similar in nature to the Labour Tribunal should be set up to enable workers to receive compensation within a short time.

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

MR LAU CHIN-SHEK (in Cantonese): Mr President, before the debate, a clear-headed reporter told me that this motion is moved almost once every year. The motion today is moved by the Honourable LEE Cheuk-yan, and not me. I believe that, however, as long as the motion is not put into effect, we shall never give in. If the motion cannot be implemented, the situation of the injured workers will not be improved. I feel extremely sorry for their living and the influence on their families. I believe that the debate today is not a "political" one, but a "humanitarian" one.

Today, I am sharing with Honourable colleagues an authentic case. I hope that we can ponder the issue more from the viewpoint of victims of work-related injuries and their family members .

Construction workers live on daily wages and barely make ends meet. The case of Mr LEE is a typical example. He, a worker who took care of the odds and ends in construction sites, was the sole financial supporter of his five-member family and made a precarious living. Unfortunately, this sole breadwinner of the family fell victim of a fatal accident. In May last year, when he was working in the construction site of a Route 3 tunnel, a rock explosion was underway in the neighbouring tunnel and the rocks in the tunnel where he was working were shaken. A big piece of rock fell on him. Unable to escape in time, he was seriously injured and died later. Ah Yung, his wife, rushed to the hospital but it was too late! Ah Yung said mournfully, "My husband has left me not a single word but three little kids and a heavy financial burden."

With the three young children, Ah Yung fell into hopeless straits and she had to borrow tens of thousand dollars to pay for the funeral of her husband. With the assistance of labour unions and after fighting for many times, Mr LEE's employer finally agreed to take up the moral responsibility and gave Ah Yung a certain amount of dependant pension. After paying back the money she has borrowed, Ah Yung and her three children now live on Comprehensive Social Security Assistance. What worries Ah Yung more is that her husband died in his forties. According to the current laws, she can at most get compensation equivalent to five years' earnings of his late husband. The three sons of Ah Yung are 13, 11 and nine years old respectively. With only this compensation of five years' earnings, how can she go through these difficulties and poignancy with three small children?

Mr President, with these remarks, I hope that Honourable colleagues will cast a conscientious vote. Thank you!

MR CHOY KAN-PUI (in Cantonese): Mr President, over the past decade or so, our economy has been flourishing and our business sector prospering. Hong Kong has become a modernized commercial and industrial city. Nevertheless, our industrial safety record is one of the worst among other relatively affluent regions. At present, the number of casualties caused by industrial accidents is even higher than the figure 10 years ago.

Although up-surging casualties in the industrial sector are witnessed year after year, the current employees' compensation system has not been revised over the last decade. There are a lot of rooms waiting for our review and improvement. For instance, no substantial amendment has been made to the compensation system provided under the Employees' Compensation Ordinance since it was put in place in 1980s. Although our economy is flourishing, no relevant adjustment has been made to the compensation level. As a result, employees who have suffered from work-related injuries as well as their families cannot get reasonably compensated. The Government, apart from considering how to improve the compensation level, should also support the recommendations raised by the Labour Advisory Board (LAB). For instance, in addition to the normal legal proceedings, a more expeditious way of settling claims for compensation for the dead should be provided for indisputable cases. The compensation, in these cases, should be determined by the Commissioner for Labour. In doing so, the original legal proceedings which will last for 18 to 24 months can be reduced to seven to eight months and the family members of the victims can get the compensation payment to relieve their difficulties in a more efficient and speedy way. As most of the victims of industrial accidents are the breadwinners of their families, it is suggested that their spouses, once having their identities verified, should be paid monthly statutory compensation immediately by the employers until the Commissioner for Labour has determined the amount of statutory compensation payable. The aim of the LAB's recommendation is to provide the speediest and simplest way of paying out timely financial assistance to relieve the financial hardship of the victims' families who are suffering from the dual blows of losing their family members and their financial support.

Mr President, the setting up of a central employees' compensation fund will doubtless be a more effective way to provide a comprehensive protection to the victims of work-related injuries. A centrally-managed compensation fund for all work-related injuries and sickness will improve the drawbacks of scattered funds and duplicated systems. It will also play a more effective supervisory role to ensure that the employers have taken out insurance for their employees and avoid situations where employers find it hard to arrange insurance for their employees. In other words, this will reduce the operational costs and increase both efficiency and effectiveness. While the insurance premium can remain unchanged, the compensation level for the employees can be enhanced and all wage-earners can be protected under insurance against work-related injuries.

Mr President, when Hong Kong is faced with more than 50 000 occupational accidents a year, the Government should conduct an overall review on the employees' compensation system and improve the compensation level and assistance provided for the victims of industrial accidents. Certainly this is a task of top priority. Regarding concrete proposals, the Hong Kong Progressive Alliance is of the opinion that an in-depth study should be carried out by the LAB and the proposals should put in place through legislation by this Council after a consensus has been reached. Of course, the provision of compensation is only a passive way. The active way should be the strengthening of tripartite co-ordination among the employees, the employers and the Government and the implementation of the industrial safety policy.

Mr President, these are my remarks.

MR TSANG KIN-SHING (in Cantonese): Mr President, first of all, I wish all Members a happy New Year and the people of Hong Kong good health.

In recent years, work-related accidents resulting in injuries or deaths happen almost every day, arousing public concern as to whether the industrial safety system in the territory is sound and whether protection for "the working class" is adequate.

In fact, throughout the last legislative session, I repeatedly stated my views by means of various motions and urged the Administration to make improvements such as (1) stepping up enforcement and imposing more severe penalties on employers who have breached the law; (2) deploying sufficient resources to enhance the system for monitoring the training of safety officers; (3) to promote the concept of occupational safety rather than merely advocating industrial safety; and (4) introducing a licensing system for skilled workers engaged in dangerous work procedures. All these proposals were made by me in the last legislative session.

Mr President, today I would like to talk about problems of the existing system for employees' compensation. As a matter of fact, the employees' compensation system has not undergone any sound improvements since its implementation at the beginning of the '80s. The system is obsolete, out of

touch with the present time and lags far behind the latest development of our economy. The Democratic Party considers it necessary to revise the various existing levels of compensation.

In this regard, I am of the view that Mr LEE Cheuk-yan's motion should be fully endorsed and supported. His motion covers compensation payable for death cases, the ceiling for monthly earnings, the percentages of compensation payable to dependants of the deceased, funeral expenses, medical expenses and provisional compensation measures. All these aspects should be properly and appropriately reviewed.

Regarding provisional compensation measures, they are presently non-existent in Hong Kong. Claiming compensation is often like buying vegetables in the market. If you try to bargain with the authorities concerned about the level of compensation payable, you may end up getting more. Mr President, I would like to share with colleagues my feeling for a few industrial accidents occurred in 1996 in which I was personally involved.

The first case is about the collapse of a working platform in Tsing Yi North Bridge which claimed the lives of six workers. Thanks to the Governor's high-profile description of the incident as "shocking", which has been proved useful, and the surviving dependants of the deceased workers got additional compensation which amounted to about \$800,000 each for the deceased.

Another case also took place in Tsing Yi, but this time in a sewage treatment plant. One night, a worker fell into a well about 500 ft deep, with his body smashed into pieces. Searches were launched five to six times before all parts of his body were recovered. As this time the Governor did not say he was shocked and the employer of the deceased worker kept a firm grip on his wallet, the surviving dependants only got the so-called additional compassionate compensation of not more than \$100,000. A third industrial accident occurred in Tai Yau Street. The employer concerned is wealthy and reputed in Hong Kong. He was more conscientious and paid the dependants of the deceased over \$800,000 as compensation, making reference to the case of the accident in Tsing Yi North Bridge.

When the matter is widely reported by the mass media, or when certain

celebrities are willing to lend a helping hand or "to say something", the dependants of the deceased worker can often get more compensation. If there is no one to "speak for them" and "to lend them a helping hand", they may even be unable to pay for the funeral expenses and have to wait for two years instead. Moreover, if the deceased employee is the breadwinner of the family, his dependants may in principle have no means to support themselves within these two years. In this connection, I think that the existing practice of "pressing" the employer for additional compensation should be formalized so as to relieve the immediate hardship suffered by the dependants of the deceased worker. I believe that the majority of employers in Hong Kong will not object to this as they do not want to see their employees die in work-related accidents. I hope that all Members will support Mr LEE Cheuk-yan's motion and vote according to their conscience.

Moreover, with regard to the adjudication of work-related injuries, I hope that an independent work-related injuries adjudication tribunal similar to the Labour Tribunal will be set up as soon as possible. The reason for setting up such a tribunal is very simple: it can settle disputes in an expeditious, inexpensive and simple manner on the one hand, and minimize the suffering of the victims of work-related accidents on the other.

Finally, I hope to draw the attention of the Secretary for Education and Manpower to the fact that despite the Government's strong advocacy of the Safety Charter promulgated last year, the Occupational Safety and Health Council has not been given additional resources. I hope that the Government's promotional efforts will move from industrial safety to the concept of occupational health. As the Government would like to benefit three million people instead of several hundreds of thousands of people, how can publicity and education be stepped up if no additional resources are provided?

I hope that the Government will not speak one thing and do another.

I wish you all safety and health. Thank you, Mr President.

PRESIDENT (in Cantonese): I now call upon Mr LEE Cheuk-yan to speak on the amendment. Mr LEE, you have five minutes for your speech.

MR LEE CHEUK-YAN (in Cantonese): Mr President, generally speaking, the

Honourable CHAN Kam-lam's amendments, in particular item (a) which calls for an expeditious implementation of the recommendations of the Labour Advisory Board (LAB) are, to be honest, of no harm if they are carried. The amendments only serve to gild the lily. Since the Government has made it clear that the recommendations would be implemented, it is no harm to call upon the Government to implement the recommendations expeditiously. Yet the amendments are not constructive at all.

Of course I do not object to the recommendations of the LAB. This is not my intention at all. The point is, Mr CHAN's amendments, if adopted, fail to achieve the objectives intended in my original motion. The first and foremost effect of my original motion is to tell the Government that this Council does not consider the present amount of compensation sufficient. This is the focal point. If the amended motion proposed by Mr CHAN is carried, such a message will not be conveyed. Instead, it implies that the Government has already done enough.

Therefore, first of all I hope you will note that my motion in fact consists of four parts. The first part deals with reasonable levels of compensation, which is of paramount importance. How does it differ from the recommendations of the LAB? The recommendations presently put forward by the LAB does not deal with the three years, five years and seven years compensation level, which have remained the same since 1980. If this point is not dealt with, there will be many more cases like that of Mrs LEE quoted by Mr LAU Chin-shek. After the death of her husband, Mrs LEE had to rely on an amount of compensation equivalent to five years' earnings of her late husband to raise her kids. If the issue of three years, five years or seven years compensation levels is not dealt with, there will be many more such cases. Please note that this is the biggest difference between my motion and the recommendations of the LAB. If Mr CHAN Kam-lam's amendments are not carried, the message that we want to see an improvement in the amount of compensation will be very clear.

Another difference between our recommendations and those put forward by the LAB is that the LAB does not touch on the \$18,000 income ceiling. Mr CHAN Kam-lam has mentioned that the income ceiling was raised in 1995, but do you consider \$18,000 sufficient? Is it that after the increase in 1995, we cannot raise the issue again for consideration? Nowadays, in the case of construction workers, whose trade has the highest number of accidents, their income can exceed \$20,000 if they are fully employed. To them, the \$18,000 ceiling is lower than their entitlement.

The third difference is that the funeral expenses recommended by the LAB amount to \$14,000 only, whereas we want to review whether the proposed \$14,000 is really sufficient. To a family member who has to arrange a funeral, \$14,000 is hardly sufficient. We all know that at least \$50,000 is needed to cover the funeral expenses nowadays.

On the other hand, we must not misinterpret that I want to hold a debate on our relationship with the LAB, or that I want to argue against the recommendations of the LAB. What is the situation now? To put it in simple words, the LAB puts forward an A recommendation and I propose an A+ recommendation. That does not mean I disapprove of the A recommendation. What I am saying is that we can have an A+ recommendation which provides higher levels of compensation. If, after today's discussion, we carry the motion requesting the Government to conduct a review, I am sure the Government will certainly refer the matter to the LAB for discussion. We simply want the Government to refer the A+ recommendation to the LAB for discussion instead of merely adopting the A recommendation.

At the same time, let us bear in mind that the LAB is structurally defective. It is a government advisory body which merely discusses issues referred to it by the Government. If the Government does not refer an issue to the LAB for discussion, any issues raised by the representatives of employees will not be approved by the Government, and we all know that nothing can be done. Therefore, what I am doing today is to press the Government to refer an "A+" recommendation to the LAB for discussion. Let's hope the Government will take the initiative to improve the compensation system and raise the seven-year compensation limit. Only in this way can our compensation system provide a genuine financial safety net to the victims, so that they need not worry about their living nor apply for comprehensive social security assistance for an extended period of time, and that the compensation is sufficient for them to lead a happy life.

Thank you, Mr President.

SECRETARY FOR EDUCATION AND MANPOWER (in Cantonese): Mr President, first, I would like to thank Members for expressing their views on the

subject of employees' compensation (EC) system. I would like to briefly explain the EC system in Hong Kong and our improvement measures undertaken in recent years.

Employees' Compensation System

Our policy objective is to provide employees with suitable protection, so that a reasonable level of compensation will be paid for the benefit of employees injured or who die in work-related accidents. The existing EC system comprises two different mechanisms. The first mechanism is employers' individual liability based on the Employees' Compensation Ordinance (ECO). Under the ECO, all employers are required to take out insurance for employees with a recognized insurer for a prescribed minimum amount in respect of their individual liability. The second mechanism is employers' collective liability based on the Pneumoconiosis (Compensation) Ordinance and the Occupational Deafness (Compensation) Ordinance. The employers of stipulated trades are required to pay levies to provide compensation to employees in those trades with occupational diseases. These two mechanisms complement one another.

Each case of work-related injuries or deaths is tragic. The Government attaches great importance to the continuous improvement of Hong Kong's occupational safety. Apart from social welfare and security, in order to ensure that employees can obtain a reasonable level of compensation, the EC system is regularly reviewed and whenever necessary, the relevant laws are amended, so as to keep up with the social and economic development. In the past 18 months alone, we amended several pieces of legislation to improve the protection of employee rights, including:

- (1) amending the ECO to raise the amount of compensation paid by the employer for death or incapacity resulting from work-related accidents, as well as to raise the maximum fines for offences listed in the ECO, in order to increase the deterrent effect.
- (2) authorizing the Commissioner for Labour to issue compensation amount certificates in order to shorten the length of time needed for employees with work-related injuries to file a claim for compensation.

- (3) deleting the provision that employees can only obtain compensation when the incapacity resulting from work-related injuries exceeds three days, and raising the amount of compensation during sick leave to 80% of the employee's normal earnings.
- (4) improving the pneumoconiosis compensation scheme, introducing compensation for pain, suffering and loss of amenities. Employees suffering from pneumoconiosis can obtain this compensation regardless of their degree of incapacity.
- (5) amending the Occupational Deafness (Compensation) Ordinance, extending the time limit of application for compensation under the occupational deafness compensation scheme by one year. This will give those who were employed in noisy occupations anytime during the six years before the commencement of the scheme and have since left ample time to apply.

At the same time, we are conducting a comprehensive review of the occupational deafness (compensation) scheme to make sure that the people suffering from work-related deafness will receive a reasonable amount of compensation. From the above, it is clear that we are constantly improving Hong Kong's employees' compensation system to protect employee rights.

Amending the Employees' Compensation Ordinance

The first point of the Honourable LEE Cheuk-yan's motion proposes that the ECO be amended so as to ensure that the family members of those who suffer injuries or die in work-related accidents are given more compensation. This is precisely the target we have wanted to achieve in employees' compensation all along. Since 1986, we have adjusted the amounts of compensation every two years. The maximum compensation amount in case of permanent incapacity due to work-related accidents has been increased from \$341,000 in 1986 to \$1,728,000 in 1996, while the maximum compensation amount for death as a result of work-related accidents has been increased by more than five times, from \$299,000 to \$1,512,000, while the increase rate of the Consumer Price Index (A) for the same period was only 122%. Later in this year, we will again review the amounts of compensation. The new rates are expected to be effective by early 1998. Each time before we make the recommendation to increase the amounts of compensation, we will consider the increase rate of income and consumer

price index and consult the Labour Advisory Board (LAB), employers' associations, trade unions and the insurance industry. The existing mechanisms already strike an effective balance between employers' and employees' interests, while taking account of the social situation. Mr LEE Cheuk-yan recently moved a Members' Bill to propose a hefty increase of the maximum compensation amounts, with an average increase rate of more than 100%. We will not support any one-sided proposals which have not been discussed in detail by employees, employers and the Government.

Central Employees' Compensation Fund

The second point of the original motion proposes the establishment of a central employees' compensation fund. On this question, we already clearly stated the stance of the Government in a motion debate on 3 November 1993 and in a reply to the Honourable CHENG Yiu-tong's oral question on 5 June last year. Our position is namely that we do not think there is a need for the Government to take over the employees' compensation insurance market now run by the private sector. Our reasons have been placed on record. I would like to make a brief response to the reasons given by supporters of this proposal:

- (1) Some people hold the view that all employees' compensation schemes should be integrated into a central employees' compensation fund, which can provide comprehensive protection to all employees. I would like to point out that the existing system consists of two different mechanisms, that is, the employers' individual liability and employers' collective liability mechanisms. The two different mechanisms have different functions, so there is no need to combine them.
- (2) Some people think that by setting up a central employees' compensation fund, the time for which employees have to wait for their compensation will be shortened and the number of litigations will be reduced. At present, in most cases, employers pay compensation to the injured employees according to the ECO. Only a small number of injured employees have to wait some time before they receive compensation or for a court judgment. In cases of employees suffering from serious injuries as a result of work-related accidents, their degree of incapacity can only be determined when their condition has stabilized. This is a necessary

procedure under the present system as well as under the system of a central employees' compensation fund. As for cases where the compensation liability has to be determined by the court, they would also arise under the system of a central employees' compensation fund. The establishment of a central employees' compensation fund, therefore, cannot help shorten the time needed to make compensation claims.

- (3) Some people maintain that as a result of the operation of the employees' insurance market by the private sector, insurance premiums rise incessantly. If the Government takes over, insurance premiums can be reduced through the elimination of commissions and lower administrative costs, which will benefit employers and employees alike. Actually, according to two recent surveys conducted by the insurance industry and the Employees' Compensation Insurance Levies Management Board, due to fierce competition on the insurance market, the insurance premiums for employees' compensation have dropped continuously in recent years, reflecting the flexibility of the market mechanism. I am sure that many employers and employees present can bear this out.
- (4) We also disagree that establishing a central employees' compensation fund will be more effective than the present private enterprise system. Hong Kong has always operated under a free economy. This also applies to the insurance market. If the Government takes over the employees' compensation insurance market, it will have to set up an enormous structure to manage it, thereby incurring huge administrative costs. Thus we do not believe that the Government will be more efficient in this than the private sector.

