OFFICIAL RECORD OF PROCEEDINGS

Tuesday, 17 June 1997

The Council met at Nine 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 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 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, J.P.

THE HONOURABLE LEE WING-TAT

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

THE HONOURABLE FRED LI WAH-MING

THE HONOURABLE JAMES TO KUN-SUN

DR THE HONOURABLE PHILIP WONG YU-HONG

DR THE HONOURABLE YEUNG SUM

THE HONOURABLE HOWARD YOUNG, J.P.

THE HONOURABLE ZACHARY WONG WAI-YIN

THE HONOURABLE CHRISTINE LOH KUNG-WAI

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

THE HONOURABLE LEE CHEUK-YAN

THE HONOURABLE CHAN KAM-LAM

THE HONOURABLE CHAN WING-CHAN

THE HONOURABLE CHAN YUEN-HAN

THE HONOURABLE ANDREW CHENG KAR-FOO

THE HONOURABLE PAUL CHENG MING-FUN, J.P.

THE HONOURABLE CHENG YIU-TONG

DR THE HONOURABLE ANTHONY CHEUNG BING-LEUNG

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, J.P.

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 MOK YING-FAN

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

THE HONOURABLE LAWRENCE YUM SIN-LING

MEMBERS ABSENT:

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

THE HONOURABLE CHEUNG HON-CHUNG

PUBLIC OFFICERS ATTENDING:

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

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

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

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

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

MISS DENISE YUE CHUNG-YEE, J.P.
SECRETARY FOR TRADE AND INDUSTRY

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

CLERKS IN ATTENDANCE:

MR RICKY FUNG CHOI-CHEUNG, J.P., SECRETARY GENERAL

MR LAW KAM-SANG, J.P., DEPUTY SECRETARY GENERAL

MRS JUSTINA LAM CHENG BO-LING, ASSISTANT SECRETARY GENERAL

PAPERS

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

Subject	
Subsidiary Legislation	*L.N. No.*
Continuing Legal Education (Amendment) Rules 1997	310/97
Practising Certificate (Solicitors) (Amendment) Rules 1997	311/97
Foreign Lawyers Registration (Fees) (Amendment) Rules 1997	312/97
Rules of the Supreme Court (Amendment) (No. 3) Rules 1997	313/97
District Court Civil Procedure (Forms) (Amendment) Rules 1997	314/97
Coroners (Forms) (Amendment) Rules 1997	315/97
Auxiliary Medical Service Regulation	316/97
Civil Aid Service Regulation	317/97
Pay Classification (Auxiliary Medical Service) Assignment Notice	318/97
Pay Classification (Civil Aid Service) Assignment Notice	319/97
Declaration of Change of Titles (Auxiliary Medical Services, Chief Staff Officer, Auxiliary Medical Services and Staff Officer, Auxiliary Medical Services) Notice 1997	320/97

ORAL ANSWERS TO QUESTIONS

Enrolment of Handicapped Students in Ordinary Schools

1. **MR AMBROSE LAU** asked (in Cantonese): *Regarding the enrolment of handicapped students in ordinary schools, will the Government inform this Council:*

(a) of the total number of ordinary primary and secondary schools which have admitted handicapped students;

(b) of the number of schools mentioned in the answer to (a) above which have purpose-built facilities, such as special access or lifts for handicapped students; and

(c) what measures or plans the Government has to encourage ordinary schools to admit more handicapped students?

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

(a) As at September 1996, a total of 637 schools, comprising 418 primary schools and 219 secondary schools, have admitted disabled (that is, handicapped) students.

(b) Existing standard design school premises in general do not have purpose-built facilities for disabled students. However, schools which have received disabled students do try their best to help students overcome difficulties through special arrangements and special equipment provided by the Government.

The Government fully understands the importance of providing special facilities in ordinary schools to cater for the needs of disabled students. Standard schools built from the 1997-98 financial year onwards are all provided with facilities for disabled students. Under the School Improvement Programme (SIP) for existing schools, facilities for disabled students such as lifts, widening of access, ramps, disabled toilets are included whenever

possible. It is expected that the SIP will be completed in 2004. According to information as at February 1997, improvement programmes for 69 primary schools and 55 secondary schools will be completed in 1997-98.

(c) To encourage ordinary schools to admit disabled students, the Education Department has provided support services to the students to help them overcome learning difficulties in the normal school setting. Depending on the degree of their disabilities, the students are placed in special classes, resource classes or ordinary classes. They are also provided with special facilities to cater for their special needs, such as closed circuit television, magnifiers and special lighting for students with visual impairment; and hearing-aids and ear moulds for those with hearing impairment. Besides, professional advisory services are provide by the Education Department to teachers to help them, as soon as possible, handle emotional and learning problems of disabled students.

To further examine how it can provide systematic support to disabled students integrated in ordinary schools, the Education Department will invite seven primary and three secondary schools to participate in a pilot project on integrative education. The project will commence in September 1997. Each participating school will admit five to eight disabled students and they will be provided with additional teachers, subsidies and professional support.

In addition, the Education Department, with the assistance of the Rehabilitation Advisory Committee and the Health and Welfare Branch, had organized painting, essay and card design competitions under the theme "Equal Opportunities and Full Participation: A Better Tomorrow for All". The purpose of these programmes was to enhance understanding and acceptance of disabled students among ordinary schools and their students. The Education Department will continue to organize similar activities.

MR AMBROSE LAU (in Cantonese): *Mr President, will the Government explain in detail what exactly the additional teachers, subsidies and professional support are in relation to the pilot project on integrative education as mentioned in the second paragraph of part (c) of the answer?*

Secondly, since this is a "pilot" project on integrative education, does the Government have any follow-up plans after the completion of the pilot project?

SECRETARY FOR EDUCATION AND MANPOWER (in Cantonese): Mr President, the specific supports in relation to the pilot project on integrative education include the following:

(1) an annual non-recurrent subsidy of $50,000 for every school;

(2) an annual non-recurrent subsidy of $1,000 for every student with special learning needs;

(3) one additional teacher in every school;

(4) training for teachers to be held between July and August;

(5) school-based training to be provided by educational psychologists starting from September 1997 ; and

(6) meetings for all schools participating in this project to exchange ideas on a regular basis, and a meeting for studying and discussing the integrative education to be held in the coming September, as well as a two-day workshop to be provided for the 10 participating schools.

As regards the future development of the pilot project on integrative education, since this is a pilot project, a comprehensive review on it has been planned in two years' time. In fact, a fund has already been allocated this year to finance the continuous development of this project. We hope that at least 40 schools will be participating in this project by the year 2001. However, I have to stress that whether we should speed up the development or whether there should be a change in the form of the project depends on the findings of the

comprehensive review, which will be conducted two years later, on the 10 participating schools.

MR HOWARD YOUNG (in Cantonese): *Mr President, in part (b) of his answer, the Secretary for Education and Manpower has mentioned that existing standard schools in general do not have purpose-built facilities for disabled students. However, a School Improvement Programme (SIP) is now underway. I would like to ask whether the Government will strategically divide the whole territory into a number of districts when carrying out the works under SIP so as to avoid uneven distribution of resources which may result in situations where some districts have all the works concerned completed while such facilities are still seriously lacking in some other districts .*

SECRETARY FOR EDUCATION AND MANPOWER (in Cantonese): Mr President, the School Improvement Programme that I mentioned in my main reply covers all schools in need of improvement. We have not set priorities for these works to be carried out in respect of the districts. Basically, all schools in Hong Kong, Kowloon and the New Territories are covered while the priority of works mainly depends on the school settings. Before the commencement of the works, the Administration will conduct a feasibility study. If they are found to be feasible, we will go ahead.

DR JOHN TSE (in Cantonese): *Mr President, part (a) of the main reply has mentioned that a total of 637 schools in Hong Kong have admitted disabled students. Will the Government inform us of the number of schools of which the teachers have undergone training in special education, and the goal set for the next few years?*

SECRETARY FOR EDUCATION AND MANPOWER (in Cantonese): Mr President, basically, the teachers of these 600-odd schools have never received so-called professional training in special education. Of course, we do have special schools for the disabled and there are at present over 60 of them over the territory. It is exactly the purpose of this pilot project to enable us to understand through these participating schools what professional training should be provided to ordinary teachers to help disabled students attend an ordinary school. In so doing, disabled students can positively consider integrating in an ordinary school, in addition to the option of attending a special school.

MR HOWARD YOUNG (in Cantonese): *Mr President, when answering my first question, the Secretary has said that the implementation of the School Improvement Programme depends on practical needs and no priority has been set for the districts. In this case, I would like to ask whether the Secretary has envisaged the following scenario. In some districts where there are more new school premises, more improvement works will be done, and therefore more schools are equipped with suitable facilities for the disabled students in these districts. However, In other districts with fewer new schools and no need for improvements to the existing school premises, there is serious shortage of such special facilities. Will this happen?*

SECRETARY FOR EDUCATION AND MANPOWER (in Cantonese): Mr President, first of all, I have to clarify that the main purpose of the School Improvement Programme is to alleviate the crowdedness in many schools at present, including the improvement of the situation of the floating class. When carrying out the improvement works, the Administration will at the same time consider putting in some additional facilities such as lifts, widened access and ramps for disabled students in compliance with the Disability Discrimination Ordinance passed in 1996. Hence we have not conducted special studies on the need of disabled students to go to ordinary schools in a specific district. Nevertheless, I can also answer Mr Howard YOUNG's question in an overall perspective. I have mentioned that there are more than 60 schools over the territory which are specially designed for children with special needs or who are disabled. Over 8 000 children are attending these schools and there are still over 2 000 vacancies available. In other words, under normal circumstances, disabled children can always enrol in special schools designed especially for them whenever they have such a need.

DR JOHN TSE (in Cantonese): *Mr President, I would like to follow up on Mr Howard YOUNG's question. I think that it is a very reasonable ratio to have one school in every district, that is, one school for disabled children in every district. I would like to know when this goal can be achieved. I would also like to know the districts where the goal of "one special school in one district" cannot be achieved. In other words, what are the areas where none of the primary and secondary schools are suitable for disabled children?*

SECRETARY FOR EDUCATION AND MANPOWER (in Cantonese): Mr President, it is not our policy to have one school for disabled children in every district at present. I believe that when reviewing the pilot project on integrative education, the Administration may then consider Dr TSE's suggestion in detail.

Enforcement of Personal Data (Privacy) Ordinance

2. **MRS SELINA CHOW** asked (in Cantonese): *A university student was videotaped furtively by a video camera installed in her room in the students' hostel while she was changing in the room. However, the incident was not regarded as a criminal act of peeping and the only punishment the University could inflict on the offender was expulsion. In this connection, will the Government inform this Council:*

(a) whether an individual is under the protection of the Personal Data (Privacy) Ordinance if he or she is watched furtively while doing a private act at a private place; if so, as the offender in the above incident was not prosecuted, whether this reflects the existence of loopholes or ambiguities in the existing legislation; and

(b) if the answer to the latter part of (a) above is in the affirmative, whether the Government will amend the relevant legislation to plug the loopholes or eliminate the ambiguities?

SECRETARY FOR HOME AFFAIRS (in Cantonese): Mr President,

(a) The act of peeping at the private actions of someone in a private place does not fall within the coverage of the Personal Data (Privacy) Ordinance. This is because peeping alone does not result in the collection of personal data, which by definition must involve recorded information.

However, recording the activities of an individual with a video camera, where the individual can be identified from the recording, amounts to collection of personal data and is subject to control by

the Personal Data (Privacy) Ordinance. In particular, Data Protection Principle 1 of the Ordinance requires such collection to be done by means that are lawful and fair. The case referred to in the question is still under investigation by the Privacy Commissioner for Personal Data and therefore, I cannot comment on whether there has been a breach of Principle 1 in that case. However, in general video taping of an individual by covert means would amount to unfair collection of personal data unless it could be justified by reference to some other overriding public interest such as the detection of crime.

Contravention of a Data Protection Principle is not by itself a criminal offence. However, an individual who suffers damage, including injury to feelings, as a result of a contravention of a Data Protection Principle has a statutory right to obtain compensation through civil proceedings. If a case has been investigated by the Privacy Commissioner, he could be called by the court to appear as an expert witness in the civil proceedings in order to provide expert opinions on the alleged contravention.

(b) The act of peeping at a person's private action at a private place does not constitute an offence. The Legal Department gave thought in 1983 to introducing legislation. However, within the legal profession, there was concern that such law would inevitably lead to abuse. With the crowded living conditions of Hong Kong, antagonistic neighbours could make accusations under the law for what might, objectively, be no more than inconsiderate conduct. In view of such concern and as "Peeping Tommery" was not a serious problem, the matter was not pursued further.

As regards the furtive videotaping of a person's private action at a private place, the Privacy Sub-committee of the Law Reform Committee is studying whether such undue interference with individual privacy should be subject to criminal sanctions.

MRS SELINA CHOW (in Cantonese): *Mr President, owing to the advancement in technology, with the help of equipment, peeping Toms need not be present at*

the scene. Will the Government consider imposing sanctions on this kind of actions as well to protect individual privacy?

SECRETARY FOR HOME AFFAIRS (in Cantonese): Mr President, I have just mentioned that the Privacy Sub-committee of the Law Reform Committee is studying this issue. I will relate Members' concerns to the Law Reform Committee.

On the other hand, although there is no substantial legislation that can sanction the action of peeping, Members may wish to know that other than looking into the possibility of obtaining compensation through civil proceedings under the Personal Data (Privacy) Ordinance, the person whose privacy being interfered in this way may also apply to the court for an order of good behaviour in accordance with the Magistrates Ordinance in the hope that the judge will issue an order to keep him from being harassed again if he feels that he is constantly suffering from such acts.

MR HOWARD YOUNG (in Cantonese): *Mr President, this incident has aroused tremendous concern but just now the Government has replied that peeping is not a criminal offence. Has the Government considered whether this constitutes an offence of trespassing and prosecution can be instituted under the relevant legislation, given that the action of videotaping has to be carried out by the offender entering the target's house to install the video camera?*

SECRETARY FOR HOME AFFAIRS (in Cantonese): Mr President, the police did consider what legislation could be enforced to prevent the occurrence of similar cases. But it was a pity that no appropriate legislation could be found applicable. However, the victim of this incident has complained to the Privacy Commissioner for Personal Data and I hope that this case will receive fair judgment.

MR EDWARD HO (in Cantonese): *Mr President, I hope that the Secretary for Home Affairs could clarify a point because I see that there is a little contradiction in her answer. She has said in the last paragraph of her answer that furtive videotaping of a person's private action at a private place does not*

constitute an offence but in part (a) she has said that recording the activities of an individual with a video camera, where the individual can be ... amounts to collection of personal data and is subject to control by the Personal Data (Privacy) Ordinance. She has also pointed out that according to the principle, the collection of personal data is to be done by lawful and fair means. From this, it seems that the latter part of the answer indicates that it does not constitute an offence while the former part states that it must be controlled.

PRESIDENT (in Cantonese): Secretary, you did not mention the phrase "does not constitute an offence" when you made the oral answer. Did you strike it out?

SECRETARY FOR HOME AFFAIRS (in Cantonese): Mr President, I have indeed struck out the phrase. I would like to make a brief explanation here. When we say that it does not constitute an offence, we mean that it is not considered a criminal offence. Under the Personal Data (Privacy) Ordinance, if the investigation finds that the person involved has breached the Data Protection Principle 1 concerning the means by which the data has been collected and this person has recorded the data and the target of the recording can be identified clearly, the latter can choose to obtain compensation through the following ways. First, he can apply directly to the court for compensation. Second, he can request the Office of the Privacy Commissioner for Personal Data to carry out an investigation. If it is found that the recording has breached the principle of collecting data by lawful and fair means, he can also apply to the court for compensation through civil proceedings.

Furtive videotaping of a person's private action at a private place, however, does not in itself constitute a criminal offence.

MR JAMES TO (in Cantonese): *Mr President, in part (b) of her answer, the Secretary for Home Affairs has said that the Legal Department gave thought in 1983 to introducing legislation for the control of peeping. As far as I know, the situation under consideration at that time involved someone looking at another person's window through another window. But the person being looked at may*

choose to close the curtains as it is his right to do so. Therefore, there is an inter-relation between looking at and being looked at.

However, the present case involves the intruder installing a video camera in the victim's room and later retrieving it. Obviously there is no way that this can be prevented. Therefore, should we review today that part of the law, the abuse of which aroused the worry of the legal profession when the legislation was introduced years ago? Of course, this might give rise to other problems but will the Administration review it again?

SECRETARY FOR HOME AFFAIRS (in Cantonese): I thank Members for drawing our attention to this issue. As Mrs Selina CHOW has pointed out earlier, with the passing of time, there has been great advancement in technology and the situation may have changed in 10 years. Hence the Privacy Sub-committee of the Law Reform Committee is studying this issue, particularly the collection of data with equipment, including by unfair and unlawful means. I believe that they will certainly study whether the action of interfering with individual privacy with the help of equipment should be subject to criminal sanctions. As far as I know, the Sub-committee is working very hard on this and the report is expected to be ready by the end of this year.

MRS SELINA CHOW (in Cantonese): *Thank you, Mr President. Before the report is released, the Secretary for Home Affairs has told us that the victim can obtain compensation through civil proceedings. I would like to ask the Secretary a question. If a similar case occurs and the victim asks the Privacy Commissioner for help, will the Commissioner render assistance by providing relevant legal information or by any other means so that the victim may initiate civil proceedings?*

SECRETARY FOR HOME AFFAIRS (in Cantonese): The answer is in the affirmative. The Privacy Commissioner will definitely explain the existing legislation very clearly to the victim. In the present case, as I have said before, the victim has already filed a complaint to the Privacy Commissioner and the

Commissioner is investigating the case. It is expected that the result will come out within a few weeks.

MR HOWARD YOUNG: *Mr President, in replying to the Honourable Mrs Selina CHOW's question, the Government has referred to the Personal Data (Privacy) Ordinance. I have recently seen many notices issued by companies in relation to this ordinance. These notices say that we have the right to ask for information that is being kept by the collector of information and to correct the details. Now, regarding this case, the person whose data has been collected in this manner only has the right to ask for information and to correct the details, which means there is in fact no remedy offered to her for having her privacy challenged this way.*

SECRETARY FOR HOME AFFAIRS: Mr President, it is quite clear that the collection of data has to be done in compliance with the provisions in the Ordinance, particularly Principle 1, which sets out how these data should be collected. Besides, the Ordinance itself has also put down guidelines and conditions concerning how these data should be collected, used and checked by the data subject, as well as the remedies. If the Privacy Commissioner finds that the case is contrary to any of the provisions in the Ordinance, obviously the remedies or sanctions as provided in the Ordinance can be applied. However, as I have said, this is to be done through civil proceedings. On the other hand, if the Privacy Commissioner finds that the offence is committed repeatedly, or that there is a tendency that the offence will be repeated, the Privacy Commissioner can issue an Enforcement Notice. If the culprit does not comply with the Enforcement Notice, he is subject to a fine of $50,000 and even imprisonment.

MR JAMES TO (in Cantonese): *Mr President, there are two sides to a coin. When the Government considers the issue of privacy, will it at the same time consider the issue of freedom of press and freedom of information? We have seen many reports exposing the dark side of the society, such as beauty salons overcharging or talking people into posing as models to take photos and so on. The information about many of these cases is collected in the form of live news*

recording. Would the Secretary for Home Affairs tell us whether she will convey these points to the Privacy Sub-committee so that it will also take note of other aspects, such as freedom of press, to avoid going to extremes?

SECRETARY FOR HOME AFFAIRS (in Cantonese): I will certainly convey Members' views to the Privacy Sub-committee. However, I believe that the bottom-line is whether the many issues that we have touched on just now are within the ambit of the Sub-committee, and whether they are all related to the collection of data.

Implementation of Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW)

3. **DR JOHN TSE** asked (in Cantonese): *As the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW) was already introduced into the territory late last year, will the Government inform this Council of:*

(a) the concrete measures the Government has taken to implement the provisions of the CEDAW since its introduction;

(b) the channels through which the Government publicizes and promotes the CEDAW, and the number of copies of the CEDAW published for issue; and

(c) the parts of the CEDAW which have not been introduced into the territory and the reasons therefor, and when the Government will introduce such parts into the territory?

SECRETARY FOR HOME AFFAIRS (in Cantonese): Mr President,

(a) The Hong Kong Government subscribes to the principle of equality between men and women. We have all along been adopting policies and measures fostering gender equality in Hong Kong. To

comply with the provisions of the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW), we have enacted the Sex Discrimination Ordinance (SDO) and established the Equal Opportunities Commission (EOC). The SDO makes it unlawful to discriminate against a person on the ground of gender, marital status or pregnancy, or sexually harass a person; and the EOC is charged to implement the Ordinance. We have also reviewed the legislation in Hong Kong and, where appropriate, introduced amendments to remove gender biased provisions. The most recent example is the Marriage and Children (Miscellaneous Amendment) Bill 1997 passed by Members last week.

In addition, we have issued circular letters to all government branches to impress upon them the need to give due regard to the provisions of the Convention in implementing programmes and devising policies that affect women. Furthermore, we have started working on our initial report as required by the Convention. An outline of the topics which we intend to include in the report was published last month for public comments. This covers specific measures and policies adopted by each branch and department of the Government to give effect to specific provisions of the Convention.

(b) To promote equal opportunities for men and women, we have produced a CD-ROM and published 15 000 copies of a comic booklet. To raise public awareness of the provisions of CEDAW, we have downloaded the whole text of the Convention onto the internet. We have also published 10 000 copies of the Convention and distributed them to women groups, schools and major employers' association. Copies are also available to the public at District Offices. We have just produced another booklet and various promotional souvenirs to further promote the Convention. These will be distributed to the public soon. In addition, the Home Affairs Branch and the EOC will jointly organize a publicity campaign in the latter part of this year.

(c) When extending the Convention to Hong Kong, several reservations have been entered to preserve some of our existing policies and practices which are necessary to cater for the special circumstances in Hong Kong. Some have been made to provide an accurate

description of how Hong Kong interprets the Convention. Let me recount them.

General reservations have been entered to protect our existing immigration law; to ensure that the Convention is not extended to the affairs of religious denominations or orders; to preserve laws enabling male indigenous villagers to exercise rights in respect of property and laws providing for rent concessions; and to allow the continuation of existing regulations and practices which provide for women to be treated more favourably than men, for example, special measures for the protection of women during their pregnancy.

A few reservations specific to individual articles have also been entered. A reservation has been entered in respect of Article 11 to protect retirement schemes which provide differential treatment between female and male. It is also entered to cover the qualifying period of employment as required by the Employment Ordinance, for under this Ordinance, female workers have to work for a certain period to qualify for the entitlement to maternity leave, paid maternity leave and protection against dismissal on the basis of pregnancy. Another reservation is entered to Article 15 to clarify our understanding that only the relevant discriminatory provisions of a contract will be deemed null and void without affecting the legal integrity of the whole contract.

We will keep the reservations under review and will withdraw any reservations in the light of the development and needs in our community.

DR JOHN TSE (in Cantonese): *Mr President, there is at present no independent body to promote the Convention. Would the Government consider promoting the Convention through the EOC?*

SECRETARY FOR HOME AFFAIRS (in Cantonese): President, I believe the answer is "no" because the work and scope of authority of the EOC are clearly

laid down in the two relevant ordinances, namely the Sex Discrimination Ordinance and the Disability Discrimination Ordinance. In fact, the promotion and enforcement of the provisions of the Convention have always been undertaken by the Government. Since the Government takes on this responsibility itself, there is no need for an outside body to carry out this work.

MR JAMES TO (in Cantonese): *Mr President, I wish to follow up on part (c) concerning the parts of the Convention that would have an impact on Hong Kong.*

This part of the answer touches on several reservations entered to ensure that the Convention is not extended to the orders of certain religious denominations, to preserve the rights of male indigenous villagers, that is, their right to small houses, and also to provide more favourable treatment to women. I would like to ask a question in this respect. When the People's Republic of China (PRC) signed this Convention, did it enter similar reservations? If the PRC has not entered such reservations as the right to small houses, (and I can hardly believe that China would allow discrimination and unfairness between male and female,) will Hong Kong amend these reservations in future? Will Hong Kong be forced into making amendments or reconsidering the situation from the overall perspective of the reservations of its sovereign state, rather than looking at the issue from the perspective of the situation in Hong Kong alone?

SECRETARY FOR HOME AFFAIRS (in Cantonese): Mr President, China has its own reservations and Hong Kong has its own practice, too. When we entered these reservations, our decision was made with respect to the particular situation of Hong Kong. As for what the future will hold, actually at the meetings of the Sino-British Joint Liaison Group, the Chinese side has already agreed that these reservations will be maintained after the change of sovereignty in 1997. Concerning whether they will be amended or the situation will be reconsidered, I have said just now that these reservations are all entered according to the needs of Hong Kong. Should there be changes in the situation in future, I believe that the present Hong Kong Government and the future Hong Kong Special Administrative Region Government will study them and, when

necessary, propose to our sovereign state to discuss with the United Nations for appropriate amendments to be made.

PRESIDENT (in Cantonese): Mr James TO, are you claiming that the Secretary has not fully answered your question?

MR JAMES TO (in Cantonese): *Mr President, I would raise another question and hope that you would make a ruling on that. I would like to ask whether China has notified the United Nations about this. Does she agree that Hong Kong should continue to retain such unfair provisions as the right to small houses?*

SECRETARY FOR HOME AFFAIRS (in Cantonese): When we first announced that we hoped to introduce the CEDAW into Hong Kong, we clearly indicated that since this Convention involved the execution of certain international obligations, we had to discuss it with China. This was an issue between China and Britain, and we already reported to the relevant committee of the United Nations about the details of our discussion with China and we also made the result public, which was that China agreed that the Convention would continue to apply after 1997. Therefore, there should not be any problems in this regard.

MR WONG WAI-YIN (in Cantonese): *Mr President, in the last sentence of her reply, the Secretary for Home Affairs has pointed out that the Government will keep the reservations under review. I would like to ask whether the reservations will be kept under regular or ad hoc reviews. Besides, does the Central Government instruct the policy branches on how to conduct the review or allow the various policy branches to decide for themselves on how it should be done?*

SECRETARY FOR HOME AFFAIRS (in Cantonese): Mr President, the Home Affairs Branch has not specified which particular branch has to conduct what form of review at what time. On the other hand, everyone knows that we have to compile a report periodically to give an account of how the Convention is

implemented in Hong Kong. Of course, as we have to submit the report, we will not be confined to studying the situation alone. We hope that all policy branches will keep on reviewing all relevant aspects and take this good opportunity of having to compile the report to fully review all aspects about the implementation of this Convention and make necessary improvements.

For example, the amendments to the Employment Ordinance that this Council is going to examine later today also provide that women have to work for a certain number of hours before they are qualified for entitlement to special treatments such as maternity leave. If this piece of legislation is passed and gains legal status, it is already an improvement. Hence, the reservation about paid leave for women will be less significant. After the law is passed, we will, within a short time, review whether the reservation in that regard needs to be retained.