Due to the above, we do not see any reason for the Government to take over and monopolize the employees' compensation industry and stifle the operation of the free economy.

Work-related Injuries Adjudication Tribunal

The third point of the original motion proposes the setting up of a work-related injuries adjudication tribunal to settle relevant disputes in an expeditious, inexpensive and simple manner. While we wholeheartedly agree

that the application procedures for compensation in respect of work-related injuries should be simplified so as to enable employees to obtain compensation expeditiously, we do not think that the proposal to set up a work-related injuries adjudication tribunal is feasible.

In the past three years, there were 60 000 work-related accidents on average each year, with 75% of the injured employees suffering from temporary incapacity. Under existing laws, injured employees are entitled to 80% of their normal earnings during their sick leave. Employees do not have to wait to go through any procedures to obtain compensation. As for cases of permanent incapacity, usually, one has to wait for the condition of the victim to stabilize before doctors or an assessment board can determine the degree of permanent incapacity. This process takes five to seven months on average. In the majority of such cases, employers will pay compensation as required by the law. Only very few cases have to be dealt with by the court due to failure to arrive at a settlement as a result of dispute between the employers and the employees or other reasons. As for cases of death resulting from work-related accidents, under present legislation, they are dealt with by the district courts.

Mr LEE Cheuk-yan's proposal is based on the existing model of the Labour Tribunal and Minor Employment Claims Adjudication Board, where labour disputes are settled in a simple manner by the parties to the proceedings without counsel. While we appreciate the good intentions of Mr LEE Cheuk-yan, we do not think this proposal is feasible. Employees' compensation claims are different from general labour disputes since they often involve complicated legal arguments and the need to refer to past cases. If the injured employees or their family members fail to obtain suitable legal opinion, it might influence the amounts of compensation they are going to obtain and their rights to claim for compensation through other civil means in the future.

The Labour Department has liaised closely with the relevant departments, including the Legal Aid Department and the judiciary, in a bid to shorten the time needed to assess the condition of the victims and the waiting time of victims to receive compensation. Since March 1994, the Wan Chai District Court has designated a court to specially handle employees' compensation claims. After the adoption of this measure, the waiting time for cases pending a court judgment has been reduced from 14 to seven months.

We agree that the procedures for handling cases of employees who die in work-related accidents must be further improved and simplified. At present, we are studying the proposal that if the claim is not disputed by the employer or insurance company, such cases need not be dealt with by a district court. Instead, they can be referred to the Commissioner for Labour, who will issue a certificate of compensation, ordering the employer or insurance company to pay compensation to the family members of the deceased employee. Furthermore, before the completion of assessment of the claim cases by the Commissioner for Labour, the employer would have to pay provisional compensation to the spouse of the deceased in advance. Such amounts paid can be deducted from the amount of compensation afterwards. According to our proposal, family members of the deceased, regardless of whether they are his dependants, will receive full compensation. This will replace the existing compensation criteria, whereby only the dependants of the deceased are entitled to compensation. At the same time, we recommend that the employer should pay for the burial costs in all fatal cases. These proposals were already endorsed by the LAB last month. We are now discussing the legal policies and details with the Legal Department. We hope to finish the drafting of the Bill soon in order to submit it to the Legislative Council for scrutiny.

Assistance System for Victims of Work-related Injuries

The fourth point of the original motion proposes that the existing assistance system for victims of work-related injuries be improved so that they can be given adequate assistance in circumstances where employers have not taken out insurance and are unable to pay compensation. Actually, under present legislation, if the employer has not taken out labour insurance and fails to discharge his responsibility to pay compensation to the injured employee, the employee can apply for assistance from the Employees' Compensation Assistance Fund (ECAAF). The Fund was set up in 1991 and derives its income from employees' compensation insurance levies paid by employers. It provides coverage for compensation to which employees are entitled under the ECO and the compensation which a court awards to the employee, in cases involving the employer's negligence and where the employee has claimed for compensation under common law. If the employer fails to pay compensation according to the law or the court ruling, the Employees' Compensation Assistance Fund Board can provide assistance by allocating moneys from the Fund. From April 1996 to January 1997, the Fund has provided assistance to 19 employees suffering from work-related injuries, with the amounts of assistance reaching \$33,000,000.

Thus the existing system already provides protection to employees who fail to obtain compensation as a result of the employers not having taken out insurance. We will monitor the operation of this fund closely to ensure that it fulfils its function of adequately protecting the legal rights of employees suffering from work-related injuries.

Amendment to the Original Motion

With regard to the amendment moved by the Honourable CHAN Kam-lam, the first point urges the expeditious implementation of the recommendations of the Labour Advisory Board (LAB) regarding amendments to the ECO. As I said earlier, the LAB discussed and endorsed our proposal to amend the claims procedures for death resulting from work-related accidents last month. We are studying the details of this proposal and hope to finish the drafting of the bill soon.

The third point of the amendment proposes streamlining the existing procedures in respect of compensation claims for work-related injuries. This has also been our work objective for many years. Some time ago, I have given this Council a detailed report on the measures we had undertaken. Since the second and fourth point of the amendment and the motion are the same, I will not repeat them.

Conclusion

Lastly, I would like to reiterate that our policy objective is to provide comprehensive and reasonable protection to employees suffering from work-related injuries and family members of employees who die in work-related accidents. I thank Honourable Members for making a lot of well-meant proposals. I reiterate that some of the main points in the two motions, including the streamlining of the claims procedures, have already been incorporated into the scope of our work, and the relevant proposals have already been endorsed by the LAB. While our present employees' compensation system is working well on the whole, we will review it on a regular basis in order to perfect it. We do not think that there are sufficient grounds to revamp the existing system, and therefore we disagree with the proposal to set up a central employees' compensation fund in the motion and the amendment, and the original motion's proposal to establish a work-related injuries adjudication tribunal.

Thank you, Mr President.

PRESIDENT (in Cantonese): Mr Michael HO, please state your point of elucidation.

MR MICHAEL HO (in Cantonese): The Secretary for Education and Manpower has just said in his speech that the Administration will not support any proposal that has not undergone the tripartite discussion by the employees, employers and the government officials. Could the Secretary explain how his words be interpreted? Does he mean that he will initiate discussion of the proposal in the Labour Advisory Board or not?

PRESIDENT (in Cantonese): Mr Secretary, you can choose not to answer this question, of course, since your speech has been quite clear.

SECRETARY FOR EDUCATION AND MANPOWER (in Cantonese): Mr President, thank you for reminding me. I also agree that my speech has been quite clear and I do not intend to answer the question.

Question on the amendment put.

Voice vote taken.

The President said he thought the "Noes" had it.

Mr CHEUNG Hon-chung claims a division.

PRESIDENT (in Cantonese): The Council shall now proceed to a division.

PRESIDENT (in Cantonese): I would like to remind Members that they are now called upon to vote on the question that the amendment moved by Mr CHAN Kam-lam be made to Mr LEE Cheuk-yan's motion.

Would Members please register their presence by pressing the top button and then proceed to vote by choosing one of the three buttons below?

PRESIDENT (in Cantonese): Before I declare the result, Members may wish to check their votes. Are there any queries? One short of the head count. The result will now be displayed.

Mr CHAN Kam-lam, Mr CHAN Wing-chan, Miss CHAN Yuen-han, Mr CHENG Yiu-tong, Mr CHEUNG Hon-chung, Mr CHOY Kan-pui, Mr IP Kwok-him, Mr Ambrose LAU, Mr LO Suk-ching and Mr NGAN Kam-chuen voted for the amendment.

Mr SZETO Wah, Mr Albert CHAN, Mr CHEUNG Man-kwong, Mr Michael HO, Dr HUANG Chen-ya, Miss Emily LAU, Mr LEE Wing-tat, Mr Fred LI, Mr James TO, Dr YEUNG Sum, Mr WONG Wai-Yin, Mr LEE Cheuk-Yan, Dr Anthony CHEUNG, Mr David CHU, Mr Albert HO, Mr LAU Chin-shek, Mr LAW Chi-kwong, Mr LEUNG Yiu-chung, Miss Margaret NG, Mr SIN Chung-kai, Mr TSANG Kin-shing, Dr John TSE and Mr YUM Sin-ling voted against the amendment.

Mr Allen LEE, Mrs Selina CHOW, Mr NGAI Shiu-kit, Mr Edward HO, Mr Ronald ARCULLI, Mrs Miriam LAU, Dr LEONG Che-hung, Mr Frederick FUNG, Mr Henry TANG, Dr Philip WONG, Miss Christine LOH, Mr Paul CHENG and Mr LEE Kai-ming abstained.

THE PRESIDENT announced that there were 10 votes in favour of the amendment and 23 votes against it. He therefore declared that the amendment was negatived.

PRESIDENT (in Cantonese): Mr LEE Cheuk-yan, you are now entitled to reply. You have two minutes 48 seconds out of your 15 minutes.

MR LEE CHEUK-YAN (in Cantonese): First of all, I must thank the Honourable CHAN Kam-lam for his amendment, which enables me to speak for

another five minutes. In fact, the speech made on behalf of the Government in relation to what constitutes a reasonable level of compensation is slightly misleading. I do not know whether everyone has heard this clearly. The Secretary for Education and Manpower has quoted some figures. He has pointed out that the maximum compensation amount has been increased from \$300,000 in 1986 to \$1,500,000. This is meaningless because the upper limit of the compensation has been raised in line with the upper limit of the income. He is talking about the upper limit, not what is actually received by victims. We must bear this in mind because the amounts received by victims are still bound by their earnings in three, five or seven years. For example, if the husband was earning \$10,000 at the time of his death, his total income for three years was only \$360,000. It was \$360,000 10 years ago, and it is still \$360,000 now. When the upper limit of compensation is raised, it does not mean that the amount of compensation will be raised. I hope everyone has heard the Secretary's explanation clearly. I am not sure whether it was the amount of compensation or the upper limit that the Secretary was referring to. I did not hear clearly. I will try to find out from his script whether he has been misleading us. I do hope he has not.

Secondly, the Secretary has referred to a centralised insurance system for work-related injuries. He has said the present insurance premium is falling. But let me remind everyone about one occasion in which the question of whether premium should be charged against full salary or four-fifths thereof was discussed. Information from the insurance companies indicated that if laws were made to the effect that premium was charged against full salary, the premium would have to be increased by 25%. When the figure was changed to four fifths of the salary, premium would, as I recall them saying, be increased 11%. So, as we fight for higher compensation amounts, the premium payable will become a pressure to employers. We think that commission for the intermediaries and administrative fees would be obstacles too.

Thirdly, when talking about the work-related injuries adjudication tribunal, the Secretary said it was very complicated and a lot of precedents would have to be referred to. However, we should note that the Labour Tribunal is very complicated too and a lot of precedents have to be referred to as well. So, there is in fact not much difference between the two. But the Secretary has stated clearly that the waiting time for a case in a district court is seven months at least.

Fourthly, about the assistance system for victims of work-related injuries,

the Secretary has referred to another figure. He has mentioned that 19 people obtained over \$30 million as compensation. One may think there is no problem with this. But my point is that the upper limit of interest-free loan is still \$15,000. I was hoping this could be improved but he was silent on this.

Thank you for your speeches and your support.

Question on the original motion put.

Voice vote taken.

The President said he thought the "Ayes" had it.

Mr LEE Cheuk-yan claims a division.

PRESIDENT (in Cantonese): Council shall now proceed to a division.

PRESIDENT (in Cantonese): I would like to remind Members that they are now called upon to vote on the question that the original motion of the Honourable LEE Cheuk-yan be approved.

Will Members please register their presence by pressing the top button and then proceed to vote by pressing one of the three buttons below?

PRESIDENT (in Cantonese): Before I declare the result, Members may wish to check their votes. Are there any queries? Still one short of the head count. The result will now be displayed.

Mr SZETO Wah, Dr LEONG Che-hung, Mr Albert CHAN, Mr CHEUNG Man-kwong, Mr Frederick FUNG, Mr Michael HO, Dr HUANG Chen-ya, Miss Emily LAU, Mr LEE Wing-tat, Mr Fred LI, Mr James TO, Dr YEUNG Sum, Mr WONG Wai-Yin, Miss Christine LOH, Mr LEE Cheuk-Yan, Mr CHAN

Kam-lam, Mr CHAN Wing-chan, Miss CHAN Yuen-han, Mr CHENG Yiu-tong, Dr Anthony CHEUNG, Mr CHEUNG Hon-chung, Mr CHOY Kan-pui, Mr Albert HO, Mr IP Kwok-him, Mr LAU Chin-shek, Mr Ambrose LAU, Mr LAW Chi-kwong, Mr LEE Kai-ming, Mr LEUNG Yiu-chung, Mr Bruce LIU, Mr LO Suk-ching, Miss Margaret NG, Mr NGAN Kam-chuen, Mr SIN Chung-kai, Mr TSANG Kin-shing, Dr John TSE and Mr YUM Sin-ling voted for the motion.

Mr Allen LEE, Mrs Selina CHOW, Mr NGAI Shiu-kit, Mr Edward HO, Mr Ronald ARCULLI, Mrs Miriam LAU, Mr Henry TANG, Dr Philip WONG and Mr David CHU voted against the motion.

Mr Paul CHENG abstained.

THE PRESIDENT announced that there were 37 votes in favour of the original motion and 9 votes against it. He therefore declared that the original motion was carried.

PREPARATORY COMMITTEE'S RESOLUTION PROPOSING THE REPEAL OF PROVISIONS IN CIVIL RIGHTS-RELATED LAWS

DR YEUNG SUM to move the following motion:

"That this Council strongly condemns the Preparatory Committee for resolving to propose the repeal of those provisions in the Societies Ordinance and Public Order Ordinance which were amended consequent upon the enactment of the Hong Kong Bill of Rights Ordinance, and certain important provisions in the Hong Kong Bill of Rights Ordinance and Personal Data (Privacy) Ordinance; and requests the Standing Committee of the National People's Congress of the People's Republic of China to reject the proposal in order not to seriously damage the legislation safeguarding Hong Kong's human rights and freedom, or to seriously tarnish the territory's good reputation in the rule of law."

DR YEUNG SUM (in Cantonese): Mr President, on 1 February this year, the

Preparatory Committee of the Hong Kong Special Administrative Region (SAR) under the Standing Committee of the National People's Congress (NPC) of the People's Republic of China agreed to propose to the Standing Committee of the NPC to repeal in entirety 14 pieces of existing legislation of Hong Kong and in part another 11 pieces of legislation. The people of Hong Kong and the international community are particularly concerned over the recommendations to repeal the Societies Ordinance (SO) and Public Order Ordinance (POO), respectively amended by the Legislative Council in 1992 and 1995 consequent upon the enactment of the Hong Kong Bill of Rights Ordinance (BORO); and to repeal certain provisions regarding the interpretation and application of the Bill of Rights.

Adverse effects in repealing the legislation

According to the recommendations of the Preparatory Committee, the POO and SO will, after the repeal, contain "defect" of various extents, which will be rectified in piecemeal by an illegal and non-representative provisional legislature. Hong Kong people are worried that the two pieces of reinstated legislation will be as stringent as, or even worse than those before the amendment, and that the Chinese Government will, through the future SAR Government, apply these two draconian laws to restrict the people of Hong Kong from enjoying their freedoms of procession, assembly, expression and association.

If the POO is reinstated, the freedoms of meeting and procession will be tightened again.

For example:

1. If the public are dissatisfied with the government policies and intend to hold a procession to express their views, they have to apply for a licence from the police seven days preceding the procession if there are over 20 participants. Without a licence from the police, they cannot hold the procession, or else they will be prosecuted for holding illegal procession.
2. It is necessary to notify the police in advance for public meetings of more than 30 persons or private meetings of more than 200 persons. The police has the right to prohibit these meetings.

3. Members of the public who participate in meetings or processions cannot wear any clothing relating to any political organizations or advocating political aims. This restriction will greatly undermine public participation in political functions.
4. If "hailers" are used in meetings or possessions, prior approval has to be obtained from the police.
5. The Chief Executive and the police can, on reasons unrelated to public order, prohibit processions and meetings, and impose conditions on the holding of meetings, such as the entertainment programmes, the publication and distribution of advertisements and printed materials.
6. For people who are aggrieved by the police's handling of applications for meetings and processions, there is no independent channel for them to lodge complaints.

Mr President, if the SO is reinstated, the procedures for setting up societies will be much more complicated than the present arrangement of merely requiring to notify the Government.

For example:

1. For people who want to set up a society, such as a concern group for issues of housing or the elderly, they have to apply for registration within 14 days after the establishment of the society, or else the association will be regarded as unlawful, and will be prosecuted, prohibited or dissolved by the Government.
2. Without the consent of the Societies Officer, societies cannot arbitrarily set up branches or amend their constitutions.
3. The Societies Officers may, at any time, enter any place which he

believes is the meeting place or information storage area of the society, and may call in any person at any time to provide information related to the society concerned.

4. People who participate in societies which show concern for workers' right, democracy and human rights, or any other societies that have connections with international societies, may be prohibited by the Government on the ground of having "a connection with a foreign political organization".
5. The Government may reject the application for registration of some student societies on the grounds that they "have political influence on students or teachers" or that "the Government is not satisfied with the provisions in the constitution".
6. However, the triad societies may benefit from the repeal as the penalty for being office-bearers of triad society or so claimed will be relaxed to the same level as those imposed on members of unlawful societies, that is the fine of \$1,000,000 and imprisonment for 15 years will be lowered to the fine of \$100,000 and imprisonment for five years. People who will benefit most from the repeal of this legislation will be the triad members.

As regards the repeal of sections 2(3), 3 and 4 of the BORO which are related to the interpretation of the Ordinance, the court will be "fettered" in handling lawsuits pertaining to the Bill of Rights since it cannot make a ruling according to the BORO even if it considers that the International Covenant on Civil and Political Rights has not been violated. As a result, every case may result in a debate on "whether it is consistent with Article 39 of the Basic Law", and has to resort to the Standing Committee of the NPC for interpretation according to the Basic Law. Regarding the drawbacks of repealing the BORO and the argument whether it has overridden the Basic Law, other members of the Democratic Party will speak on these subjects.

The Preparatory Committee claims that the Personal Data (Privacy) Ordinance (PDPO) has to be repeal because section 3 has an overriding effect. This is perplexing since the PDPO is a piece of legislation within the autonomous jurisdiction of Hong Kong and is, in no way, related to the issue of overriding the Basic Law. As the section is not in violation of the Basic Law,

one cannot help querying that the Preparatory Committee proposes to repeal it on political grounds or out of personal preference.

Mr President, in the '70s, the POO of the colonial government vested too much power with the police to restrict the right of assembly and procession of the public, and this has been strongly condemned by the Hong Kong community. The Hong Kong Federation of Students published a book in 1994, describing in detail how Hong Kong people strove for amendment of the POO during the past 20 years. Some of the colleagues here have also fought for the amendment of the POO at that time, and some of the colleagues have also supported the amendment of the POO by the Legislative Council.

How then will the repeal of the provisions safeguarding human rights and the reinstatement of these draconian laws be of no connection to the human rights and freedom of Hong Kong people?

It is obvious that repealing the existing provisions and reinstating those provisions that have not been amended according to the BORO will greatly restrict the rights of expression and association of Hong Kong people. This is a great retrogression in safeguarding Hong Kong people's human rights.

Furthermore, if the legislation concerned is amended by a provisional legislature without any legal basis and public support, it will not only cause confusion in law, but also give people a negative impression that "Laws of Hong Kong can be amended at any time in accordance to the selective political preferences of the Chinese Government". People will lose confidence in the continuity of the rule of law in Hong Kong. There will also be disputes on the application of that legislation in future. All these will seriously tarnish the territory's good reputation in the rule of law, and will hamper international investors' confidence in the stability of Hong Kong.

After the introduction of the proposals of the Legal Subgroup of the Preparatory Committee, the Democratic Party has collected, within just a week, over 20 000 signatures of members of the public who oppose the proposals on repealing the legislation. This indicates that most Hong Kong people wish to see a smooth transition of the legislation concerned together with most other

local legislation, which will safeguard the development of human rights in the territory and avoid confusion in law and instability in the society.

The Democratic Party, therefore, strongly protests against the proposals of the Preparatory Committee, and requests the Standing Committee of the NPC to reject the proposals.

I move this motion on behalf of the Democratic Party.

Question on the motion proposed.

PRESIDENT (in Cantonese): Mr Edward HO has given notice to move an amendment to this motion as set out on the Order Paper and circularized to Members. I propose that the motion and the amendment be debated together in a joint debate.

Council shall debate the motion and the amendment together in a joint debate. I now call on Mr Edward HO to speak and to move his amendment. After I have proposed the question on the amendment, Members may express their views on the motion and the amendment.

MR EDWARD HO to move the following amendment to DR YEUNG SUM's motion:

"To add "in the interest of a smooth transition," after "That"; to delete "strongly condemns the Preparatory Committee for resolving to propose the repeal of those provisions in the Societies Ordinance and Public Order Ordinance which were amended consequent upon the enactment of the Hong Kong Bill of Rights Ordinance, and certain important provisions in the Hong Kong Bill of Rights Ordinance and Personal Data (Privacy) Ordinance; and"; to delete "to reject", and substitute with "not to accept or implement"; to delete "in order not to seriously damage the legislation safeguarding Hong Kong's human rights and freedom, or to seriously tarnish the territory's good reputation in the rule of law", and substitute with "of the Preparatory Committee regarding the repeal of certain provisions of the Societies Ordinance, the Public Order Ordinance, the Personal Data (Privacy) Ordinance and the Hong Kong Bill of Rights

Ordinance".

MR EDWARD HO (in Cantonese): Mr President, ever since the Preliminary Working Committee resolved to repeal the Hong Kong Bill of Rights Ordinance (BORO) and certain related ordinances, the people of Hong Kong cannot help feeling anxious about the Government of the Hong Kong Special Administrative Region (SAR). They worry that the SAR Government might intend to restrict the freedoms which they have enjoyed all along. These worries may be unwarranted, but such feelings are only natural.

It is a relief to know that the Preparatory Committee has not accepted all the proposals put forward by the Preliminary Working Committee. The Preparatory Committee only deems it necessary to repeal Articles 2(3), 3 and 4 of the BORO. In other words, it proposes repealing only those parts which are said to "override" other Hong Kong laws. It is certainly an improvement over the proposals of the Preliminary Working Committee.

Despite this, I cannot accept that there is a need to repeal any sections of the BORO. Nor can I accept the Preparatory Committee's proposal to repeal the 1992 and 1995 amendments to the Societies and Public Order Ordinances.

I have heard that those people who support the Preparatory Committee are basically against the BORO and the other two ordinances. However, we must bear in mind that we are not arguing about or questioning the value of these ordinances. Instead, we should discuss whether these ordinances or amendments are in actual contravention of the Basic Law.

The reason given by the Preparatory Committee for this resolution is that the relevant parts of these pieces of legislation contravene the Basic Law, which makes it necessary to repeal them. The entire rationale seems to be based on Article 8 of the Basic Law, which reads, "The Laws previously in force in Hong Kong shall be maintained, except for any that contravene this Law, and subject to any amendment by the legislature of the Hong Kong Special Administrative Region."

For members of the Preparatory Committee, the main point seems to be

what the "laws previously in force in Hong Kong" are. Since the signing of the Sino-British Joint Declaration and since the promulgation of the Basic Law, our society has undergone many changes. This is no different from what goes on in other societies. In order to accommodate the changes in society, many amendments to the laws need to be made. Time cannot stand still. If you reject some laws as not being "laws previously in force in Hong Kong" by virtue of their not being in existence at the time of the signing of the Joint Declaration in 1984, you will set a dangerous precedent which is feeble and should not be tolerated.

On the other hand, according to Article 8 of the Basic Law, any laws which contravene the Basic Law should be repealed. This is indisputable. Of course no one would object to the repeal of such laws.

The laws we are debating today are the BORO, the existing Societies (Amendment) Ordinance, the Public Order (Amendment) Ordinance and the Personal Data (Privacy) Ordinance. In my opinion, these laws do not fall under the above category, that is, they do not fall under the category of laws which contravene the Basic Law.

Mr President, we have a very important consideration now, which is that during this transitional period, we should not let Hong Kong people have the impression that anyone is trying to restrict their freedoms. This will be a serious threat to the pledge of "one country, two systems" and "a high degree of autonomy" enshrined in the Basic Law. Not only will it affect the confidence of the local population in future, it will also affect the confidence of overseas investors in Hong Kong.

Article 23 of the Basic Law prohibits foreign political organizations or bodies from conducting political activities in the SAR, and local political organizations or bodies from establishing ties with foreign bodies. I think this problem should be dealt with by legislation. Alternately, the Crimes Ordinance can be amended to prohibit such activities. However, the Societies Ordinance should guarantee the basic rights of Hong Kong people to have freedom of association.

Finally, I urge the Standing Committee of the National People's Congress

not to accept the Preparatory Committee's proposals to repeal the relevant laws, since they do not contravene the Basic Law. The proposal will have the effect of undermining Hong Kong people's confidence. Even if any problems arise in future, they can be dealt with by legislation.

Lastly, I would like to explain the reason for my amendment to Dr the Honourable YEUNG Sum's motion. The reason is the same as my feeling about today's debate: if we want to look after Hong Kong people's interest, we must deal with these matters by adopting an objective, non-provocative and non-confrontational course. At this juncture, only 132 days before the handover of sovereignty, what Hong Kong people want most is to have a tranquil environment and a smooth transition.

Having said the above, Mr President, I hope that colleagues will support the amendment that I proposed to Dr YEUNG Sum's motion.

Question on the amendment proposed.

MR IP KWOK-HIM (in Cantonese): Mr President, as society progresses, the standard on human rights will also become higher. This is inevitable in the course of social development. The series of proposals put forward recently by the Legal Subgroup of the Preparatory Committee to repeal certain laws have aroused public concern in Hong Kong, which is not surprising. Yet, how many of them know the specific contents of the proposals of the Preparatory Committee? We learnt from the television that people who took part in a rally against the proposals of the Legal Subgroup of the Preparatory Committee to repeal certain laws said, "In future, rallies will be banned, and that's why we have to come forward to voice our objections". There are also sayings that the Hong Kong Bill of Rights Ordinance (BORO) will be repealed, and that the human rights and freedom in Hong Kong will be doomed. Is this the whole truth?

Mr President, as a Member of the Legislative Council, I am obliged to make clarifications. Firstly, the Legal Subgroup of the Preparatory Committee did not propose to repeal the entire BORO. Instead, it only proposed to repeal certain provisions which give the BORO an overriding status. Both the Chinese and British Governments have, since the signing of the Joint Declaration in 1984,

and subsequently the enactment of the Basic Law by the Chinese Government, firmly adhered to the principle that the laws currently in force in Hong Kong should remain basically unchanged. However, in 1991 the Hong Kong Government unilaterally decided to enact the BORO, despite objection from the Chinese Government, and vest it with an overriding status. Any legislation which contravenes the BORO will be repealed or amended. Moreover, in future, all laws examined by the legislature should not contravene the BORO. With this enactment, the original two tier legal structure with the Basic Law having an overriding status would become a three tier structure with the BORO being grafted in the middle. This has created a significant change to the original legal system of Hong Kong.

More importantly, while the Governor, Mr Christopher PATTEN, was criticizing the proposals of the Preparatory Committee, he seemed to have forgotten entirely that after the British Government's approval of the implementation of the two international covenants on human rights in Hong Kong, it had, during the course of Sino-British negotiations over the future of Hong Kong, explained to the Chinese side time and again that, according to common law, it was possible to implement the two international covenants on human rights through existing legislation and administrative measures without having to enact a specific BORO. The Britain Government also repeatedly stated that the laws of Hong Kong were in total compliance with the covenants. This situation only lasted 15 years, and there was a sudden about-turn in 1995. The BORO was enacted and the laws vesting the executive arm with powers were extensively amended to tie in with the implementation of the covenants in Hong Kong. The Democratic Association for the Betterment of Hong Kong (DAB) thinks that the Preparatory Committee only proposes to repeal a few overriding provisions in the BORO to retain the original legal system and revert the BORO to a reasonable statutory status. This is a desirable course of action.

Regarding the Legal Subgroup's proposal to repeal certain provisions in the Societies (Amendment) Ordinance (SO) and the Public Order (Amendment) Ordinance (POO), it can be said that the amendments have nothing to do with human rights. The Preparatory Committee definitely does not intend to prohibit the people of Hong Kong from associating freely, nor to deprive them of the rights and freedoms of assembly and protest. In fact, Article 27 of the Basic Law has sufficiently provided for the freedom of association in future. As

regards the SO, apart from requiring societies to register with the administrative department concerned, another main purpose is to restrict local societies from associating with foreign political organizations. This is an area classified by all countries as state security. Article 23 of the Basic Law clearly stipulates the prohibition of "foreign political organizations or bodies from conducting political activities in the Region", and the prohibition of "political organizations or bodies of the Region from establishing ties with foreign political organizations or bodies." However, the SO enacted in 1992 has directly contravened the above provision of the Basic Law and there is a practical need to repeal the provision.

Mr President, on the issue of repealing the SO, the DAB believes that the provisions of 1992 and the provisions amended in 1995 by the BORO only differ in degree and perspective but not in principle. It cannot be said that the SO prior to the amendments contravened the BORO or the international covenants. All along the DAB opines that any views of the Preparatory Committee concerning amendments to highly controversial laws can be shelved until the establishment of the SAR Government, and the issue can be fully handled by the first legislature of the SAR. This will allow the SAR Government sufficient time to consult the public and listen to their different views, so that legislation appropriate to the conditions of the SAR can be formulated.

Mr President, one admirable thing about Hong Kong is that it is a pluralistic society in which everyone can express their views freely. The proposal of the Legal Subgroup of the Preparatory Committee to repeal certain laws is precisely an issue of how to strike a balance between the human rights of an individual and the interests of the community. To handle this matter appropriately is like walking on a tight rope, which is never easy. People from different walks of life may have different views and judgement, but it is important that we have a channel to voice our opinions. When we exercise our personal freedom, we have to consider the interests of the community at large and behave in a responsible manner. Only in this way can all sorts of people in society live together in harmony.

I so submit.

MR FREDERICK FUNG (in Cantonese): Mr President, I support the argument of the amendment, and the Hong Kong Association for Democracy and People's Livelihood (ADPL) also supports the amendment.

I would try to look at the issue from the legal, logical and sentimental points of views. In my opinion, the proposal of the Preparatory Committee to repeal some ordinances, in particular those mentioned by Dr the Honourable YEUNG Sum, is not justified in legal, logical and sentimental perspectives. Therefore, those provisions should not be repealed.

There are two Articles in the Basic Law that clearly provide which laws may be repealed and under what circumstances. One of the provisions is Article 8 of the Basic Law as previously mentioned by the Honourable Edward HO. The other is Article 160 which stipulates that if the laws currently in force in Hong Kong are in contravention of the Basic Law, they shall only be repealed when the Standing Committee of the National People's Congress (NPC) declares them to be in contravention of the Basic Law.

Being a member of the Preparatory Committee, I have never heard of any legal arguments on how those provisions mentioned by DR YEUNG Sum were in contravention of the Basic Law during the subgroup meetings of the Preparatory Committee. All I have heard of was a general explanation. Though such an explanation has been mentioned by the Honourable IP Kwok-him, I would like to repeat it in essence. As I understand it, the Chinese officials said to me that they had been told clearly by the British Government during the Sino-British talks the laws in Hong Kong were in line with the two international covenants and the BORO. Britain had been applying this concept in monitoring the legislation of Hong Kong, and thus laws in Hong Kong were not in contravention of laws on human rights. Since there was no contravention, why then did we need to enact the BORO? If there was no contravention, why did we need to amend other ordinances according to the BORO? This is the first point of argument of the Chinese side.

The second point of argument is that the BORO was overruling, turning the two-tier system of Hong Kong legislation to three-tiers. As this was a major amendment, the consent of the Chinese and British Governments should be

sought before the BORO was implemented. However, the British Government implemented it before the Chinese side has given their consent and so it was unreasonable.

Thirdly, since the BORO was implemented without the agreement between the Chinese and British Governments, other ordinances amended according to the BORO were also in contravention of the spirit of the Basic Law.

Judging from these three premises, I think the Chinese side should really review why Hong Kong people were not represented during the Sino-British talks. Had they been represented Hong Kong people would have understood the problems encountered during the talks, and they would have known that there had been so many agreements and understandings behind the Sino-British talks. After a dozen years or so, the Chinese Government now realises that they have been deceived by Britain. What was "acceptable" to the British Government at that time suddenly became "unacceptable" now, and thus the Chinese Government thought that amendment was inevitable. However, to Hong Kong people, as it is stipulated in the Basic Law that amendments should be made on legal grounds, legal evidence should be provided to prove that the Basic Law has been contravened. If no clear explanation can be provided, we will not consider that the Basic Law has been contravened on legal grounds. Therefore, from a legal point of view, I do not think those provisions are in contravention of the Basic Law.

Furthermore, I would like to quote some examples. It is said that the SO contravenes Article 23 of the Basic Law regarding ties with foreign organizations. I also think that this may be possible. However, it is completely unjustified to repeal the SO so as to deal with Article 23. According to my own survey, most of the political organizations referred to in Article 23 are not registered as societies. Only the ADPL is registered as a society; the Democratic Party and the Liberal Party are registered as companies. If my memory serves me right, the Hong Kong Progressive Alliance, the Liberal Democratic Federation of Hong Kong Limited and the Democratic Alliances for the Betterment of Hong Kong are all registered as companies. If the repeal of the provisions concerned aims at preventing political organizations registered as societies from establishing ties with foreign organizations, the proposal is directed against ADPL, because other political organizations which are registered as companies will not be affected. Therefore, I think it is unjustified to repeal the provisions as they are directed

against ADPL. (*Laughter*)

If the proposal does not merely single out ADPL, but is directed against all organizations registered under the SO, the impact will be very serious. In fact, many organizations so registered are not political organizations. They are only local residents' organizations or sports associations. Most of these organizations are registered as societies. For example, many sports associations have ties with foreign organizations and some are their subsidiaries. If Article 23 is to be interpreted this way, there will be big problems.

If Article 23 is to be amended, I agree with the Honourable Allen LEE that this should be left to the SAR Government to enact its own legislation to state the definition for political organization and what is meant by establishing ties. Should phone calls to foreign associations be regarded as establishing ties with foreign organizations, or should we only take subsidiary relationship as establishing ties with foreign organizations? When a clear definition is set, all organizations, whether they are registered as societies, companies or business corporations, will have to comply with the provisions. The scope of Article 23 should not be restricted to organizations registered as societies. For this reason, I think the provisions concerned should not be repealed.

Regarding the repeal of certain provisions of the POO, I cannot see any legal justification for the proposal. The ADPL agrees with the comments made by Mr TUNG Chee-hwa recently that "there should be a balance between individual freedom and public interest". This is a principle. Has the existing POO upset this balance? I do not think so. The existing POO provides that approval from the police has to be sought for processions with more than 20 persons and meetings with more than 30 persons. The police may still have many means to prohibit the activities of societies or their existence, such as issuing notice of prohibition. If there are organizations which take advantage of their status as registered societies to engage in activities prohibited under Article 23, such as the act of subversion and secession against the state, the Administration can apply other ordinances to address these political issues, as these are not legal issues. Therefore, I believe that there is no need to repeal those provisions, and I cannot see how those provisions are in contravention of

the Basic Law.

The repeal of those provisions is not justified from the legal and logical grounds. In the perspective of sentiments, I sympathize and understand the feelings of the Chinese Government, but that is a question to be resolved between China and Britain. Since China is not negotiating with Britain any more, every provision that they are now dealing with will affect Hong Kong people. Therefore, concerning the perspective of sentiments, it should be the sentiment between China and Hong Kong, and not that between China and Britain. I hope the Chinese Government would appreciate the sentiment of Hong Kong people towards China and try to understand the situation of Hong Kong, so that the issue can be handled reasonably.

Three colleagues of ADPL and I support the amendment of the Honourable Edward HO in requesting the NPC to reject the proposal of the Preparatory Committee. Why do I mention three but not four of my colleagues? It is because the Honourable MOK Ying-fan is not in Hong Kong and cannot cast his vote. However, he told me that he would support the amendment of Mr Edward HO.

Thank you.

MISS EMILY LAU (in Cantonese): Mr President, I am speaking in support of the motion moved by Dr the Honourable YEUNG Sum.

As Dr YEUNG Sum has referred to just now, since the Preparatory Committee made these proposals, there has been great repercussion in Hong Kong and many people are worried. I think this is to be expected because the people of Hong Kong cherish their freedom very much. Besides, they have long been afraid that the Communists of China will step up the control in future. Therefore, any signals about the amendment of the laws will frighten them all badly. The Chinese Government and Mr TUNG Chee-hwa should not be surprised at such public reaction. On the contrary, should they, after learning that people react like this, still go ahead to amend the laws, I will be very surprised and disappointed.