DR JOHN TSE (in Cantonese): *Mr President, it is mentioned in part (a) of the reply that the Government has started working on the initial report. Many a time, the Government compiles reports according to its own preference and only provides an outline of topics for comments of the public or this Council. What I mean is that the Government asks the public to give their comments right after reading the outline of topics. In fact, there are a lot of restrictions in this kind of consultation and it is very difficult for the Legislation Council and the public to express their views.*

I wish to ask whether the Government will consider changing this practice in future to give this Council and the public more chances to participate.

SECRETARY FOR HOME AFFAIRS (in Cantonese): Mr President, it has long been our practice to invite the public to comment on outlines of topics. We have found that many people who are concerned about the subject will give us their views. As regards the Legislative Council, we also give the outlines of topics to Members and welcome their participation by relating their opinions to us. We attend the meetings here in this Chamber. Members can also submit to us their opinions in writing. We will certainly consider including their opinions in the report.

Under-provision of Land for Public Housing Construction

4. **MR FREDERICK FUNG** asked (in Cantonese): *According to the Housing Department (HD), the Housing Authority (HA) is facing the problem of under-provision of land for meeting the target production levels for public rental housing (PRH) flats in the coming 10 years set out in the Long Term Housing Strategy. At present, although the land required for construction of PRH flats up to the year 2003 has been allocated to the HA by the Government, the land required to cope with the production levels for the years 2004 to 2007 has yet to be allocated. According to the HD's lead time in the construction of RPH flats, the preparation work has to commence by the end of this year if the flats are to be completed by 2004, otherwise a drastic drop in the level of production of flats will occur again in 2004. In this connection, will the Government inform this Council:*

(a) of the reason for the Government not providing sufficient land to the HA in response to the production target set out in the Long Term Housing Strategy; and

(b) whether the Government will consider improving the current arrangement for allocating land to the HA, so that sufficient land will be allocated to the HA to enable it to meet the levels of production of PRH flats in the coming 10 years?

SECRETARY FOR PLANNING, ENVIRONMENT AND LANDS: Mr President, the Long Term Housing Strategy (LTHS) Review was published as a public consultation document in January this year. The public consultation exercise only ended on 31 May 1997, and the Administration is now studying and analysing the public views received. A final decision will be made in the next few months.

The LTHS Review sets out an overall strategy to achieve our future housing goals. It is based on a Housing Demand Model which has made certain assumptions regarding the forecast demand for housing in the period up to 2006 and the changing expectations of the community. The Review, however, is not a housing construction programme or production target. Rather, it provides a framework in which specific targets may be set by the Government after public consultation.

In the light of the above, Mr President, it will be neither fair nor true to say at this stage that the provision of land for the production of public rental housing some seven to 10 years from today will be insufficient.

In the LTHS Review Consultative Document, various sources of land supply to meet forecast public and private housing demand during the period from 2001 to 2006 have been identified. Feasibility and engineering studies on the areas involved are being conducted so as to translate them into firm land production programmes.

The Government's Resource Allocation System provides funding for public work projects, including those connected with land formation, on a five year programme basis. This is rolled forward annually. We would also aim to hand over formed sites to the Housing Authority for public housing development. The current arrangement for allocating land to the Housing Authority does not delay or constrain the Public Housing Development Programme. As the lead time for the construction of public housing is around 62 months, we are working towards allocating sites to the Housing Authority by early 1988 to meet the forecast requirement for public housing in 2003-04.

The LTHS Review outlines a strategy to meet forecast demand up to 2006. We recognize the need for longer term land use planning. The Territorial Development Strategy Review has already set out a strategy for this up to 2011, and actions are either in hand or being planned to achieve it.

MR FREDERICK FUNG (in Cantonese): *Thank you, Mr President. In paragraph 5 of his answer, the Secretary has pointed out that if sites are allocated to the HA by 1998, there should be sufficient land to build public housing flats in 2003-04. There are, however, several months ahead before the consultation exercise on the LTHS Review is completed. It is suggested in the review that over 50 000 public housing units should be built, which far exceeds the number being built. Is the Secretary confident, as far as land provision is concerned, that more land will be allocated? Will the Government consider building up a land bank?*

SECRETARY FOR PLANNING, ENVIRONMENT AND LANDS (in Cantonese): Mr President, we are quite confident in this respect. Indeed, in the Financial Secretary's Budget Speech, it has been announced clearly that we have started what we call an interim land supply for housing, that is, the supply for 2001-06. At the time we indicated that according to a rough current estimate, 320 hectare would be available for public housing for that period. At present, our plans and work are targeted at that objective. According to our estimate, the Housing Authority will certainly be able to meet the production target if we allocate land to it in 1998, which will give it 60 to 70 months' of lead time.

About land bank, we have in fact said many times that there is a huge demand for housing at present and land supply has to be increased. So, if sites have been formed and ready for use, why should we put them in a bank? We should immediately allocate them. In principle, therefore, formed sites should not be set aside as if they were money put in a bank for later use. Ready sites should be put to use immediately. Hence, in the short term, we find it better to allocate them early than put them aside.

MR LEE WING-TAT (in Cantonese): *Mr President, last week the Chairperson of the HA, the Honourable Rosanna WONG Yik-ming, openly criticized the Government for unstable land allocation and failure to allocate properly formed sites. The unstability refers to the allocation of tens of hectares of land for a certain year but only two or three hectares in the following year. Last week, Mr Dominic WONG also acknowledged in public that in the past there was inadequate land allocation. Now the HA wants to sign a "service agreement" with the Government, probably for the sake of making sure that the Government will supply a more stable amount of formed land. What is the Government's response to that?*

SECRETARY FOR PLANNING, ENVIRONMENT AND LANDS (in Cantonese): Mr President, I have not read the "service agreement" proposed by the HA. But if the HA does have that proposal, I believe that it will be

forwarded to the Secretary for Housing, and the Government will surely look at the matter seriously.

The Honourable Mr LEE Wing-tat has said that in the past the amount of land allocated for public housing was unstable and the sites allocated were neither properly formed nor adequate. I think we must consider the circumstances there and then. If we are talking about land supplied to the HA in the early 1990's, we should understand the calculation process and the requirements of the HA then. Request for land had to be made in the mid 80's, that is 1985 or 1986, before land could be allocated in 1990 or 1991 because we had to make arrangements or calculations beforehand. In addition, public works projects for land formation are different from production in a factory. While a factory can figure out the annual production volume by referring to the prescribed production quota, land formation has to be processed according to the actual position of the public works projects and development in the relevant zones. For example, if a new town is completed, more land will be supplied. In any case, our negotiations with the HA on land allocation is done on a five-year rolling basis with a view to satisfying demand as far as possible in a larger prospective.

Now let me explain why some sites allocated to the HA have not been formed. After going through the records, we find that around the end of the 80's, that is, in 1989 and 1990, the HA suggested to the Government that they wanted as far as possible to receive sites which were not completely formed so that it could take part in the design of some basic facilities. Therefore, in the few years after 1990, we allocated land to the HA on this principle. Every time we allocated to the HA land which was not completely formed, the Housing Department would discuss the situation with relevant Government departments. Land allocation was done after mutual agreement had been reached. I do not think that we breached the agreement in the past several years. But in the light of the comments of the HA, we think it may want to change the principle raised in the past. We do not have any problem in this respect. We will do our best to allocate to the HA sites that are formed and equipped with basic facilities.

MRS ELIZABETH WONG: *Mr President, I would like to follow up on paragraph 5 of the Secretary's reply, in which he said the LTHS review outlined the Strategy to meet forecast demand up to 2006, and also in his last sentence, he said "actions are either in hand or being planned to achieve it." My question is,*

"Does the action include the introduction of capital gains tax in the years to come?"

SECRETARY FOR PLANNING, ENVIRONMENT AND LANDS: Mr President, a simple answer to the question is "no". What we are now doing is to implement or make more detailed arrangements to implement the LTHS review as well as the Territorial Development Strategy review. This will necessitate a number of planning and engineering studies, for which actions are in hand.

MR FREDERICK FUNG (in Cantonese): *Thank you, Mr President. In his answer to a supplementary question, the Secretary has indicated that a special task force chaired by the Financial Secretary will identify and provide as much as 300 hectares of land. I would like to know whether the special task force will announce periodically or annually the new land it has identified and how it will allocate it so that the HA and the public will know that the Government does have adequate land.*

SECRETARY FOR PLANNING, ENVIRONMENT AND LANDS (in Cantonese): Mr President, I want to clarify that just now I did not say the task force chaired by the Financial Secretary would do this work. I only said there were indications in the Budget Speech that basing on our present estimates, between the five years from 2001 to 2006 there will be about 320 hectares of land for the construction of public housing. There will be another 200-odd hectares of land for private housing. We have planned for the land in the LTHS for Hong Kong. Of course, some of the sites will need a number of planning or engineering studies before they can be put to actual use. But we do have the time to reach our goals.

The special task force chaired by the Financial Secretary has its functions, of course. It can assist in the co-ordination of certain aspects of work in the various departments or policy branches. If, for example, there is a mismatch between resources and policy, the task force may assist in co-ordination. The task force will continue to function, but as regards when it can complete its task, I think we will have to let the Financial Secretary decide as he is its chairman.

WRITTEN ANSWERS TO QUESTIONS

Complaints against Services Provided by Practitioners in Chinese Medicine

5. **MR MOK YING-FAN** asked (in Chinese): *Will the Government inform this Council:*

(a) of the number of complaints from the public about the service provided by Chinese medicine practitioners, received by the relevant authorities in the past three years, and the nature of such complaints; and

(b) of the outcome of the handling of the above complaints by the authorities concerned?

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

(a) and (b)

During 1994-96, the Consumer Council received a total of seven complaint cases against Chinese medicine practitioners. According to the Consumer Council's record, the complaints are mainly related to high charges and suspected inappropriate treatment. None of these cases required follow-up action.

We have no other information on complaints against Chinese medicine practitioners as there is currently no authority specifically tasked to receive and investigate such complaints. The Department of Health did not receive any such complaints during the past three years.

Quality of Court Interpreters

6. **MR CHOY KAN-PUI** asked (in Chinese): *In view of the recent criticism from a judge about inaccurate translation by court interpreters, will the Government inform this Council of:*

(a) the existing establishment and strength of court interpreters and whether there is sufficient manpower to meet the needs of various levels of the court;

(b) the entry requirements of court interpreters;

(c) the on-the-job training currently provided for court interpreters and whether a review on such training will be conducted;

(d) the mechanism in place to monitor the quality of court interpreters and ensure that their interpretation work meets the standard required; and

(e) the total number of complaints about inaccurate interpretation by court interpreters, and the number of appeal cases lodged on the ground of inaccurate interpretation by interpreters resulting in unfair trials or judgement, in the past three years?

CHIEF SECRETARY (in Chinese): Mr President,

(a) According to information provided by the Judiciary, the existing establishment and strength of the Court Interpreter grade are 177 and 173 respectively. The establishment is currently the subject of a Management Services Review. It is likely that additional posts will be required, particularly as a result of the additional workload arising from the wider use of Chinese in courts.

(b) The entry requirement for the Court Interpreter grade is normally a recognized university degree. However, candidates who hold a diploma from a recognized post-secondary college and those who are matriculated may also be considered for appointment by the Judiciary under exceptional circumstances. In recent years, most of the new recruits have been degree holders.

(c) The Judiciary provides a four-week induction course for all newly recruited court interpreters. The induction course includes both classroom teaching and field practice in court rooms. During this training period, an experienced court interpreter is assigned to each

new recruit to provide advice and guidance. In addition, the Judiciary regularly organizes seminars, talks and training courses to help interpreters improve their language abilities, translation skills and legal knowledge.

This training programme is the subject of an on-going review. In addition, the Judiciary has commissioned the Civil Service Training and Development Institute to identify the training needs of the Court Interpreter grade and to make recommendations to strengthen its training activities in order to enhance the services provided by the grade. Initial studies have now been completed and a report should be available shortly. The Judiciary is also considering the establishment of language laboratories for the training of court interpreters.

(d) At all levels of the court, the work of junior Court Interpreters is supervised by experienced senior colleagues who also make inspection tours to all court rooms to observe their performance. Guidance, counselling and further training are provided as necessary to ensure that high standards are maintained.

(e) Judiciary has not received any formal complaints about incorrect interpretation in the past three years. It also has no record of any appeal which has been allowed on the ground of incorrect interpretation.

Operation of Government Computer Systems beyond 2000

7. **MR AMBROSE LAU** asked (in Chinese): *It is learnt that at the time when computer manufacturers designed the current computer systems, it was not envisaged that the systems would continue to operate in the next century, and this has resulted in such systems not being able to handle the new year digits in the new century. In this connection, will the Administration inform this Council of:*

(a) the percentage of computer systems in government departments which have been adjusted to enable such systems to operate in the year 2000;

(b) the estimated time required to complete the adjustment of the remaining computer systems in various government departments; and

(c) the estimated expenses for the adjustment of the computer systems mentioned in (a) and (b) above?

SECRETARY FOR THE TREASURY (in Chinese):

(a) Of the some 560 major computer systems in the Government, about 200 are not year 2000 compliant. So far, we have modified about 8% of these non-compliant systems to enable them to continue to operate in year 2000 and after.

(b) We expect to have all the modification work completed by mid 1999; and

(c) We estimate that the total cost of the modification work required for the non-compliant computer systems referred to in (a) and (b) above will be around $75 million. This, however, does not include the replacement costs of those non-compliant operating systems and system software provided by outside suppliers which are used to support the execution of computer applications. Such costs are not readily available as the Information Technology Services Department are in discussion with the suppliers on the detailed arrangements for the replacement.

Elderly Population Profile

8. **MR CHAN WING-CHAN** asked (in Chinese): *Will the Government inform this Council whether it can provide a statistical breakdown of Hong Kong's population in the "60-64" and "65 and over" age groups in 1996 according to the following categories:*

(a) sex and activity status;

(b) sex and educational attainment;

(c) sex and marital status;

(d) sex and duration of residence in Hong Kong;

(e) sex and type of housing;

(f) sex and geographic area of residence;

(g) sex and household size;

(h) sex and household income; and

(i) sex and household composition;

if not, what the reason are; and whether the Government will consider collecting such information and publishing it on a regular basis?

SECRETARY FOR FINANCIAL SERVICES (in Chinese): Mr President, the following nine tables are compiled based on 1996 Population By-census results. The household income in Table 8 includes monthly earnings from main employment, monthly earnings from other employment and other cash incomes of all members in the household.

Table 1: Population aged 60 - 64 and 65 and over by sex and activity status

Table 2: Population aged 60 - 64 and 65 and over by sex and educational attainment

Table 3: Population aged 60 - 64 and 65 and over by sex and marital status

Table 4: Population aged 60 - 64 and 65 and over by sex and duration of residence in Hong Kong

Table 5: Population aged 60 - 64 and 65 and over by sex and type of housing

Table 6: Population aged 60 - 64 and 65 and over by sex and district of residence

Table 7: Population aged 60 - 64 and 65 and over by sex and household size

Table 8: Population aged 60 - 64 and 65 and over by sex and household income

Table 9: Population aged 60 - 64 and 65 and over by sex and household composition

Table 1 Population Aged 60 - 64 and 65 and over by Sex and Activity Status

	Aged 60 - 64			*Aged 65 and over*		
Activity Status	*Male*	*Female*	*Total*	*Male*	*Female*	*Total*
Employees [(1)]	52 921	14 319	67 240	33 422	9 488	42 910
Employers	8 532	940	9 472	7 137	885	8 022
Self-employed	5 727	1 309	7 036	5 729	1 730	7 459
Unpaid family workers	378	741	1 119	770	937	1 707
Unemployed persons	3 717	501	4 218	1 078	212	1 290
Home-makers	995	49 283	50 278	2 209	71 470	73 679
Of independent means	380	380	760	668	1 126	1 794
Retired persons	56 966	52 127	109 093	219 970	245 806	465 776
Other economically inactive	5 845	5 234	11 079	11 839	15 079	26 918
Total	135 461	124 834	260 295	282 822	346 733	629 555

Note: (1) Figures include outworkers and student workers.

Table 2 Population Aged 60 - 64 and 65 and over by Sex and Educational Attainment

	Aged 60 - 64			*Aged 65 and over*		
Educational Attainment	*Male*	*Female*	*Total*	*Male*	*Female*	*Total*
No schooling/Kindergarten	20 559	52 409	72 968	68 279	206 949	275 228
Primary	65 762	51 687	117 449	146 284	106 743	253 027
Lower secondary	19 645	8 565	28 210	29 585	15 196	44 781
Upper secondary	13 803	6 354	20 157	19 219	9 999	29 218
Sixth form	3 148	1 265	4 413	4 935	2 174	7 109
Tertiary :						
Non-degree course	3 167	1 674	4 841	3 414	2 491	5 905
Degree course	9 377	2 880	12 257	11 106	3 181	14 287
Total	135 461	124 834	260 295	282 822	346 733	629 555

Table 3 Population Aged 60 - 64 and 65 and over by Sex and Marital Status

	Aged 60 - 64			*Aged 65 and over*		
Marital Status	*Male*	*Female*	*Total*	*Male*	*Female*	*Total*
Never married	7 182	2 447	9 629	13 621	13 667	27 288
Now married	118 894	92 007	210 901	223 602	153 530	377 132
Widowed	6 204	27 240	33 444	40 897	174 706	215 603
Divorced/separated	3 181	3 140	6 321	4 702	4 830	9 532
Total	135 461	124 834	260 295	282 822	346 733	629 555

Table 4 Population Aged 60 - 64 and 65 and over by Sex and Duration of Residence in Hong Kong

	Aged 60 - 64			*Aged 65 and over*		
Duration of Residence in Hong Kong	*Male*	*Female*	*Total*	*Male*	*Female*	*Total*
Less than 1 year	316	511	827	452	785	1 237
1 - < 2 years	342	401	743	542	784	1 326
2 - < 3 years	486	631	1 117	640	1 003	1 643
3 - < 4 years	702	606	1 308	885	1 325	2 210
4 - < 5 years	403	626	1 029	660	1 107	1 767
5 - < 6 years	292	510	802	651	936	1 587
6 - < 7 years	442	691	1 133	700	1 261	1 961
7 - < 8 years	402	727	1 129	671	1 321	1 992
8 - < 9 years	326	762	1 088	707	1 166	1873
9 - < 10 years	233	565	798	432	868	1 300
10 years and above	131 517	118 804	250 321	276 482	336 177	612 659
Total	135 461	124 834	260 295	282 822	346733	629 555

Table 5 Population Aged 60 - 64 and 65 and over by Sex and Type of Housing

	Aged 60 - 64			*Aged 65 and over*		
Type of Housing	*Male*	*Female*	*Total*	*Male*	*Female*	*Total*
Public rental housing	59 879	55 585	115 464	130 774	149 409	280 183
Housing Authority and Housing Society subsidized sale flats	11 140	13 007	24 147	21 955	29 502	51 457
Private permanent housing	59 683	53 101	112 784	116 681	147 785	264 466
Temporary housing	3 039	2 330	5 369	7 082	6 070	13 152
Non-domestic housing	1 556	702	2 258	6102	13 836	19 938
Marine vessels	164	109	273	228	131	359
Total	135 461	124 834	260 295	282 822	346 733	629 555

Table 6 Population Aged 60 - 64 and 65 and over by Sex and District of Residence

	Aged 60 - 64			*Aged 65 and over*		
District of Residence	*Male*	*Female*	*Total*	*Male*	*Female*	*Total*
Central and Western	5 627	4 943	10 570	12 696	14 875	27 571
Wan Chai	4 622	3 867	8 489	9 172	11 215	20 387
Eastern	13 048	13 016	26 064	26 721	36 431	63 152
Southern	6 050	5 720	11 770	13 038	17 245	30 283
Sham Shui Po	10 462	9 119	19 581	24 822	28 391	53 213
Kowloon City	10 698	9 110	19 808	20 139	25 331	45 470
Wong Tai Sin	10 703	12 343	23 046	26 171	31 168	57 339
Kwun Tong	15 477	15 045	30 522	31 864	36 038	67 902
Yau Tsim Mong	8 371	6 216	14 587	15 241	17 089	32 330
Kwai Tsing	11 512	9 238	20 750	21 383	25 068	46 451
Tsuen Wan	5 604	4 998	10 602	10 398	11 246	21 644
Tuen Mun	5 967	5 060	11 027	11 454	15 507	26 961
Yuen Long	5 687	5 190	10 877	13 402	16 546	29 948
North	3 648	3 876	7 524	9 070	9 950	19 020
Tai Po	3 632	4 082	7 714	9 016	12 014	21 030
Sha Tin	10 046	9 019	19 065	19 061	27 146	46 207
	Aged 60 - 64			*Aged 65 and over*		
District of Residence	*Male*	*Female*	*Total*	*Male*	*Female*	*Total*
Sai Kung	3 021	2 821	5 842	6 017	7 845	13 862
Islands	1 122	1 062	2 184	2 929	3 497	6 426
Marine	164	109	273	228	131	359
Total	135 461	124 834	260 295	282 822	346 733	629 555

Table 7 Population Aged 60 - 64 and 65 and over by Sex and Household Size

	Aged 60 - 64			*Aged 65 and over*		
Household Size	*Male*	*Female*	*Total*	*Male*	*Female*	*Total*
1	13 005	6 897	19 902	30 984	41 463	72 447

2	23 063	27 560	50 623	66 973	76 915	143 888
3	30 807	31 099	61 906	57 962	60 281	118 243
4	29 859	25 359	55 218	46 885	51 478	98 363
5	19 877	17 126	37 003	33 396	47 210	80 606
6+	18 850	16 793	35 643	46 622	69 386	116 008
Total	135 461	124 834	260 295	282 822	346 733	629 555

Table 8 Population Aged 60 - 64 and 65 and over by Sex and Household Income

	Aged 60 - 64			*Aged 65 and over*		
Household Income ($)	*Male*	*Female*	*Total*	*Male*	*Female*	*Total*
<4,000	9 490	10 237	19 727	46 310	54 200	10 0510
4,000 - 4,999	4 127	3 084	7 211	9 493	8 573	18 066
5,000 - 5,999	4 576	3 389	7 965	8 549	8 348	16 897
6,000 - 6,999	4 428	3 397	7 825	8 556	9 258	17 814
7,000 - 7,999	4 244	3 961	8 205	9 041	9 911	18 952
8,000 - 8,999	5 216	4 469	9 685	10 311	12 241	22 552
9,000 - 9,999	4 305	3 665	7 970	9 147	10 880	20 027
10,000 - 10,999	4 507	4 950	9 457	10 761	13 771	24 532
	Aged 60 - 64			*Aged 65 and over*		
Household Income ($)	*Male*	*Female*	*Total*	*Male*	*Female*	*Total*
11,000 - 11,999	3 552	2 907	6 459	7 400	8 933	16 333
12,000+	89 633	84 102	173 735	152 598	186 450	339 048
N.A. (1)	1 383	673	2 056	10 656	24 168	34 824
Total	135 461	124 834	260 295	282 822	346 733	629 555

Note: (1) Figures refer to persons of collective household. Household incomes were not compiled for this kind of household.

Table 9 Population Aged 60 - 64 and 65 and over by Sex and Household Composition

	Aged 60 - 64			*Aged 65 and over*		
Household Composition	*Male*	*Female*	*Total*	*Male*	*Female*	*Total*
Nuclear family						
One unextended nuclear family	81 270	69 396	150 666	139 835	107 952	247 787
One vertically extended nuclear family	18 722	24 922	43 644	44 232	104 918	149 150
One horizontally extended nuclear family	1 786	1 101	2 887	2 728	2 861	5 589
Two or more nuclear family	14 444	17 612	32 056	42 335	39 083	81 418
Non-nuclear family						
One person	12 970	6 883	19 853	30 929	41 185	72 114
Others	4 886	4 247	9 133	12 107	26 566	38 673
Collective Households	1 383	673	2 056	10 656	24 168	34 824
Total	135 461	124 834	260 295	282 822	346 733	629 555

Non-economically Active Population among New Arrivals

9. **MISS CHAN YUEN-HAN** asked (in Chinese): *Will the Government provide the data in respect of the non-economically active population among new arrivals from the Mainland (those with less than seven years' residency in the territory) in 1986, 1991 and 1996, by "type of housing resided", "geographical area", "household size", and "household composition", and provide the data by "type of housing resided", "geographical area", "household size" and "household composition" in respect of the following income groups in the employed persons among new arrivals from the Mainland (those with less than seven years' residency in the territory) in 1986, 1991 and 1996:*

(i) under $4,000

(ii) $4,000 - 4,999

(iii) $5,000 - 5,999

(iv) $6,000 - 6,999

(v) $7,000 - 7,999

(vi) $8,000 - 8,999

(vii) $9,000 - 9,999

(viii) $10,000 - 10,999

(ix) $11,000 - 11,999

(x) $12,000 or above;

if not, what the reasons are and whether it will consider collecting such information and publishing it on a regular basis?

SECRETARY FOR FINANCIAL SERVICES (in Chinese): Mr President, the 1991 Population Census and 1996 Population By-census included questions on "Place of birth", "Nationality" and "Duration of residence in Hong Kong". If persons who meet the following criteria are regarded as new arrivals from the Mainland (those with less than seven years' residency in the territory) (hereafter referred to as new immigrants), namely:

(1) place of birth in China;

(2) nationality is "Chinese (place of domicile — Hong Kong)"; and

(3) have stayed in Hong Kong for less than seven years,

are regarded as new arrivals from the Mainland (those with less than seven years' residency in the territory, hereafter referred to as new immigrants), then the number of new immigrants can be estimated and their characteristics analyzed.

As the 1986 Population By-census did not collect information on "Nationality" and "Duration of residence in Hong Kong", new immigrants cannot be identified from the data.

The estimated number of new immigrants based on the above criteria may differ from the actual number of one-way permit holders who entered Hong Kong. This is because the one-way permit holders after arriving Hong Kong may have returned to China, emigrated to other countries, obtained other nationalities, died, or they might have error due to memory lapse in answering the question on duration of residence in Hong Kong. Hence, statistics related to new immigrants compiled from the 1991 Population Census and 1996 Population By-census findings should be used for reference only.

The number of economically inactive new immigrants by "type of housing", "district of residence", "household size" and "household composition" are given in Tables 1-4.

Table 1: Number of economically inactive new immigrants by type of housing

Table 2: Number of economically inactive new immigrants by district of residence

Table 3: Number of economically inactive new immigrants by household size

Table 4: Number of economically inactive new immigrants by household composition

The number of new immigrant employed persons by "monthly earnings from main employment" and "type of housing", "district of residence", "household size" and "household composition" are presented in Tables 5-8.

Table 5: Number of new immigrant employed persons by monthly earnings from main employment and type of housing

Table 6: Number of new immigrant employed persons by monthly earnings from main employment and district of residence

Table 7: Number of new immigrant employed persons by monthly earnings from main employment and household size

Table 8: Number of new immigrant employed persons by monthly earnings from main employment by household composition

The above eight tables are compiled based on findings of the 1991 Population Census and 1996 Population By-census. The monthly earnings from main employment in Tables 5-8 refer to the total amount earned from main employment excluding New Year bonus and double pay.

(Total 13 pages) for Merge Table

Counterfeit Bank Notes from Auto-teller Machine

10. **MR FRED LI** asked (in Chinese): *Regarding the reports in the press about an incident involving counterfeit bank notes being found amongst the bank notes drawn from an Auto-teller Machine (ATM) of a bank, will the Government inform this Council:*

(a) whether it knows of the reasons for the occurrence of the above incident;

(b) whether the bank concerned has breached the law concerning the illegal use of counterfeit bank notes and other related laws;

(c) whether there is currently any mechanism monitoring the banks' procedures in handling bank notes, to safeguard the rights of the public using ATMs and prevent the public from suffering any loss; and

(d) whether members of the public who find counterfeit bank notes whilst drawing bank notes from ATMs can claim compensation from the banks concerned; if not, why not?

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

(a) So far, the Hong Kong Monetary Authority (HKMA) and the Police Force have not received any complaints about ATM dispensing counterfeit bank notes. Following a recent press report about an ATM dispensing a counterfeit bank note, the HKMA has contacted the bank concerned to find out the circumstances of the incident. The HKMA was advised that the bank had contacted the person involved in the incident and invited her to present the bank note to the bank and to provide further information to enable the bank to follow up to case. So far, she has not done so. As a result, the bank and the HKMA are unable to verify whether the report is correct.

(b) The offence of counterfeiting and related offences are set out in Part XI of the Crimes Ordinance. Whether or not an offence has been committed under that Ordinance would be a matter for the Court.

(c) The handling of bank notes including the whole process of loading bank notes into ATMs is subject to very tight controls by banks. Bank notes are mainly supplied directly from the main treasury of the note issuing banks and their genuineness is checked before-hand. The loading is handled at all times by at least two persons.

The HKMA considers that the controls currently exercised by banks in handling bank notes are adequate. Should there be any complaint, the HKMA will investigate banks' procedures for handling bank notes, or request banks' external auditors to do so, to ensure that they are sound. So far the HKMA and Commercial Crime Bureau of the Police Force have not received any complaints about ATMs dispensing counterfeit bank notes.

(d) There is no legal authority on banks' liability for counterfeit bank notes being dispensed from their ATMs. Whether any claim can be established depends on the circumstances of the individual case.

Assessment of Rateable Values of Hotels

11. **MR HOWARD YOUNG** asked: *The Federation of Hong Kong Hotel Owners has alleged that the assessment of the rateable values of hotels is based on profitability rather than their rental values, resulting in a 50% to 120% increase in the amount of rates payable. In this connection, will the Government inform this Council of the factors that are taken into account in assessing the rateable values of hotels?*

SECRETARY FOR THE TREASURY: Mr President, the rateable value of a property is the estimated annual rental value of that property. Actual rents agreed between landlords and tenants are the best evidence of the rental value of properties as they reflect market demand and supply conditions. Properties such as residential premises, offices, and shops are valued by this method. However, there are certain types of property, such as hotels, which are seldom let

in the open market and hence rental evidence is not available. Therefore, an alternative method has to be used for determining the rateable value of these properties.

Hotels are primarily valued by reference to receipts and expenses. The accounts of an hotel are analyzed to ascertain the annual rent which a hypothetical tenant would be prepared to pay out of the balance remaining after deducting the expenses from the receipts and allowing for a reasonable return which is sufficient to induce the tenant to run the business. The same valuation method is adopted for other properties which are not let in the open market, for example, electricity undertakings, telephone network, tunnels. This valuation method is also applied in other jurisdictions which have a similar rating system as Hong Kong.

The average increase in rateable value for hotels as ascertained by the above-mentioned method in the 1991-92 general revaluation was 16% while that for offices was 174%. In the 1994-95 general revaluation, the average increases for both types of properties were about the same. In the 1997-98 general revaluation, the average increases for hotels and offices were 76% and 4% respectively.

Land Illegally Used for Storage of Containers

12. **MR WONG WAI-YIN** asked (in Chinese): *Will the Government inform this Council:*

(a) of the total area of land in the territory which were illegally used for storage of containers in the past three years, and the number of owners of such land who were ordered by the authorities concerned to stop the illegal use of the land in question;

(b) of the locations and areas of the sites in respect of which permission was granted for the sites to be used for storage of containers in the past three years, as well as the criteria adopted for granting such permission; and

(c) of the reasons for the authorities concerned permitting certain sites mentioned in (b) above to be used for storage of containers, despite complaints being lodged by residents that the use of these sites for storage of containers has caused noise nuisance and heavy flooding?

SECRETARY FOR PLANNING, ENVIRONMENT AND LANDS (in Chinese): Mr President,

(a) In the past three years, about 30 hectares of land used for container depots and open storage of containers were confirmed to be unauthorized development under the Town Planning Ordinance. Some sites had been regularized before statutory enforcement action was taken on them. Enforcement actions under the Ordinance were taken so far against 93 owners and occupiers of 11.6 hectares of such unauthorized developments.

(b) From May 1994 to May 1997, a total of 11 cases have been approved by the Town Planning Board (TPB) for container storage and related uses. The total site area amounts to 118.79 hectares. A breakdown of the approved planning applications by Development Permission Area (DPA) is given blow:

DPA	*No. of cases*	*Site Area (hectares)*
San Tin, Yuen Long	3	4.45
Nam Sang Wai Yuen Long	1	4.35
Ha Tsuen, Yuen Long	5	23.70
Man Uk Pin, North District	1	0.29
Chok Ko Wan, Lantau	1	86.00
Total	11	118.79

The reasons for approving a planning, application vary from case to case. In making its decision, the TPB takes into account a number

of factors including planning, transport, economic, environmental and social impacts.

(c) The TPB gives consideration to each planning application on its individual merits. In the processing of planning applications, there is an established administrative practice that the relevant district officers would convey to Planning Department any relevant local views on the applications for incorporation into the papers submitted to the TPB for consideration. In addition, Director of Home Affairs is represented on the TPB and its Planning Committees meetings. Due consideration to local views is given by the TPB in the consideration of planning applications.

However, it is necessary to stress that local views are only one of the many factors that the TPB has to consider in assessing planning applications. The TPB has to take a balanced view and take into account other planning and technical considerations such as traffic, drainage and environmental impacts as well as the assessment by the government departments concerned.

The TPB very often imposes conditions as part of its approval to planning applications, so as to ensure that the proposed use will not cause any adverse impacts on the adjacent environment. We are not aware of any approved cases where the use of the site for container storage has caused noise nuisance and heavy flooding.

Provision of General Out-patient Clinics

13. **MR FRED LI** asked (in Chinese): *Under the "Hong Kong Planning Standards and Guidelines", the Government will establish a general out-patient clinic for every 100 000 persons. However, there are only four general out-patient clinics in Kwun Tong District with one of them providing evening out-patient service, despite the fact that the District has a population of almost 600 000. In this regard, will the Government inform this Council:*

(a) of the reasons for the number of general out-patient clinics in Kwun Tong District failing to meet the above planning standard;

(b) whether the Government will consider increasing the number of general out-patient clinics in the District; if not, why not;

(c) of the reasons for there being only one general out-patient clinic in Kwun Tong District providing evening out-patient service, as opposed to a total of six general out-patient clinics in Kowloon City, Yau Tsim Mong, Sham Shui Po and Wong Tai Sin Districts providing such a service;

(d) of the criteria adopted for providing evening out-patient service in general out-patient clinics; and

(e) whether the Government will consider reinforcing the evening out-patient service in Kwun Tong District, particularly in regard to providing evening out-patient service in Lam Tin Polyclinic; if not, why not?

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

(a) and (b)

The "Hong Kong Planning Standards and Guidelines" provide some general planning parameters for the provision of out-patient clinic service in the whole territory. For the provision of clinic service in a particular district, other factors are taken into account, including the local population characteristics, utilization pattern of existing facilities, availability of out-patient clinic service operated by private medical practitioners in the district, and service capacity of the existing and planned clinics.

At present, there are four general out-patient clinics in Kwun Tong District. The fifth clinic in Kowloon Bay is under construction and is scheduled to be completed by end 1998. We shall monitor the demands closely and review the situation regularly.

(c) The evening clinic in Kwun Tong District provides 320 consultations per session. The evening clinics in the other four districts in Kowloon provide, altogether, 1 280 consultations per

session, averaging 320 per district. The capacity of evening clinic service in Kwun Tong District is no less favourable than that in the other districts in Kowloon.

(d) Evening clinics are expected to complement day clinic service and their provision is governed by a number of considerations. These include availability of resources, operational constraints, the utilization rate of existing facilities and availability of alternative medical and health care services in the district.

(e) The average utilization rate of the Kwun Tong evening clinic was 91% in 1996. We believe that the demand for out-patient clinic service in the evening has been adequately coped with by this evening clinic and the local private general practitioners. There is at present no plan to operate another evening clinic in the District, but we shall continue to monitor the situation and make adjustments when necessary.

Crimes on Flights

14. **MR HOWARD YOUNG** asked: *Will the Government inform this Council:*

(a) of the number of persons who were prosecuted for committing crimes on flights within Hong Kong's airspace in the past three years, together with a breakdown of the nature of such crimes and the outcome of the prosecutions; and

(b) whether the Government has sought the co-operation of the airline industry to prevent the occurrence of crimes on flights within Hong Kong's airspace; if so, what the details are?

SECRETARY FOR SECURITY: Mr President,

(a) Since January 1995, a total of 11 persons were prosecuted for committing crime on board a Hong Kong registered aircraft while in flight. Particulars and outcome of these prosecutions are in Appendix. We have not kept records as to whether the aircraft was

flying within Hong Kong's airspace or otherwise at the time the crime took place.

(b) There has been close co-operation between the Government and the airline industry in the fight against crime on aircraft. In particular, the Kai Tak Airport Security Committee, of which the police and the airlines are members, provides a useful forum for regular exchanges of information relating to aviation security and crime prevention. The Civil Aviation Department also works closely with the airlines to ensure proper security screening of passengers and baggage to ensure that no restricted items will be carried on board.

Appendix

Crimes Committed on Hong Kong Registered Aircraft

Year	*Nature of Offence*	*Outcome of Prosecution*
1995	1) Disorderly conduct	Fined $1,500
	2) Theft	Sentenced to two months imprisonment, suspended for two years
	3) Theft	Bound over $500 for 12 months
	4) Theft	Fined $500
	5) Obtaining property by deception and possession of an unlawfully obtained travel document	Sentenced to four months imprisonment
	6) Disorderly conduct and assault occassioning actual bodily harm	Fined $1,800 in total

Year	*Nature of Offence*	*Outcome of Prosecution*
1996	7) Possession of a false instrument	Sentenced to six months imprisonment
1997 (up to 31 May)	8) Common assault	Fined $4,000
	9) Common assault	Bound over $2,000 for 12 months
	10) Common assault	Fined $4,000
	11) Theft	Sentenced to six months imprisonment, suspended for two years

Abuse of Bus-only Lanes on Tuen Mun Highway

15. **MR WONG WAI-YIN** asked (in Chinese): *Will the Government inform this Council:*

(a) of the number of drivers who have been prosecuted for using the bus-only-lane on Tuen Mun Highway illegally since the implementation of the bus-only-lane on the Highway, and provide a breakdown of the prosecutions by the type of vehicle involved; and

(b) how the authorities concerned will step up prosecutions so as to deter drivers from using the above bus-only-lane illegally?

SECRETARY FOR TRANSPORT (in Chinese): Mr President, since the introduction of the bus-only-lane on the Tuen Mun Highway in June 1995, 1 617

vehicles have been issued fixed penalty tickets. A breakdown into vehicle types is as follows:

(a)	Private Cars	698
(b)	New Territories Taxis	41
(c)	Urban Taxis	86
(d)	Public Light Buses	69
(e)	Light Goods Vehicles	337
(f)	Medium Goods Vehicles	326
(g)	Heavy Goods Vehicles	25
(h)	Special Purpose Vehicles	3
(i)	Motorcycles	31

No summons has been issued.

The Police have so far not observed widespread misuse of the bus-only-lane on this road and they will monitor the situation. Should there be any indication of deterioration in the situation, enforcement action will be stepped up.

Transport Department is satisfied that the Tuen Mun Highway bus-only-lane has effectively achieved the objective of reducing travel time and improving service reliability. Approximately 66 000 passengers are benefited every day.

Traffic Arrangements for North Lantau Expressway

16. **MR LEE WING-TAT** asked (in Chinese): *Regarding the traffic arrangements for the North Lantau Expressway since it was opened to vehicles, will the Government inform this Council:*

(a) of the daily numbers of vehicles driving through the Expressway during the period from the date of its commissioning up to 11 June;

(b) how long will the arrangement of prohibiting private cars from accessing the Expressway via Tsing Yi Road West during holidays - which is designed to prevent traffic congestion on Tsing Yi Island - be in force; and

(c) whether adequate public transport is provided for carrying passengers from Tung Chung to South Lantau and the Po Lin Monastery during holidays?

SECRETARY FOR TRANSPORT (in Chinese): Mr President,

(a) Between 22 May, the date of commissioning, and 11 June 1997, the average daily traffic using the Lantau Link is 15 860 (two directions). Details are in the Annex.

(b) The prohibition of private cars from entering the Lantau Link via Tsing Yi Road West was introduced as a contingency measure on the first weekend after the opening of the Tsing Ma Control Area, when motorists were not familiar with the main access route via the Kwai Chung Viaduct and Cheung Ching Tunnel and used instead the approach from Tsing Yu Road West. Subsequently, with enhanced publicity on route access and improved directional signs, the use of Tsing Yi Road West has been greatly reduced. The entry prohibition is therefore no longer necessary.

(c) Since the opening of the Lantau Link, the New Lantao Bus Company Limited has introduced three new routes from Tung Chung New Town to Mui Wo, Tai O and Ngong Ping. Frequencies of these routes are as follows:

Routes to	*Average Hourly Departures on Weekdays (Mondays to Saturdays)*	*Average Hourly Departures on Sundays and Public Holidays*
Tai O	2	4 (8)*
Mui Wo	2	2 (5)*
Ngong Ping	2	9 (16)*

* Figures in ( ) are the hourly departures during peak hours from 11.00 am to 2.00 pm.

Except for Sundays, passengers do not need to queue up for bus services. The maximum waiting time during the peak hours on Sundays for the bus service to Mui Wo and Tai O is 30 minutes, while the corresponding figure for Ngong Ping is 45 minutes.

There are limitations in operating more buses along Tung Chung Road. As an alternative, a new ferry route between Tung Chung and Tai O has been introduced on Sundays and public holidays between 9.00 am and 4.50 pm. Services are operated every hour, with a passenger capacity of 100 seats.

Annex

Daily No. of Vehicles using Lantau Link

Date	*Traffic volume (two ways)*
22 May 97	15 200

23 May 97	19 100
24 May 97	27 600
25 May 97	43 600
26 May 97	12 500
27 May 97	12 400
28 May 97	11 300

Date	*Traffic volume (two ways)*
29 May 97	11 000
30 May 97	11 700
31 May 97	17 100
1 June 97	30 500
2 June 97	9 000
3 June 97	8 800
4 June 97	7 200
5 June 97	8 300
6 June 97	9 500
7 June 97	13 600
8 June 97	26 000
9 June 97	24 100
10 June 97	7 300
11 June 97	7 400
Daily average	15 860

Incorporation of a Women's Body

17. **MR LEUNG YIU-CHUNG** asked (in Chinese): *It is learnt that a women's body has submitted an application for a certificate of incorporation as a charitable organization, but so far approval has not been granted for the reason that one of the articles of the body concerned is considered to have political overtones as it advocates "fighting for equality between men and women". In this connection, will the Government inform this Council of:*

(a) the criteria for approving an application for a certificate of incorporation as a charitable organization, and the rationale for the adoption of such criteria; and

(b) the criteria for determining whether an activity and/or an organization has political overtones, and the rationale for the adoption of such criteria?

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

(a) The term "charitable institution" is not separately defined in the Inland Revenue Ordinance. In considering whether an organization can be accepted as a charitable institution for tax exemption purposes under the Ordinance, the Inland Revenue Department has applied the meaning given to the term in English case law. Based on an authoritative court decision, purposes that may be accepted as charitable can be categorized as follows:

(i) relief of poverty;

(ii) advancement of education;

(iii) advancement of religion; or

(iv) other purposes of a charitable nature beneficial to the community but not falling under any of the proceeding categories.

These criteria have been adopted by the Inland Revenue Department in determining whether an organization can be accepted as a charitable institution for tax exemption purposes.

(b) As regards the criteria for determining whether an activity and/or an organization is political for the purposes of deciding whether the activity and/or the organization concerned is charitable and therefore eligible for tax exemption, the Inland Revenue Department has been following the principles established by English courts. These courts have long established that the objects of a charity must be for exclusively charitable purposes. The promotion of political objects is not charitable and a trust for political purposes cannot be regarded

as for public benefit in the manner which the law regards as charitable. The specific guidelines in this respect which have been adopted by the Inland Revenue Department for determining whether an applicant organization can be accepted as a charitable organization for tax exemption purposes are as follows:

(i) a trust for the attainment of a political object is not charitable since the court has no way of judging whether a change in the law proposed by such institutions will or will not be for the public benefit;

(ii) promotion of changes in the law, or maintenance of the existing law, is a political purposes and not charitable;

(iii) although an association for promoting some changes in law cannot itself be a charity, an association would not necessarily lose its right to be considered a charity if, as a matter of construction, the promotion of legislation were one among other lawful purposes ancillary to good charitable purposes it is a question of degree; and

(iv) unless its governing instrument precludes it from doing so, a charity may, generally speaking, freely engage in other activities which are consistent with its status as a charity, for example, commenting on a bill affecting its cause.

Noise Control on Existing Roads

18. **DR JOHN TSE** asked (in Chinese): *As the noise control standards imposed on newly built roads are more stringent than those imposed on existing roads, will the Government inform this Council of:*

(a) the number of roads in each of the 18 districts in the territory with noise levels exceeding the standards applied to newly built roads, as well as the name of the road with the highest noise level in each of the 18 districts; and

(b) the measures which have been or will be implemented to reduce the noise nuisance and to raise the noise control standards on existing roads?

SECRETARY FOR PLANNING, ENVIRONMENT AND LANDS (in Chinese): Mr President, the assertion that the noise control standards for new roads are more stringent than those for existing roads is not true. The road traffic noise standards of 65 dB(A) and 70 dB(A) for schools and residential premises respectively are recommended guidelines for planning purposes. These standards were published as part of the Hong Kong Planning Standards and Guidelines in 1985 and have been adopted in the planning and design of new roads. Any noise problems identified are addressed through revised land use arrangements and re-alignment of roads where practicable, or through implementation of noise mitigation measures such as noise barriers and enclosures. Although existing roads are less amenable to these measures, the same standards are used in assessing their noise impacts. With regard to the specific questions raised:

(a) Generally speaking, busy trunk roads are the major sources of excessive traffic noise. We do not have a breakdown by district of the number of roads which generate noise exceeding the planning standards. According to a study completed in late 1995, 663 major roads out of the 740 reviewed were found to be generating excessive noise impacts on their residential neighbourhood.

(b) We have implemented the following measures to mitigate traffic noise impacts from existing roads:

(i) Quiet Road Surface Programme. Suitable noisy road sections are resurfaced with noise reducing materials. Since the implementation of this programme in 1990, 9.7 km of high speed road sections have been resurfaced, bringing relief to some 13 000 households.

(ii) School Insulation Programme. Noise insulation measures in the form of air conditioners and double glazing are provided

to classrooms which are exposed to noise levels above the planning standards. Since 1989, a total of 6 900 classrooms in 340 schools have been insulated, improving the learning environment for 320 000 students.

(iii) Control on Noise Emissions from Vehicles. In 1996, a regulation was enacted to prohibit vehicles not meeting stringent noise emission standards from first registration.

In addition to the above, the Environmental Protection Department has recently commissioned a consultancy study to examine the technical feasibility of installing noise barriers or enclosures on existing roads. The study will be completed by mid 1998 and on the basis of its findings, we will review the policy to deal with traffic noise from existing roads.

Local Interior Decoration Industry

19. **MR MOK YING-FAN** asked (in Chinese): *Regarding the interior decoration industry in the territory, will the Government inform this Council of the following in each of the past three years:*

(a) the number of interior decoration companies in operation, the numbers of male and female employed persons and their respective percentages, as well as the number of vacancies and its proportion to the total number of posts in the industry;

(b) the respective numbers of unemployed and underemployed workers, as well as their respective proportions to the total number of workers in the industry; and

(c) the nominal wage index and the real wage index of workers in the industry?

SECRETARY FOR FINANCIAL SERVICES (in Chinese):

(a) The Government does not compile employment statistics specifically for the decoration industry. However, the required statistics for the decoration and maintenance industry as a whole are available.

The numbers of male and female employed persons in the decoration and maintenance industry and their respective shares in the industry's total employment from 1994 to 1996 are given in Table 1.

Regarding statistics on the number of companies and vacancies in the decoration and maintenance industry, the relevant data are not collected at present. This is due to the operational difficulty in contacting and enumerating firms operated by sub-contractors and gang leaders in the construction sector. Nevertheless, plans are already in hand to cover these firms under the Quarterly Survey of Employment and Vacancies starting from the reference month of December 1997. The relevant statistics on the number of companies and vacancies will be available from then onwards.

(b) Statistics on unemployed persons with a previous job and underemployed persons in the decoration and maintenance industry from 1994 to 1996 and their respective proportions in the industry's total labour force are given in Table 2 and Table 3 respectively.

(c) As the decoration industry is not covered in the Labour Earnings Survey, the required statistics on the nominal wage index and real wage index are not available. However, statistics on median monthly employment earnings of employed persons in the decoration and maintenance industry for the years from 1994 to 1996 are available, as given in Table 4.

Monthly employment earnings refer to earnings from all jobs. For employees, they include wage and salary, bonus, commission, housing allowance, overtime allowance and attendance allowance, but back pay is excluded. For employers and the self-employed,

they refer to net earnings from business or amounts drawn from the enterprise for personal and household use.

Table1 : Employed persons in the decoration and maintenance industry by sex

1994-1996

	Male		*Female*		*Total*	
Year	*No.*	*%*	*No.*	*%*	*No.*	*%*
1994	71 900	97.9	1 600	2.1	73 500	100.0
1995	72 000	97.7	1 700	2.3	73 700	100.0
1996	78 600	97.3	2 200	2.7	80 800	100.0

Source : General Household Survey

Table 2 : Unemployed persons with a previous job in the decoration and maintenance industry (1994-1996)

Year	*No. of unemployed persons*	*No. of employed persons*	*Unemployed persons as a percentage of total employed and unemployed persons in the decoration and maintenance industry*
1994	2 400	73 500	3.2
1995	6 500	73 700	8.2
1996	4 200	80 800	4.9

Source : General Household Survey

Table 3 : Underemployed persons in the decoration and maintenance industry 1994-1996

Year	*No. of unemployed persons*	*No. of employed persons*	*Unemployed persons as a percentage of total employed and unemployed persons in the decoration and*

			maintenance industry
1994	7 600	73 500	10.0
1995	15 400	73 700	19.2
1996	11 700	80 800	13.8

Source : General Household Survey

Table 4 : Median monthly employment earnings of employed persons in the decoration and maintenance industry (1994-1996)

Year	*Median monthly employment earnings of employed persons in the decoration and maintenance industry*	*Percentage change over preceding year*	
	($)	*Nominal (%)*	*real (%)*
1994	8,000	-	-
1995	8,000	0	-8
1996	9,000	13	6

Note: (*) Figures on the real employment earnings are obtained by deflating the nominal employment earnings by the Consumer Price Index (A).

Source : General Household Survey

Ambulance Service for Tung Chung and South Lantau

20. **MR LEE WING-TAT** asked (in Chinese): *As Tung Chung and South Lantau are located far away from urban areas and it takes time for an ambulance to cover the long distance, will the Government inform this Council:*

(a) of the average times taken for an ambulance to travel from Princess Margaret Hospital to Tung Chung and South Lantau respectively; and whether such times meet the "travel time" target;

(b) given that the Planning Department is actively considering increasing the planned population in North Lantau (including Tung Chung and Tai Ho), whether the Government will reconsider

constructing of a hospital on Lantau Island in view of the increase in population in North Lantau and the need to cope with emergencies at the new airport; and

(c) whether the Government will set up a clinic providing accident and emergency services in Tung Chung to coincide with the time when the public housing estates in Tung Chung are ready for occupation?

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

(a) The Fire Services Department (FSD) does not have an ambulance depot in Princess Margaret Hospital. FSD sends ambulances from Cheung Sha or Mui Wo fire stations or Tung Chung ambulance depot for ambulance services required in Tung Chung or South Lantau. The target travelling time of 10 minutes can be normally met provided the area is accessible to vehicles. Upon arrival, the ambulance officers will provide ambulance aid to the patient to stabilize his/her conditions. If required, the patient can be transported by helicopter to hospital for emergency treatment.

(b) According to the Planning Department, the projected population in Tung Chung New Town (including Tai Ho) will be in the region of 50 000 to 55 000 by the year 200l. In view of this relatively small population, we do not have any plans at this stage to construct a hospital on Lantau Island, but we shall pay close attention to future development plans for Lantau Island and review the situation regularly. Meantime, to cope with any future potential emergencies in the new airport at Chek Lap Kok, the Hospital Authority (HA) is formulating a detailed emergency plan in conjunction with other concerned organizations. The plan will involve the mobilization of multiple HA hospitals to provide the necessary medical services in case of emergency at the new airport.

(c) The Department of Health will open a general outpatient clinic in Tung Chung in July this year to coincide with the occupation of the public housing estates in Tung Chung. Whilst accident and

emergency services will not be provided by the clinic, it will be able to provide some form of initial medical treatment to patients suffering from minor injuries and emergencies.

GOVERNMENT MOTIONS

OCCUPATIONAL SAFETY AND HEALTH ORDINANCE

THE SECRETARY FOR EDUCATION AND MANPOWER to move the following motion:

"That the Occupational Safety and Health Regulation, made by the Acting Commissioner for Labour on 31 May 1997, be approved."

SECRETARY FOR EDUCATION AND MANPOWER (in Cantonese): I move the motion standing in my name on the Order Paper.

In accordance with section 42 of the Occupational Safety and Health Ordinance, the Commissioner for Labour made the Occupational Safety and Health Regulation on 31 May 1997.

As I noted in my speech at the resumption of the Second Reading debate on the Occupational Safety and Health Bill on 14 May 1997, we would submit subsidiary regulations to be made under the new legislation to this Council as soon as possible after the enactment of the Bill. The Bill was passed by this Council on that day after three readings and subsequently enacted on 23 May 1997. I am therefore submitting the Occupational Safety and Health Regulation to this Council today.

The Occupational Safety and Health Regulation governs the safety, health and welfare at the workplace and manual handling operations. It has the following main provisions:

Part I contains provisions which define certain expressions used in the Regulation. Part II contains provisions which provide for the prevention of

accidents at workplaces. Part III contains provisions outlining fire safety measures which have to be taken at workplaces. Part IV contains provisions related to the environment of workplaces. Part V contains provisions about the hygienic conditions of workplaces. Part VI contains provisions related to the provision of first aid facilities at workplaces. Part VII contains provisions which impose on the responsible person for a workplace several requirements with respect to manual handling operations undertaken at the workplace.