A few colleagues have said earlier on that they cannot find any grounds in the Basic Law for amending these laws in the light of their argument that those laws are in breach of the Basic Law. Even if we narrow down the scope from the original reason of contravention of the Basic Law to the reason that those laws were passed in accordance with the Hong Kong Bill of Rights Ordinance (BORO) which is not allowed and that they had been tricked into doing so, I still see no point in arguing on this point. Should a great and powerful country not feel ashamed in citing the reason of being tricked? If it was really cheated by Britain as claimed, was it not very impotent? I recall that at a meeting of the Constitutional Affairs Panel, we also raised the question on this incident about "being cheated" with the legal advisor. He explained that in the negotiations between China and Britain, each side had its own experts to guide them with the discussion and nothing such as "being cheated" could have arisen. No matter how, after the enactment of the BORO, over 40 laws have been amended accordingly. If their principle and logic hold, they should have these laws repealed altogether. But the case is not so. I have heard some Preparatory Committee members say that the other 40-odd ordinances were somewhat given to us in charity while these few in question cannot be so. This gives us a stronger feeling that they have an axe to grind and are targeting at some particular parties. Besides, it so happens that those laws, which pertain to their fundamental political and civil rights, hit home to the nerve centre of the Hong Kong people. Why do they have to do that?

Mr President, there is no way that I, as well as my colleagues of the Frontier, can support such doing of theirs. The problem lies with how big a price we will have to pay. Recently, there has been a popular saying that someone went abroad to "bad-mouth" Hong Kong. I have just come back from the United States and I am leaving for Australia in half an hour. Mr President, I do not believe anyone would purposely "bad-mouth" Hong Kong. I heard the Honourable Allen LEE's interview on radio on Monday. He had just come back from the United States and I, too, had just come back from Washington. Many people ask about this popular topic and I believe that many people will bring this up with me tomorrow when I am in Australia. Mr TUNG Chee-hwa laid the blame on the media again yesterday. There is either someone being the "bad guy bad-mouthing" Hong Kong or the media "bad-mouthing" Hong Kong. What are we supposed to do?

In fact, some members of the Preparatory Committee are also against such

recommendations of the Chinese Government and other Preparatory Committee members. Therefore, I hope that the Chinese Government and Mr TUNG Chee-hwa will consider carefully why so many people, including those hand-picked by them, do not agree to such recommendations. If they insist on having their way, we will have to pay a big price! We have already seen some reaction. Some surveys have shown that Mr TUNG Chee-hwa's reputation has sunk lower than that of Governor PATTEN. He actually lags behind a colonial governor. Was his reputation very high earlier on? Why has it plummeted so fast? This well reflects the vast fluctuation of the people's opinion. At first, before he made any advocacy or took any action, just by looking at him, one would have found him a very nice guy. Who would have thought that his words would shock everyone! Today, newspapers report that his reputation has sunken below the passing point. How is he going to carry on? Is the Chinese Government pleased to see the Chief Executive's reputation gradually falling? Does this indicate that they have to take some remedial measures?

Mr President, I hope that my colleagues will keep advising Beijing, hopefully to get this message across to them that there are boundaries which should not and cannot be crossed. When I was in Washington, a reporter from the Washington Post asked me why we did not model on some East European countries to launch a long protest parade for over 80 consecutive days. I laughed and answered that there might be such possibility in future. Hong Kong has had a record of 1 million people taking to the street. As for a continuous protest lasting over 80 days, it is not time yet but I dare not say it will never happen. Some Preparatory Committee members who are trade union representatives themselves have said that Hong Kong is not like East Europe and people here would not do such things. I am really surprised that these Preparatory Committee members who are trade union representatives themselves would have said such things in front of the students of the Chinese University of Hong Kong. Be it necessary to do so, we ought to do it. Of course, we would not force the people to continue to protest non-stop for several dozen or several hundred days.

I hope that the Chinese Government will not make us feel that it keeps coming down on us. I believe that people of Hong Kong are very placid and tolerant to a large extent. I hope that today the Legislative Council can get a clear message across to the Chinese Government and Mr TUNG Chee-hwa that some things cannot be handled in whatever way they like. If they are willing to take back this proposal, I believe that it will have a positive effect and let the

people of Hong Kong know that the Chinese Government and the Preparatory Committee will not turn a deaf ear to their views. I believe that we are now at a delicate time. If all agree that the laws should not be amended, I hope that we will voice it out together. More importantly, I hope that the Chinese Government will, after hearing the views of the people here, decide to respect the view of the people and allow Hong Kong a high degree of autonomy and continuous freedom.

With these remarks, I support Dr YEUNG Sum's original motion.

MR ALBERT HO (in Cantonese): Mr President, Mr TUNG Chee-hwa has expressed a lot of his political views since being elected the Chief Executive of the Hong Kong Special Administrative Region (SAR). Recently, he even rose to defend the Preparatory Committee's proposal and render support to weaken the Hong Kong Bill of Rights Ordinance (BORO) and to repeal certain provisions therein. I would like to response to his comments.

Soon after assuming the office of the Chief Executive, Mr TUNG has been emphasizing that he would be a strong leader. In other words, he will lead a strong administration to govern Hong Kong. What does this mean?

Mr TUNG has indicated that he supports weakening the Bill of Rights and repealing the existing Public Order Ordinance (POO) and Societies Ordinance (SO), as well as the Provisional Legislative Council's proposal to reinstate the draconian laws. As such, I believe that the public will have the impression that Mr TUNG and his administration are to suppress the freedom of community activities for the purpose of creating and consolidating his strong leadership. In so doing, he can restrict or even suppress politically dissident organizations as well as other vulnerable organizations and further cut back the basic rights of association, assembly, procession and protest.

The purpose of weakening or repealing the said laws is to weaken the power of the community, so that the Chief Executive and the SAR Government will enjoy more power and have more room to manoeuvre but subject to no check and balance.

Worse still, when Mr TUNG shows his strong leadership to the people of Hong Kong, he is at the same time absolutely obedient to the Central Government and follows every line set by it. If Mr TUNG remains in such a

position and pursues the wish of the Central Government to suppress the will of Hong Kong people, I believe the people of Hong Kong will have an impression that the Chief Executive is just like the fox borrowing the tiger's terror as well as holding a candle to the devil.

I would like to give a piece of advice to Mr TUNG and wish that he would remember well the traditional saying that "people are the most superior, next comes the government, and then the king." I hope that Mr TUNG will make use of his so-called strong leadership to speak up for the vulnerable people of Hong Kong and to safeguard our basic human rights and freedom.

Also, Mr TUNG emphasizes that the present argument is not on human rights because it is more necessary to maintain social orders, so as not to cause disruption and damage to the society. We certainly agree that, in exercising the basic right of expression, no citizen should disregard social order, the rule of law and equal rights of other people. In fact, the said covenants also recognize that it is necessary to strike a balance between public interest and individual rights. The question is how such balance can be struck.

To strike such a balance, first of all, we must take the principles laid down in the Bill of Rights and the two covenants as the statutory foundation. Secondly, there should be a fully represented legislature which will make laws to effect that balance after assessing the need of the society and the will of the people. Thirdly, to safeguard the final balance, we need an independent judiciary to exercise the authority of judicial review and independent trials. Such balance should never be determined by orders of the Central Government, nor by judgements made from Mr TUNG's intuition.

Moreover, Mr TUNG keeps saying that "we should pay more attention to obligations than rights" and that "we have to depoliticize Hong Kong". In fact, we are extremely concerned that his relatively weak human rights awareness will be overshadowed by his pro-conservative values. Is it really suitable for him to perform the balancing function by himself only and to go his own way to weaken or repeal the laws?

Mr TUNG dislikes others to "bad-mouth" Hong Kong, he has recently condemned the Democratic Party

PRESIDENT (in Cantonese): Mr Albert HO, I have heard two issues about Mr TUNG, and this third issue is still about Mr TUNG. Our topic, however, is about the endorsement of the Preparatory Committee to repeal the Societies and Public Order Ordinances. I hope that you will not focus too much on issues about Mr TUNG.

MR ALBERT HO (in Cantonese): Mr President, a lot of Mr TUNG's comments are in support of the Preparatory Committee's decisions. That is why I voice my opinions against his comments.

PRESIDENT (in Cantonese): You may disagree with some of Mr TUNG's arguments but our topic is not about Mr TUNG. It is about the Preparatory Committee's decision to repeal the laws.

MR ALBERT HO (in Cantonese): Mr President, my address will stick to the present topic.

Mr President, I do not think people will agree that there are comments around which are meant to malign Hong Kong, nor will they agree that there are comments around which "bad-mouth" Hong Kong aimlessly. However, good things will be good things and bad things will be bad things. Bad things will remain bad even if they are not bad-mouthed; good things will remain good even if they are bad-mouthed.

However, we must stress that a nice place can be "bad-framed" and a good place can be turned into a bad one. Suppose we had a sound legal system and many good laws, but all of a sudden, our legal system was destroyed and our good laws replaced by draconian ones, then these perverse systems, policies and legislation's would turn Hong Kong into a dark, autocratic and corrupt place. Therefore, I hope the Preparatory Committee and the future Chief Executive will focus their attention to keep Hong Kong away from being "bad-framed" rather than worrying about other people's comments about Hong Kong.

Mr President, finally, I believe that many of our colleagues in this Council

will agree that, in fact, there is no legal foundation to support weakening the BORO and repealing the existing laws of Hong Kong. There are only a few justifications at most. I feel that the legislation in question is being selected for political reasons and it looks as if its purpose is to suppress the freedom of speech and expression in Hong Kong. This worries us very much.

The Honourable IP Kwok-him mentioned the issue of supremacy just now. It seems that he still fails to understand that it is not the case. As a matter of fact, the BORO is not overriding. The question is whether Hong Kong should implement the two human rights covenants through legislation and whether the legislature of Hong Kong should make laws that are not consistent with the human rights covenants. These are the essence of the question and they have nothing to do with the issue of overriding. I hope everybody can accept the points mentioned above and support the motion of Dr the Honourable YEUNG Sum.

MR PAUL CHENG: Mr President, I have decided to participate in today's debate because it is high time we started dealing in facts. From the reaction of and comments made by the international media, some of the foreign governments, the British Foreign Secretary, the Governor and certainly some of the Hong Kong politicians, the general public —both at home and abroad —could be excused for thinking that the entire Bill of Rights is being repealed and that Hong Kong people will be stripped of all their freedoms.

Such wilful misrepresentation of the facts serves only to increase the concerns and anxiety of people here in Hong Kong and to further damage perceptions of Hong Kong overseas.

The fact is that Hong Kong will still have its Bill of Rights and the provisions of the International Covenant on Civil and Political Rights will still be in force in Hong Kong through Article 39 of the Basic Law. This should be made absolutely clear.

What should also be made clear is that despite attempts made by the merchants of doom to lump everything together into confused issues, we are actually dealing with two quite and distinct issues.

The first issue relates to technical amendments to the Hong Kong Bill of

Rights Ordinance (BORO) to prevent it having supremacy over the Basic Law, while the second relates to amendments to the Public Order Ordinance (POO) and the Societies Ordinance (SO). Let me begin with the BORO.

Despite attempts by the Governor and perhaps even some of the Legislative Council colleagues here in today's debate implying that I have changed my stance, let me make it absolutely clear. Today, as in the past, I fully support the BORO. However, today, as in the past, I have reservations about the compatibility of the BORO with legislation already in place, and, in particular, the relationship between the BORO and the Basic Law.

I am not a legal expert, so I have to rely on legal opinion, and if legal opinion is of the view that the Bill of Rights overrides the Basic Law, then a few technical amendments will need to be made to the BORO to prevent this situation from arising. After all, the essence of the BORO is to reinforce various freedoms and rights for the Hong Kong people, not the granting of supremacy over our mini-constitution.

But let us make it very clear, we are talking here about technical amendments. No one is suggesting for a moment that the BORO be repealed.

On the issue relating to the POO and SO, let us not make condemnation before the fact. This matter has now been delegated to the Special Administrative Region Government to handle. I do not wish to go into the details at this point, but as far as the POO is concerned, the key is to make sure proper balance is in place to enable expression of opinion. But this must be done in a peaceful way so that ordinary citizens are not inconvenienced in any way.

Misleading the public, both locally and abroad, through exaggeration or twisting of the facts would only damage Hong Kong's investment climate and erode our status as the leading commercial and financial hub in the region. Would that benefit Hong Kong and the livelihood of Hong Kong people? What it would do is to raise unemployment as investment and confidence in Hong Kong both go down a slippery slope.

I would, therefore, like to once again urge colleagues now more than ever before to work together constructively in the interests of Hong Kong's future and not try to split the community.

Thank you.

THE PRESIDENT'S DEPUTY, DR LEONG CHE-HUNG, took the Chair.

MR LEUNG YIU-CHUNG (in Cantonese): Mr Deputy, several days ago Mr TUNG Chee-hwa, the Chief Executive Designate of the Hong Kong Special Administrative Region (SAR), criticized some well-known personalities for "bad-mouthing" Hong Kong while they were overseas, thereby harming Hong Kong. I do not doubt the good faith of Mr TUNG in maintaining the prosperity and stability of Hong Kong. However, I hope he understands that those people who undermine the prosperity and stability of Hong Kong are members of the Preparatory Committee appointed by Beijing. They ignore the aspirations of Hong Kong people and the principles of the rule of law by proposing to repeal some of the provisions of the Hong Kong Bill of Rights Ordinance (BORO), the Societies (Amendment) Ordinance (SO) and the Public Order (Amendment) Ordinance (POO). Mr TUNG, being one of those who supported the proposals to repeal the laws, accused others of "bad-mouthing" Hong Kong. I think in so doing, he was having a guilty conscience and was acting like a thief crying "Stop thief!". Such accusations, sent through the mass media to Hong Kong and all parts of the world, can only make people feel there will be a great setback in human rights and freedom in Hong Kong.

It comes as no surprise that Hong Kong people are worried about the said proposals put forward by the Preparatory Committee. Hong Kong people are not over-reacting either. They voice their oppositions to the proposals with a good cause. They do so not because they want to reject whatever is put forward by the Chinese. Instead, it is just because the proposals will really tighten Hong Kong people's freedoms of association, assembly and procession. At the same time, the proposals provide a legal tool for the future SAR Government to crack down on dissidents. The traditional leftists, who have suffered very much from the draconian colonial laws, should know this well. Of course, some people may argue that reinstating laws can prevent chaos in Hong Kong, and under normal circumstances those laws reinstated would only lie idle without affecting the general public. However, I must point out that such arguments are designed to confuse because once they are there the Government has every possibility of

invoking them. The resultant deterrent effect would have a lot of adverse effects on people expressing their ideas and exercising the freedom of speech.

Mr President, amidst all the bickering between people for and against the reinstatement of the laws in question, what scares me most is the lawless spirit of the Preparatory Committee. Article 160 of the Basic Law stipulates 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 National Peoples' Congress (NPC) declares to be in contravention of the Basic Law. However, since the days of the Preliminary Working Committee to the present time at which the Preparatory Committee formally adopt the proposal to repeal the laws, the relevant authority has never explained clearly which parts of the laws to be repealed contravene the Basic Law. On being pressed by the media, some Preparatory Committee members could only defend their position with such empty slogans as: "These laws contradict the spirit of the Basic Law" or "They contravene the requirement that laws currently in force in Hong Kong will remain basically unchanged". Hence, it is not surprising that the Governor ridiculed these arguments to be "political nonsense". Of course, for those politicians who are used to acting like voting machines or rubber stamps, their ugly behaviours are hardly surprising. Nevertheless, as the Chief Executive of the SAR, what Mr TUNG Chee-hwa says and does utterly disappoint those people who still maintain the last bit of hope in him. The main argument of Mr TUNG, the Chief Executive, for repealing these laws is that he wants to find a suitable point of balance between human rights and the stability of Hong Kong. It is not a sin for him to be conservative in his political beliefs. But as he is the Chief Executive of the SAR, I think it is a wicked sin if he wants his political beliefs to prevail over the law and forces Hong Kong people to accept! In so doing, he should be reprimanded by the mass. The repeal of laws lowers his personal credibility. More importantly, Mr TUNG intends to rule Hong Kong with his own will, ignoring the requirements of the law. This is a matter for everybody and so everyone should point out what has done wrong.

Mr President, the impact on Hong Kong of the Preparatory Committee's proposal to repeal laws does not simply stop at having a few laws reinstated. Under Article 158 of the Basic Law, the power of its interpretation shall be vested in the Standing Committee of the NPC. At present, we cannot tell how in future the Standing Committee will interpret the Basic Law. However, the farcical proposal of the Preparatory Committee to repeal laws has set a very bad precedent. A number of people, be they politicians in the Preparatory

Committee, the Chief Executive-designate of the SAR or Chinese officials at various levels, are trying to hide their ulterior political motives by interpreting arbitrarily the Basic Law and by using the so-called Basic Law spirit, which is empty and meaningless. When Hong Kong people and the international community see this farce, how can they have any faith in the Standing Committee of the NPC giving reasonable and legitimate interpretations to the Basic Law? After this farce, the impact on the future system of the rule of law will be so immense that the system will be beyond repair. The result will be far-reaching.

Mr President, I remember a fable I heard in my childhood. It was a calm and breezy night with stars and the moon shining above. A confident Beijing dog was strolling along the side of a lake, which was as smooth as a mirror. Suddenly, it occurred to the dog that it should bark at the lake. At that moment, it discovered that there was another dog in the lake barking back. The Beijing dog thought to itself, "I am the newly elected "best dog of the year", to say the least. What dog is it in the lake that dares to bark at me!" Thinking like this, it mustered greater force and shouted twice towards the dog in the lake. Upon its barking, it could see the dog in the lake bark back twice with more force as well. The barking from the lake broke the tranquillity of the night and created huge repercussions from the surrounding. The Beijing dog was provoked and determined to teach the dog hiding in the lake a lesson for breaking the calmness of the night. At last, it charged with all its might at the dog in the lake.

Mr TUNG may not have heard this fable. He may regard the story as too childish to be given any attention. Still, I hope he understands that there has never been the other dog in the lake. What breaks the tranquillity of the night is just what the Beijing dog does to its own shadow. The ignorance of the Beijing dog has eventually brought itself down from the noble status of the "best dog of the year" to a real underdog.

Mr President, I so submit.

MR LAU CHIN-SHEK (in Cantonese): Mr Deputy, precisely a month ago, the Legal Subgroup of the Preparatory Committee of the Special Administrative Region (SAR) suggested in Beijing the repeal of the existing Societies Ordinance (SO) and Public Order Ordinance (POO) of Hong Kong as well as some other legislation. This gave rise to strong oppositions by the non-governmental bodies and legal professionals in Hong Kong, as well as incessant denunciation from overseas. There are various views on the repeal of the laws within the

Preparatory Committee, but it is both ridiculous and lamentable that, although Miss Maria TAM, a member of the Legal Subgroup, has openly expressed that she disagrees to the repeal of the laws, she has to vote for the repeal at the general meeting of the Preparatory Committee. I would like to pose the following questions to the hand-raising machines which make up the majority:

First, for what reasons of law does the Preparatory Committee propose the repeal of the laws? In accordance with Articles 2 and 8 of the Basic Law, the SAR is authorized to "exercise a high degree of autonomy and enjoy executive, legislative and independent judicial power, including that of final adjudication". Article 160 specifically stresses 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 National People's Congress declares to be in contravention of the Basic Law". However, the Preparatory Committee has not pointed out in what way the existing legislation is in contravention of the Basic Law. Despite the repeated allegation by the legal professionals of Hong Kong that there is not any contravention, the Preparatory Committee has still remained indifferent and acted in its own way. This would only thoroughly and seriously affect the basis of the rule of law in Hong Kong.

Throughout last month, the Preparatory Committee has been fervently advocating the appeal of the laws on a grand scale as it simply want to place itself above the SAR Government and the Legislative Council and become the supersovereign. I would like to ask members of the Preparatory Committee, who are not returned by election, not attending to their proper duties and disregard law and discipline, whether they should stop before going too far.

Secondly, the existing SO and POO allow the vulnerable groups to get organized, rely on one another for support and put forward their claims by means of assembly and demonstration when necessary. Therefore, the public have become aware of the problems of container truckers, single parents, owners of the "uncompleted flats" in the Mainland, people living in rooftop huts, the disabled and dismissed workers. Social progress is dependent on the interaction between the people and the Government, and the freedoms of speech, assembly and information are absolutely important. Once the relevant legislation is repealed or the draconian laws are reinstated, the claims of the vulnerable groups would be drowned out and their resistance would be stifled.

The repeal of laws would not affect the parties and groups which are used to processions and demonstrations. I would also do what I have been doing and appear in the streets to show my resistance. However, if the draconian laws are

reinstated in future, the public would not know how to file applications and they would be afraid that their requests would be rejected by the police. If their requests are really turned down, they would not have any channels to change the decisions of the police while their requests and discontents cannot be expressed. As a result, the discontents of the public with the police would be aggravated. On the other hand, if they are finally permitted to hold assemblies and demonstrations but the police set out additional conditions of assembly at the last moment, the public would be even more discontented and there would be more chances of conflicts between the police and the public. Around 10 years ago, when I filed an application for holding a demonstration from Tsim Sha Tsui to Mong Kok, the police demanded that we should proceed along Wylie Road. Would Members imagine how we could hold a demonstration on Wylie Road? This would not fulfil the original intent of the demonstration at all but the draconian laws at that time exactly wanted to achieve that.

Thirdly, the proposal of the Preparatory Committee would only make the Police Force more political and turn them into a tool. The examination and approval of the applications for demonstration and assembly by the police would only intensify the confrontation between the public and the police. The Preparatory Committee is passing its responsibilities to the police and this would not do any good to the stability of Hong Kong in future. What does the Preparatory Committee intend to do?

Fourthly, I believe that the Legal Subgroup of the Preparatory Committee has come up with the idea of reinstating the draconian laws because of its lack of history sense. They need only ask the leftist "pioneers of revolution" in the '60s and '70s, and they would know that the leftists were arrested at that time for they had fallen victims to the draconian law, the POO in those days. Some of these leftists are members of the Preparatory Committee now. Those draconian laws were enacted to lash at the leftist activities and the leftists should grind their teeth with hatred. The leftists should be delighted with the Hong Kong Bill of Rights Ordinance introduced after 1991 which caused amendments to be made to various legislation which is in violation of human rights. However, the members of the Preparatory Committee support reinstating the draconian laws today. Are they victimizing themselves or have they lost their memory?

In general, I think that the Preparatory Committee is defying the laws but

the public are innocent. If the NPC adopts the relevant decisions, the autonomy of the SAR would be hopeless.

These are my remarks, thank you, Mr Deputy.

MR AMBROSE LAU (in Cantonese): Mr Deputy, it was clearly stipulated in the Joint Declaration signed in 1984, "The laws currently in force in Hong Kong will remain basically unchanged." If we take "the laws currently in force in Hong Kong" to mean those in force in Hong Kong in 1997, China and Britain would not know which laws would be "currently in force in Hong Kong" in 1997 when they signed the Joint Declaration. Therefore, "The laws currently in force in Hong Kong will remain basically unchanged" should mean the laws in force in Hong Kong when the Joint Declaration was signed in 1984 would remain basically unchanged.

Mr Deputy, after the Joint Declaration was signed, the Government violated the agreement and made a number of amendments to the laws of Hong Kong. From 1985 to 1996, the Government had, without consulting the Chinese Government, unilaterally enacted as many as 184 pieces of legislation and passed 845 amendments to the original laws. The Preparatory Committee considered that enactment and amendment of laws were necessary to tie in with the development of the society, and so long as the principle of keeping the laws originally in force in Hong Kong unchanged was upheld, the Basic Law was not contravened.

The Preparatory Committee has proposed not to adopt some provisions of the Hong Kong Bill of Rights Ordinance (BORO) and the Personal Data (Privacy) Ordinance (PDPO) because those provisions upset the the original legal system of Hong Kong and have violated the overriding status of the Basic Law as the ultimate and supreme law of the SAR. When Britain and some other common law countries became signatories to the international covenants on human rights and implemented the covenants in their own countries, they did not directly and comprehensively incorporated the full text of the international covenants into their own laws. Instead, the covenants were implemented through the laws enacted by the country or region concerned. Up to now, Britain does not have any Bill of Rights and Article 39 of the Basic Law adheres to the common law system by providing that the two international covenants "shall be implemented through the laws of the Hong Kong Special Administrative Region". However, section 2(3) of the BORO provides that the international covenants shall be

incorporated into the laws of Hong Kong. This has deviated greatly from the legal systems of Britain and Hong Kong and has also contravened the provisions of the Basic Law. Section 3 of the BORO empowers judges to repeal laws freely. This will mix up the legal and judicial powers as laws enacted by the legislature after three readings can be repealed by any judge at any time. This is tantamount to giving the legislative power to the courts and therefore has contravened the Basic Law's provision that legislative power in the SAR shall be vested in the legislature. According to section 4 of the BORO, not only can it repeal pre-existing legislation, it can repeal subsequent legislation as well, which will totally change the legal system of Hong Kong as stipulated in the Basic Law. Section 3(2) of the PDPO also provides for the same overriding status. Therefore, it is reasonable to repeal such provisions.

The Preparatory Committee does not adopt the relevant amended provisions in the SO and the POO because the amended provisions in the former Ordinance contravenes Article 23 of the Basic Law, whereas the latter inappropriately weakens the power of the Police Force in protecting public interests and maintaining public order. Recently, Britain has enacted local legislation to strengthen the registration of societies and greatly increase police power. Yet Hong Kong is heading in the other direction. Do you think Britain itself wants to do away with human rights? I believe Members will have no difficulties in getting the correct answer.

According to a report by the Agence France-Presse, Mr RIFKIND, the British Secretary of State for Foreign and Commonwealth Affairs, told reporters after meeting with Mr QIAN Qichen, the Chinese Minister of Foreign Affairs, in Singapore last Friday that Mr QIAN told him Beijing would not decide which new laws should replace the repealed laws; instead, Hong Kong people and Mr TUNG Chee-hwa, the Chief Executive designate, should make the decision. The British Secretary of State stressed that Mr QIAN had specifically stated that China would not try to decide what laws would be adopted as replacements. the decision would be left to the Chief Executive designate and Hong Kong people.

Mr Deputy, the relevant proposals of the Preparatory Committee have adequately dealt with the relevant problems, and this Council should not go on wrangling interminably.

Mr Deputy , I so submit.

DR ANTHONY CHEUNG (in Cantonese): Mr Deputy, the Preparatory Committee of the Special Administrative Region (SAR) proposes to repeal certain provisions in the existing Societies Ordinance (SO) and Public Order Ordinance (POO) which were amended in accordance with the Hong Kong Bill of Rights Ordinance (BORO). The Preparatory Committee also proposes to repeal some important provisions in the BORO and Personal Data (Privacy) Ordinance. Just as several Honourable colleagues have said a moment ago, the crux of the question is whether the BORO contravenes the Basic Law. Many people and legal practitioners in Hong Kong think that the BORO conforms to the Basic Law, and therefore the Standing Committee of the National People's Congress (NPC) should listen to the strong reaction of the Hong Kong community on this issue and reject the resolution of the Preparatory Committee to repeal the above-mentioned laws.

In the following, I will quote the speeches of some incumbent and former Members of this Council to reiterate the necessity and rationality of the present BORO and related laws.

First of all, our President of the Legislative Council, Mr Andrew WONG, pointed out in his speech in the Legislative Council sitting on 5 June 1990 that there were six fallacious arguments opposing to the BORO. At that time, he said that the opponents to the BORO hoped that a falsehood repeated a hundred or a thousand times would become the truth. Among the fallacious arguments he raised then, four of them still exist today:

(1) Why did not we have it over and done with earlier but instead choose a particularly sensitive moment as now to get started?

(2) The human rights concept Chinese people hold is radically different from that of the West. The people of Hong Kong basically do not identify themselves with the Western concept of human rights. Western criteria on human rights should not therefore be imported, or, if ever, they should at least be imported in a gradual manner.

(3) As the common law already affords adequate protection for human rights, why should the BORO be enacted? Or, put it in the words of the Honourable Ambrose LAU: As the United Kingdom does not have a Bill of

Rights, why should Hong Kong have one?

(4) The BORO will override the Basic Law; it will reduce the Basic Law to nonentity; it will contravene the Basic Law; the Basic Law already provides adequate safeguards for human rights; therefore, why should the BORO be enacted?¹

Mr Deputy, when Mr Andrew WONG talked about the above fallacious views, it looked as if he was speaking for the opponents, but in fact he was again dealing head-on blows at the views and arguments that he considered fallacious. Mr Deputy, I concur completely that we should take the opportunity of today's debate to deal head-on blows once again at any fallacies related to the BORO.

The Honourable Mrs Peggy LAM also presented her views vehemently then, trying all she could do to state the importance of the human rights laws. She said, "Human rights are the basic requirements for the civilization and advancement of any modern society. Hong Kong is a progressive metropolitan city. Our concepts, culture, finance and developments are all internationalized. It is therefore natural and indisputable that the people of Hong Kong should enjoy the human rights upheld in a modern city. Moreover, from a practical point of view in Hong Kong today, the enactment and promulgation of a Bill of Rights Ordinance are not necessarily related to the 1997 issue. With its present-day progress, Hong Kong has a genuine need to introduce legislation to safeguard human rights instead of relying solely on international covenants. In my view, the promulgation of a Bill of Rights Ordinance should be regarded as a factor conducive to the maintenance of stability and prosperity in Hong Kong, and a step forward in promoting Hong Kong's rule of law system. It is, moreover, an indispensable part of the journey towards civilized social developments."²

The Honourable Paul CHENG has said just now that he has not changed his stance. At that time, he avowed very clearly the responsibility of himself as a legislator. He said, "It is incumbent upon us as legislators preparing for the effective running of Hong Kong as a special administrative region to ensure that

¹ For the above 4 fallacious views, please refer to Hong Kong Hansard, 5 June 1991, P. 2316, speech of Mr Andrew WONG.

² Hong Kong Hansard, 27 June 1990, P. 1824, speech of Mrs Peggy LAM.

we will entrench essential freedoms in line with the International Covenant on Civil and Political Rights. A Bill of Rights will allow for this in the most expedient manner."³

Mr Deputy, as for the saying that there is no need to have additional legislation because human rights are already safeguarded by the existing common law, the Honourable Miss Maria TAM pointed out sharply then, "In fact, in Hong Kong our protection of the individual under the common law is insufficient or else we would not find such a gap between our local legislation and the requirements of the Covenant."⁴

Mr Deputy, from the 80s when the legal sector started to fight for human rights legislation in Hong Kong till 1991 when the laws were officially enacted, discussions about the BORO have been going on for more than a decade. The BORO issue has been thoroughly and completely discussed in this Council and even in the community of Hong Kong. Since the enactment of the BORO, the stability of the Hong Kong society has never been undermined in any way. To repeal part of the BORO and certain provisions in other ordinances which were amended in accordance with the BORO will only unreasonably undermine the structure of the BORO that has already been built up steadily, divest its integrity and adversely influence the protection of human rights in the future Hong Kong SAR.

If the NPC attaches importance to the promise of safeguarding human rights in Hong Kong in the future as written in the Sino-British Joint Declaration and the Basic Law, it should not repeal the laws just because they were "British". The NPC views these laws as part of the British political conspiracy plotted against China simply because they were officially introduced in the form of bills by the British Hong Kong Government. It wants to repudiate them without ever taking into account the impact on the people of Hong Kong. This is indeed turning back the wheel of history. I sincerely hope that the Chinese Government and the Standing Committee of the NPC would think twice before they act.

Mr Deputy, with these remarks, I support the motion of Dr the Honourable YEUNG Sum.

³ Hong Kong Hansard, 27 June 1990, P. 1816, speech of Mr Paul CHENG.

⁴ Hong Kong Hansard, 27 June 1990, P. 1778, speech of Miss Maria TAM.

MR CHIM PUI-CHUNG (in Cantonese): Mr Deputy, before the transfer of the administration, a lot of things are bound to happen, which is nothing unusual. In fact, this is part of the political strategy of the British Government. It is unfortunate that some Legislative Council Members, including most of those from the pro-democracy camp, have been forced to jump off the wall, which is the only way out for them. Therefore, they are taking every opportunity to cause confusion, and especially when facts are concerned, they are even bolder to do so.

Some Members of this Council have said that we should keep a close look from the beginning to the end. The Chinese and British governments have all along been holding negotiations on Hong Kong through various channels and the natural development has seen the British Government insist on imposing something which is unacceptable to the Chinese Government. Therefore, the on-going row over the Hong Kong Bill of Rights Ordinance (BORO) and the Societies Ordinance (SO) has been the result of an attempt by the British Government to create direct conflict between China and the people of Hong Kong by making the latter no longer think of how much Britain still owes or has not given to them when it is about to withdraw. In my opinion, Legislative Council Members from the pro-democracy camp and some politicians who do wish to improve the living conditions in Hong Kong have made the mistake of being manipulated.

We must bear in mind that China today is no longer what it was 154 years ago. Beijing also has a large number of persons who "earn a living from politics". They have struggled and survived in the political arena for a few dozen years and are not afraid of the politics of Britain at all. Unfortunately, the so-called "Hong Kong people ruling Hong Kong" in future is in fact a reflection of the people of Hong Kong being manipulated. The general public of Hong Kong should ascertain what elements this concept actually contains. The main reason behind this is the purpose of the British Government to make more trouble in the final days of its administration in order to create direct friction between the Chinese Government and the people of Hong Kong, thereby increasing the difficulties for the Chinese Government in the administration of Hong Kong and creating an impression on the people of Hong Kong that they were better off under British rule than they would be under that of the SAR Government. One should have a closer look at such political ends and aims.

With regard to the reinstatement of some laws, I am of the view that one must first understand what draconian laws mean. Draconian laws are a "gift" to Hong Kong from the British Administration. The so-called draconian laws as commonly known to us seem to have the association that they have been left to the people of Hong Kong by China, but it is not necessarily so. Therefore, the reasons for the row which has been aroused on international level are more or less the same as those concerning the issue of the Provisional Legislative Council. You should know well that you have thrown away the "through train", and you do not allow the Chinese Government to handle the matter on its own; you are really being too domineering. You could only regret the fact that not all 60 Members in Legislative Council were directly elected in the 1995 elections, which achieved that goal only half-way through by having another nine Members elected in a thinly-veiled direct manner.

Under such circumstances, it does not matter for us Legislative Council Members, as participants in politics, to have diverse political opinions as long as we base our arguments on facts and have specific aims. One should not confront China after leaving the Legislative Council and put all the blame on China. The Preparatory Committee just clarified the fact that the Chinese and British governments had agreed that it would be most desirable that laws practised in Hong Kong should remain unchanged. As for those laws which have been changed, they could be frozen and left to the Provisional Legislative Council, or the first Legislative Council of the SAR, and the people of Hong Kong to revise. By then, the relevant laws may be less restrictive in that prior application may not be required for holding rallies, or as the Governor said, demonstrators might even be treated to a cup of coffee or tea, and provided with an electric fan in summer. All of these could be left for the future Legislative Council and political participants to strive for so as to make the Chinese Government realize that Hong Kong does have such a need.

During the transition period, we should focus our attention and common wish on matters which are constructive and conducive to Hong Kong, instead of continuing with the argument about the above-mentioned matters. Of course, someone may say these are special conditions good for Hong Kong and are the common wish of the people of Hong Kong. If these were the case, I would like to suggest that this mentality and the relevant legislation should be explained clearly to the Chinese Government in the future. After all, China is our sovereign power. It may accede to our demand in view of the different political

system to be adopted in Hong Kong. If this is indeed the common wish of the people of Hong Kong, China would not make life more difficult for us. I am personally quite confident about this.

Of course, I would also like to remind all of you that nowadays, there are always a few familiar faces among participants in rallies and demonstrations. Some members of the public even mistook them for professional demonstrators and asked where they could apply to take part in demonstrations and whether they would get paid. Rallies and demonstrations in future may be met with some counter-demonstrations and rallies. Holding demonstrations by then may not be as relaxing as we are now used to under the protection of laws and the Government. Therefore, we should deal with future matters through consultation instead of indulging in our own wishful thinking and blocking other attempts which may not be totally agreed by all sides.

I personally suggest that we should keep calm. Under the present circumstances, it is not necessary for us to argue about these things. Our common goal should lie in making the transition of Hong Kong a success.

Mr Deputy, these are my remarks.

MISS MARGARET NG: Mr Deputy, the legal profession has spared no occasion to make its views known on the attempt to tamper with Hong Kong's laws, whether by the Preliminary Working Committee, the Legal Subgroup of the Preparatory Committee, or the Preparatory Committee itself.

The approach the legal profession has adopted is consistent. The rule of law must be upheld. The enactment and repeal of laws must follow a lawful process. The law cannot be set aside for political considerations by political means.

Mr Deputy, I need not repeat here the full and detailed arguments the legal profession has set out in opposing these proposals to repeal the laws in question. I shall only state them briefly.

Firstly, under the Basic Law, the National People's Congress can only repeal an existing law, only if that law contravenes the Basic Law, and not on

any other grounds. Therefore, political reasons cannot be accepted for repealing any of the laws.

Secondly, the power to repeal is limited to non-adoption. It does not go further into reviving any older version.