The Bills Committee on the Occupational Safety and Health Bill has already scrutinized the draft of the Regulation. The Bills Committee has also reached agreement with the Administration regarding certain amendments to the Regulations. The Administration has accepted the suggestion of the Bills Committee and shortened the grace period for implementing those provisions of the Regulation regarding the general safety, health and welfare of the workplace from the originally proposed 12 months to six months. The provisions on manual handling operations are more technical and specific in nature and cover a much broader area. We would therefore maintain a 12 month grace period to allow sufficient time for preparation to all parties concerned.

For the purpose of introducing early improvements to the occupational safety and health of employees in the non-industrial sectors, I urge Members to approve the Regulation.

Mr President, I beg to move.

Question on the motion proposed.

MR LEE CHEUK-YAN (in Cantonese): Mr President, the Hong Kong Confederation of Trade Unions surely welcomes the Regulation. But regrettably we have to wait another six months before it comes into operation. I would like to remind the Administration of a very important provision in the Regulation, which I hope can be executed as soon as it comes into force.

As everyone knows, the investigation report of the Garley Building fire will be released today. From the report we can see that there were a number of casualties related to fire prevention measures in old commercial buildings. Now, a provision of the Regulation states that occupational safety officers from

the Labour Department may make suggestions to employers to improve fire prevention measures. The Commissioner for Labour is empowered to make such suggestions. If he does not exercise that power, he has failed to perform the important duty of fire prevention in old commercial buildings. Therefore, I hope that once the Regulation comes into effect, the Government will send more occupational safety officers to inspect fire black-spots in old commercial buildings and make improvements as soon as possible for the safety of employees, in order to avoid incidents similar to that at Garley Building.

Thank you, Mr President.

MR MICHAEL HO (in Cantonese): Mr President, the Democratic Party welcomes the passage of the Regulation. We also welcome the Government's decision to shorten the grace period from 12 months to six.

Mr President, when reading through the Regulation, I found that it was written in great detail, perhaps a bit too detailed. During my six years of service as a Member of the Legislative Council, this is the first time I see a piece of subsidiary legislation that specifies latrines to be installed in lavatories. The Occupational Safety and Health Ordinance will bring with it six sets of regulations, one of which is the Occupational Safety and Health Regulation. Recently we find that employers are particularly worried about the detailed regulations written. We hope that in drafting the second to the fifth sets of regulation the Government will not include so many details, by which employers may be easily trapped. I hope that in drafting future regulations the Government will not include too many details.

SECRETARY FOR EDUCATION AND MANPOWER (in Cantonese): Mr President, I wish to thank the Honourable LEE Cheuk-yan and the Honourable Michael HO for speaking in support of the Occupational Safety and Health Regulation. We have listened very carefully to their remarks.

First of all, in response to the remarks made by Mr LEE Cheuk-yan, I wish to reiterate that Part III of this Regulation is on the preventive fire safety measures to be taken at workplaces, and it also provides that the Commissioner

for Labour can require the persons-in-charge of workplaces to provide fire safety measures in addition to those specified or required under any other legislation or regulations.

Mr Michael HO is of the view that many of the provisions in this Regulation are too detailed, and asks us to consider leaving out some of the details when we draft other regulations. We will certainly consider Mr Michael HO's suggestion. However, we have to understand that the law on occupational safety and health matters is a piece of very important legislation to the Government, and it also touches on areas which we have never studied before. Therefore, in drafting a new regulation, we have to strike a balance between giving flexibility to employers and providing sufficient safeguards to employees. But anyway, we will certainly consider Mr Michael HO's suggestion in the future.

Thank you, Mr President.

Question on the motion put and agreed to.

INTERPRETATION AND GENERAL CLAUSES ORDINANCE

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

"That the Building (Planning) (Amendment) Regulation 1997, published as Legal Notice No. 239 of 1997 and laid on the table of the Legislative Council on 21 May 1997, be amended in the new Third Schedule -

(a) by repealing section 4(1) and substituting -

"(1) Access shall be provided from a point or points on the lot boundary which is accessible from a public street or pedestrian way, directly to -

(a) at least one entrance which is commonly used by the public; or

(b) a point directly adjacent to one entrance which is commonly used by the public,

and to a lift.";

(b) in section 11 -

(i) by repealing subsection (8) and substituting -

"(8) There shall be at least 2 handrails -

(a) which shall be not less than 32 mm and not more than 40 mm in external diameter; and

(b) each of these handrails shall be fixed on the wall leaving a grip space of not less than 30 mm clear of that wall.";

(ii) by renumbering subsections (9) to (12) as subsections (10) to (13) respectively;

(iii) by adding -

"(9) There shall be one handrail which shall be -

(a) not less than 32 mm and not more than 40

mm in external diameter; and

(b) fixed on the surface of the door of the cubicle which faces the inside of the cubicle and leaving a grip space of not less than 30 mm clear of that surface.";

(c) in section 12(8), by repealing "teleloop" and substituting "induction loop";

(d) by repealing section 16 and substituting -

"16. **Induction loop system**

(1) An induction loop system shall be provided -

(a) at at least one of the information counters, if any, in a building intended to be used by the public;

(b) in the public hall, if any, of such a building; and

(c) in the auditorium, if any, of such a building.

(2) For the purpose of this section, induction loop system is a system which enables a person, who is standing within the loop area and using a hearing-aid device, to pick up sound from a sound source, by means of an induction loop amplifier, without being disturbed by the noise from the surroundings.

(3) For the purpose of this section, an information counter in a building intended to be used by the public is any part in such building -

(a) where the public or a section of the public is likely to approach to seek information; and

(b) where such information is expected to be provided in an audible form."."

SECRETARY FOR PLANNING, ENVIRONMENT AND LANDS: Mr President, I move the motion standing in my name on the Order Paper.

The Building (Planning) (Amendment) Regulation 1997 was published as Legal Notice No. 239 of 1997 and laid on the table of the Legislative Council on 21 May 1997. The Regulation amends the existing requirements governing the provision of facilities in certain buildings to allow access to and use of such buildings and their facilities by persons with a disability.

The House Committee has formed a subcommittee to study the Regulation and three related Regulations, namely, the Building (Construction) (Amendment) Regulation 1997, Building (Administration) (Amendment) Regulation 1997 and Building (Standards of Sanitary Fitments, Plumbing, Drainage Works and Latrines) (Amendment) Regulation 1997. The Subcommittee has suggested a number of amendments to the Building (Planning) (Amendment) Regulation 1997, including those proposed by the Joint Council for the Physically and Mentally Disabled of the Hong Kong Council of Social Services. I would take this opportunity to thank the Honourable Edward HO, Chairman of the Subcommittee, and other members of the subcommittee for their work on the Regulations.

The proposed amendments are acceptable to the Administration, and are now reflected in the motion. Most of the amendments set out more clearly some of our requirements and introduce minor additional provisions. I would, however, like to highlight the amendment relating to the access requirement. The original provision was that access should be provided from a point or points

on the lot boundary directly to at least one entrance or to a point directly adjacent to one entrance commonly used by the public and to a lift. The Joint Council would like to improve the provision with regard to the first option to the effect that the access should be to at least one entrance commonly used by the public (rather than simply an entrance). We accept this suggestion and have reflected it in the motion. I would, nevertheless, wish to clarify that this improved provision may not be feasible in some cases due to technical difficulties and hence the Building Authority may need to grant exemptions from this provision in certain situations.

The Subcommittee has also expressed concern about the co-ordination between the Equal Opportunities Commission and the Building Authority in enforcing the requirements. There is a suggestion that the Commission should be represented on the Access for the Disabled Committee, which is a committee set up by the Buildings Department to consider applications for exemption from the new requirements set out in the Regulation. We have conveyed this suggestion to the Commission and sought its views on the referral of every exemption application for its comments. The Commission takes the view that this will affect its neutrality and conciliation role in handling future complaint cases. A copy of the Commission's view has been circulated to Honourable Members. Nonetheless, the Building Authority will seek the general advice of the Commission whenever in doubt and share experience with the Commission about the exemption applications and closed complaint cases.

Mr President, I beg to move.

Question on the motion proposed.

MR EDWARD HO: Mr President, on behalf of the Subcommittee on four Building (Amendment) Regulations 1997 of which I was elected Chairman, I give a brief report on its deliberations. The four Regulations are the Building (Planning) (Amendment) Regulation 1997, the Building (Standards of Sanitary Fitments, Plumbing, Drainage Works and Latrines) (Amendment) Regulation 1997, the Building (Construction) (Amendment) Regulation 1997 and the Building (Administration) (Amendment) Regulation 1997.

Of these four amendment regulations, material changes are proposed to the Building (Planning)(Amendment) Regulation 1997 which aim at giving statutory effect to the mandatory design requirements in Design Manual (Barrier-free Access) 1997.

The Hong Kong Institute of Architects, the Joint Council for the Physically and Mentally Disabled of the Hong Kong Council of Social Services and the Subcommittee are all in support of the Building (Planning) (Amendment) Regulation 1997.

Whilst Members envisaged that new buildings should have no difficulties in complying with the new requirements regarding the provision of facilities, they share the Institute's concern about their application to existing buildings and buildings undergoing alteration works. The Institute has drawn Members' attention to physical constraints, such as space, in providing all facilities stipulated in the Regulation.

There are also cost considerations as the provision of such facilities may be beyond the means of owners of premises. The Administration has assured Members that it will assess on a case-by-case basis as to whether owners of premises have genuine difficulties in complying with the new provisions in the Regulation. Where an application for alteration works to an existing building is submitted to the Building Authority for approval, the Building Authority will impose the new requirements only on that part of the building to which alteration works relate but not on the whole building.

The Administration has also clarified that should a renewal of licence be applied for carrying out certain business at existing buildings to which no alteration works are proposed, the Building Authority's main considerations are the provision of fire escape and structural safety. I believe the Administration's advice will allay, to a certain extent, the concern of building professionals.

As Members are aware, Members of the public may lodge a complaint about disability discrimination with the Equal Opportunities Commission. The Subcommittee is concerned whether a professional decision made by the Building Authority on an application for exemption from operation of certain

provisions in the Regulation will be respected by the Commission. Whilst Members note that each case will be assessed by the Access for the Disabled Committee, comprising government officials, building professionals and representatives of rehabilitation services to enable the Commission to fully understand the rationale behind a decision to extend certain requirements in a particular case, the Subcommittee hopes that the Building Authority will maintain effective communication with members of the Commission.

Lastly, the Subcommittee thanks the Administration for having taken on board a number of suggestions made by Members and the Joint Council to improve the Regulation. No doubt, implementation of the new provisions in the Regulation will greatly facilitate access of persons with a disability to buildings. I appeal to Members of this Council to support the resolution.

SECRETARY FOR PLANNING, ENVIRONMENT AND LANDS: Mr President, I would like to thank Mr HO and the Subcommittee again for the hard work they have done in examining the amendment Regulations, and to thank Mr HO and the Subcommittee for their support on both the original Regulations and the amendments.

Question on the motion put and agreed to.

PATENTS ORDINANCE

THE SECRETARY FOR TRADE AND INDUSTRY to move the following motion:

> "That the Patents (Transitional Arrangements) Rules, made by the Governor in Council on 3 June 1997, be approved."

SECRETARY FOR TRADE AND INDUSTRY (in Cantonese): Mr President, I move the motion standing in my name in the Order Paper.

On 28 May, this Council passed the Patents Ordinance which provides for a new and independent patent protection regime in Hong Kong. Section 158 of the Patents Ordinance empowers the Governor in Council, subject to the approval of the Legislative Council, to make rules for the transitional arrangements for registered patents or patent applications under the preceding system, which was dependent on that of the United Kingdom. These rules are

required to ensure the continued protection of the patents which have been registered and remain in force in Hong Kong on the commencement of the new law; and to allow proprietors of patents to get registered under the preceding law, or patent applications leading to patents capable of being so registered, to obtain a patent under the new law.

These rules, known as the Patents (Transitional Arrangements) Rules, seek to deal with the transitional arrangements for registered patents or patent applications in respect of the following five categories of cases: first, patents granted under the United Kingdom 1949 or 1977 Patents Act and currently registered under the Registration of Patents Ordinance (Cap. 42); second, patents granted under the United Kingdom 1949 or 1977 Patents Act and which are the subject of pending application for registration under Cap. 42; third, patents granted under the United Kingdom 1949 or 1977 Patents Act but not falling within the first or second category; fourth, pending applications for patents made under the United Kingdom 1977 Patents Act which have been published by the United Kingdom Patent Office; and fifth, pending applications for patents made under the United Kingdom 1949 Patents Act.

The legal profession and the practitioners support the Patents (Transitional Arrangements) Rules. The Bills Committee on the Patents Bill has seen the earlier draft of these Rules and made no comments.

With these remarks, Mr President, I move that the Rules be approved.

Question on the motion proposed, put and agreed to.

GOVERNMENT BILLS

Second Reading of Bills

Resumption of Second Reading Debate on Bill

EMPLOYMENT (AMENDMENT) BILL 1996

Resumption of debate on Second Reading which was moved on 29 May 1996

MRS MIRIAM LAU (in Cantonese): Mr President, I speak in the capacity of the Chairman of the Bills Committee of the Employment (Amendment) Bill 1996 to report to Members the major arguments and views of the Bills Committee.

The Employment (Amendment) Bill 1996 aims to improve the protection for pregnant employees. The Bills Committee held a number of meetings with the Administration. Eight bodies, including the Law Society of Hong Kong and several unions of employers and employees, sent in their submissions to the Bills Committee.

The Bills Committee has been advised that the proposed amendments in the Bill have been accepted by the Labour Advisory Board. By and large, members of the Bills Committee have no objection against legislation to improve maternity protection for employees. There are, however, different views on some controversial provisions in the Bill.

The Bill proposes that employees having completed four consecutive weeks of service should be entitled to 10 weeks' no pay maternity leave. Pregnant employees should also be protected from dismissal by employers. The amendment gained support from most members, who also heard the strong opposition from the Hong Kong Employers of Overseas Domestic Helpers Association (HKEODHA). The HKEODHA was worried that the amendment may cause difficulties for employers due to the special job nature and recruitment process for overseas domestic helpers, which is different from that commonly found in the commercial sector. For example, employers may recruit pregnant employees unknowingly. Under the legislation, however, the employers may not dismiss those employees. The HKEODHA requested that the Administration retain the existing qualifying service of 12 weeks. But many labour groups and most members are of the view that the proposal for employees to be protected once they are pregnant is acceptable.

The Bills Committee agrees with the Committee stage amendments proposed by the Administration to eliminate possible contradictions in the Bill so as to retain the right of dismissal by employers during the probationary period.

The Bill also proposes that employers should refrain from assigning heavy or hazardous work to pregnant employees who can produce medical certificates to that effect. Employers are required to free the employee from such work within 14 days. Since it is a criminal offence for non-compliance, the Bills Committee is concerned about the objective criteria for defining heavy or hazardous work, particularly in relation to household duties. Since the Commissioner for Labour is empowered to determine whether an employee is suitable for certain work, the Commissioner should be required to seek further medical advice in the course of such determination. The Administration has agreed to make suitable amendments to this effect.

In the course of deliberation, the Bills Committee understands that some provisions, such as lowering the qualifying period of service enabling employees to enjoy maternity leave and to be protected against dismissal, and the prohibition on assignment of heavy or hazardous work, can cause certain practical difficulties to employers of overseas domestic helpers. Although most members object to the HKEODHA's proposal to exclude overseas domestic helpers from the ambit of the Bill, some members stress the need to face squarely the implications of the Bill.

Although the Administration has stressed time and again that the Employment Ordinance has been applied to all domestic helpers since it came into force in 1968, members in general are of the view that the mode of employment has changed a lot over the last 30 years. The Administration must consider the actual position and take a good look at the present law to see whether it is still appropriate. In response to members' concerns, the Administration has agreed to conduct a review on employment matters for live-in domestic helpers. The review is expected to be completed in mid-1998. I trust that the Secretary for Education and Manpower will have a detailed report on the issue in due course.

Although a few members have reservations about the major amendments mentioned above, under the premise of improving labour benefits, the Employment (Amendment) Bill 1996 gains the support of most members of the Bills Committee. Mr President, the above are the overall views of the Bills Committee. I now wish to talk about my own views on the Bill.

The Bill aims to improve maternity benefits of pregnant employees. I am in full support of this principle. But proposals to improve employee benefits must not only be acceptable to employees but also be affordable by employers. More importantly, they should not create insurmountable difficulties for employers.

If the Bill is passed, all employees, including local workers, imported labour, business employees and domestic helpers, will be protected. It is of course ideal to give benefits to all workers. But we have heard from the HKEODHA that the Bill is not fair to employers of domestic helpers. It may mean a heavy burden and all sorts of difficulties for them. The HKEODHA's comments are directed not to overseas domestic helpers but to helpers in the household.

In addition to the examples already mentioned, the HKEODHA has also pointed out that it is difficult to define heavy work or work harmful to pregnancy. Although the Department of Health advises that common household work will not influence pregnancy, and the Labour Department has printed a guideline for "Heavy Manual Work for Pregnant Employees", household work comes in many forms and it is difficult to define. If the relevant helper has to stop work all of a sudden due to pregnancy, the employer will lose someone who can help with the care of their kids or their aged members in the family. We can imagine the predicament encountered by the employer.

The HKEODHA does not represent bosses in big firms. Their members are *petit* employers who are employees themselves. Many of them belong to the lower middle class. There are more than 100 000 of them. In commercial firms, when employees become pregnant, they may not cause great difficulties to the employers, but the situation is another story in a household. The reason is that employers in commercial firms may redeploy manpower to cover vacancies or recruit temporary staff or even shut down their operation for a few days.

I do not agree that employers should have the power to force pregnant employees to do any work harmful to pregnancy. But I think the HKEODHA has good reasons to be worried. I think domestic helpers are different from employees in commercial firms in terms of the job nature and work environment. So, in improving employee benefits, the Administration should give separate consideration to the different situation of domestic helpers. This is no discrimination.

One purpose of the Administration in submitting the Bill is to bring Hong Kong labour benefits in line with international labour standards and practices. The Government gives most of its consideration to Convention No. 3 of the International Labour Convention in relation to suggestions for employment before and after pregnancy. But I want to point out that Convention No. 3 refers only to protection needed by pregnant women in public or private commercial enterprises. It makes no reference to domestic helpers. Can we say the Convention discriminates against domestic helpers? As regards international practice, my understanding is that in Singapore domestic helpers are not protected by labour laws, while in Taiwan, although there are laws for the protection of pregnant employees, it does not allow pregnancy among overseas domestic helpers. Once found pregnant, they would be deported back to their country of origin. In Britain, the Government exempts family employers from the responsibilities in maternity benefit. And in certain states in the United States, still less maternity benefits are allowed. From these examples, we can see that maternity benefits are not regarded as absolute rights in some overseas countries. There are countries using separate laws to protect domestic helpers and employees in commercial firms. Why must Hong Kong choose to use the same laws for both categories of pregnant employees, who are distinctly different in their job nature?

The Administration tells employers of domestic helpers not to worry, as a contract will be invalid once a domestic helper is seriously ill (whether the illness is due to pregnancy or not) and cannot perform her duties. And by law the relevant labour contract will terminate automatically. So, the scenario that the employer has to take care of a domestic helper who cannot work will not arise. This argument is based on the "doctrine of frustration" in law. In support of its argument, the Administration cited the judgement by Lord RADCLIFF in the *Davis Contractors Ltd vs Fareham Urban District Council.* But in the same case, Lord RADCLIFF has pointed out that the incident must be an unexpected event if one is to rely on the above principle. There are no precedents as regards whether a female domestic helper who cannot perform her duties is an unexpected event. But I am not as confident as the Administration if I were required to convince the court. This is an unexpected twist for employers.

In the light of the above reasons, I will support the amendment put forward by Mrs Selina CHOW during the Committee stage.

Thank you, Mr President.

MR LEE KAI-MING (in Cantonese): Mr President, I have expressed my views in the Bills Committee. Regarding the amendments put forward by the Honourable Mrs Selina CHOW, I have four points to make:

1. To exclude domestic helpers from the Employment Ordinance is a bad precedent. If the amendment is passed, domestic helpers will lack legal protection.

2. The law has rendered suitable protection to employers because an employee is required to produce a medical certificate to prove her unfitness to do certain work or dangerous work. The employer is entitled to oppose the decision of the doctor concerned through finding another doctor to prove otherwise. In contentious cases, the Commissioner for Labour will make judgement only after seeking advice from doctors from the Department of Health. So, there is protection under the law.

3. From a moral viewpoint, we should support protection for pregnant workers. So, the Bill is totally in line with the moral spirit in granting protection to pregnant workers.

4. The Government has undertaken to conduct a full-scale review on the issue of domestic helpers and will come to a conclusion in mid-1998.

For the above reasons, I oppose the amendment.

Thank you, Mr President.

MR MICHAEL HO (in Cantonese): Mr President, the Democratic Party supports the Bill. We welcome the amendment because it introduces protection for pregnant workers.

During the scrutiny of the Bill, an issue that attracted a hot debate was about domestic helpers. In fact, the issue of taking up household chores and heavy work have been thoroughly debated in the Bills Committee. What is heavy work? It is indeed not easy to define. But we must not forget that from a medical point of view, pregnant women are healthy women. They are healthy beings, not patients. Pregnant women may lead a normal life and work as ordinary people do. Of course, it is not suitable for them to take up manual work that involves heavy physical strength. But the meaning of "heavy" changes with the physical built of the person and the degree of demand on the physical strength involved.

I fully agree that in future there should be further studies on domestic helpers as a work type. Yet we need to understand that once a domestic helper falls sick and cannot work, a household, as the Honourable Mrs Miriam LAU has said, will have difficulty in finding a replacement. When there is only one domestic helper in the household, a similar situation may arise, even if she is not pregnant, say, when she is sick or injured and cannot work. The position is similar to that we mentioned a while ago in which pregnant domestic helpers develop complications preventing them to do their work.

Mr President, during the discussions we have agreed that this type of work is a special case and we need to study it further. I hope to hear more definite undertakings when the Secretary for Education and Manpower speaks later. We also hope that the law can be passed as soon as possible to protect pregnant workers.

I so submit.

MRS SELINA CHOW (in Cantonese): Mr President, first of all I need to make an announcement. The Liberal Party has regarded constant improvements in the labour laws a very good thing. But I want to make a small protest today on two aspects.

First, should we consider clearly and thoroughly all types and nature of work when we consider improvements in labour laws? As I understand it, when the Labour Advisory Board discussed the proposed amendments to the Bill, no one spoke for the employers of the 140 000 to 150 000 domestic helpers. The voices and difficulties of these employers were not adequately reflected or considered.

Second, when we talked about things in the household, more often than not, the topic would appear academic to male Members of this Council. They are completely ignorant about the problems facing employed or unemployed women. As employers, the problems they face are different from those faced by factory owners or office managers. Therefore, when a piece of legislation seeks to regulate all people, the difficulties of these employers, most of whom are one-on-one employers or of the middle-class, and some of whom are not necessarily employed or are merely "homemakers" responsible for the operation of the household, are not considered or taken care of. People just talked about issues of academic nature and principles.

I will move an amendment later, which I think is fair. We cannot let the law do injustice to the employers now just because the Secretary for Education and Manpower promises to conduct a review next year. I do not think we should do this. If we understand the special situation of domestic helpers, which the Honourable Michael HO and LEE Kai-ming have mentioned, why are we oblivious to it and reluctant to face the issue squarely, and just let it continue? Why should injustice be allowed to exist till the review next year?

In fact, as we all know, many countries, such as Singapore, have different laws for the benefits of domestic helpers. I am totally against the Honourable LEE Kai-ming's ideas because what we are doing is not discrimination against the helpers. We are just asking for different considerations according to different circumstances. Under this broad principle, when we see that something is unfair and should not be done, I hope we will not force our way through when we make laws. I hope that everyone can understand and accept the reasons I have given just now. I believe many colleagues are aware of the problem; therefore I hope they will support my amendment.

MR LEE CHEUK-YAN (in Cantonese): Mr President, first of all, I would like to "lick the boot" of the Government on behalf of the Hong Kong Confederation

of Trade Unions (CTU), commending the Government upon this amendment which serves to protect pregnant women. In fact, when I joined this Council in 1995, I did propose to increase the payment for maternity leave from two thirds to four fifths. At that time the Government promised that it would follow up with the review, of which the Bill in front of us today is the result. The review is fairly extensive in its scope. With the third bill, the Employment (Amendment) (No. 2) Bill 1997, which will be passed later, it can be said that the problems about job security and maternity leave rights of pregnant women are basically solved. I would like to express appreciation on behalf of the CTU.

Originally, the discussion today could bring good news to all women in Hong Kong, but the focus of discussion of the Bill has gradually been shifted to whether domestic helpers should be excluded from the relevant provisions. I want to state clearly that the purpose of the Bill is to protect all pregnant women in employment. The Hong Kong Employers of Overseas Domestic Helpers Association always says that they represent career women. If this is the case, they must first accept that this Bill provides protection to their members because they are all career women. On the one hand, in their capacity as employees, they think this Bill is very good. On the other hand, in their capacity as employers, they reverse their position. This is not right. We should affirm the contribution of the Bill to all the career women in Hong Kong. If Members intend to discuss about overseas domestic helpers .....

PRESIDENT (in Cantonese): Mrs Selina CHOW, is it a point of order?

MRS SELINA CHOW (in Cantonese): Mr President, it is a point of order. The Honourable LEE Cheuk-yan has already mentioned the term "overseas" three times, I wonder what "overseas" means .....

PRESIDENT (in Cantonese): Mr LEE Cheuk-yan, please sit down.

MRS SELINA CHOW (in Cantonese): I would like him to clarify the meaning of "overseas".

PRESIDENT (in Cantonese): Mrs Selina CHOW, this is not a point of order. Mr LEE Cheuk-yan may clarify if he is willing to. Mr LEE Cheuk-yan, please continue with your speech. If you wish to clarify, you may do so.

MR LEE CHEUK-YAN (in Cantonese): I am very willing to clarify. Since the name of the association is Hong Kong Employers of Overseas Domestic Helpers Association (HKEODHA), so I did not say it wrongly. With the term "Overseas" in its name, it means that all members of the HKEODHA employ overseas domestic helpers. Of course, I do not know whether the Honourable Mrs Selina CHOW wants to say that not only overseas domestic helpers but also all other domestic helpers are to be excluded from the Bill. This is naturally worse because in this way all local domestic helpers will be unprotected. We all know that we are actually discussing overseas domestic helpers.