Thirdly, and the most important point is that the enactment or repeal of laws must follow "due process" — that is, it has to be clearly and openly proposed, and argued on reasoned grounds, and taken through the proper procedure. It is not acceptable that those in power simply state it as their wish to do so.

Mr Deputy, the Bar has taken no short-cut, but has set out the legislation or provisions which are suggested to be repealed meticulously, examined whether each of these may contravene any article of the Basic Law, and drawn a conclusion separately for each of them.

On the basis of that detailed examination and analysis, we have come to the conclusion that none of the legislation singled out contravenes any of the articles of the Basic Law, and none should be repealed. Despite repeated requests, we have been given no reasons of law for repealing any of these laws, although the political reasons for doing so are repeated only too often.

We fear, and we have made our fears widely known in no uncertain terms, that this would do fundamental harm to the rule of law in Hong Kong. This is the last thing Hong Kong can afford.

The spirit of the rule of law is equally important and that has to do with the respect for human rights and the freedom of the individual. That is why the attempt to weaken the Bill of Rights and retrogressive tightening of laws restricting the freedom of association and assembly are of special concern to us.

In a recent article in the *Ta Kung Pao*, the Chinese authorities have tried to justify their position by arguing that they are already taking a more lenient view, even though by right they can be much more severe, in that the numbers of laws to be repealed has been drastically reduced.

We understand this is meant well, but this misses the point, and further

proves our concerns to be justified. Under the rule of law, whether a law should be repealed depends on whether it contravenes the Basic Law, not whether those in authority are minded to be severe or lenient. The protection of the law cannot depend on the whim of those in power.

Mr Deputy, the battle for the rule of law is far from won. We must continue to fight with spirit, with reason and with perseverance. I am proud to assure this Council the legal profession will continue to do so to the best of its ability. Thank you.

MISS CHRISTINE LOH (in Cantonese): Mr Deputy, it is extremely difficult to speak after the Honourable Miss Margaret NG because the legal point she just made has basically covered all the points and I cannot put it any better. Therefore, I will not repeat what she has said. I just want to say that I totally agree with her. I also agree with the points that Dr the Honourable YEUNG Sum has made in his speech as well as the views of the Honourable Edward HO. What in fact is the subject of our discussion today? Basically, many Members have expressed how they see the whole issue and I believe the subject is already very clear.

How should we vote today then? Dr YEUNG Sum said that we should strongly condemn the Preparatory Committee. While Mr Edward HO suggests that the words "strongly condemn" be deleted, the substance of his amendment and his opinion remain the same. I do not know the final result of our voting, which will be held later. I believe we are not going to have the overwhelming result which we had in the past when we held debate on the provisional legislature. I do not know whether all Members of the Liberal Party, if they are all going to take part in the voting, will support Mr Edward HO. If they will, that is good. As they are all nodding their heads, I take it to mean that they will. There will also be Members who support neither side. So what will the ultimate result be like? I believe this is what I choose: I will not object to Mr Edward HO's amendment because he has put it very clearly and the wording of his speech is also very clear. Hence, I will support his amendment. If his amendment is passed, it implies that we will not have the chance to vote on Dr YEUNG Sum's original motion. If Mr Edward HO's amendment is negated, which means we will have to vote on Dr YEUNG Sum's motion, I will give it my support.

Thank you.

MR CHEUNG MAN-KWONG (in Cantonese): Mr Deputy, today I would like to speak in response to the ideas of several Members.

The reinstatement of the Hong Kong Bill of Rights Ordinance (BORO) and the repeal of the Public Order Ordinance (POO) and the Societies Ordinance (SO) have recently caused some severe repercussions from Hong Kong people. These repercussions have led to the plunge of Mr TUNG Chee-hwa's popularity. They have also taught Hong Kong people more about the meaning of holding fast to human rights principles. In recent years people have become particularly aware of the importance of holding fast to human rights principles. Human rights have been trampled on since a hundred or so years ago in colonial Hong Kong. This is a phenomenon that has continued for some time.

I want to ask a fundamental question: Who or which institutions suffered most in the past from colonial draconian laws? Frankly speaking, they were the leftist institutions in Hong Kong. The POO and SO enacted previously were mainly meant to fetter these leftist institutions. These ordinances were meant to restrict their normal political activities and freedoms of speech, assembly and association. However, colonial rule will end this year. Colonialism inflicted sufferings upon leftist institutions. As the Chinese saying goes, they "should not do to others what they do not want done to themselves." But the present position is quite the contrary. Those groups and people who suffered from colonial draconian laws now want to reinstate such laws. They hope to impose such draconian laws on the people of Hong Kong in the new community of the future Special Administrative Region. Plainly speaking, they hope to impose such laws on those Hong Kong people who strive for democracy and human rights. Why are they doing this? Why is it that despite their past suffering they now want to suppress their own people once they have the power to do so?

Hong Kong will be leaving colonial rule behind. But we now have proposals to reinstate draconian laws. This is going to lead Hong Kong into a tyranny of colonial rule without the label of a colony. The only difference is that in the past it was the leftists that were suppressed, but now it is the democrats, and all those who fight for democracy and human rights that are being suppressed. Should this happen in a reasonable and progressive community?

Just now, the Honourable IP Kwok-him said reinstatement of the ordinances had nothing to do with human rights. Rather, he said, it was a question of the degree of liberty given and a question of viewpoint. Indeed, Dr the Honourable YEUNG Sum has stated clearly that reinstating the draconian laws will actually cut back many of the human rights Hong Kong people are beginning to have. So, if Mr IP said everything was a matter of degree and viewpoint, I would interpret the reinstatement of draconian laws as being borne out of the suppression viewpoint for the purpose of tightening the grasp on human rights. Why is the reinstatement said to be unrelated to human rights? I think the reinstatement is absolutely related to human rights.

Mr IP Kwok-him said the purpose of reinstating the two ordinances is to strike a balance between human rights and public interest. What is public interest? In the past couple of years we amended the SO and the POO. After this, what actual harm has been done to public interest? Has public interest been severely jeopardized in these years by the amendments made to the two ordinances? Obviously not. Almost all assemblies and rallies take place in a peaceful manner. All of the societies in Hong Kong are law-abiding and civilized. Why do we have to find a new balance between human rights and public interest? In fact, the so-called new balance is just new emasculation, new setback in disguise. It is intended to bring about retrogressive changes to laws related to human rights, assembly, association, societies and community progress to those days when Hong Kong was under colonial rule. It is a new emasculation on the laws and human rights!

Mr IP Kwok-him also said we would not repeal the entire BORO. We would only repeal a small part of it, meaning this would just be a lesser evil and Hong Kong people should be grateful. Indeed, a lesser evil is still something unfortunate. Why should Hong Kong be dragged into a new but unfortunate state on the eve of the reunion. Why can we not receive the reunion with joy but instead we have to create a lesser evil among ourselves? I think this is absolutely preposterous.

Let me tell a story here. Once upon a time in ancient China, a teacher asked a student to choose between being slapped on the face once or twice.

After some calculation, the student said he would choose to have it once. The teacher said, "You are very stupid! Why should you choose to be slapped at all? You should have chosen no slap whatsoever!" We should treat this lesser evil as something similar.

Moreover, the Honourable Ambrose LAU said the 1984 Sino-British Joint Declaration provides that laws then in force in Hong Kong remain unchanged. Is the signing of the Joint Declaration a death sentence for law reform in Hong Kong? Is law reform going nowhere? What has the elitist law group, the Law Reform Commission done? Is there a city on earth which can freeze its laws for 13 years? Which law professional can insist that laws for a community should remain unchanged for 13 years?

If we wanted everything to remain the same as they were in 1984, many of those who advocated the repeal were then still pro-British servants, like solitary ministers and perverse sons; we had in our public housing units mostly squatting-type toilets rather than pedestal toilets. The only thing I want to revert to 13 years ago is legal fees. But is this possible? The society cannot remain unchanged; nor can the law. It came as a surprise to me that someone from the legal sector should say such things.

Thank you, Mr Deputy.

MRS SELINA CHOW (in Cantonese): Mr Deputy, first of all, I would like to speak on the point that the existing laws are to remain basically unchanged. I do not quite understand how this argument can be held because regarding the point that the existing laws are to remain basically unchanged, I do not believe we have too much disagreement. The question now is, as we want to change it, will it be changed beyond the scope of the Sino-British Joint Declaration or the scope of the Basic Law? The answer is in the negative. Our current Hong Kong Bill of Rights Ordinance (BORO) was formulated on the basis of the two international covenants which were already contained in the Basic Law.

As the Chairman of the committee to scrutinize the BORO at that time and involved in the work, I might have a better understanding of the dispute at that time.

Much has been said about the overriding nature of the BORO. But the question lies with what the Honourable Paul CHENG has just said, whether the BORO overrides the Basic Law. This is rather peculiar, and I do not quite follow his argument. The discussion at that time was about the possibility that the BORO would override other laws and prevail over them. In that regard, there are different views. That may have something to do with the "preceding laws" and "subsequent laws", that is, whether the BORO has a restrictive effect on the laws formulated before it and whether the laws formulated subsequently have to base on it. This may be a sound argument. However, I do not know how the argument that it overrides the Basic Law can be held.

He has also mentioned another alarming issue of "splitting the community". I feel that although there are diverse views, in the face of this controversial issue, we should not resort to exaggeration. The dispute today is in fact a test given to Hong Kong to see what we would do to deal with a serious divergence of views.

I feel that when dealing with such diverse views, we should not exaggerate them. Some arguments have in fact been exaggerated. Whether at home or abroad, we can hear some people of Hong Kong say that this incident will lead to the collapse of Hong Kong. Is that correct? I feel that we do not have to overreact. At the same time, I do not think that we should criticize each other with such impudent and strong words and deeds. For instance, during the dispute, some would reproach the Preparatory Committee and the Preparatory Committee would turn back on those who oppose them. I do not feel that this is a good way to handle the dispute. Actually, the most important thing is to convince others with reason and to resolve the conflicts with calmness and tolerance.

In fact, to be fair, China understands the anxieties of the people of Hong Kong. From the drafting of the Basic Law and the way in which China handled some issues over the past dozen years, we can see that it has made concessions and taken into account the views and worries of the people here. Actually, in this incident concerning the so-called repealing of provisions, they have made certain concessions. Nevertheless, whether we, the people of Hong Kong, consider the concessions to be adequate or not is a matter of subjective opinions.

Actually, we only hope that the Standing Committee of the National People's Congress will accept the views of most people in Hong Kong, that is,

the only reason for not adopting the existing provisions is that they contravene the Basic Law, and that the Standing Committee will appreciate the aspirations of Hong Kong people to freedom and their anxiety over their freedom being restrained, and not to withhold from adopting the provisions that we have just mentioned. If the existing provisions do need improvements, it might as well let the Hong Kong Special Administrative Region Government handle it in a democratic manner through the usual way to move the amendments and undergo the normal consultation procedure. We think, and we believe, that this is the aspiration of most people here.

Therefore, we hope that Members will support the Honourable Edward HO's amendment today, which makes it clear to all sides that this Council is to express, with calmness and reason, our view about the recommendation of the Preparatory Committee and we will not unnecessarily arouse the resentment and accusation against one another. I hope that Members can disregard their prejudice or personal views and support the amendment of Mr Edward HO.

MR SZETO WAH (in Cantonese): Mr Deputy, in fact I did not intend to speak. But I recall a past event after having heard what the Honourable Ambrose LAU has just said. He said that "the laws previously in force in Hong Kong shall be maintained" and they refer to the laws which were in force in 1984.

I had an argument with Mr LU Ping some time ago. He said that "the laws previously in force shall be maintained" and they referred to the laws which were in force in 1984. Having heard that, I told him that such an interpretation would have a significant implication because Article 100 of the Basic Law provides that public servants serving in all Hong Kong government departments, including the police department, before the establishment of the Hong Kong Special Administrative Region, may all remain in employment and retain their seniority with pay, allowances, benefits and conditions of service no less favourable than before. By adopting his interpretation, the phrase "no less favourable than before" refers to the standards before 1984. I then asked whether this meant that all public servants could have their pay cut back to the levels in 1984. Facing my question, he was speechless.

If we count the number of words "previously" or "before" in the Basic Law and assert that these words refer to the situation at or before the year 1984, I am sure chaos will arise. First of all, all public servants will protest against such an

interpretation. It is not surprising that we will arrive at such a situation by following such a logic. I now only express my doubt over Mr LAU's interpretation of the phrase "the laws previously in force shall be maintained" and wonder whether he would interpret Article 100 by following the same logic?

Thank you !

THE PRESIDENT resumed the Chair.

MR ALLEN LEE (in Cantonese): Mr President, I rise to speak in support of the Honourable Edward HO's amendment.

After listening to the speeches made by Members in respect of today's motion debate, I recall a very deep impression when I was in Washington and San Francisco. Proposals of the Legal Subgroup of the Preparatory Committee can be said to have aroused considerable feedback from the international community. The day I arrived Washington, even the front page of the Washington Post had news about Hong Kong and its future. Overseas countries had the impression that China had tightened all freedoms enjoyed by Hong Kong, that assembly and processions were not allowed any more. Of course, this is not true. Nevertheless, this kind of impression is undeniably harmful to the future of Hong Kong. Someone may have gone overseas and promoted this kind of impression. Anyway, a number of Members in this Council have taken part in the drafting of the relevant bills, in particular, the Hong Kong Bill of Rights Ordinance (BORO), the Societies Ordinance (SO) and the Public Order Ordinance (POO), the last two of which have attracted a lot of attention among the Hong Kong and international communities. The relevant bills have been scrutinized in great detail.

I am a member of the Preparatory Committee myself. I voiced my ideas when I attended meetings in Beijing. I objected to the Legal Subgroup's proposals for the Standing Committee of the National People's Congress (NPC) to repeal the two ordinances. Finally, at the meeting, we amended the proposal to the effect that the NPC be advised to repeal those provisions in the SO amended in 1992 and those in the POO amended in 1995. Although the proposals were amended, I had great reservations. Therefore, I abstained at the full committee meeting of the Preparatory Committee.

Although the present position has improved, as it is said that the matter would be dealt with by the Hong Kong Special Administrative Region (SAR) Government. In other words, Mr TUNG Chee-hwa would submit bills to the Provisional Legislative Council for study before 1 July. It is also said that the matter would undergo a public consultation process to solicit response from Hong Kong people. However, I think, in any case what matters most is: What has happened to Hong Kong since the ordinances were amended? Do Hong Kong people think the ordinances have created chaos or threatened the credibility or capability of the Administration? According to my observation about the situation over the past couple of years, the answer is in the negative.

Usually, we, as law-makers, make laws because there are needs in the community to be satisfied or because there is a change in circumstances or because certain circumstances have arisen. An obvious example was the time when the Hong Kong Government had to deal with the riots in 1967. In the light of the riots, the power of the police had to be enhanced to maintain public order. At the time, laws were very harsh. 1967 was the year when I returned to Hong Kong. I deeply felt that the laws then were very strict. An assembly of three people had to be approved by the police. One can imagine that in that situation, the then Legislative Council had to make urgent orders.

However, Hong Kong is an open society today. We need not face problems similar to those mentioned a while ago. The amended ordinances have been accepted by Hong Kong people. That is why I, though a member of the Preparatory Committee, urged the Standing Committee of the NPC not to amend the two very important ordinances. I hope Mr TUNG and the future SAR Government and many colleagues here who are members of the Provisional Legislative Council can carefully consider and study the spirit of the bills and the kind of impact the bills may have on our community when there are new bills submitted by Mr TUNG to the Provisional Legislative Council for scrutiny.

I think the amendment put forward by the Honourable Edward HO is made in good faith. It is not made for the purpose of accusing anyone through its wording. Nor is it a violent attack on any course of action. This is not a "political show". To Hong Kong people, this concerns their own immediate interest and is very important. So, the authorities in China should consider ways to deal with these ordinances with a clear mind. I will have the opportunity to meet Mr TUNG and discuss these matters with him. I hope that his wit is keen enough to understand what Hong Kong people think of these ordinances, and during the future law-making process, he will listen to the voices

of Hong Kong people with sincerity. I do hope that he will not let Hong Kong people down.

PRESIDENT (in Cantonese): I now invite Dr YEUNG Sum to speak on the amendment to his motion. You have five minutes to speak on the amendment, Dr YEUNG.

DR YEUNG SUM (in Cantonese): Mr President, I always handle my matters with a forthright attitude. Therefore, the main reason for me to move this motion on behalf of the Democratic Party is to draw the public's attention towards this issue.

I move this motion to strongly condemn the Preparatory Committee for resolving to repeal these laws and also the three pieces of legislation mentioned just now, and request the National People's Congress (NPC) to reject the decision of the Preparatory Committee because after the Preparatory Committee has approved the proposal, the NPC has to issue its endorsement as well. If such a decision is passed, it will have a great impact on the territory's rule of law.

The stance and content of the Honourable Edward HO's amendment are basically similar to my motion as we both request the NPC not to accept the decision of the Preparatory Committee to repeal the legislation. His amendment only deletes the wording of "strongly condemns" and "seriously tarnish the territory's good reputation in the rule of law", but its stance and content are still in line with my motion.

I do not mind who proposes or amends a motion, or the newspapers will say whose motion has been passed. This is always the way I work. I am indifferent to all these because my focus is always on the incident itself. Since Mr Edward HO shares the same stance with me, it means he supports the formulation of the BORO at that time, and Members from the Liberal Party who have spoken just now at least maintain their stance. I can, therefore, declare on behalf of the Democratic Party that we support the amendment of Mr Edward HO. However, I would like to point out that we are not staging a political show by proposing strong condemnation. We think Hong Kong people should not just remain silent and resign to adversity when our rule of law is being challenged and damaged. I think we should state clearly our stance.

Since we share the same stance, I do not mind giving our support, so the Democratic Party will vote for the amendment of Mr Edward HO.

SECRETARY FOR HOME AFFAIRS (in Cantonese): Mr President, I pointed out in this Chamber 15 months ago that great concern was aroused in the community when the Preparatory Committee proposed to water down the Hong Kong Bill of Rights Ordinance (BORO) and other laws regulating the civil liberties of Hong Kong people. With regard to such proposals, government officials, many legal experts, majority of the public and Members of this Council clearly stated that there was no reason and no need to amend these laws.

Afterwards, the Preparatory Committee's Legal Subgroup continued to discuss behind closed doors and the matter quieted down for a few months. At that time, people expected that the Subgroup would, conforming to the will of the people and listening to the professional opinions of the Law Society of Hong Kong and the Bar Association, give consideration to the possible damages done by amending the laws on the confidence of Hong Kong people and the international community. People also hoped that the Subgroup could take the first step and implement firmly the concept of "one country, two systems".