I object to the exclusion of domestic helpers from the Bill. First of all, the whole Bill has introduced nothing new. When we discussed with the HKOEDHA, they alleged that there were two new ideas in the Bill. Firstly, an employee only has to work for four weeks before she can have pregnancy protection. I have already explained the situation to them. If they think that the four-week security period will create problems, they can try to make sure that the employees are not pregnant before they come to work in Hong Kong when they recruit overseas domestic helpers, as employment agencies have the responsibility to give domestic helpers physical examinations. If employment agencies have not done what they should do, I think it is unfair to shift the responsibility onto the laws and exclude domestic helpers from the Bill as a remedy.

If we think that domestic helpers should not be pregnant at the time they come to Hong Kong, we can state clearly that they are coming to work in Hong Kong upon their employment. I am sympathetic to the employers' feeling if they are dissatisfied to find their domestic helpers pregnant when they arrive in Hong Kong. However, instead of excluding domestic helpers from the Bill, the solution should be ensuring that they are not pregnant when they come to Hong Kong. The responsibility lies with the employment agency. I think that the issue should be followed up along this line, instead of excluding domestic helpers from the Bill.

The other new idea, as believed by the HKEODHA, is that according to the amended provisions, the domestic helpers who can produce a medicate certificate of pregnancy will not be required to do heavy work. In fact, heavy work takes up only a very small part of domestic duties. It may be possible that the employer cannot ask her to clean windows, yet other than this, I cannot think of any work that is heavy. If you have to buy rice, you can ask her to buy a five-kilogram pack instead of an eleven-kilogram one, and she may make use of a trolley. I would like to ask Members not to forget that the so-called heavy work has to be first decided by a doctor, and the domestic helper has to ask the doctor for a certificate as proof.

I believe that in a household, if the domestic helper really gets pregnant, she will discuss it with her employer. It is just normal to think that the employer will not ask her to do heavy work under such circumstances. Therefore, I think that the issue of heavy work will not have any impact in practice (I am not holding an academic discussion here). I believe that no domestic helper will ask for a medical certificate, and in reality the employer and employee will discuss ways to deal with this matter. As a result, it is completely unreasonable to exclude domestic helpers from the Bill.

Of course, the only justification is that overseas domestic helpers are living in their employers' places and I think there are really some difficulties. However, such difficulties should not be resolved by excluding overseas domestic helpers from the Bill because this will not solve the problem. On the contrary, all domestic helpers will be deprived of their pregnancy protection and it will be very unfair to them. This would only be a means to deprive them of their rights in order to solve the problem of live-in domestic workers. I think that the problem can be solved by other means, instead of depriving them of their protection.

Lastly, I must declare that I am also an employer of domestic helpers, so I would like to draw Mrs Selina CHOW's attention that I am not holding an academic discussion here. The amended Bill allows our career women to contribute more to the society. They cannot just take the best away and deprive domestic helpers of all their rights once problems arise. Such problems are not only confined to pregnancy of domestic helpers. If they are injured during work or are seriously ill, they may not be able to work, either. All the same, this will cause inconvenience to their employers. What we should take into consideration is that it is unfair for the employers to take the best things in the

world and deprive domestic helpers of their protection once anything goes wrong.

Lastly, I want to respond to Mrs Selina CHOW's protest. She said that the voices of employers of domestic helpers were not heard in the Labour Advisory Board (the Board). I agree to this point, but domestic helpers are not represented in the Board either. If the voice of every single profession were to be heard in the Board, it would mean that each profession and its union had to send a representative to the Board. If all the 72 professions were to be included, there would be 72 representatives. 72 multiplied by two is 144, then there will be 144 representatives discussing in the Board. We all know it is impossible. Therefore, if employers of domestic helpers have to be represented in the Board, unions of domestic helpers have to be represented too. Regarding this issue, the HKEODHA has already done its best and both sides are aware of the issue. I believe that their endeavour has achieved its effect.

All in all, I will vote against Mrs Selina CHOW's amendment. Thank you.

MR CHAN WING-CHAN (in Cantonese): Mr President, the Hong Kong Federation of Trade Unions (FTU) supports this Bill moved by the Administration.

The Bill should protect all employees and women. When protection is provided, there should be no difference among employers of various sizes, or between "big companies" or "small employers". The Employment Ordinance should protect everyone of "the employed". It will be extremely unreasonable if certain provisions are taken out so that some employees are left unprotected.

Mr President, the FTU supports the Bill. Thank you, Mr President.

MR LEUNG YIU-CHUNG (in Cantonese): Mr President, I went to a forum some time ago and the Honourable James TIEN of this Council was also present. We discussed the Employment (Amendment) (No. 2) Bill 1997, which will be submitted to this Council later. I remember Mr James TIEN stated clearly at that time that the Employment Ordinance must be consistent. Just as what the Honourable CHAN Wing-chan said just now, employees of all big or small

enterprises and domestic helpers should be protected. Mr James TIEN's attitude was very clear and definite. Unfortunately, I do not understand why one of the Members from the Liberal Party, the Honourable Mrs Selina CHOW, proposes to amend the Bill. Her amendment is exactly opposite to Mr TIEN's view.

I share Mr TIEN's view put forward in the debate that day because the Employment Ordinance has to be completely consistent and should not treat employees of enterprises of various sizes and domestic helpers differently. Just now many Honourable colleagues also put forward the same view to which I very much agree. I find one thing extremely unfair, and that is, employees of a certain profession are to be excluded from the protection. I am very puzzled. Are they not employed? Are they not "human"? Since they are equally employed and human, the Employment Ordinance should equally protect them and should not treat them in a totally different way. If the treatments they receive are different, I think that it is obviously a discrimination against that particular profession.

Moreover, employers of the domestic helpers are themselves career women. I hope that they will understand the principle of "live and let live". In the capacity of employees, they hope to have protection under the Employment Ordinance. I hope they understand that the employees whom they employ should also be protected. Although the protection of domestic helpers may cause them some difficulties and inconvenience, by the same token, the employers who employ them may also think that giving them protection will create problems. Therefore, I think it is unreasonable to apply this logic to refrain from giving protection to all employees under the Employment Ordinance.

I hope we understand that all employees should receive entirely equal protection, and such protection should not be revoked because of the type of work involved. I agree that jobs of different nature may need different protection. For example, measures of occupational safety may vary according to the job nature. However, the Bill we are discussing is about the physical condition of a person. So what is the difference between a pregnant employee of this job nature and of another?

Hence we cannot accept that these employers are small scale ones and so their difficulties should become a justification. If we could accept this, many employees would not be protected, as most enterprises in Hong Kong are of medium or small scale.

I hope that we would not just think of ourselves and give no thought to others. I believe we should put ourselves in other people's shoes. If we think that we need protection, we should understand that other people need the same, too.

My president, on behalf of the Neighbourhood and Workers Service Centre, I support this Bill moved by the Administration.

Thank you, Mr President.

MR CHENG YIU-TONG (in Cantonese): Mr President, first of all I welcome the Bill submitted by the Administration. There have been in-depth discussions in the Labour Advisory Board (LAB) on the Bill. The Bill has been discussed in the Labour Advisory Board Committee on Labour Relations and at a meeting of the full LAB. During the discussion, both labour and management unanimously, I stress, unanimously agreed to submit the Bill to this Council for consideration.

In the past, when this Council discussed about bills relating to labour laws, some Members might reject a bill on the ground that the bill had not been discussed in the LAB or there was no unanimous decision of the LAB. Today, I find it strange that some Members want to move amendments to the Bill on other grounds, although it has been unanimously agreed in the LAB. I do not think this is appropriate.

The Bill is based on proposals put forward by the LAB and submitted by the Administration to this Council for consideration and therefore I think is worth supporting.

Thank you, Mr President.

MR LAU CHIN-SHEK (in Cantonese): Mr President, today's discussion teaches us a good lesson. In fact, I have been encouraging the working class and the weak social groups to fight for their interests. Working women and employees are no exception. But I think that it is more important for us to take the chance to reflect in the course of our strife. We should understand more and care more about the people who are in more needs than we are. If we treat our own difficulties as more important than the predicament of others, we would learn nothing new in the course of our strife. If we take our strife for our own interests for granted and those of the weaker groups as unimportant, we would fail even if we can successfully protect our own interests.

So, as working women explain their difficulties today, they need to understand those of the more needy and humble.

I support the amendment put forward by the Administration and oppose to the Honourable Mrs Selina CHOW's. Thank you.

MR JAMES TIEN (in Cantonese): Mr President, the Honourable CHENG Yiu-tong has mentioned that the Bill has been discussed in the Labour Advisory Board (LAB) and has been agreed upon by both labour and management. In other debates, we Members representing employers have been saying we hope that this Council will accept proposals agreed upon in the LAB and that Members representing the labour side will not move further amendments. But often they continue to move further amendments, despite prior agreement in the LAB. This often happens and Members representing the labour side accepts this practice. My idea is that I agree with the decisions reached in the LAB, to which we as the management side also agree. So, we will not oppose the amendments to the Employment Ordinance moved by the Administration.

When the Bill was being scrutinized, many representatives of employers of overseas domestic helpers pointed out that only representatives of the business sector and of employees took part in the study in the LAB, and that a group of people being affected were ignored. Problems arising from the pregnancy of domestic helpers were also ignored. We asked the representatives of the management side, that is employers, in the LAB about this, and they acknowledged that they did not think of this problem in their discussions. What they had been discussing was the situation when female workers in factories or secretaries working in the office become pregnant. They never thought about

the situation in which an overseas domestic helper working for a household becomes pregnant.

What concerns the business sector is the work to be done during the time when a secretary becomes pregnant and is entitled to leave four weeks before delivery and six weeks afterwards. While a secretary can return home to rest when she is on leave, a domestic helper stays with the employer during the entire period of pregnancy or the total of ten weeks of maternity leave mentioned above. A domestic helper does not return home to get the care of her family members or her husband and become unrelated to the employer. If a domestic helper suffers a fall in the employer's place or has to care for her baby or, as the Honourable LEE Cheuk-yan said, finds a bag of rice too heavy to carry, how should her safety be protected by law?

Indeed, I said I would support the idea of equality. But given that idea, does it mean we should not consider any problems that may arise? Can we ignore the problems in the name of equality? Can we not change other laws after enactment? The answer is in the negative. For example, in the Sex Discrimination Ordinance, the premise is that there should be equality for both sexes, but still there are exemptions. Women are exempted from overtime work and so are protected in this area. They are also exempted from operating heavy machines, such as cranes. That being the case, although the premise is that there should be equality for both sexes, we should discuss problems that may arise. Despite the concept of equality for both sexes, there are no restrictions on men taking up overtime work, but there are for women. Similar situations arise in other laws. We should be practical. If problems arise, we have to solve them.

Now, here is the problem. If an overseas domestic helper becomes pregnant, no matter how she does so or whether she should do so, and she has to do so much housework, is her employer protected? The employers are neither business tycoons nor very rich people. They may be our colleagues or members of the lower class. At present, households of the middle class or households with medium or lower income may have employed overseas domestic helpers. That is the reason why the Honourable Mrs Selina CHOW moved an amendment to see if overseas domestic helpers should be excluded from the Ordinance. In addition, we hope the Government can give careful consideration to whether the small group of overseas domestic helpers should be included in the entire Hong

Kong workforce so that their problems can be included in future discussions on laws. Or should a separate policy be applied to overseas domestic helpers because their position is different in that they live at their employers' places, they work alone there and their husbands and children are not with them? It is for the above reasons that we move the amendment.

Thank you, Mr President.

SECRETARY FOR EDUCATION AND MANPOWER (in Cantonese): Mr President, first of all, I would like to act on behalf of the Administration to thank the Bills Committee chaired by the Honourable Mrs Miriam LAU and other Members for their general support of this Bill. Particularly, I would like to thank the Honourable LEE Cheuk-yan for appreciating the Administration's achievements in labour welfare. Instead of thanking the Administration six times in this Council, because we are going to table six pieces of legislation for the endorsement of this Council today, I would suggest Mr LEE withdrawing the three Member's Bills which he has scheduled to present next week. I think this is more practical.

The objective of this Bill is to give effect to the review findings on maternity protection in the Employment Ordinance. Since various improvement proposals have been endorsed by the Labour Advisory Board (LAB) and were tabled before this Council last May, I hope Members would vote for and pass this Bill and give effect to the proposals which can benefit all the employees affected.

After detailed scrutiny of the clauses in the Bill, the Bills Committee is in general support of the Bill. Given the unique employment situation of live-in foreign domestic helpers, the Bills Committee requested the Administration to conduct review on whether special arrangements under the Ordinance for these employees are necessary. Representatives of the Hong Kong Employers of Overseas Domestic Helpers Association (HKEODHA) also suggested at the meeting of the Bills Committee that foreign domestic helpers and domestic helpers be excluded from the protection of this Bill. This is indeed the most controversial issue during the scrutiny of this Bill. Therefore, I think it is

necessary to take this opportunity to elaborate the Administration's stance and viewpoint on this issue.

The HKEODHA claimed that the employment relationship between a domestic helper and her employer was very unique in nature. The employer may encounter difficulties in abiding by the relevant provisions in the Ordinance. The Association particularly opposed the provisions in the Bill which states that if a pregnant employee can produce medical certificate to prove that she is unfit for duties which are injurious to pregnancy, she may not be assigned such duties. The Association opined that as the intrinsic nature of the duties of live-in domestic workers often involved physical exertions, they would be unsuitable to undertake routine domestic duties if they were pregnant, and therefore their pregnancy would certainly cause inconvenience to the employers.

We cannot agree to this view for three reasons. First, according to the expert advice of the Department of Health, domestic duties would not normally be injurious to a pregnant domestic helper provided that the pregnancy itself was normal. Second, we have proposed to put in place an appropriate mechanism in the Bill allowing the employer to arrange medical examination by another registered doctor to the employee who claims to be unfit to carry out certain duties. If there are conflicting views between the two doctors, the case can be referred to the Commissioner for Labour, whose decision will be final after seeking medical advice. Third, after the enactment of this Bill, the Labour Department will issue guidelines for reference by employers and employees. The guidelines will list out points to take note of when a pregnant employee is undertaking some heavy work and types of work which will be hazardous to her health.

The HKEODHA also opined that the employers would have difficulty in arranging a replacement when live-in domestic helpers were on maternity leave. We do not think that this problem is confined to employers of foreign domestic helpers. The Bill does not create additional difficulties to them because under the extant legislation, employees enjoy 10 weeks of maternity leave. The employers can hire suitable part-time or temporary workers through the Local Employment Service Offices of the Labour Department or other employment agencies.

In fact, the existing Employment Ordinance stipulates various rights and benefits enjoyed by employees working in Hong Kong. Since its

implementation in 1968, apart from a few exceptions, the Employment Ordinance applies to all employees including local and foreign domestic helpers. There must be sufficient justification before we can decide to exclude foreign domestic helpers from the statutory coverage. This is because legally and constitutionally, we have the responsibility to treat the foreign employees coming to Hong Kong to work equally. This is also in compliance with the stipulation under International Labour Convention No. 97. Even if this exclusion applies to all domestic helpers, including local and foreign domestic helpers, the exclusion would not be deemed non-discriminatory because most domestic helpers in Hong Kong are foreign domestic helpers, and this exclusion would put them in a disadvantageous position.

After careful deliberation and seeking legal advice, we think that there is insufficient justification to exclude all foreign domestic helpers or all live-in domestic helpers from the protection under the Bill. However, after listening to the views of the HKEODHA and Members of this Council representing the employers, we agree that since live-in domestic helpers have to live together with their employers and the employment situation is quite different from other kinds of work, we decide to review comprehensively the employment situation of live-in domestic helpers. Since the comprehensive review covers a wide range of issues, we have to gather more information about the employment situation of live-in domestic helpers as well as consulting relevant parties and bodies. We expect that the review will be completed in mid-1998. After that, we will consult the LAB on the findings of the review and the suggestions of the proposal.

Given this undertaking as well as the reasons I mentioned just now, the Administration will not support the Committee stage amendment moved by the Honourable Mrs Selina CHOW because this amendment will curtail the protection afforded to the pregnant domestic helpers under the Bill. I will explain further our grounds at the Committee stage.

Lastly, I urge Members to support the original Bill proposed by the Administration.

Thank you, Mr President.

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

Bill read the Second time.

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

11.07 am

PRESIDENT (in Cantonese): This Council shall be suspended for five minutes.

11.16 am

Council then resumed.

Committee stage of Bill

Council went into Committee.

EMPLOYMENT (AMENDMENT) BILL 1996

Clauses 1, 6, 9 and 10 were agreed to.

CHAIRMAN (in Cantonese): The procedure of a joint debate as written in the script was a mistake, for the amendment proposed by the Secretary for Education and Manpower and that proposed by Mrs Selina CHOW are not mutually exclusive, so Members should listen carefully to the following procedures. We will first decide whether Members support the amendment moved by the Secretary for Education and Manpower and then we will consider Mrs Selina CHOW's amendment.

Clause 7

SECRETARY FOR EDUCATION AND MANPOWER (in Cantonese): Mr Chairman, I move that clause 7 be amended as set out in the paper circularized to Members.

Clause 7 of the bill proposes that a pregnant employee who works for an employer under a continuous contract of employment, and that is, as having completed four consecutive weeks of service with no less than 18 hours of work per week will be entitled to such protection under the Employment Ordinance, and that means an employer cannot terminate the services of an employee on grounds of pregnancy.

According to the legal advice, clause 7 of the Bill would deprive employers of their existing right under section 6(3) and 6(3A) of the Employment Ordinance to dismiss pregnant employees whilst on probation, and invalidate the agreement between the employers and employees on the probation period, but this was not our original intention. We consider it appropriate for employers to terminate the services of employees on grounds of poor performance during the probation period.

Therefore, I move to amend this clause to explicitly state that where in a contract of employment of a pregnant employee, whether in writing or oral, it has been expressly agreed that the employment is on probation, an employer of such contract may terminate the services of an employee for reasons other than pregnancy during the period of probation, or during the first 12 weeks of probation if the probation period exceeds 12 weeks.

The above amendment proposal was endorsed by the Labour Advisory Board on 28 October 1996. This amendment was also supported by the Bills Committee.

Mr Chairman, I hereby move the amendment and call upon Members to support my amendment.

Proposed amendment

Clause 7 (see Annex I)

Question on the amendment put and agreed to.

CHAIRMAN (in Cantonese): As the Secretary for Education and Manpower's amendment to clause 7 has been agreed, the number of the provision in the

amendment moved by Mrs Selina CHOW to clause 7 has to be changed from 1(A) to 1(B). I now call upon Mrs Selina CHOW to move her further amendment to clause 7.

MRS SELINA CHOW (in Cantonese): Mr Chairman, I move the amendment under my name.

Just now many Honourable colleagues have spoken on the issue, but I would like to correct something they said which is wrong. We are not excluding domestic helpers or exploiting them. These terms as used by certain Members earlier are completely incorrect. We are simply taking the special situation of domestic helpers into account. While they have to live in the household they work for, many procedures cannot be taken during their recruitments because a lot of them are recruited overseas. These procedures include interviews and medical examinations as mentioned by the Honourable LEE Cheuk-yan. More often than not, there is not enough time to do so and interviews are rarely conducted during recruitment since few housewives can go overseas to interview domestic helpers. Therefore, the situation is actually quite special.

This does not mean that we are not providing domestic helpers with protection. We just want to maintain 12 weeks as a stipulation for termination of contract in the case of domestic helpers, whereas the amended four week stipulation will not be applicable to them.

I hope that Members will support my amendment and give thorough consideration to this issue, because in reality this will not infringe other employees' interests and they will receive their original protection.

Proposed amendment

Clause 7 (see Annex I)

MR LEE CHEUK-YAN (in Cantonese): There is one point that I do not understand. If this is the reason, why are local domestic helpers also involved in the change from four weeks to 12 weeks? Why do local domestic helpers have to receive the same treatment? While foreign domestic helpers are recruited overseas and it is likely that they are not given physical examinations, and it is also stated clearly in the contract that they are coming to work in Hong Kong, the present problem is that local domestic helpers will also be affected.

Thank you, Mr Chairman.

MR LEE KAI-MING (in Cantonese): Mr Chairman, since the Secretary for Education and Manpower has just made amendment to clause 7, I think that the problem raised by the Honourable Selina CHOW can be solved. If an employer discovers that his or her domestic helper is pregnant during the period of probation, that is, within 12 weeks, the contract of employment on probation can be terminated. This will solve the problem raised by Mrs Selina CHOW. Therefore, I will still vote against Mrs Selina CHOW's amendment.

SECRETARY FOR EDUCATION AND MANPOWER (in Cantonese): Mr Chairman, the Administration is against the proposal of the Honourable Mrs Selina CHOW to amend clause 7 of the Bill, because by implementing her proposal, pregnant domestic helpers would get lesser protection as compared with other pregnant employees who are engaged in other kinds of work. This proposed amendment would mean that both local and foreign domestic helpers would be excluded from the provisions on greater employment protection under the Bill, and employers would be able to dismiss pregnant employees who have been employed for a period of less than 12 weeks.

It was proposed in the Bill that any pregnant employee who has been under a continuous contract of employment, and that is, having completed four consecutive weeks of service with not less than 18 hours of work per week, will be entitled to such protection, and that the existing provisions on the qualifying service of 12 weeks under the Employment Ordinance will be superseded.

The intent of the Administration in amending the Employment Ordinance is to enhance maternity protection and to prevent employers from dismissing employees on grounds of pregnancy. This is in line with the spirit of the

Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW).

The Labour Advisory Board has studied the Bill in great detail and carefully considered the interests of both employers and employees before endorsing the proposal of the Administration. I think there is no reason we should discriminate against domestic helpers and cut down their protection in this regard.

I have pointed out at the Resumption of the Second Reading of the Bill that other than a small number of exceptional cases, the provisions of the Employment Ordinance are applicable to all employees including local and overseas domestic helpers ever since it was implemented in 1986. There is no reason for us to accord lesser protection to domestic helpers at this stage.

Moreover, the Administration has also promised to conduct an overall review on live-in maids and it is expected that the results will be available by mid-1998. By then, we will seek the advice of the Labour Advisory Board again. Therefore, it will be inappropriate for us to cut down the protection of domestic helpers before the review is completed.

Therefore, I would urge Members to vote against Mrs CHOW's amendment.

Thank you, Mr Chairman.

Question on Mrs Selina CHOW's amendment put.

Voice vote taken.

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

Mrs Selina CHOW claimed a division.

CHAIRMAN (in Cantonese): Committee will now proceed to a division.

CHAIRMAN (in Cantonese): I would like to remind Members that they are now called upon to vote on the question that the amendment moved by Mrs Selina CHOW 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?

CHAIRMAN (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 NGAI Shiu-kit, Mr LAU Wong-fat, Mr Edward HO, Mr Ronald ARCULLI, Mrs Miriam LAU, Dr LEONG Che-hung, Mr CHIM Pui-chung, Mr Eric LI, Dr Philip WONG, Mr Howard YOUNG and Mr James TIEN voted for the amendment.

Mr Martin LEE, Mr SZETO Wah, 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, Mr Andrew CHENG, Mr Paul CHENG, Mr CHENG Yiu-tong, Dr Anthony CHEUNG, Mr Albert HO, Mr IP Kwok-him, Mr LAU Chin-shek, 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, Dr John TSE, Mrs Elizabeth WONG and Mr YUM Sin-ling voted against the amendment.

THE CHAIRMAN announced that there were 13 votes in favour of the amendment and 35 against it. He therefore declared that the amendment was negatived.

Question on clause 7, as amended, put and agreed to.

Clause 8

SECRETARY FOR EDUCATION AND MANPOWER (in Cantonese): Mr Chairman, I move that the above clause be amended as set out in the paper circularized to Members.

This amendment seeks to amend clause 8 of the Bill on the provision to prohibit the assignment of pregnant domestic helper to handle heavy, hazardous and harmful work.

There are two parts in the proposed amendment. The first part is to delete the proposed section 15AA (1) and (2) under clause 8 of the Bill and substitute them with the provisions that specifically required pregnant employee to produce medical certificates to prove their unfitness to handle certain heavy or hazardous or heavy work.

The second part of the amendment is to amend clause 8 of the Bill to add section 15AA(6). According to the original Bill, if a pregnant employee presents a medical certificate to prove her unfitness to handle certain hazardous and heavy work, her employer can arrange for her to undergo another medical examination within 14 days. If there are conflicting views between the two doctors, the employer can ask the Commissioner for Labour to make a ruling. Before making a decision, the Commissioner for Labour may adopt appropriate measures such as seeking further medical advice to assist him in making a decision. The objective of the amendment is to specifically require the Commissioner for Labour to take appropriate actions, including seeking further medical advice, before making a final decision on the matter.

The above amendments have been endorsed by the Bills Committee.

Mr Chairman, I hereby move the above amendments and call upon Members to support this amendment.

Proposed amendment

Clause 8 (see Annex I)

Question on the amendment put and agreed to.

MRS SELINA CHOW (in Cantonese): Mr Chairman, I move that clause 8 be further amended as set out in the paper circularized to Members.

I propose this amendment because the Director of Health said that the general housework done by domestic helpers should not be listed as heavy work. Therefore, I move an amendment to exempt general housework from the Bill.

In fact, just now the Secretary for Education and Manpower talked about certain complicated procedures which are difficult to follow in a household situation. I have also read a guideline stating that if an employee is certain months pregnant, she cannot carry objects of certain weight. For example, in the case of carrying a child, a child's weight may differ every week. This fact reflects that the situation in a household is totally different from that of a commercial or industrial working environment.

Therefore, I hope that Members will support my amendment and exempt general housework from the list of heavy work.

Proposed amendment

Clause 8 (see Annex I)

SECRETARY FOR EDUCATION AND MANPOWER (in Cantonese): Mr Chairman, the Administration is against the amendment moved by the Honourable Mrs Selina CHOW. The reasons are the same as those against her amendment to clause 7, because by implementing the amendments, pregnant domestic helpers will enjoy lesser employment protection than other pregnant employees engaged in different types of work. This amendment seeks to exclude domestic helpers from the provisions of prohibiting employers to assign heavy, hazardous or harmful duties to domestic helpers.

According to the provisions of the Bill, if the pregnant employee can produce a medical certificate to prove her unfitness to handle certain types of work, the employer has to remove the pregnant employee from those duties, so as to ensure her safety and safeguard her health.

As I have pointed out during the Resumption of the Second Reading of the Bill, according to the expert advice of the Department of Health, normal household duties will not affect the health of the employee if the pregnancy is normal. Besides, the law has been designed in such a way that an employer can arrange for another registered medical practitioner to examine the employee. If the result of the examination does not agree with that produced by the employee, the employer can ask the Commissioner for Labour for a ruling, and the Commissioner for Labour will seek expert medical advice before making a final decision. So, the employer does not have to worry about abuse of the relevant provisions. I cannot support this amendment for the above reasons.

Moreover, I have repeatedly said that the Administration will conduct a comprehensive review on the employment conditions of live-in domestic helpers to see whether special arrangements have to be made. It is anticipated that the review will be completed in mid-1998, and so, we should not hastily approve the amendment at this juncture of time.

I would like to call upon members to vote against this amendment.

Thank you, Mr Chairman.

Question on Mrs Selina CHOW's amendment put.

Voice vote taken.

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

Mrs Selina CHOW claimed a division.