Although the Preparatory Committee has made concession, it is regrettable that they still insist certain ordinances defining human rights and freedoms are in conflict with the Basic Law. However, the Preparatory Committee has not explained its arguments; neither has it explained how to amend these ordinances, nor who is responsible, nor what laws will be used to replace them. Most importantly, no one has ever considered whether Hong Kong people think these ordinances need to be amended or not.

I want to point out one thing: The Government has no objection to certain proposals of the Preparatory Committee, such as the laws which will no longer be applicable after the sovereignty transfer. What we strongly oppose are:

1. the proposal of repealing some sections in the BORO and the Personal Data (Privacy) Ordinance (PDPO);
2. the proposal of deleting the laws regulating the rights of assembly

and association; and

3. the proposal of repealing the laws which provide the basis for the election systems.

The Preparatory Committee has not put forward convincing arguments to support any of the above proposals. I shall now elaborate our views on these proposals which the two sides do not agree on.

The enactment of the BORO was strongly supported by the community. With this ordinance, all the rights protected by the International Covenant on Civil and Political Rights can be heard in local courts. The ordinance is indispensable for protecting the civil liberty of Hong Kong people and for strengthening the rule of law. In consolidating confidence of the public and ensuring a smooth transition, the BORO is of utmost importance. When it was drafted, we had taken into full account the stipulations in the Joint Declaration and the Basic Law, and had referred to the experience of other judicial regions which had already enacted or were in the process of considering the enactment of human rights legislation. Our BORO was drawn up with regard to the unique situation of the territory.

Both the Joint Declaration and the Basic Law provide that the International Covenant on Civil and Political Rights as applied to Hong Kong shall remain in force after 30 June 1997. Besides, Article 39 of the Basic Law stipulates that the provisions of the above Covenant shall be implemented through the laws of Hong Kong. This is exactly the aim of the BORO. The Ordinance puts into effect the provisions of the International Covenant on Civil and Political Rights which are applicable to Hong Kong. This complies completely with Article 39 of the Basic Law.

Someone says that the BORO has supremacy over other laws so it contravenes the Basic Law. This remark is utterly incorrect and it is caused by a misunderstanding of the operation of the local legal system. The status of the BORO is not different from any other Hong Kong ordinances. To repeal the parts in the original laws which do not conform with the BORO does not mean that the status of the BORO will be placed between other laws and the Basic Law. There are also no provisions in the BORO and the Letters Patent that indicate the status of the BORO overrides the Basic Law. According to the current

constitution, the status of the BORO, just like other ordinances, is secondary to that of the Letters Patent; and after 30 June 1997, its status will also be secondary to that of the Basic Law.

The local laws' compliance with the provisions in the International Covenant on Civil and Political Rights which are applicable to Hong Kong can be ensured by reviewing whether the present laws contravene the BORO. Hong Kong has to safeguard personal rights and freedoms while at the same time enforcing laws effectively. The amendments to the Societies Ordinance (SO) and the Public Order Ordinance (POO) were a concrete implementation of this belief, a safeguard that the governing power and ability of the Government will not be reduced, and a protection against the abuse of the rights of assembly and association. Just now an Honourable Member asked how Hong Kong has been influenced after the enactment of these amended ordinances. What I can say is: over 1 000 public assemblies and demonstrations have been held ever since the POO was amended, and most of them were carried out in order and peace. The Authority has not banned the assemblies and demonstrations, nor has public order been destroyed in the process. We should believe that Hong Kong people are able to exercise the rights and freedoms vested in them by the BORO and the International Covenant on Civil and Political Rights with a civilized and responsible manner. There is no evidence that the public security of Hong Kong has deteriorated because of the amendments to the POO and SO. If we compare the present condition with that in 1991 before the above-mentioned ordinances were amended, the overall crime rate today has instead fallen by almost 19%.

The PDPO also complies totally with the Basic Law. On the one hand, the ordinance protects personal privacy; on the other hand, it ensures that Hong Kong receives without any restriction the personal data it needs from countries which have already enacted data protection legislation because these countries would curb the sending of personal data to places where such laws are not enforced.

We do not have to delete Section 3(2) of the PDPO. This section simply reflects a principle of the common law, that is, in case of incompatibility, the law enacted on a later date should override the law enacted earlier. From the legal perspective, Section 3(2) has not stipulated that the laws enacted later cannot contravene the PDPO. From the executive perspective, when the Government drafts related new bills, it will take into consideration whether the new bills

conform with the present policy and the PDPO. If it does not conform but we believe there are sufficient reasons, the Government will add provisions in the new bill to clearly explain the incompatible areas and the new law will then be used as the norm.

The Boundary and Election Commission Ordinance provides that the Authority must set up a Boundary and Election Commission. The main duty of the Commission is to put forward proposals to demarcate election district boundaries and to ensure that all the elections in Hong Kong are held publicly and fairly so that the people will have confidence in elections. Although the Boundary and Election Commission has only operated for a short time, its fairness, rigour and efficiency have already reached world standard. The Electoral Provisions Ordinance and Legislative Council (Electoral Provisions) Ordinance have both set out provisions about participation in the elections for the Legislative Council, the Urban Council, the Regional Council and the district boards. We do not see any basis to the saying that certain sections in these Ordinances are in conflict with the Basic Law.

Once the proposals of the Preparatory Committee are adopted, public confidence in the continuation of the legal system in Hong Kong will be influenced and certain basic principles of the common law will be queried. The proposals will also bring legal ambiguity and chaos to the application of some basic principles of the common law. As a result, in the first few months after the Hong Kong Special Administrative Region (SAR) is established, the courts and the public may have to take a lot of trouble to clarify the purposes and impacts of these proposals. At the same time, legal dispute may rise one after another.

An equally important issue which the Honourable Miss Margaret NG has also mentioned just now is that these proposals have not paid much attention to Hong Kong's legislative procedures. The principle of the rule of law is that the procedures of enacting and repealing laws have to be open, reasonable and legitimate. However, the procedures taken by the Preparatory Committee do not comply with this principle and they have not provided any legal basis to state which provisions in the Basic Law are contravened by the current laws and in which aspects the contravention lies. Neither have they tried to solve the problems which are likely to be caused by these proposals. If the current laws are repealed, there will be a legal vacuum and the public will be perplexed.

The British and the Hong Kong Governments will do their best to persuade the Chinese Government not to adopt these proposals. The matter has been raised with the Chinese Ambassador to the United Kingdom and has also been discussed in the Sino-British Joint Liaison Group. When the two foreign ministers met in Singapore lately, the matter has also been talked about. It will be followed up through official and unofficial means in the future.

The present is an important moment to define the concept of "one country, two systems". All along nobody has put forward convincing arguments how these laws contravene the Basic Law. The applications of these laws after 30 June should be decided by the SAR Government and a legislature which is set up legitimately through an open and consummate process.

Thank you, Mr President.

Question on the amendment put.

Voice vote taken.

The President said he thought the "Ayes" had it.

Dr YEUNG Sum claimed a division.

PRESIDENT (in Cantonese): Council shall now proceed to a division.

PRESIDENT (in Cantonese): I would like to remind Members that they are now called upon to vote on the question that Mr Edward HO's amendment be made to Dr YEUNG Sum's motion.

Will Members please register their presence by pressing the top button and proceed to vote by choosing one of the three buttons below?

PRESIDENT (in Cantonese): Before I declare the result, Members may wish to check their votes. Are there any queries? The result will now be displayed.

Mr Allen LEE, Mrs Selina CHOW, Mr SZETO Wah, Mr Edward HO, Mrs Miriam LAU, Dr LEONG Che-hung, Mr Albert CHAN, Mr CHEUNG Man-kwong, Mr Frederick FUNG, Mr Michael HO, Dr HUANG Chen-ya, Mr LEE Wing-tat, Mr Fred LI, Mr James TO, Dr YEUNG Sum, Mr WONG Wai-Yin, Miss Christine LOH, Mr LEE Cheuk-Yan, Mr Paul CHENG, Dr Anthony CHEUNG, Mr Albert HO, Mr LAU Chin-shek, Dr LAW Cheung-kwok, Mr LAW Chi-kwong, Mr LEUNG Yiu-chung, Mr Bruce LIU, Miss Margaret NG, Mr SIN Chung-kai, Mr TSANG Kin-shing, Dr John TSE and Mr YUM Sin-ling voted for the amendment.

Mr CHIM Pui-chung, Dr Philip WONG, Mr CHAN Kam-lam, Mr CHAN Wing-chan, Miss CHAN Yuen-han, Mr CHENG Yiu-tong, Mr CHOY Kan-pui, Mr David CHU, Mr IP Kwok-him, Mr Ambrose LAU, Mr LEE Kai-ming, Mr LO Suk-ching and Mr NGAN Kam-chuen voted against the amendment.

THE PRESIDENT announced that there were 31 votes in favour of the amendment and 13 votes against it. He therefore declared that the amendment was carried.

PRESIDENT (in Cantonese): Dr YEUNG Sum, you are now entitled to reply and you have seven minutes 30 seconds out of your original 15 minutes.

DR YEUNG SUM (in Cantonese): Mr President, I have distributed my time well; my speech has just been divided into two halves. I do not intend to respond to each individual view of all speakers because the Honourable CHEUNG Man-kwong, Albert HO and Dr Anthony CHEUNG have given very appropriate

answers earlier on. Therefore, I will only make a general response on behalf of the Democratic Party. There is still seven minutes left and I would like you to listen carefully. (*Laughter*) First of all, Members will see whether my speech is too strong and secondly, whether my speech is exaggerating. Be honest with myself, I have done my "homework" and I will be especially careful when I mention the laws. Please never think that the Democratic Party's speeches are sharp arguments or exaggerations. Members may make a judgement after I have spoken.

The Preparatory Committee explained that the reason for repealing certain provisions in the Public Order Ordinance (POO) and the Societies Ordinance (SO) is that the provisions in question have been "substantially" amended in accordance with the Hong Kong Bill of Rights Ordinance (BORO), thus contravening the provision that the laws previously in force in Hong Kong are to remain unchanged as stipulated by the Basic Law.

This reason is in fact totally absurd. They have obviously twisted the original meaning of the Basic Law concerning the existing laws of Hong Kong, which are to remain unchanged. The purpose of the Sino-British Joint Declaration (Joint Declaration) and the Basic Law in providing that the original laws shall remain unchanged is to safeguard the legal system of Hong Kong so that all laws, including the common law and laws previously in force in Hong Kong before the handover of sovereignty in 1997 which the people have been accustomed to and familiar with can straddle 1997. Thus, the confidence of the local people and international community regarding the continuous stability and rule of law in Hong Kong after 1997 can be strengthened. This is what the so-called "laws remaining unchanged" in 1984 means, rather than rigidly keeping them all completely intact. Mr CHEUNG Man-kwong is right: How can a community stay put for over a decade? This is impossible, and, in particular, anyone who study law will not accept it.

In fact, ever since the signing of the Joint Declaration in 1984, quite a number of laws have been amended in accordance with the needs of the society. It is just impossible for any law to remain absolutely unchanged. Actually, the ordinances and rules amended according to the BORO have numbered around 60, part of which have based on court rulings. It is obvious that the Preparatory Committee has a political aim in accepting the other amendments and only targeting on restricting the ordinances concerning the freedoms of assembly, procession and association, which are to undermine the human rights and limit

the freedoms of Hong Kong people. On the other hand, the Broadcasting Authority Ordinance and the New Territories Land (Exemption) Ordinance amended in accordance with the BORO after 1984 have been accepted by the Preparatory Committee. Since some of the laws amended after 1984 have been accepted while others have not, the saying that laws can absolutely not be changed is just not true.

In addition, the Preparatory Committee has all along failed to pinpoint which specific provisions in the Basic Law that the ordinances in question have contravened. Someone claims that after the SO was amended, its original provision that prohibits ties between Hong Kong societies and foreign political organizations has been abolished and it is thus in contravention of Article 23 of the Basic Law. But Article 23 of the Basic Law only stipulates that the Hong Kong Special Administrative Region (SAR) should enact laws on its own to prohibit organizations or bodies of the SAR from establishing ties with foreign political organizations or bodies. That there is no such restriction in the SO does not follow that it has contravened the Basic Law.

On the contrary, this recommendation of the Preparatory Committee is to reverse the Basic Law and is in itself a contravention of the Basic Law. Article 160 of the Basic Law stipulates that the laws previously in force in Hong Kong shall be adopted as laws of the SAR except for those which the Standing Committee of the National People's Congress (Standing Committee) declares to be in contravention of the Basic Law. Now, the Preparatory Committee, though unable to point out which specific provisions of the Basic Law those laws in question have contravened, recommends to repeal the laws out of its own preference and political consideration. This is obviously a contravention to Article 160 of the Basic Law, making us doubt whether the Standing Committee is arbitrarily assuming the responsibility to legislate for Hong Kong. It is also a serious violation to the promise made in the Joint Declaration concerning the principle of "Hong Kong people ruling Hong Kong and a high degree of autonomy".

Furthermore, Article 27 of the Basic Law provides that Hong Kong residents have freedoms of speech, assembly, procession, demonstration and association. Article 39 of the Basic Law also stipulates that the provisions of the International Covenant on Civil and Political Rights, the International

Covenant on Economic, Social and Cultural Rights shall remain in force and shall be implemented through the laws of the SAR. The Preparatory Committee's recommendation totally contradicts these provisions of the Basic Law. This is in itself a perverse practice.

Since the implementation of the BORO and Personal Data (Privacy) Ordinance (PDPO) and after the amendment of the POO and SO, no chaos in public order has been resulted. The spokesman of the Hong Kong Government has just clearly indicated that the Government has no complaints about it and the police has found no problem with it either. Instead, it has been widely accepted by the people and everything has worked well. The amendments concerned have introduced a balancing effect between social order and protecting the freedoms of speech, assembly, procession and association. Never say that human rights are absolute. In fact, they are relative. As we have to consider social order as well, we have to inform the police when we launch a rally. It proves that we have considered the importance of striking a balance among the different interests. We should strive to make the whole ordinance become the law of the SAR so that the provisions safeguarding the human rights and freedoms of Hong Kong can remain in force.

Both the original motion and the amendment today are moved in the hope that the Standing Committee will, for the sake of the overall interests of Hong Kong, reject the recommendation of the Preparatory Committee to repeal parts of the SO, POO, BORO and PDPO. The public opinion cannot be clearer. It is very seldom that our view is in line with that of the Liberal Party. Although there are only four Members of the Liberal Party in this Chamber at the moment and the whereabouts of the other Members of them are not known, it is not important because the four prominent figures of the party are with us now. The Democratic Party hopes that the Chinese leaders and the Standing Committee can really listen to the views of the Legislative Council and representatives of the local people to allow the ordinances in question to be adopted intact as the laws of the SAR so as to safeguard the human rights and freedoms of Hong Kong. This will also show that China keeps its promise stipulated in the Basic Law to really accord to the SAR the legislative rights in respect to its internal matters.

No matter what the decision of China will be, the Democratic Party will continue to monitor the progress and impacts of the recommendation to repeal the laws concerned and provide information to those who care about the development of Hong Kong's human rights and freedoms through the

international network of the Democratic Party.

Here I would like to thank all the Members who have spoken and I will support the amendment of the Honourable Edward HO. This shows that we, the Legislative Council, are unanimously against the repealing of the ordinances as recommended by the Preparatory Committee and urge the Standing Committee not to accept it.

Thank you, Mr President.

Question on the amended motion put.

Voice vote taken.

Mr TSANG Kin-shing claimed a division.

PRESIDENT (in Cantonese): The Council shall now proceed to a division.

PRESIDENT (in Cantonese): I would like to remind Members that they are now called upon to vote on the question that the motion moved by Dr YEUNG Sum as amended by Mr Edward HO be approved.

Will Members please register their presence by pressing the top button and then proceed to vote by choosing one of the three buttons below?

PRESIDENT (in Cantonese): Before I announce the result, Members may wish to check their votes. Are there any queries? The result will now be displayed.

Mr Allen LEE, Mrs Selina CHOW, Mr SZETO Wah, Mr Edward HO, Mrs Miriam LAU, Dr LEONG Che-hung, Mr Albert CHAN, Mr CHEUNG Man-kwong, Mr Frederick FUNG, Mr Michael HO, Dr HUANG Chen-ya, Mr LEE Wing-tat, Mr Fred LI, Mr James TO, Dr YEUNG Sum, Mr WONG Wai-Yin,

Miss Christine LOH, Mr LEE Cheuk-Yan, Mr Paul CHENG, Dr Anthony CHEUNG, Mr Albert HO, Mr LAU Chin-shek, Dr LAW Cheung-kwok, Mr LAW Chi-kwong, Mr LEUNG Yiu-chung, Mr Bruce LIU, Miss Margaret NG, Mr SIN Chung-kai, Mr TSANG Kin-shing, Dr John TSE and Mr YUM Sin-ling voted for the amended motion.

Mr CHIM Pui-chung, Dr Philip WONG, Mr CHAN Kam-lam, Mr CHAN Wing-chan, Miss CHAN Yuen-han, Mr CHENG Yiu-tong, Mr CHOY Kan-pui, Mr David CHU, Mr IP Kwok-him, Mr Ambrose LAU, Mr LEE Kai-ming, Mr LO Suk-ching and Mr NGAN Kam-chuen voted against the amended motion.

THE PRESIDENT announced that there were 31 votes in favour of the amended motion and 13 votes against it. He therefore declared that the amended motion was carried.

MEMBERS' BILLS

First Reading of Bills

EMPLOYMENT (AMENDMENT) BILL 1997

MEDICAL REGISTRATION (TRANSITIONAL PROVISIONS) BILL 1997

THE HONG KONG INSTITUTE OF HOUSING BILL

IMMIGRATION (AMENDMENT) (NO. 2) BILL 1997

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

Second Reading of Bills

EMPLOYMENT (AMENDMENT) BILL 1997

MR LEE CHEUK-YAN to move the Second Reading of: "A Bill to amend the Employment Ordinance."

MR LEE CHEUK-YAN (in Cantonese): Mr President, I move the Second Reading of the Employment (Amendment) Bill 1997.

The objective of the Bill is to extend the criminal liabilities for discrimination on the grounds of trade union membership or activities to include civil liabilities, so that people who are discriminated against may obtain civil remedies, including monetary compensation and reinstatement. In addition, the Bill also increases the penalties for criminal liabilities for discrimination on the ground of union membership. In sum, the aim of the amendment is to relieve workers who actively participate in union activities from fear of being exploited by employers, or worse still, losing their jobs.