CHAIRMAN (in Cantonese): Committee will now proceed to a division.

CHAIRMAN (in Cantonese): I would like to remind Members that they are now called upon to vote on the question that the amendments moved by Mrs Selina CHOW 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?

CHAIRMAN (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 NGAI Shiu-kit, Mr LAU Wong-fat, Mr Edward HO, Mr Ronald ARCULLI, Mrs Miriam LAU, Dr LEONG Che-hung, Mr CHIM Pui-chung, Mr Eric LI, Dr Philip WONG, Mr Howard YOUNG and Mr James TIEN voted for the amendment.

Mr Martin LEE, Mr SZETO Wah, 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, Mr LEE Cheuk-yan, Mr CHAN Kam-lam, Mr CHAN Wing-chan, Miss CHAN Yuen-han, Mr Andrew CHENG, Mr CHENG Yiu-tong, Dr Anthony CHEUNG, Mr Albert HO, Mr IP Kwok-him, Mr LAU Chin-shek, Mr LAW Chi-kwong, Mr LEE Kai-ming, Mr LEUNG Yiu-chung, Mr Bruce LIU, Miss Margaret NG, Mr NGAN Kam-chuen, Mr SIN Chung-kai, Dr John TSE, Mrs Elizabeth WONG and Mr YUM Sin-ling voted against the amendment.

THE CHAIRMAN announced that there were 13 votes in favour of Mrs Selina CHOW's amendment and 33 against it. He therefore declared that the amendment was negatived.

Question on clause 8, as amended, put and agreed to.

Council then resumed.

Third Reading of Bill

THE SECRETARY FOR EDUCATION AND MANPOWER reported that the

EMPLOYMENT (AMENDMENT) BILL 1996

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

Question on the Third Reading of the Bill proposed and put.

THE PRESIDENT declared the "Ayes" had it.

Mrs Selina CHOW claimed a division.

PRESIDENT (in Cantonese): I am sorry, it is too late now.

Bill read the Third time and passed.

Resumption of Second Reading Debate on Bill

EMPLOYMENT (AMENDMENT) (NO. 2) BILL 1996

Resumption of debate on Second Reading which was moved on 29 May 1996

MRS MIRIAM LAU (in Cantonese): Mr President, in the capacity of the Chairman of the Bills Committee of Employment (Amendment) (No. 2) Bill 1996, I would like to brief Members on the deliberation and views of the Bills Committee.

The Bill aims to amend the existing provisions concerning wages, protection of wages, end of year payment and long service payment. The Administration states that the relevant amendments have been approved by the Labour Advisory Board (the Board). The Bills Committee has also listened to the opinions of seven organizations of employers and labour groups.

Regarding the amendment to the definition of wages, disputes have occurred in the past about whether commission, travelling allowances and overtime pay should be regarded as wages. Now the Administration proposes to expand the definition of wages and include the above payments unless they are

of a gratuitous nature or the overtime pay is not of a constant nature and does not exceed 20% of the average monthly wages. The relevant organizations and committees are concerned about the interpretation of the Ordinance and the effects on the operating costs after the amendment. The Administration says that the amendment will be conducive to clarifying the definition of wages and will not make employers undertake new responsibilities.

As for protection of wages, the Administration proposes to add a new provision stipulating that a contract of employment is deemed terminated by the employer if he or she fails to pay wages to the employee for more than one month, in which case, the employee can claim compensation from the employer for the termination of the contract of employment. This provision seeks to enact the concept of presumed dismissal in common law. Although some members of the Bills Committee think that the period should be shortened to 14 days, the Administration says that the Board subscribed to the one-month period after extensive consultations and taking into account of the interests of both parties in employment. Besides, in response to the suggestion of certain members, the Administration agrees to retain in the Ordinance the employees' right to regard the contract of employment as being terminated in accordance with common law, and relevant amendments will be moved at the Committee stage.

At present, whether end of year payment is of a gratuitous nature or part of the contract always causes disputes, so the Administration proposes to add a clause of presumption stipulating that it shall be presumed that end of year payment is not of a gratuitous nature unless there is a written term or condition by the employer. The Administration also proposes to reduce the qualifying service for pro rata end of year payment from 26 weeks to three months upon the dismissal of the employee. The Law Society of Hong Kong is worried that the amendment will place on employers an unnecessary burden of proof, and may cause employers to state in the contract that end of year payment is of a gratuitous nature. In response, the Administration points out that the relevant clause of presumption serves only to clarify the nature of end of year payment and that it will not, as it believes, bring addition burdens to the employers.

Lastly, regarding the amendment to long service payment, the Administration proposes that, from the effective date of the amended Ordinance, all employees who have served for seven years or more and are qualified for long service payment will be able to obtain the whole amount of long service payment.

After one year, the provisions concerned will be extended to employees whose periods of service are less than seven years. The Bills Committee understands that the purpose of this proposal is to improve step by step the long service payment provisions which have been implemented since 1986.

Mr President, by and large, the Bills Committee supports the passage of the Bill. Thank you.

MR LEE CHEUK-YAN (in Cantonese): Mr President, the amendment Bill today fulfils four of the 16 goals of legislation of the Hong Kong Confederation of Trade Unions. I would like to point out some inadequacies which I hope the Administration should consider when it conducts reviews in future.

Firstly, with regard to the definition of wages, at present, only overtime pay more than 20% of the employee's average monthly wages is considered part of the wages. This means that overtime pay less than 20% is not counted. This is definitely different from the income on our tax returns. If the overtime pay does not reach 20%, it is not under protection on wages. We think if a worker has done his labour, the labour should be included in the definition of wages and calculated as part of his rights.

Secondly, with regard to arrears of wages, the amendment this time stipulates that an employee may deem a contract of employment as being terminated by the employer if his wages are not paid for more than one month. However, I feel that actually the effect of prevention and deterrence are most important. Of the complaint cases received by the Labour Department at present, 25% are about the arrears of wages by employers. Why do the laws not have deterring effect? The problem is that the provisions concerned stipulate clearly that an employer will only be prosecuted if he does not pay the wages of an employee deliberately and without reasonable explanations. I believe no employer will say that he does not pay an employee deliberately, so in the end the laws have no deterring effect at all. Even if an employer fails to pay wages for several pay days or even a few consecutive months, he will say that he is not doing it deliberately. The result is that only a few employers will be prosecuted since the law lacks deterring effect. I hope that the Administration will consider using "reasonable explanations" as the only indication instead of an ambiguous term like "deliberately", since the latter is more difficult to prove.

Besides, young workers are of course still being discriminated against in the provisions for long service payment at present. Although such discrimination will eventually vanish, we still have to wait for one more year.

As for end of year payment, we feel that we can have a new concept about whether an employee can get the payment if he resigns. Of course, I know the commercial and industrial sectors have all along been objecting to the idea that an employee can get his end of year payment if he resigns. However, should we change the concept and regard double-pay as "wages paid afterwards", then even if an employee resigns he is entitled to it. What are "wages paid afterwards"? It means they are actually part of the wages, only that they are paid at the end of the year. If we accept the concept of "wages paid afterwards", there is hope that employees will be able to get their end of year payment when they resign in future.

Thank you, Mr President.

MR JAMES TIEN (in Cantonese): Mr President, with regard to the definition of wages, employers have already made a big concession during the recent review conducted by the Labour Advisory Board. In the past, overtime pay and many other allowances were not included in the definition of wages. What are the real impacts of the definition of wages on employees and employers? After all, the definition actually affects paid leave and long service payment. Now employers agree to make all these amendments which have already increased paid leave, that is, statutory holiday and other holidays, as compared with that calculated with the old method. For employers, this has cast on them a heavier financial burden.

Apart from that, employers do not agree with the views of the labour side regarding severance and resignation, especially the way in which double pay is calculated when an employee resigns of his own accord. Most employees resign because they have a better offer, so they are actually "firing their bosses". While the bosses have imparted years of training to these employees and thrown so much manpower and resources into staff training, it is rather unjustifiable to make them pay more money when they are "being fired". Therefore, Mr President, I object to the Honourable LEE Cheuk-yan's proposal which urges the Administration to reconsider this issue. I hope that it will stop consider making other requests to employers.

Thank you, Mr President.

MR CHENG YIU-TONG (in Cantonese): Mr President, the definition of wages has bearing on the income of employees because it affects payment in lieu of notice, end of year payment, payment for maternity leave, severance pay, long service payment and sickness allowance.

The Hong Kong Federation of Trade Unions (FTU) has voiced criticism many times that the definition of wages under the extant Employment Ordinance, which is too narrow and unclear, has resulted in some employers making use of its grey areas and resorting to trickery with the employees' wages to dodge or reduce their responsibilities as employers. Although the FTU has proposed many times to amend this unreasonable definition, the Administration has remained indifferent. It was just before I was about to move a Members' Bill to amend that the Administration was aware of the situation and proposed its Bill. The Administration should have foresight and initiate its amendments, instead of doing so in a passive manner? To meet the need of present development and prevent employers from resorting to trickery and abusing employees, the new definition of wages now clearly includes travelling allowances, attendance allowance, attendance bonus, commission and overtime pay.

The FTU thinks that there are still inadequacies in the calculation of overtime pay in the amendment proposed by the Administration. The proposed stipulation that overtime pay must exceed 20% of the average monthly wages may give employers another chance to play tricks. They may ask the employees to work overtime but reduce the time and pay of overtime work at the same time, striking a direct blow at the income of the employees.

In short, there are more advantages than disadvantages in amending the definition of wages. Therefore, the FTU supports the Employment (Amendment) (No. 2) Bill 1996 proposed by the Administration.

Mr President, these are my remarks.

MR CHAN WING-CHAN (in Cantonese): Mr President, one of the amendments of the Employment (Amendment) (No. 2) Bill 1996 repeals the stipulation that long service payment has to be paid in different proportions according to different age groups.

The Hong Kong Federation of Trade Unions (FTU) supports this amendment. The original intention of setting up long service payment is to compensate the employees who have worked for the same employer for a long time when they are dismissed. The payment is a compensation for the time and effort they spent working for the same employer for years. However, ever since the Ordinance was enacted, younger employees have all along been treated unfairly because only employees over the age of 45 can get the whole amount of long service payment after completing five years of service. The long service payment for employees of other ages have to be calculated with different percentages. For example, employees under 41 years old have to work for as long as 10 years before they can get the whole amount of long service payment without a proportional reduction. This practice actually defeats the original purpose of long service payment. In fact, the age of a person should be disregarded. As long as he has spent the same five years, with labour and effort, he should receive the same treatment.

While the FTU highly welcomes the amendments moved by the Administration this time, I think it is utterly unnecessary to wait for one year after the Ordinance has taken effect to repeal all the above stipulations. The amendments should be implemented immediately. Why should the unfair treatment for young employees in respect of long service payment be prolonged for one more year? I am a bit sorry about this.

Mr President, with these remarks, I support the Employment (Amendment) (No. 2) Bill 1996.

SECRETARY FOR EDUCATION AND MANPOWER (in Cantonese): Mr President, on behalf of the Administration, I would like to thank the Honourable Mrs Miriam LAU and her Bills Committee as well as Members of this Council for supporting the Employment (Amendment) (No. 2) Bill 1996. This is a very

important Bill which covers a very wide scope and there will be substantial improvements to various labour rights and benefits, including the definition on wages, long service payments, protection of wages and end of year payment. The proposals in the Bill were drafted by the Administration after careful considerations. These proposals strive to strike a proper balance between the expectations of employees and the interests of employers and have been unanimously endorsed by the Labour Advisory Board. As the Bill was submitted to this Council in May last year, today I hope it can go through the Committee smoothly, so that the proposals can be implemented at an earlier date for the benefit of employees covered by the Ordinance.

In response to the points made by Members in their speeches, I want to reiterate that it is Government policy to constantly review the benefits of employees with regard to our economic developments; and to propose improvements to employees' benefit in accordance with the tripartite consensus reached between employees, employers and the Government. I must emphasize that any proposal to improve employees' benefits would be subject to widespread consultation. That is why we are against any Members' Bill hastily moved by Members.

Thank you, Mr President.

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

Bill read the Second time.

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

Committee stage of Bill

Council went into Committee.

EMPLOYMENT (AMENDMENT) (NO. 2) BILL 1996

Clauses 1 to 4 and 6 to 18 were agreed to.

Clause 5

SECRETARY FOR EDUCATION AND MANPOWER (in Cantonese): I move that the above clause be amended as set out in the paper circularized to Members.

This amendment seeks to amend clause 5 which is about the termination of employment contracts as a result of default payments on employees' wages for a long period, and to clarify that the amendments will not jeopardize the rights enjoyed by employees under common law.

One of the wages protection clauses proposed in the Bill is that when the employee has not been paid wages one month from the date after his wages were due, his employment contract is deemed to have been terminated by his employer without any notice; he is therefore entitled to claim all relevant terminal payments. The proposed amendment makes it clear that even if the wages are overdue for less than one month, the employee may, with sufficient justifications, follow common law to claim damages from his employer for breaching the employment contract.

If the proposed amendment is passed, the Bill will be in line with the other provisions on the rights accorded to both employers and employees in accordance with common law under the existing Employment Ordinance. The Bills Committee has already had a very detailed discussion on the proposed amendment, and the amended clause is drafted in accordance with the final decision of the Bills Committee.

Mr Chairman, I so move and I urge Members to vote in support of this amendment.

Proposed amendment

Clause 5 (see Annex II)

Question on the amendment put and agreed to.

Question on clause 5, as amended, put and agreed to.

Council then resumed.

Third Reading of Bill

THE SECRETARY FOR EDUCATION AND MANPOWER reported that the

EMPLOYMENT (AMENDMENT) (NO. 2) BILL 1996

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

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

Bill read the Third time and passed.

Resumption of Second Reading Debate on Bill

EMPLOYMENT (AMENDMENT) (NO. 2) BILL 1997

Resumption of debate on Second Reading which was moved on 19 March 1997

MR LEE CHEUK-YAN (in Cantonese): The purpose of the Employment (Amendment) (No. 2) Bill 1997 is to provide Hong Kong workers with job security. Just now the Honourable James TIEN has pointed out that many of the improvements in labour laws in recent years have led to increases in labour costs in Hong Kong. I would like to analyse and summarize with him here the situation in this respect. In the current session of the Legislative Council, that is, over the past two years, the Government has proposed 23 improvements to labour laws in total, among which seven are about occupational safety, seven

about the Employment Ordinance, six about employee compensation, one about retraining and two about labour relations.

I have made some calculations to analyze the impact of these amendments on labour costs. The seven improvements to the Employment Ordinance only account for 0.711% of the cost increase, but one of them is about the Public Holidays (Special Holidays 1997) Bill today which I do not know if it will be passed. This improvement alone has already taken up 0.6%, and this 0.6% will only exist this year; whether it will still be there in the future is unknown. Therefore, objectively, this 0.6% should not be taken into account. Moreover, the money involved in the improvements to employee compensation laws account for 0.12% of the cost increase, and the total amount is 0.831%. If the 0.6% of public holidays is deducted, eventually only 0.231% is left and that means the cost increase for two years will be 0.231%, the average works out at 0.15% per year.

As such, I hope that Members can anaylze the matter calmly. In fact, many improvements to the labour laws do not involve high labour costs. The purpose of the Employment (Amendment) (No. 2) Bill 1997 today is to reduce the qualifying service for long service payment from five years to two years. According to the estimation of the Government, about 2 000 employees involved in labour disputes or dismissal cases will consequently be protected. This is what the labour sector has been fighting for years. We have received a lot of complaints. In some cases, the employees were fired after they had worked for four years and 10 months and they did not get a single cent of compensation. In the past, all the employees with less than five years of employment did not have any job security. The purpose of the amendment this time is to provide job security to the employees who have been employed for two years or more.

Having said so, with the reduction from five to two years, the Government opens another door in the amendment which allows employers to "reasonably" dismiss their employees more easily. The door I am talking about is the amendment to the five reasons which can constitute reasonable dismissal, some of which did not exist in the Employment Ordinance in the past. The most obvious ones are those concerning ability and qualification. That is to say, the ability and qualification of an employee may constitute a reason for his being dismissed reasonably. The second relatively more serious problem is about conduct. I do not know how the court will define "conduct" in future. While the provisions stated "misconduct" clearly in the past, now an employee can be

dismissed simply because of his conduct. This actually opens a door for employers to find a cause to "reasonably" dismiss their employees. I think this is the most inadequate part in the entire mechanism of security.

Lastly, I would like to reiterate the position of the Hong Kong Confederation of Trade Unions toward the right of reinstatement. In the light of the proposals in the Bill, the Government requires that there can only be reinstatement if both the labour and the capital agree, the court does not have the power to make such adjudications. We think that the right to adjudicate upon reinstatement should be given to the court, and the adjudication should be made freely by the court after studying the whole case. It should not be stipulated rigidly in the laws that the right of reinstatement can only be exercised with the agreement by both the labour and management sides.

Thank you, Mr President.

MRS SELINA CHOW (in Cantonese): Mr President, with regard to the major principle of improving labour treatment, I believe nobody will raise objection. However, I have to reiterate once more that, in view of the special situation of domestic helpers and the fact that many small employers are involved, I will move amendments at the Committee stage. One of the amendments concerns long service payment, which we have discussed just now. Trade unions or Members representing trade unions will of course fight enthusiastically for the reduction of qualifying service for long service payment from 54 months to 24 months. However, the opinion of certain small employers is that the reduction of qualifying service will exert great pressure upon them and it is unfair. They think that long service payment is afterall long service payment. Does it comply with the original intention of long service payment if two years is counted as qualifying service?

Besides, as to justifications for dismissal, it is also very unfair to the employees if their conduct within one year is also taken into account. In complaints or other individual cases, three months is more than enough for consideration should there be dissatisfaction. If consideration has to be given to the conduct of almost one year ago, it may cause abuse or unnecessary and silly accusations.

Afterall, we have to take one thing into consideration. With the advancement of our society, we have to improve the treatment of workers, of course. The improvements concerned, however, must be reasonable and fair. At the same time, I have to stress that employers are not necessarily big companies. Most of the time, we have to give consideration to small employers, or even the "very small" employers hiring domestic helpers. Therefore, I feel that we must strike a balance when we fight for fairness. We cannot regard all employers as large-scale and wealthy employers.

MR JAMES TIEN (in Cantonese): Mr President, today I will discuss the Employment (Amendment) (No. 2) Bill 1997 first, as there are two other bills on which we will speak later. However, I want to respond to what the Honourable LEE Cheuk-yan has said just now. Over the past two years, 23 amendments to the Employment Ordinance have been passed. Yet he has pointed out that the employers' costs have only increased by 0.23%. I am surprised at this. If the median income per month is $8,000, which means an annual income of $100,000, 0.23% equals to $200. Will anyone believe that these 23 amendments add only $200 to an employee's annual income of $100,000? Even if we calculate with the simple definition of wages, the total amount of overtime pay and travel and lunch allowances will exceed $200. As for ensuring the safety of employees, while we absolutely support the principle, it still entails expenditure for employers because they have to buy equipment for the protection of employees, and hire staff such as safety inspectors to supervise the employees on their safety. The training of safety inspector is yet another aspect of expenditure. Who would believe that the cost per worker will only increase by 0.2% on the average?

According to the statistics of the Hong Kong General Chamber of Commerce, if the annual income of an employee is $100,000, our extra expenditure on labour cost in the past two years amounted to $10,000, that is, 10%, and it included long service payment, severance payment, as well as the extra cost incurred by the redefinition of wages and the increase in maternity leave. Besides, when it comes to litigation, an employee can apply for legal aid if he sues his employer, but the employer has to hire lawyers and pay for the lawsuit no matter whether he wins or loses. Therefore, in fact, the employers' extra expenditure in the past two years was definitely not 0.23%. Instead it should be 10%.

Thank you, Mr President.

MR CHAN WING-CHAN (in Cantonese): Mr President, the Hong Kong Federation of Trade Unions (FTU) often criticizes the present Employment Ordinance, in particular the provisions concerning long service payment. The FTU thinks that these provisions cannot give full play to the protection of employees. They do not stipulate remedies about reinstatement of dismissed employees or compensation to which dismissed employees are entitled. The FTU supports the Employment (Amendment) (No. 2) Bill 1997 proposed by the Government in order to put an end to the employers' practice of dodging responsibilities by exerting pretences to dismiss the employees or by changing the contract of employment. Furthermore, we support this Bill to improve the Employment Ordinance so as to protect employees.

All along, in order to shun or cut the statutory rights of their employees, some unscrupulous employers have been unreasonably dismissing the employees who have worked for almost five years, or changing the contracts of employment to short-term contracts, deliberately making the employees unable to meet the qualifying service for long service payment or severance payment.

In recent years, many employees in the catering industry have been dismissed unjustifiably, illegally or through unreasonable changes to their employment contracts.

Mr President, the FTU thinks that the amendments to this Bill should be passed as soon as possible so that employees will not lose their right of job security. At the same time, the FTU agrees to making the penalties heavier. If an employee is dismissed illegally but employed by the same employer again, other than the payment for termination of employment, the employee is entitled to a compensation not exceeding $150,000. The heavy penalty will also be a deterrent to employers and a safeguard for employees.

The Bill stipulates that the qualifying service is not less than 24 months of employment. The FTU is of the view that the qualifying period should be further reduced to 12 months in order to provide more extensive employment protection.

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

MISS CHAN YUEN-HAN (in Cantonese): Mr President, long service payment gave rise to a lot of labour disputes in the past. As pointed out by my colleagues, some employers who wanted to avoid paying out long service payment dismissed their employees who had worked for nearly five years. A lot of these cases sought adjudication from the Labour Tribunal in the past. Therefore, the labour sector has been urging the Administration to do something in this regard. I think the Administration has heard some comments at some meetings of the Labour Advisory Board (LAB). The Administration has thus proceeded to draft some legislation to prevent unscrupulous employers from defaulting on long service payment. And we have done something further in this regard. The Administration has now enacted these laws. As mentioned by the Honourable CHAN Wing-chan, the Hong Kong Federation of Trade Unions (FTU) supports them and urges that they should be passed as soon as possible. In fact, the situation has been worsening. In particular, a lot of workers who have worked for an employer for nearly five years are dismissed as the economy at present is not good. Therefore, after discussion, the Administration and the LAB have a consensus to allow those workers who have worked for more than two years to be entitled to long service payment. I consider that it is a good start. We consider that theoretically, the serving period for long service payment should not be that long. As mentioned by Mr CHAN Wing-chan, long service payment should be paid out for service of one year. Moreover, I would like to respond to the Honourable James TIEN, who has said that some recent amendments to labour laws have wasted a lot of employers' money. It is undeniable that employers have to spend more money. However, what is the percentage of this extra expenditure? He has said that it is 15%. We think that the percentage should be zero point something. There can be different ways to calculate. However, I think that when calculating the percentage, the most important thing is to consider the existing ordinance itself. If there exists anything unfair, especially when such unfairness still exists after the overall economy of Hong Kong has developed, it will be extremely inequitable.

Mr President, I have mentioned that a lot of labour disputes in the past were in fact aroused from long service payment, resulting in a considerable amount of public money spent on the Labour Tribunal in this regard. The money is, afterall, paid by taxpayers.

Moreover, I have to mention the definition of wages as well as injuries at work. Why can workers not receive monetary compensation unless they have been ill for four days or injured at work? The ordinance itself has already been very unfair. This is the question of equity rather than that of the percentage. Frankly speaking, it is now the 1990s; yet a lot of ordinances in Hong Kong were enacted in the late 1960s or 1970s and there were actually a lot of unfair points. As I have mentioned just now, only two-thirds of the wages are payable to employees for injuries at work or illnesses lasting over four days. Why has this not been changed? If no one in this Council had moved the private Member's bill, I think the Administration would not have proposed any amendments. I think in comparison with other countries, the situation of Hong Kong is really a shame. Therefore, I consider that it is not a question of money. The most important point is that the employees in Hong Kong enjoy less legal protection than their counterparts in other countries.

Moreover, I would like to make one more point. Operators often think that we have made a lot of amendments to the legislation over the last two years, resulting in increases in their cost. I think it is very regrettable. Why do I have this feeling? When there is labour shortage, employers may usually pay more than the wages stipulated in the 23 pieces of legislation. For example, when there was labour shortage to a certain extent in 1988 and 1989, in order to recruit and retain their employees, a lot of employers provided many fringe benefits which were more favourable than those stipulated in the 23 pieces of legislation as amended recently. Therefore, what I have to say is that although employers at present always comment that their costs have increased, the most important point is that supply is more than demand in the labour market at present. Basically, if there is no protection by legislation, employers will never provide anything extra.

Mr President, we, the FTU will support a number of amendments to the Employment Ordinance proposed by the Administration today. It is because, first, we consider that the Employment Ordinance in Hong Kong only provides a very low standard of labour protection. Second, facing the poor economic situation at present, if we do not rely on legal protection, the situation of employees may be even more difficult.

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

MR LEUNG YIU-CHUNG (in Cantonese): Mr President, first of all, I would like to thank the Administration and members of the Labour Advisory Board (LAB) because without their time and efforts devoted, we cannot have the Second Reading of this Bill today.

At present, the protection for employees by the labour laws is not sufficient. Under the existing legislation, having observed the provisions on the entitlement of female employees to maternity leave, entitlement of the employees injured at work to sick leaves with allowances, the rights of employees to participate in trade unions and other activities, and the right of employees to give evidence in proceedings of labour laws, employers can dismiss employees whenever they like without giving any reason provided that they are in compliance with the regulation concerning the notifying period or payment in lieu of notice under the Employment Ordinance. As there is insufficient protection, a lot of unscrupulous employers take advantage of the loopholes in the legislation to dismiss employees or deprive them of their benefits by changing the contract of employment. For example, some employers force their employees who have a service of nearly five years to resign first and then re-engage them, and thus prevent their employee from obtaining long service payment provided in the legislation. Some employers may sign non-consecutive short-term contracts of employment of less than two years with their employees to render the latter unprotected under the provisions concerning severance.

The Bill submitted by the Administration at present can plug the loopholes of the legislation to a certain extent. This is a desirable approach. In particular, the Bill stipulates that regarding appeals lodged by an employee, the employer has to justify the dismissal of the employees. This can effectively alleviate the burden of proof on the affected employee in legal proceedings. For example, the Cathay Pacific Airlines penalized the employees who had participated actively in the trade union and the Wellcome Supermarket unjustifiably dismissed employees who organized the trade union. These show that employers discriminate against employees or the formation of trade unions. However, the existing legislation still cannot make such employers guilty. It shows that protection for employees at present is still insufficient. When an

employer has decided to terminate an employment, it is very difficult for the employee to prove the motive of the employer. Therefore, employers should be responsible to justify the dismissal whilst employees should be responsible for providing counter-evidence. This is a more reasonable arrangement as it can balance the burden of proof on both sides.

Mr President, although this Bill has its merits, it still has a lot of inadequacies. I would point them out one by one and hope that the Administration can promise to make improvements within a short time. First, the Administration claims that the Bill will provide remedies for employees who have been dismissed by employers unreasonably. However, the concrete proposals in the Bill and the contents of the bill concerning unfair dismissals urged by the public are virtually totally different. In fact, in the consultation paper submitted to the Labour Advisory Board by the Administration, it has quoted the Termination of Employment Convention 1982, that is, International Labour Convention No. 158. The Convention stipulates that regardless of their intention, employers cannot dismiss employees unless they have proper reasons to do so, such as the capabilities or behaviors and conduct of employees or operational needs. However, apart from the extra compensation for illegal dismissals under the existing legislation, the Bill only emphasizes on the benefits to which an employee is entitled under the Employment Ordinance in case an employer has tried to evade his responsibility in this regard. The remedy provided is too limited to uphold the spirits in the Convention for preventing employees from being dismissed by employers unreasonably. For instance, when a worker who has a service of over five years is dismissed unreasonably, the protection granted to him/her by the Bill is nearly nil. The Administration has copied some provisions from the Convention, with an intention to give an illusion of having introduced a bill on unfair dismissals. It is actually a very regrettable means to cheat and trick the public.

Second, the five proper reasons for dismissal proposed by the Bill, which include the employee's behavior, abilities or qualification, redundancy or other genuine operational needs, legal requirements and other substantial reasons, are relatively vague principles. Great problems and hindrances may be encountered in implementation. As I will move an amendment concerning the statutory code of practice at the Committee stage, I will discuss it further later.

Third, the Bill stipulates that an employer can give notice to terminate the employment contract. If an employee leaves before the expiration of the

notifying period, unless he has the employer's permission or has paid the latter a payment in lieu of notice, he cannot make a claim under the Bill. This regulation is the same as that concerning long service payment under the Employment Ordinance. However, I would like to point out that entitlement to long service payment and the right to obtain compensation due to unfair dismissal are not the same. If an employee has suffered from unfair treatments and hope to leave earlier, it is understandable. We should not deprive him/her of his/her right by claiming that the employee does not have the permission of the employer or has not made payment in lieu of notice to the employer. The best way I consider is that after the deduction of payment in lieu of notice from the compensation to which the employee is entitled, compensation will be given to him/her in the same terms as the provisions of long service payment. This is a better approach. Otherwise, it will only show that this Bill is not a piece of perfect legislation, but only a "remedial" measure which tries to plug the loopholes in the existing law concerning long service payment.

Fourth, the Bill is not binding to the Administration. Of course, the Administration is usually considerate and reasonable in treating its employees. It seldom does anything shocking. However, we cannot assume that the Administration will never make any mistake. Recently, I have received complaints made by some contract staff of the Urban Services Department, who claim that the Department refused to renew their contracts on the ground that they had been injured at work. I hope the Administration can enact the legislation as soon as possible for reasonable protection between civil servants and the Administration or even between the Administration and its contract staff.

Fifth, concerning the reinstatement and re-engagement of employees, the Bill stipulates that only under mutual agreement between employees and employers will the Labour Tribunal order for reinstatement or re-engagement. Obviously, the reason given by the Administration is unconvincing. The Administration has advised that it does no good to force employers and employees to continue the employment relation. The labour relation may have already been ruined because of the original dismissal. Compulsory reinstatement will benefit neither side. This is the view of the Administration. I would like to ask the Secretary for Education and Manpower a question. If I asked Mr WONG to lend me his car but he would not agree to do so, could I borrow it? If Mr WONG considers it his right to refuse to lend me his car if he does not want to do so, I hope he can set a good example. It is because if the Administration has the intention to protect the right of private property, it should

not show no respect to employees who should have the right to avoid being treated unfairly by employers. In fact, in the provisions concerning reinstatement or re-engagement under the Disability Discrimination Ordinance, there is no provision stipulating that orders can only be issued with the permission of employers. In this case, it seems that the Education and Manpower Branch and the Labour Department give more favour to employers than other government departments do, instead of adopting a neutral attitude.

Sixth, the compensation proposed in the Bill is obviously insufficient. For the terminal payment proposed in the Bill, out of the nine items listed, eight of them are in fact, compensations to which employees are entitled under the existing legislation. The only thing which will benefit employees is that for those who have a service of two or five years, they can get, pro rata, severance payment or long service payment. This amount of compensation can never ensure that employees will not suffer from reasonable behaviors of employers. According to the Administration, this is a way to balance the benefits of employers and employees and it was very appropriate. However, I would like to ask Mr WONG if he has lost $10,000 due to my unreasonable behaviors, and the legislation only requires me to pay a compensation of $5,000, does he think that it is fair? The provision in the Bill now can neither compensate the loss of employees nor act as a deterrent to employers. It will never provide sufficient compensation or protection to employees. Therefore, I would like to point out that although the labour sector has all along urged to increase the amount of compensation, we do not request for an unreasonable amount, with an intention to drive a hard bargain. In drawing up employment policies, we should, of course, balance the benefits of both sides. However, I think that a more important principle in balancing the benefits is to consider whether the policies are rational.

Mr President, for the labour sector, the Bill resembles a chicken rib, which is tasteless but wasteful to discard. However, I hope that after the Bill is passed today, the Administration can make improvement promptly according to the comments raised by the labour sector.

Mr President, these are my remarks.

SECRETARY FOR EDUCATION AND MANPOWER (in Cantonese): Mr President, first of all, I would like to thank the Legislative Council Panel on

Manpower and Members for supporting this Bill, and I also want to thank them for supporting the early resumption of the Second Reading debate so that the Bill can be enacted as soon as possible.

This Bill represents a very big step forward and opens up a new era with regard to the improvement of labour benefits and interests, particularly in respect of employment protection. This proposal is a consensus reached between the Labour Advisory Board (LAB) and the representatives of both employers and employees after a number of examinations, discussions and negotiations. I am very happy that Members have shown respect for the consensus reached in the LAB between employers and employees.

This Bill seeks to improve employment protection and prevent unscrupulous employers from dismissing their employees or altering employment contracts so as to evade or reduce their legal responsibilities for making terminal payments, and to enhance the protection for employees under unlawful dismissals. Moreover, this Bill also states the eligibility of employees on fixed term contracts to long service payments, and the proposals in this Bill will not affect law-abiding employers.

Some Members are concerned about the five legitimate reasons put forward in the Bill for dismissing employees, and they are of the opinion that these reasons are vague and may become pretexts for employers to dismiss their employees, or to alter the terms of the employment contracts. In fact, the five legitimate reasons set down the benchmarks with regard to lawful and unlawful dismissals. However, as the circumstance of each case may be different, we really cannot be more specific. If employers and employees have different views concerning the interpretation of these five legitimate reasons, they can refer the case to the Labour Tribunal, which will make a ruling based on the circumstance of each case. After the enactment of the Bill, the LAB will draw up a code of practice to enhance the employers and employees' understanding of the Bill. Factors that should be taken into account and measures that should be taken will be listed out in the code of practice for references of employers who wish to dismiss their employees.

In the course of our discussions, we received some recommendations on introducing technical amendments to certain provisions of the Bill. After studying the recommendations in detail, I find that certain wordings of the Bill

should be amended to remove possible doubts. I will be moving such amendments at the Committee stage.

First of all, I will propose to add a provision to clause 4 to specify the method for calculating long service payment to be awarded as terminal payment to employee aged under 45 years and has less than five years of service with his employer, for the method for calculating such payments have not been specified under the existing provisions. Secondly, in order to avoid any ambiguity in the wordings of this legislation, I will propose that technical amendments be moved to the text of the Bill where necessary, so that it can become clearer in its meaning.

Many Members have spoken on this Bill and on the suggestions put forward by the Administration in the past one or two years in regard to the improvement of labour benefits and interests. A lot of suggestions, including some criticisms on the Government have been made. However, at the moment I do not want to respond to each of the points made by Members. I would like to have a more detailed debate with Members at a more appropriate time and forum, whereby we can look at the benefits brought to employees and impacts brought to employers by these suggestions. Nevertheless, I am sure that the 23 Bills to be introduced by the Education and Manpower Branch will have very positive impact on the improvement of labour interests.

The Honourable LEUNG Yiu-chung has just raised many questions, and it is a pity that he is not in the Chamber right now. In fact, I do not quite understand the rationale behind many of his questions. If he has asked one of the questions with the intention of borrowing my car and I think that he wants to borrow my car so that he can rush back to this Council to cast his vote, particularly when he votes in support of the Government, I would be most happy to lend him my private car.

Finally, may I commend the Employment (Amendment) (No. 2) Bill 1997 to Members.

Thank you, Mr President.

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

Bill read the Second time.

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

Committee stage of Bill

Council went into Committee.

EMPLOYMENT (AMENDMENT) (NO. 2) BILL 1997

Clauses 1, 2, 5, 6 and 7 were agreed to.

Clause 3

SECRETARY FOR EDUCATION AND MANPOWER (in Cantonese): Mr Chairman, I move that clause 3 be amended as set out in the paper circularized to Members. This amendment seeks to clarify the Chinese text of the clause so that its meaning will tally with the English text.

Mr Chairman, I hereby move the amendment and call upon Members to support this amendment.

Proposed amendment

Clause 3 (see Annex III)

Question on the amendment put and agreed to.

MRS SELINA CHOW: Mr Chairman, I move that clause 3 be further amended as set out in the paper circularized to Members.

I believe it is technically wrong to include the test of reasonableness in section 31(f) and section 32(c) as it would create an anomaly between treatment for fixed term contract employee and monthly contract employees and it should be corrected, and my amendment does exactly that.

Proposed amendment

Clause 3 (see Annex III)

SECRETARY FOR EDUCATION AND MANPOWER (in Cantonese): Mr Chairman, the Government is against the Honourable Mrs Selina CHOW's amendment to delete "unreasonably" wherever it appears in the proposed sections 31S(3) and 31S(4). According to the amendments proposed in the Bill, where an employer has offered to renew an employee's contract or to re-engage him, and the terms are not inferior to the terms of the original contract, the employee will still be entitled to a long service payment if he has reasonably refused that offer. In our view, the original intention of the Bill is to set out the circumstances in which an employer will be exempted from the payment of long service payment. We also think it is necessary to make provisions allowing an employee to reasonably refuse an offer by the employer to renew his contract or to en-engage him, and still retain the entitlement to long service payment. The existing sections on severance payment also have similar provisions which properly protect the interests of employer and employee. Therefore, the Government is against this amendment.

Question on Mrs Selina CHOW's amendment put.

Voice vote taken.
THE CHAIRMAN said he thought the "Noes" had it.

Mrs Selina CHOW claimed a division.

CHAIRMAN (in Cantonese): Committee will now proceed to a division.

CHAIRMAN (in Cantonese): I would like to remind Members that they are now called upon to vote on the question that the amendment moved by Mrs Selina CHOW to clause 3 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?

CHAIRMAN (in Cantonese): Four short of the head count. 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 Edward HO, Mr Ronald ARCULLI, Mrs Miriam LAU, Dr LEONG Che-hung, Mr Eric LI, Dr Philip WONG, Mr Howard YOUNG and Mr James TIEN voted for the amendment.

Mr Martin LEE, Mr SZETO Wah, 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, Mr LEE Cheuk-yan, Mr CHAN Kam-lam, Mr CHAN Wing-chan, Miss CHAN Yuen-han, Mr Andrew CHENG, Dr Anthony CHEUNG, Mr Albert HO, Mr IP Kwok-him, Mr LAU Chin-shek, Mr Ambrose LAU, Dr LAW Cheung-kwok, Mr LAW Chi-kwong, Mr LEE Kai-ming, Mr LEUNG Yiu-chung, Mr Bruce LIU, Miss Margaret NG, Mr SIN Chung-kai, Mr TSANG Kin-shing, Dr John TSE, Mrs Elizabeth WONG and Mr YUM Sin-ling voted against the amendment.

THE CHAIRMAN announced that there were 10 votes in favour of Mrs Selina CHOW's amendment and 34 against it. He therefore declared that the amendment was negatived.

DR LEONG CHE-HUNG (in Cantonese): Mr Chairman, I move under Standing Order 37(4) that in the event of further divisions being claimed by Members in respect of the motions of the Employment (Amendment) (No. 2) Bill 1997 at this sitting, Standing Order 36(4) should be suspended so that the Chairman can order

the Committee of the whole Council to proceed to the divisions concerned immediately after the division bell has been rung for one minute. I hope that Honourable colleagues can support this motion and not to debate on it.

Question on the motion proposed put and agreed to.

Question on clause 3, as amended, put and agreed to.

Clause 4

MRS SELINA CHOW (in Cantonese): I move that clause 4 be amended as set out in the paper circularized to Members.

I would like to make a special supplement here to the speech I have made just now. I have said just now that the qualifying service for long service payment should be fixed at 54 months instead of 24 months. Some Honourable colleagues have said earlier that certain employers will dismiss their employees before the end of 60 months in order to dodge paying long service payment. This of course is not what we want to see. However, if the qualifying service is reduced sharply from 60 to 24 months, I think there is actually a logical fallacy. The reason is that, in view of the situation described by Members, the purpose of the amendment should be restricted to deterring employers from making use of the opportunity to dodge their responsibilities. Long service payment should be real "long service" payment; we should not shorten it obligatorily to two years and regard it as long service. Basically, we should focus on preventing employers from resorting to trickery to dodge making long service payment to workers who have worked for five years. The amendment I propose is entirely in line with the purpose of focusing on employers because they have already been given six months. In other words, even though an employee has not worked for five years, he can get long service payment if he has worked for 54 months. This is the true spirit of "long service" payment. Thank you, Mr Chairman.

Proposed amendment

Clause 4 (see Annex III)

MR LEE CHEUK-YAN (in Cantonese): Thank you, Mr Chairman. First of all, the Honourable James TIEN reminded the Honourable LEUNG Yiu-chung last time that he represented the whole textile and garment sector rather than only employees of the sector. I would like to follow Mr TIEN and remind the Honourable Mrs Selina CHOW that she is supposed to represent electors of the whole retails sector rather than only small-scale employers. Most of the electors in this sector are employees and the proposed amendments to this Bill are very important to them. You have just mentioned that long service payment can be obtained after a service of four and a half years and this will be in line with the spirits of long service payment. However, the question is that if the qualified period is set as four and a half years, employees may still be dismissed after a service for three years. And under the situation that employees will be dismissed for every three years, they can never enjoy employment protection eventually.

On the other hand, I also strongly agree that the name "long service payment" is not correct. If it is really "long service payment" as the term suggests, even employees who resign should also be entitled to it. This can then be regarded as long service payment. Thus, I agree that the existing name is not correct and should be changed to "terminal payment". And all the legislative proposals put forward this time should be followed to provide employment protection for employees whose employment is terminated after a service of over two years. I think this approach is the best. It is reasonable if long service payment is payable even for resignation. The existing name has created a lot of misunderstanding. Many employees have called me and asked whether long service payment is payable upon their resignation. In fact, no long service payment will be paid out in such cases unless the employee is over 65 years old.

If the amendments proposed in this Bill are introduced in Hong Kong, it will simply mean that employees with service over two years are entitled to the employment protection. However, as I have just mentioned, this employment protection still has some loopholes. Despite such, Hong Kong can at least tell employees that employment protection does exist at present. This can put workers at ease and so they need not worry that they will be dismissed by employers unjustifiably. This is an important step forward and is also an improvement.

I hope that Honourable Members will object to Mrs Selina CHOW's proposal which proposes to change the qualifying service from two years at present to four and a half years. Thus, those employees who have worked for four years and four months will be very miserable in future. Someone may say that those who have worked for one year and eleven months may also be very miserable. However, I strongly believe that the society is in progress and hope that further amendments can be made. However, if workers are dismissed after a service of one year and eleven months, the mobility of employees will be very high and not acceptable to some employers. If workers are dismissed after a service of one year and eleven months, the mobility will create difficulties for employers to draw up business plans. However, if workers are dismissed after a service of four years and eleven months, or four years and four months, the problem of mobility of hands faced by employers will not be so great. Thus, some employers will usually dismiss their employees.

Therefore, I urge Members to oppose Mrs Selina CHOW's amendment.

Thank you.

MISS CHAN YUEN-HAN (in Cantonese): Mr Chairman, I have not raised up my hands. However, as you have called me, I will also express some opinions of mine. *(Laughter)* Would the Honourable Members please excuse me?

Frankly speaking, I do not quite agree with Mrs Selina CHOW's view. As there are loopholes in long service payments, the Administration has wasted a long of public funds each year to deal with numerous cases in which wicked employers dodged paying out long service payment. I cannot quite accept insisting on reverting to the former qualifying service period of 54 months.

Moreover, I would also like to point out that the Administration's proposal to change the limit to two years only aims at bringing the regulation on long service payment in line with other existing legislation. At present, the qualifying period of service for severance payment is two years. Therefore, I think employers and those who lodge this proposal should consider the development of the whole society, and should support the Administration's amendment and oppose Mrs Selina CHOW's counter-amendment.

Thank you.

MR JAMES TIEN (in Cantonese): Mr Chairman, I did not ring the bell but I did raise my hand. I think it is just the same.

Mr Chairman, I wish to discuss the issue of long service payment here again. People used to say that if an employee had worked for the same employer for so many years and had contributed so much, when he resigned, or dismissed by the employer for whatever reasons, the employee should be given a certain sum of money as compensation. However, what does "long service payment" mean? It really takes a lot of time to arguing about it. From the perspective of working life, a person can generally work from his twenties until his sixties, that is, his working life is about 40 years. According to the present proposal, an employee can receive long service payment every two years. In other words, over the 40 years of his working life, he can receive long service payment for 20 times. Is this the original intent of long service payment? The original intent is that for an employee who has worked for a very long time, if his employer terminates his employment for some reason, the employer must take care of him. But the original intention at that time was that after an employee had worked for more than 10 or 20 years, he would retire after receiving the long service payment and no one expected that he was merely switching jobs and switching for so many times. Another problem is that even if the qualifying period for long service payment is reduced to two years, such unjustifiable dismissals may still take place before two years. On the other hand, when an employee resigns on his own accord, he need not make any compensation to the employer. In theory, the employee has to give his employer one-month's notice and if he has not given enough notice, the employer may deduct one month's salary in lieu, but in fact, would any employer really do that? An opposite scenario is that, the law should be fair; no matter it is for five years or two years, once the employer dismisses an employee or an employee resigns on his own accord, the initiating party has to make compensation to the other party. In that case, the length of the qualifying period will not matter, be it one year, two years, four years, five years, or any other number of years; anyone can decide it for oneself.

However, the present law is unfair. The contract, after all, should be signed on a fair and level ground. When the employee is willing to accept a job and the employer is willing to employ him, the two parties will agree on the

working hours, say, between 9 am and 6 pm, the amount of salary and other terms of employment. In that case, why should the employee be given a sum of money when he resigns? What are the reasons for that? When an employee works for an employer, and both parties agree on the salary, bonus, transport allowance and so on, why should the employee be compensated when he leaves? We have to know that the relation between the employer and the employee is not something like a marriage and there is no paying of alimony when the two split. When discussing the Employment Ordinance, we have to point out very clearly why the employer has to compensate the employee. At present, when a foreigner comes to work in Hong Kong under a three-year contract, he will work for three years and that is it; there is no such thing as long service payment. Why should our local employees be given something extra? Besides, some Member has pointed out that if the period is set at 60 months, many unscrupulous employers (a term often used by the Honourable LEE Cheuk-yan, who may not have used it today) would dismiss their employers in the fifty-eighth, fifty-ninth or right before the sixtieth month is over and then re-engage them. Then about four years later, they would dismiss them again in order to avoid paying out long service payment. We also think that this is wrong. However, to eliminate this unjustifiable practice, what we need to do is to control it by law, providing that since the employer has dismissed the employee, he should not employ him again. It is however not a reasonable means to shorten the qualifying period to two years.

Thank you, Mr Chairman.

MR LEE KAI-MING (in Cantonese): The dispute over long service payment has never stopped since its legislation. I believe that this kind of debate will go on until the mandatory provident fund takes effect. The Honourable Mrs Selina CHOW considers that only when an employee is dismissed will he be eligible for long service payment. This is in fact very fair because under the present circumstance, the employee is very willing to work for his employer for a long time but it is only that he is denied of this opportunity. Of course, if an employee is guilty of serious misconduct and is thus dismissed immediately, he is not eligible for long service payment. Therefore, the employee should maintain his good conduct and continue to work for his employer. It is awfully wrong of the employer to terminate the employment contract and dismiss the employee in order to avoid paying him long service payment. I think that the amendments proposed in this Bill is in line with the spirit of long service payment. This

reminds me of the year-end bonus. Sometimes, an employee cannot receive the bonus after working for 11 and a half months because the employer says, "You have to work for me for a full year before you can receive the year-end bonus but now you have not worked for a full year, so I will not give it to you." Moreover, the Honourable James TIEN mentioned the issue of "fairness" and said that there were few, and even no, employers who asked the employees for compensation. Mr TIEN can ask the Secretary for Education and Manpower whether he has dealt with such cases that involved the employee not giving enough notice as required by the contract and was thus sued by the employer. There are indeed such cases. If he does not believe it, Mr TIEN can check with the Labour Tribunal. I think that the amendment proposed by the Administration now is both fair and reasonable while Mrs Selina CHOW's amendment is not worth our support.

SECRETARY FOR EDUCATION AND MANPOWER (in Cantonese): Mr Chairman, the Administration is against Mrs Selina CHOW's proposed amendment to clause 4 of the Bill. I will now explain the reasons for the Administration's objection one by one to the three parts of Mrs CHOW's amendment.

In paragraph (a) of the amendment, Mrs Selina CHOW proposes to change the period of service of an employee who may be entitled to employment protection due to unreasonable dismissal from no less than 24 months to no less than 54 months. The reason for the Administration's objection is that the proposed amendment would greatly reduce the employment protection originally provided to an employee by the Bill, and would also contravene the consensus reached on employment protection by the Labour Advisory Board (LAB).

Actually, the main purpose of this Bill is to improve employment protection. It serves to prevent some irresponsible employers from evading or reducing their legal responsibility to pay severance payment to employees through dismissal or by changing the provisions in the employment contracts, as well as to increase the protection of employees in case of unreasonable dismissal. It covers a very broad area and not just relaxes the criteria for entitlement to long service payment, as some Members suggested.

During the resumption of the Second Reading debate of this Bill, I already pointed out that the overall proposals on employment protection in the Bill were

the consensus reached after detailed discussion by representatives of labour and employers. We believe that at this stage, it is inappropriate to make substantial changes to a proposal which is acceptable to both labour and employers. Paragraph (b) of the amendment relates to the proposed sections 32A(5)(a) and (b) and proposes that in relation to a dismissal in contravention of section 21B(2)(b) and section 72B(1) of the Employment Ordinance, the period within which the employee has exercised any of the rights or done any of the things mentioned shall be shortened from 12 months immediately preceding such dismissal by the employer in the original provisions to three months.

According to this amendment, if an employee is unreasonably dismissed by the employer three months after he has exercised his rights as a trade union member or testified in legal proceedings related to the enforcement of labour laws, he will not be entitled to remedies. I consider such protection inadequate. Sometimes, due to the time required for legal proceedings or other reasons, the employer may dismiss an employee only some time after he has exercised his right as a trade union member or agreed to testify in legal proceedings related to the enforcement of labour laws on account of such activities. Thus the 12 month period proposed in the Bill is more appropriate. As for paragraph (c) of Mrs CHOW's amendment, for the same reasons I gave in responding to her proposed amendment to clause 3, the Administration opposes this part of the amendment. For the above reasons, the Administration is against Mrs Selina CHOW's amendments. I urge Members to vote against the relevant amendments.

Thank you, Mr Chairman.

MRS SELINA CHOW (in Cantonese): Mr Chairman, I eventually have the chance to respond.

The Administration proposes to cut the qualifying service period for long service payment from 60 to 24 months this time. I consider that it is a "collusion between the Government and labour interests". Why do I say so? The Honourable LEE Cheuk-yan has just voiced out from his heart and revealed the truth that as he considered there was no terminal payment, long service payment should be turned into terminal payment in effect. It is unreasonable.

If the labour sector considers that it is necessary to set up terminal payment, they can point it out frankly rather than "cries out wine but sells vinegar" and tell employers that it is just long service payment. How can two years be regarded as a long period? It is no more than doing one thing in the disguise of another. It is absolutely incorrect.

I hope the Administration should not consider from the political point of view all the time and only considers which side can be easily persuaded or can win more votes. The Administration should say something equitable and make a fair decision. If the Administration thinks that it is really necessary to consider setting up terminal payment, we can, in fact, discuss and debate on it to see whether the public support it or not. However, the Administration is adopting a different approach. It just turns long service payment into terminal payment. As such, I strongly object to it and hope that Honourable Members can support my amendment.

Question on the amendment put.

Voice vote taken.

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

Mrs Selina CHOW claimed a division.

CHAIRMAN (in Cantonese): Committee will now proceed to a division.

CHAIRMAN (in Cantonese): Please bear in mind that there is only one minute. I would like to remind Members that they are now called upon to vote on the

question that the amendment to clause 4 moved by Mrs Selina CHOW 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?

CHAIRMAN (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 Edward HO, Mr Ronald ARCULLI, Mrs Miriam LAU, Dr LEONG Che-hung, Dr Philip WONG, Mr Howard YOUNG and Mr James TIEN voted for the amendment.

Mr Martin LEE, 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, Mr LEE Cheuk-yan, Mr CHAN Wing-chan, Miss CHAN Yuen-han, Mr Andrew CHENG, Dr Anthony CHEUNG, Mr IP Kwok-him, Mr Ambrose LAU, Dr LAW Cheung-kwok, Mr LAW Chi-kwong, Mr LEE Kai-ming, Mr LEUNG Yiu-chung, Mr Bruce LIU, Miss Margaret NG, Mr SIN Chung-kai, Mr TSANG Kin-shing, Dr John TSE, Mrs Elizabeth WONG and Mr YUM Sin-ling voted against the amendment.

THE CHAIRMAN announced that there were nine votes in favour of the amendment and 30 against it. He therefore declared that the amendment was negatived.

SECRETARY FOR EDUCATION AND MANPOWER (in Cantonese): Mr Chairman, I move that clause 4 be further amended as set out in the paper circularized to Members.

The amendments consist of two parts: paragraph (a) amends the proposed section 32J(1) of the Bill and its purpose is to more clearly define the Labour Tribunal as a judiciary body established under the Labour Tribunal Ordinance.

The amendment in paragraph (b) is to clarify that in hearing cases of unreasonable dismissal, the court or the Labour Tribunal may, whether it has made an award of terminal payments to the employer, make an award of compensation to be payable to the dismissed employee by the employer of an amount not exceeding $150,000.

The amendment in paragraph (c) is to clearly define the power of the court and the Labour Tribunal in making an order of reinstatement or re-engagement.

Paragraph (d) amends the proposed section 32O(2) and 32O(6). Its purpose is to set out the method of calculating the long service payment payable to an employee aged less than 45 years who has less than five years service when he is unreasonably dismissed by his employer. This long service payment is part of terminal payments.