Regarding the protection against anti-union discrimination, the existing legislation only imposes criminal liability on acts of discrimination and there is no provision for civil remedies. The victim would still suffer without any remedies, whether in the form of reinstatement or compensation. Since the onus of proof in criminal offences is very stringent, there have been no successful prosecutions in this respect. In a review conducted by the Government, it admitted, "Although there have been occasional complaints from employees against their employers for anti-union discrimination, there have not been any successful prosecutions in this respect. Experience reveals that breaches of these provisions are difficult to prove because a covert intent to discriminate can always be disguised under other manifested cause." One can say that criminal liability is a toothless tiger and that alone can hardly deter discriminatory behaviour.

It is therefore reasonable to impose civil liabilities on anti-union discriminatory behaviour. As stated in the review on the labour relations system in Hong Kong conducted by the Government in response to the Cathay Pacific strike at the beginning of 1993, "To enhance the protection against anti-union discrimination, and to overcome the technical difficulty of establishing in court the employer's intention to discriminate, it is proposed that if an employee is dismissed on grounds of union membership or activities, he may make a claim for compensation to the Labour Tribunal, and the burden of proving that the dismissal is not discriminatory should rest with the employer.

Employers failing to discharge the burden of proof will be liable to pay a compensation to the employee." It is a pity that although the review was completed more than three years ago, the Government has yet to introduce a bill to the Legislative Council to put these proposals into effect.

I believe that monetary compensation alone is not a sufficient civil remedy, particularly for active union members, although the Government has suggested otherwise just now. If they are dismissed because of trade union membership, not only have they lost their right of continual employment, they have also lost their right of continual participation in union activities. Can the dignity of employment and the right to take part in union activities be arbitrarily deprived of by making compensation only? Therefore, I propose that reinstatement should be included as a form of civil remedy, in addition to the monetary compensation as supported by the Government. This is the only major departure of my Bill from the Government's.

Therefore, the Bill proposes to empower the courts to order the employer to reinstate the employment of the employee when necessary. I believe court rulings will definitely strike a balance between the interests of the employer and the employee.

Regarding the existing criminal liabilities, the Bill also proposes to increase the penalties on discrimination. Apart from increasing the maximum fine for the offences, a provision on imprisonment has also been added to enhance the deterrent effect. The proposed maximum fine of \$200,000 and one year's imprisonment is modelled on the penalties for arrears of wages stipulated in the Employment Ordinance.

Mr President, I so submit and move the Second Reading of the Bill.

Thank you, Mr President.

Question on the motion on the Second Reading of the Bill proposed.

Debate on the motion adjourned and Bill referred to the House Committee pursuant to Standing Order 42(3A).

**MEDICAL REGISTRATION (TRANSITIONAL PROVISIONS) BILL
1997**

MRS SELINA CHOW to move the Second Reading of: "A Bill to amend the Medical Registration Ordinance."

MRS SELINA CHOW (in Cantonese): Mr President, I move the Second Reading of the Medical Registration (Transitional Provisions) Bill 1997. I would like to tell you a story to set the scene and the rationale of this Bill.

Once upon a time, many children in a town wished to learn some skills. So they looked for some reputable masters. Unfortunately, the number of masters in the town was so limited that they could not take on all children as their apprentices. Those children who could not find a master were forced to leave the town in order to find a master. Quite a number of them intended to return and serve the people of the town. The masters of the town had been maintaining a good relationship with the masters of a sister town. They gave the children a list of recognized masters so that they would know from whom they could learn the skills and come back to practise.

Such an arrangement had been all right for a long period. But all of a sudden, masters of the town said that too many children who had completed their apprenticeship were rushing into the town to look for jobs and they must close the gate. If they delayed in closing the gate, disciples of masters not on their recommended list would also come to compete for jobs. So they were determined to close the gate and since then, only apprentices who were approved by them could look for jobs in the town.

When they close the gate, however, they forgot that a few hundred of their own children serving apprenticeship with masters elsewhere had not come back yet. As a result, all these children were barred outside. When hearing the bad news, those children who had just completed their apprenticeship rushed back. At the beginning, they did not believe that they had been forgotten. But when they found that they could not come back, the nightmare began. Masters in the town changed their attitude. Although they said that they pitied the plight of the children, the gate was kept closed. They ordered that children who would like to come back had to queue up for approval like the outsiders.

Mr President, today we have got a few hundred medical students who are

studying in recognized overseas universities. The countries that they chose and the universities at which they are studying have all been recognized by the Hong Kong Medical Council. Before the enactment of the Medical Registration (Amendment) Bill 1995, they could come back for internship and then practise in Hong Kong. After the enactment of the legislation, they are on a par with other overseas medical practitioners and have to pass a licentiate examination before they can practise. Undeniably they are forced to have their rights denied half-way. I say "half-way" because the rights to which they were entitled at the beginning have been deprived when they are in the middle of their study. I said "forced to" because their future has been jeopardized even though they have not been told nor consulted beforehand.

The Bill I move today is to do justice to these unfortunate group of Hong Kong students.

As the title indicates, the Bill is to provide for a transitional arrangement. I do support that Commonwealth doctors should be treated on a par with other overseas doctors. In other words, their privilege of being exempted from licentiate examinations, which arises from Hong Kong's status as a colony of the United Kingdom, should be voided upon the severance of the constitutional link between Hong Kong and the United Kingdom. However, for the Hong Kong permanent residents who have already started their medical courses in recognized Commonwealth universities, they should be recognized as they have been promised at the beginning. We should not allow situations in which these children "fall between two stools", as such situations are immoral and unjust.

Two days ago, I explained in details the background and the implication of the Bill at the meeting of the Panel on Health Services. Unfortunately, quite a number of our colleagues here are not members of the panel. So I hope Members would allow me to give the details and clarify some misleading comments. On 7 June 1995, the Medical Registration (Amendment) Bill was read the First and the Second time and subsequently enacted on 28 July. So we had only a month and a half to study the Bill. Many medical professionals, including Dr the Honourable LEONG Che-hung, and the Medical Council criticized the hasty passage of the Bill. During the process, students studying at recognized overseas medical institutions were totally uninformed. During the discussion of the Bill, no one mentioned this group of students. As a result,

these young people who would be directly affected did not have a chance to be informed or consulted. This is certainly an act of omission.

In March 1996, when this Council scrutinized the Medical Registration (Amendment) (No. 2) Bill, Dr the Honourable HUANG Chen-ya and the Honourable LEUNG Yiu-chung for the first time queried the Government whether there were any students who would be put into a plight as a result of the 1995 Amendment Bill. The Government replied that only one student was affected.

In fact, this was misleading. It might not have been intentional, though. The Government, however, has failed to take the initiative to find out how many Hong Kong students might be affected by the new legislation and report to us.

In fact, the problem arose when the students found that the legislation enacted the year before had deprived them of their previous rights when they looked for internship in early 1996. Their perplexity and anxiety were really saddening.

The matter was referred to the Hong Kong Medical Association. Eventually the Association formed a working group to look for remedial means. In its report published on 3 September 1996, the working group suggested that the legislation enacted in 1995 should be amended to ensure that these Hong Kong students would not be subject to this legislation.

The Medical Council discussed this issue in November. Thirteen members of the Council attended the meeting and one was absent. The only absentee later wrote to the students to show his support. Eventually the issue was put to vote. Although the Government said that this was the internal affairs of the profession and it was improper for the Government to intervene, it did participate in the voting and the legislative amendment was negated by a voting of eight to five. And the number of *ex-official* members in the Council is just three, no more and no less. I wonder whether this implies that whenever there is divergence of opinion, the Government will play a decisive role? The Government should not stay behind the scene under the pretext of "confidentiality". Instead, it should stay above board and keep the public informed.

The day before yesterday, the Medical Association gave its submission to

the Panel on Health Services and obviously its stance has changed. It argued unconvincingly that the students whose position had not been considered when the legislation was enacted would not be affected by the new system. But the fact is that originally they were exempted from the examination and now they have to sit for it; originally they could practise in Hong Kong but now they have to pass the licentiate examination before they are allowed to do so. Have these students been affected? Is this reasonable? Anyone with wits will not be deceived so easily.

Someone argued that even if the changes in legislation were unfair to some students, we should consider whether any unreasonable hardship had been caused. What this argument meant was that even if there were unfairness, we had to consider the magnitude of the problem before we decided whether rectification was necessary.

I do not agree to such an argument. Unfairness is unfairness and we have to do justice to those affected.

But we have to see what substantial difficulties are faced by the overseas students who are affected.

Last year, some medical graduates who wanted to come back faced the closed door and an uncertain future. For one whole year, they ran around town and begged hospitals to accept them as housemen. After one year's internship, they have to wait for the examination if they want to come back and practise in Hong Kong. During the waiting period, they are not allowed to practise. But if they do not come back to Hong Kong, they will not be allowed to practise in an overseas country either. In Australia, for instance, overseas students are not allowed to practise or be employed there because of restriction laid down by the country's immigration law.

Should we treat our children in such a manner? Finally I would like to respond to some alarming arguments. For instance, it is argued that my Bill will open the floodgates for overseas doctors and a few hundred overseas graduates will come back to compete with the local graduates. There would be pressure on our system to allow Chinese doctors to come to practise in Hong Kong. In fact my Bill is targeted at the medical students who were studying before the enactment of the 1995 Bill. Those who were enrolled after enactment of the Bill will not be included. It is estimated by the Medical Association that at

most 600 of them will come back in a number of years and they will not return at one go. Previous experience shows that not all of them will come back to Hong Kong. The Medical Association has also mentioned that the Bill may contravene the General Agreement on Trade and Services of the World Trade Organization. A careful study of the Agreement shows that the agreement provides that the exchanges of services or the provision of manpower between states should be conducted in a fair manner. It does not apply to the arrangement for a country's own nationals. My Bill is obviously targeted at the permanent residents of Hong Kong and not people providing services from overseas. The title of the Bill makes it clear that it is for transitional arrangement only. It allows some buffer to prevent unnecessary harm being done to certain people or being sacrificed by reforms which are inevitable when a long-established unfair system is being put to an end. In fact, we understand that some professions such as the architects and the accountants, will provide for transitional arrangements when they have to change the system so that those who are caught in the middle will not face unnecessary hardship.

Mr President, I would urge the Government not to repeat its mistakes. No legislation is inviolable although it has been enacted. And mistakes, once discovered, should be rectified. In January this year, both the students and the parents repeatedly urged the Medical Association and the Medical Council to have a discussion on the issue. It is most disappointing to hear the Government saying that it was not aware of the number of students who would be affected when answering the Honourable Miss Emily LAU's question. I urge senior members of the medical profession not to give people an impression that they are protectionists against our young people. They have to honour their promise made to their students and should not obstruct their return to Hong Kong to practise. I further urge that colleagues of this Council to make a moral decision and welcome our students back to serve our community.

Question on the motion on the Second Reading of the Bill proposed.

Debate on the motion adjourned and Bill referred to the House Committee pursuant to Standing Order 42(3A).

MR EDWARD HO to move the Second Reading of: "A Bill to make provision for the incorporation of The Hong Kong Institute of Housing and for matters connected therewith."

MR EDWARD HO: Mr President, I move that the Hong Kong Institute of Housing Incorporation Bill be read the Second time.

The purpose of the Bill is to give the Hong Kong Institute of Housing the status of an incorporated body. The Institute opts for incorporation by statute so that it will be a legal entity with perpetual succession and can only be dissolved by another statute passed by the Legislative Council. This will ensure the existence and independence of the Institute in the long run.

Also, one important purpose of introducing this Bill is to prepare for the way of a Housing Managers Registration Bill which would provide for the registration of professional housing managers and the disciplinary control of professional activities of registered professional housing managers, similar to registration ordinances now in place for architects, surveyors, planners and engineers. Since it is envisaged that the eventual Housing Managers Registration Board will be largely self-regulated, as for other similar professional registration boards, it is in the interests of the public that the status and the independence of the Institute be preserved and the powers of the General Council of the Institute be defined and controlled by a separate ordinance in addition to the statutory and common law principles of company law in general.

The Hong Kong Institute of Housing was incorporated under the Companies Ordinance in 1988. The Institute is an independent local professional body, with a current membership of close to 900 professionals working both in and outside the territory.

Members of the Institute are engaged in their professional capacities in the management of two thirds of residential properties in Hong Kong. They are also responsible for the management of shopping centres and a sizable proportion of commercial and industrial buildings and other related amenities in Hong Kong. Their work is to ensure proper and efficient management of the properties under their care. This has a positive effect on the well-being of the community.

The Institute has also actively assisted the School of Professional and

Continuing Education, Hong Kong University in the running of a three-year Diploma in Housing Management. Graduates of the Diploma course are eligible for full membership of the Institute.

Today the housing management profession is a well established and widely recognized profession in the territory. They play an important role in achieving and maintaining a high quality of housing management in Hong Kong. I commend the present Bill to Honourable Members.

Question on the motion on the Second Reading of the Bill proposed.

Debate on the motion adjourned and Bill referred to the House Committee pursuant to Standing Order 42(3A).

IMMIGRATION (AMENDMENT) (NO. 2) BILL 1997

MISS CHAN YUEN-HAN to move the Second Reading of: "A Bill to amend the Immigration Ordinance."

MISS CHAN YUEN-HAN (in Cantonese): Mr President, I move that the Immigration (Amendment) (No. 2) Bill be read the Second time.

Mr President, with a number a large scale infrastructure projects launched in the Territory in recent years, plenty of job opportunities should have been created for our workers. However, the local "working class" are still plagued with persistent unemployment or underemployment. Countless complaints have been received by the Hong Kong Federation of Trade Unions. One of the main reasons is that our labour market is swarmed with legal and illegal overseas workers. What have especially drawn our attention are those British citizens who enjoy the right to land and exemption from employment visa. They are doubly privileged.

Mr President, this phenomenon is the result of our Immigration Ordinance, which grants British citizens double immigration privileges. Their privileged status is the product of section 61(2) of the Ordinance, which allows the Director of Immigration discretion to exempt certain persons from employment visas. Under general circumstances, this exemption covers only British citizens. That means, only British citizens enjoy the privilege of the right to land and the

exemption of employment visa. This actual implementation of the discretion has been confirmed by the Secretary for Security, Mr Peter LAI and the Director of Immigration, Mrs Regina IP.

Obviously, this is a loophole in law. The Director of Immigration, following the present government policy, grants only British citizens this privilege. If the Director of Immigration, in future, makes use of this discretion to grant overseas workers free entrance into Hong Kong, that will be import of labour in disguise. If the Government does not plug this loophole, it will not only be a disruption to the local labour market, but also an unfair treatment, as well as a threat, to the local working class.

Though there is a superficial similarity between the Immigration Amendment Bill proposed by the Government earlier on and the Members' Bill I move, a closer look into the Government Bill will reveal that it focuses only on the British citizens' immigration privileges so granted by the Ordinance. This is part of what the Members of this Council have been fighting for over the past year, that is, the necessary amendments of the Immigration Ordinance to reflect the change of status after the 97 Reunion. However, the part on Discretion stated in section 61(2) of the Immigration Ordinance, the right of land together with the exemption of employment visa, is left untouched, practically intact. That is why I move this Member's Bill. I have to point out that this Bill does not seek to total remove the discretionary power of the Director of Immigration. Instead, it just requests that the Director of Immigration, when exercising this discretion to exempt certain persons from entry visa, should add a term of condition to prevent these persons from seeking employment here. In other words, overseas residents looking for jobs here have to apply for an employment visa first. Such terms are well practised by many open countries. In fact, immigration policy is not independent of labour policy.

My proposed Bill can plug the unfair legal loophole mentioned above. However, we also see that when the Bill is put into implementation, other supplementary terms and regulations are needed to take care of special cases, such as diplomatic personnel, legal immigrants from China coming to settle in Hong Kong, and descendants of indigenous villagers. Hence, my Bill will seek exemption for people under these categories. Comments from the Government, Members of this Council, as well as from other sectors, are welcome.

Mr President, the Director of Immigration, Mrs Regina IP, commented in

public the other day that my Bill could only bring forth a great deal of administrative confusion. What is worse, the international community might thus be misled to think that the Government intends to tighten its policy on encouraging foreign investors to come to Hong Kong. While regretting about her comments, I am baffled. In fact Mrs IP is misleading the public. The purpose of my Bill is to plug a legal loophole, and not to change the existing policy fundamentally.

Mr President, here is a passport and I seek permission for showing it to Members. This is a passport issued by the British Government which allows me the right to land in Britain without a visa. However, the British Government also states here, with this line, that I cannot seek employment there. It is as simple as that. Where comes the confusion? Why should issues be deliberately mixed up? I think this is grossly unfair to me. It is common sense that when businessmen seek work or investment in any open countries or regions, they will make all sorts of arrangements beforehand, including visa application. Our Director of Immigration, however, mixes up all the issues and arguments. The Government is really guilty of causing confusion. I just cannot help asking whether foreign businessmen will wait at our Customs counter for the permission to enter without a visa under section 61(2). Such a scenario simply does not exist. The Government is really mixing all issues up.

Will this Bill cause administrative confusion to the Government? My opinion is, what the Government needs to do, upon the passage of this Bill, is to stamp the words "no employment" on the passports of those overseas residents who are exempted from entry visa, just like what we are treated when seeking entrance into Britain or other countries. It is that simple.

Finally, I have to emphasis one point. As my Bill will be referred to a bills committee for study, and subjected to public comments and discussion both inside and outside the Council, I do hope that the Government will, with an open attitude, allow a fair chance of discussion for this Bill. The Secretary of Security has said that my tabling of my Bill causes difficulties for the original amendment. I have no objection if the Government thinks that the original amendment should be passed before the discussion of mine. However, the Government should not mix up the issues and give the impression that I have meddled up the situation. Frankly speaking, as this Bill needs to be implemented in April, it should have been tackled last year when the Government raised the issue of putting this ordinance in line with the change of status upon

the 97 Reunion, instead of delaying it till now, when time is running out. The situation would have been more unthinkable had the Members of this Council not been urging the Government to take action during the past year. Hence, I do hope the Government will allow us a fair chance of discussion, to seek a solution to this legal loophole in a realistic manner. Mr President, I move the amendment of the Immigration Ordinance Bill. Thank you.

Question on the motion on the Second Reading of the Bill proposed.

Debate on the motion adjourned and Bill referred to the House Committee pursuant to Standing Order 42(3A).

ADJOURNMENT AND NEXT SITTING

PRESIDENT (in Cantonese): In accordance with Standing Orders, I now adjourn the Council until 2.30 pm on Wednesday, 26 February 1997.

Adjourned accordingly at twelve minutes past Eight o'clock.

Note: The short titles of the Bills/motions listed in the Hansard, with the exception of the Nurses Registration (Amendment) Bill 1997, Midwives Registration (Amendment) Bill 1997, Immigration (Amendment) Bill 1997, Employment (Amendment) Bill 1997, the Hong Kong Institute of Housing Bill and Immigration (Amendment) (No. 2) Bill 1997, have been translated into Chinese for information and guidance only; they do not have authoritative effect in Chinese.