We feel that it is necessary to make this amendment. The main reason is that under the existing Employment Ordinance, an employee under the age of 45 who has less than five years service will not be entitled to long service payment if he is dismissed by his employer. This Bill proposes that if any employee has worked for the same employer continuously for 24 months, that is, two years or more, he will be entitled to file a civil claim for remedies if he is unreasonably dismissed by the employer or the employer has unreasonably varied the contract of employment. If the court or the Labour Tribunal makes a judgment in favour of the employee, the employee may be awarded terminal payments, including a long service payment.

Therefore, we think that this Bill must clearly set out the method for calculating the amount of long service payment which may be awarded to such employees. According to the present method of calculating long service payment, for employees under 45 who have five years service, they are entitled to a 50% long service payment after completing five years of service. This rate will be increased with the increased number of years of service. Those who have 10 years service will be entitled to a 100% long service payment. For the sake of fairness, we propose that if an employee under 45 years old and with less than five years service is dismissed by his employer, any long service payment

payable to him under this Bill will be at the same rate as the long service payment payable to an employee aged less than 45 who has five years service under present legislation.

Paragraph (e) amends the proposed section 32P(1). Its purpose is the same as the proposed amendment in paragraph 4(b) and it specifies that in hearing cases of unreasonable dismissal, the court or the Labour Tribunal may award compensation to the dismissed employee an amount not exceeding $150,000. This amendment also makes a technical amendment to delete the proposed section 32P(1)(b), in order to avoid contravention with section 32P(1)(a).

I also propose to amend clause 4 of the Chinese version of the Bill in order to make its meaning clearer and consistent with the English version.

Mr Chairman, the above proposed amendments are purely technical in nature. I urge Members to support this amendment.

Proposed amendment

Clause 4 (see Annex III)

Question on the amendment put and agreed to.

CHAIRMAN (in Cantonese): Before calling on Mr LEUNG Yiu-chung to move his further amendment to clause 4, Members may wish to know that I have, in accordance with Standing Order 45(4)(c), directed that the word "a" before "subsidiary legislation" be deleted from the proposed paragraph (3) of the proposed section 32PA. Without the deletion, that expression would be ungrammatical.

CHAIRMAN (in Cantonese): Mr LEE Cheuk-yan, is it a point of order?

MR LEE CHEUK-YAN (in Cantonese): Point of order. Do we have a break between one o'clock and two o'clock? However, he will need some time to speak.

CHAIRMAN (in Cantonese): I propose to finish this Bill first.

MR LEE CHEUK-YAN (in Cantonese): I propose to continue after the break at two o'clock. I hope the Chairman can consider my suggestion.

CHAIRMAN (in Cantonese): We have scheduled to suspend the sitting at one o'clock. However, please bear in mind that the sitting will not necessarily be suspended at one o'clock. I hope it will be more reasonable. We should finish the Bill being processed first. However, as Members have appointments today, I now order a suspension. The lunch break will last for an hour and the Council will be resumed at two o'clock sharp.

1.05 pm

Sitting suspended.

2.05 pm

Committee then resumed.

MR LEUNG YIU-CHUNG (in Cantonese): Mr Chairman, I move that clause 4 be further amended as set out in the paper circularized to Members.

Mr Chairman, as I have pointed out in the Second Reading debate, the five reasons for drafting the proposal are very vague. Let us look at an example. What kind of behaviors of employees can be regarded as proper reasons for dismissal? Let us look at another example. What does the ability or qualification mentioned in the Bill refer to? None of them have been defined clearly in the Bill. The Secretary for Education and Manpower has just said that it will be decided by the Labour Tribunal. However, in dealing with these problems, particularly when some controversial cases are involved, how will the tribunal make the judgment? In fact, the tribunal will also face some difficulties in practice. For both the employer and the employee, if there is no clear

definition for them to affirm the five reasons mentioned in the Bill, many unnecessary disputes will result. If it is the case, it will benefit neither the employer nor the employee.

Nowadays, we become more concerned about harmonious labour relations. This Bill, in fact, cannot achieve this goal. Instead, it will create the many drawbacks we have just mentioned.

Based on the above consideration, I decide to propose the amendment to stipulate that the Secretary for Education and Manpower can issue a Statutory Code of Practice in the form of subsidiary legislation. The Administration has promised to issue the guidelines on the code of practice, giving examples and explanations on what will constitute reasonable or unreasonable termination of employment contracts, and even the Administration itself has said that it might quote some examples so that employers and employees can get a clear understanding of the content of this Bill. However, these guidelines do not have any legal effect nor do much in solving the above problem. Basically, the contents of the provisions proposed by me are similar to those of the statutory code of practice issued under the existing Sex Discrimination Ordinance. That is to say, anyone who contravenes the provisions of this code of practice will not be charged. However, contravening this code of practice may be taken as an acceptable evidence in the adjudication of the tribunal. The above arrangement can help the Labour Tribunal make judgment, and at the same time, it may also give employers and employees clear guidelines and bring beneficial effects to both sides.

Mr Chairman, I would like to point out that the addition of the provisions concerning the Statutory Code of Practice will not affect the actual content of the Bill. Concerning the wording of the amendment, the character "可" is used in the Chinese version whilst the word "may" is used in its English counterpart. That is to say, the Secretary for Education and Manpower can decide whether to issue the Statutory Code of Practice according to the actual situation. The most essential function of the amendment is to enable the Administration to issue guidelines which can be taken as evidence by the Labour Tribunal when making judgments so that the Bill can operate more effectively.

As such, I urge Honourable colleagues to consider the meaning and content of the amendment in greater details. In particular, I have to point out that as we support addition of the statutory code of practice to the Sex Discrimination Ordinance, why should there be no statutory code of practice in the Employment Ordinance? Therefore, I hope Members can consider this question seriously from the perspective of actual needs.

Mr Chairman, with these remarks, I move the amendment.

Proposed amendment

Clause 4 (see Annex III)

MR JAMES TIEN (in Cantonese): Mr Chairman, this Bill is related to unfair dismissals. When debating on this issue, the Labour Advisory Board (LAB) has also discussed how to deal with unfair dismissals. During the discussions, the LAB discovered that both employers and employees always claimed themselves to be in the right. For example, associations of employers points out that as the working hours of employees are from 9 am to 6 pm, they should start working immediately upon their arrival at 9 am. However, an employee may argue that it is not a contravention of any regulation even if he goes to work at 9 am, reads a newspaper and drink some coffee first upon arrival and will not start working until 9.30 am. And so, why should he be dismissed? The Administration considers that such a self-defending situation at present is not proper and should be improved. Employers also agree on this point. After discussing with the LAB, the Administration has decided to adopt General Guidelines on Code of Practice. However, the Honourable LEUNG Yiu-chung proposed to adopt the Statutory Code of Practice. These two kinds of practice are different. We employers consider that if the Administration issues guidelines to us and asks us to distribute them to our members, particularly employers of the small and medium-scaled enterprises, so as to achieve the promotional and educational effects for letting them know what is regarded as a reasonable or unfair dismissal, we will support it. However, if the Administration issues the Statutory Code of Practice, employers have to comply with it strictly, and even the court cannot make a determination. That is to say, the Judge has to pass a verdict of guilty if there is such a stipulation in the Statutory Code of Practice, otherwise the Judge should decided that it is not guilty. The General Guidelines on Code of Practice

proposed by the Administration is not the same. The court can still make an appropriate judgment according to the actual situation. As regards the existing labour relations, we should also consider that even an employer has sufficient reasons to dismiss an employee, due to the rigid rules in the legislation, if he contravenes some provisions of the guidelines or the code of practice, he will be found guilty. The Judge may still determine that the employer has lost. In fact, the determination has nothing to do with the reason of dismissal. It is just because the employer has not met the provisions of the code of practice and he is found guilty. It is really hard for employers to adapt to it. Therefore, Mr Chairman, the employer's association and the Liberal Party support the Administration's amendment to the original motion but not that of Mr LEUNG Yiu-chung.

MR MICHAEL HO (in Cantonese): Mr Chairman, Mr LEUNG Yiu-chung's amendment is to enable the Administration to introduce a code of practice by way of subsidiary legislation. Before the sitting today, the Administration has already promised to issue a code of practice so that it can be taken as reference for affairs concerned in future.

In principles, the Democratic Party also tends to support the proposal of the subsidiary legislation and hopes the Legislative Council can then perform its monitoring function. However, when this Bill was submitted to the Legislative Council, we proposed in the Panel on Manpower that no Bills Committee be set up for this Bill. Instead, we should resume the Second Reading of this Bill and pass it as soon as possible. Therefore, at the meeting of the Panel on Manpower, we neither raised any opinions nor prepared to make any amendments.

As such, we will cast an abstaining vote to Mr LEUNG Yiu-chung's amendment today.

SECRETARY OF EDUCATION AND MANPOWER (in Cantonese): Mr Chairman, the Administration is against the amendment proposed by the Honourable LEUNG Yiu-chung. The amendment adds section 32(P)(A) on the code of practice to the proposed section 32(P) in the Bill.

During the Second Reading of the Bill, I have already pointed out that after the enactment of the Bill, the Labour Department would issue practical

guidelines to explain the relevant provisions to employers and employees and increase their understanding of the Bill. The guidelines will provide guidance to employers and clearly set out the factors employers should consider and the measures they should adopt in dismissing employees or varying the terms of their contracts of employment.

We do not find it appropriate to give a legal binding effect to the practical guidelines or the code of practice, since any practical guidelines for explaining legal provisions need to be amended quickly according to the actual enforcement of the relevant legislation and the changes in the social environment. Therefore, if the code of practice become subsidiary legislation as proposed by Mr LEUNG, any future changes will require a long legal process, which will greatly reduce the flexibility of the enforcement of this legislation.

According to the established practice of the Administration, after the passing of any labour laws, the Labour Department will issue relevant practical guidelines to help employers and employees understand the new legislation and enable us to enforce the relevant legislation smoothly. These practical guidelines have worked well and served their purposes.

Concerning this Bill, the Labour Department's practical guidelines will explain clearly to employers the things they should pay attention to in dismissing employees or in varying their contracts of employment, and will provide practical guidance on the procedures employers should take. Therefore, the Labour Department's practical guidelines will have the same effect as the code of practice proposed by Mr LEUNG.

As to whether individual dismissals or variations of the terms of contracts of employment are reasonable or not, we feel that they should be decided by the Labour Tribunal. Some time after the implementation of the Ordinance, we will review whether there is a need to amend the guidelines or to draw up the code of practice.

Therefore, we do not see any reason to turn these guidelines into subsidiary legislation.

For the above reasons, the Administration opposes the amendment proposed by Mr LEUNG. I urge Members to oppose the amendment.

Thank you, Mr Chairman.

MR LEUNG YIU-CHUNG (in Cantonese): Mr Chairman, first of all, I would like to point out that in the past the Administration strongly stressed that labour laws, and even amendments to them, had to be discussed by the Labour Advisory Board (LAB) first. Only after an agreement was reached between the labour and employees would the legislation be submitted to the Legislative Council. If my amendment is passed and the Administration is required to draw up the code of practice, they will still be submitted to the LAB for debate between before it can be passed. This approach has all along been stressed by the Administration. The Honourable James TIEN has just pointed out that the code of practice has little flexibility and will also put employers at a loss. I consider that the code of practice, which is passed after discussion between the employers and employees on the LAB, will be very clear and concrete. It not only enables us to understand this matter, but also alleviates the work pressure of the Labour Tribunal and save a lot of public funds. It is very efficient in administration. However, I do not know why our Honourable colleagues do not seem to agree with this approach.

Moreover, I have to stress that the Sex Discrimination Ordinance also has its code of practice. Why should this bill not have one? The Secretary for Education and Manpower has said that a set of guidelines will be issued. However, guidelines as they are have no legal effects. The code of practice proposed by me may be taken as an evidence when the Labour Tribunal makes judgments. I stress once again that it is beneficial to both employers and employees as we can understand the situation clearly and concretely so that unnecessary disputes can be avoided. At the same time, the code of practice can save a lot of our time and so, it will bring advantages rather than disadvantages. Codes of practice have been in place in Britain for many years and few drawbacks have been found. Should there be defects, they would have been repealed long ago. The fact is that nothing has been found wrong over a score of years. Therefore, I cannot see any reason in various situations why we need not do so. The Secretary for Education and Manpower has just said that the Administration does not refuse to do so but it will have to size up the situation. Now we can have guidelines first and make other plans later.

When we enacted the Sex Discrimination Ordinance, we adopted the approach of drawing up the code of practice. Why should we still "wait and see"? When will the wait end? The Secretary for Education and Manpower has not mentioned how long we have to wait. Under the present situation, I

wonder why we should not amend the legislation today. I have also stressed that the character "可" in the Chinese version and the word "may" in English suggest that the Secretary for Education and Manpower can decide whether to issue the code of practice according to the actual situation in future. Given the situation as it is, I can only point this out clearly. I hope the Secretary for Education and Manpower can think clearly about the approach to take, instead of acting as he likes. In particular, special attention should be paid on the fact that the code of practice has no legal effect. I think the amendment is not tailor-made for employees. Both employers and employees are provided with a set of objective criteria for reference.

As such, I hope that Members will not object just for the sake of objection, and can really understand that this is beneficial to both employers and employees. Why should we not agree with it?

Mr Chairman, these are my remarks.

Question on Mr LEUNG Yiu-chung's amendment put.

Voice vote taken.

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

Mr LEUNG Yiu-chung claimed a division.

CHAIRMAN (in Cantonese): Committee will now proceed to a division.

CHAIRMAN (in Cantonese): The time allowed is only one minute. I would like to remind Members that they are now called upon to vote on the question that the amendment moved by Mr LEUNG Yiu-chung 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?

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

Miss Emily LAU, Mr LEUNG Yiu-chung and Miss Margaret NG voted for the amendment.

Mr Allen LEE, Mrs Selina CHOW, Mr Edward HO, Mr Ronald ARCULLI, Mrs Miriam LAU, Mr Eric LI, Dr Philip WONG, Mr Howard YOUNG, Mr James TIEN, Mr CHAN Kam-lam, Mr IP Kwok-him, Mr Ambrose LAU, Mr LEE Kai-ming and Mr LO Suk-ching voted against the amendment.

Mr Martin LEE, Mr SZETO Wah, Mr Albert CHAN, Mr CHEUNG Man-kwong, Mr Michael HO, Dr HUANG Chen-ya, Mr LEE Wing-tat, Mr James TO, Dr YEUNG Sum, Mr WONG Wai-Yin, Miss Christine LOH, Mr CHAN Wing-chan, Miss CHAN Yuen-han, Mr Andrew CHENG, Mr CHENG Yiu-tong, Dr Anthony CHEUNG, Mr SIN Chung-kai and Mr TSANG Kin-shing abstained.

THE CHAIRMAN announced that there were three votes in favour of Mr LEUNG Yiu-chung's amendment and 14 against it. He therefore declared that the amendment was negatived.

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

Council then resumed.

Third Reading of Bill

THE SECRETARY FOR EDUCATION AND MANPOWER reported that the

EMPLOYMENT (AMENDMENT) (NO. 2) BILL 1997

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

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

Bill read the Third time and passed.

Resumption of Second Reading Debate on Bill

LABOUR RELATIONS (AMENDMENT) BILL 1997

Resumption of debate on Second Reading which was moved on 19 March 1997

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

Bill read the Second time.

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

Committee stage of Bill

Council went into Committee.

LABOUR RELATIONS (AMENDMENT) BILL 1997

Clauses 1 to 5 were agreed to.

Council then resumed.

Third Reading of Bill

THE SECRETARY FOR EDUCATION AND MANPOWER reported that the

LABOUR RELATIONS (AMENDMENT) BILL 1997

had passed through Committee without amendment. He moved the Third Reading of the Bill.

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

Bill read the Third time and passed.

Resumption of Second Reading Debate on Bill

TRADE UNIONS (AMENDMENT) (NO. 2) BILL 1997

Resumption of debate on Second Reading which was moved on 19 March 1997

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

Bill read the Second time.

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

Committee stage of Bill

Council went into Committee.

TRADE UNIONS (AMENDMENT) (NO. 2) BILL 1997

Clauses 1 and 2 were agreed to.

Council then resumed.

Third Reading of Bill

THE SECRETARY FOR EDUCATION AND MANPOWER reported that the

TRADE UNIONS (AMENDMENT) (NO. 2) BILL 1997

had passed through Committee without amendment. He moved the Third Reading of the Bill.

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

Bill read the Third time and passed.

Resumption of Second Reading Debate on Bill

JUDICIAL SERVICE COMMISSION (SPECIAL PROVISIONS) BILL 1997

Resumption of debate on Second Reading which was moved on 28 May 1997

MR MARTIN LEE: Mr President, this Bill in my view is totally unnecessary so when I suggested that we should form a Bills Committee to look at it, I wanted to make sure that, unnecessary though it may be, the passage of it will not actually do any harm to our judicial/legal system. And I am grateful that the Honourable Ronald ARCULLI and the Honourable Andrew CHENG, who joined me to form this Bills Committee to look into this thing, were satisfied ultimately that although we have a number of reservations about the proposals, after substantial amendments to the proposed Bill, ultimately the result is acceptable to all three of us. And therefore we have recommended to Honourable Members to support it as far as I am concerned, with a lot of reluctance.

Mr President, we are concerned, really, with the appointment of members of the Judicial Officers Recommendation Commission (JORC) under the Judicial Officers Recommendation Commission Ordinance, which actually follows word for word from the existing Judicial Services Commission Ordinance, as of 1 July this year. The intention, as we understand it, is that the Chief Executive (Designate) on 1 July, after becoming the Chief Executive, will then be appointing various persons to constitute the Judicial Officers Recommendation Commission. If I may simply refer to it as JORC for the sake of convenience hereafter.

Two members of the JORC are judges and indeed these two judges are already members of the Judicial Services Commission, so the intention is for the Chief Executive on 1 July to appoint exactly the same two judges who presently constitute members of the Judicial Services Commission to be members of the JORC.

The problem, we are told, arises this way. That these two judges may, it is feared, have their appointment come to an end with the Letters Patent on 30 June 1997. And so it is said that it is necessary to have them reconstituted judges under the Special Administrative Region (SAR) so that they would be qualified as judges to be appointed as members to the JORC. If Honourable Members think that I am talking a lot, of not rubbish, but if you find it difficult to understand, I do not blame you at all. It is the whole concept which constitutes the background of this Bill which is difficult to understand and, I daresay, unnecessary.

Mr President, when I was a member of the Hong Kong Basic Law Drafting Committee, we were very concerned that there must be a through-train arrangement for judges and all judicial officers. In other words, those who are serving as judges and other judicial officers under British rule on 30 June 1997 ought automatically to continue holding exactly the same post on 1 July and thereafter unless they are removed for misconduct or whatever. That is the logic and the rationale behind Article 93 of the Basic Law, and I am struggling to find my English text of it, which reads:

> "Judges and other members of the judiciary serving in Hong Kong before the establishment of Hong Kong Special Administration Region may all remain in employment and retain their seniority with pay, allowances, benefits and conditions of service no less favourable than before."

And then that, we thought, would take care of that so that the two judges who would still be judges on 30 June would become, and continue rather, would continue to be judges after the establishment of the SAR on 1 July. And if that is so, they are perfectly eligible to be appointed by the Chief Executive to be members of the JORC. So, as far as I am concerned, there is no problem.

But unfortunately I do not know who was the originator of that but it was thought that this is unclear because of Article 88 of the Basic Law. Article 88 reads:

> "Judges of the courts of the Hong Kong Special Administrative Region shall be appointed by the Chief Executive on the recommendation of an independent commission composed of local judges, persons from the legal profession and eminent persons from other sectors",

which is now called the JORC. Now, clearly this particular Article, 88, is confined to judges who would be appointed after the establishment of the SAR because it says "judges of the courts of the Hong Kong Special Administrative Region shall be appointed by the Chief Executive on the recommendation ....." of the JORC. So, there is no conflict at all between Article 93, which deals with existing judges, that is, judges who are already judges on 30 June, whereas Article 88 deals with judges to be appointed on or after 1 July this year. But it is thought that, to make it quite beyond doubt, it is necessary to make sure that, these two judges will certainly be considered to be judges on 1 July and that we should do it by an ordinance enacted before 1 July.

I had reservations because we might thereby be conceding to a very important point which is that there be a through-train arrangement for every judge and every judicial officer who holds such a post on 30 June. Once we make a concession that these two judges should be re-appointed before they can continue to be judges of the SAR, we are effectively conceding that all the other judges and magistrates and members of the Labour Tribunal, and so on, must also be re-appointed. Now, we are assured by the Administration that indeed the JORC will re-appoint everybody to the judicial office on 1 July. But still how can we know until it actually happens, and that is why I have been struggling very much with this Bill because we must not make a concession that Article 93 does not guarantee a through-train for every judicial officer, including these two eminent judges.

And so after discussing this with the Administration, the Administration is prepared to make pretty substantial amendments to clause 2 of the Bill — in fact there is a re-writing of it — in two ways. First, they add the words "for the avoidance of doubt", making it quite plain that if there be any dispute arising out of the problem we are looking at today, let it not be argued successfully that Article 93 is somehow prejudiced by this Bill, and that is an important improvement. The second improvement is that whereas the original Bill would require these two judges to be appointed as judges before they could be appointed as members of the JORC, the present wording which will be moved by

the Chief Secretary in due course would remove the word "appointed" so that it is clear that they merely continue to be judges in office.

Now, with these two very important amendments, the Bills Committee feel that there should be no reason to object to the passage of this Bill, although as I said I really believe that it is unnecessary, but at least I can satisfy myself and I daresay members of the Bills committee are satisfied that they will do no harm to the existing arrangements contained in the Basic Law.

And lastly, I would like to remind Members that on 15 May 1996 in reply to a supplementary question which was asked as a result of a question from the Honourable Albert HO, the Secretary for Constitutional Affairs made it quite plain to Members of this Council that my reading, my present reading of Article 93 certainly at that time accorded with his interpretation, namely, that serving judges and judicial officers will have a through-train arrangement. They need not be re-appointed. And this is the part of his answer given. He said:

> "Any possible arrangements that the SAR Government may wish to make to effect the continued service of these judges should be no more than a procedural formality, for example taking the oath of allegiance under Article 104 of the Basic Law."

So, with the relevant amendments which will soon be proposed by the Chief Secretary, I hope that the constitutional position of all serving judges and other members of the judiciary can be retained intact. And with these words, Mr President, I would urge Members to support the Second Reading of this Bill and to support the amendments that the Chief Secretary would make in due course.

MR RONALD ARCULLI: Mr President, let it not be said that whenever a few lawyers sit together you are bound to have a difference of opinion because on this occasion, there were three of us who formed the committee, and happily at the end of about one hour of intense analysis and discussion, we were actually able to persuade the Administration to accept the amendments that the Honourable Martin LEE has averted to.

But what I really wish to say is that I think there is no doubt in any of our minds that as far as the Judiciary is concerned, there will be a judicial through-train. What I am, or what I was, at that stage concerned with was really that all the legal formalities and all the jigsaw puzzles would, as it were, fall into place. And therefore, if one looks at Article 88 and Article 93 and indeed look at the constitutional position of judicial officers today and their appointments under our present constitutional documents, there seems to be little doubt that they need a bit of paper, as it were, to ensure their continuance in the service in the Judiciary and to serve Hong Kong.

And I think, therefore, that when at the stroke of midnight they cease to rely on the present appointment, continuation is necessary. And I think the amendments to the Bill provides for that avenue so that the JORC can actually go about their jobs to ensure that that will happen and to ensure that there will be no possibility, no possibility whatsoever of any form of challenge.

It may well be that Mr Martin LEE is correct in his interpretation of Article 93. However, I think, Mr President, you always hear lawyers saying "on this hand and on the other hand". Unfortunately, in this instance, we cannot really have a one-armed lawyer. So, being a conservative, I thought it would be nice if we could have two bullets to shoot both arguments down rather than just one.

So, with those words, I entirely agree with Mr Martin LEE in urging Members to support the Bill and indeed to support the amendments. Thank you, Mr President.

MR ALBERT HO (in Cantonese): Mr President, I believe that our Honourable colleagues all agree that the judicial through-train is of utmost importance to the stability of the Judiciary and the entire territory. I believe that there should be no variance among us. When we raised this question repeatedly to the Administration in the past, the answer given was that according to its understanding, the operation of Article 93 has confirmed the through-train arrangement for judicial officers.

The submission of this Bill today really casts on us a doubt that Article 93 may have two interpretations. To play safe, we have to plug the loopholes. However, I have to point out that if this loophole is due to the interpretation of Article 88, that is the interpretation of Articles 88 read in conjunction with Article 93, that every judge should be appointed on the recommendation of the Judicial Service Commission after the appointment procedures. If this interpretation is correct, we will be trapped in a situation that it is impossible to appoint judges of the first term as the first Judicial Service Commission cannot be formed.

If this is the interpretation of the Basic Law, and I have to stress that the legislation of this Council cannot make any remedy, how can the legislation of this Council make a remedy to plug a loophole in the Basic Law? How can the legislation of this Council be used to interpret the Basic Law? Under this situation, I can only hope that the interpretation of Articles 93 and Article 88 have, in fact, no problem. In other words, Article 88 of the Basic Law is not applicable to judges who have been appointed and will remain in employment and function as judges during the transition under Article 93, and the procedure of Article 88 will only be applicable to newly appointed judges. Therefore, the Bill today is, in fact, unnecessary and may even arouse misunderstanding. However, as we have stated so clearly that Mr Martin LEE, a member of the Bills Committee, and other colleagues thought that our understanding was consistent, and the Bill has already been submitted to this Council, we do not want to send a wrong message. Although we think that some people's worries are unnecessary, they, in fact, have worries. We hope the opinions raised today that Members have consensus over the understanding of Article 93 can be stated clearly in record. Moreover, all of us have declared that it is really our consensus. Under this situation, we, the Democratic Party, will not object to this Bill.

Thank you, Mr President.

CHIEF SECRETARY: Mr President, on 28 May, I introduced the Judicial Service Commission (Special Provisions) Bill 1997 into this Council. The Bill is a technical one, the aim of which is to make a technical provision in respect of the meetings of the Judicial Officers Recommendation Commission (the Commission) hereinafter held on 1 July to avoid challenges to the validity of

judicial appointments based on the arguments that the Commission was not properly constituted.

A Bills Committee under the chairmanship of the Honourable Martin LEE, was established to scrutinize the Bill and I would like to thank him and other members of the Committee for their efficient scrutiny of the Bill. Members of the Bills Committee acknowledged the intention of the Administration to formalize the transitional arrangement in respect of the meetings of the Commission on 1 July 1997. However, given that Article 93 of the Basic Law provides that judges serving in Hong Kong before the establishment of the Hong Kong Special Administrative Region (SAR) may all remain in employment, some Members wondered whether the Bill is necessary. They also wondered whether the proposed Bill would in fact give rise to possible conflict with Article 88 of the Basic Law, which provides that judges of the courts of the SAR shall be appointed by the Chief Executive acting in accordance with the recommendation of an independent commission composed of local judges, persons from the legal profession and other eminent persons.

Despite Article 93, the procedures set out in Articles 88 and 104 of the Basic Law must be complied with before the judges could be regarded as having been formally appointed. Article 104 provides that when assuming office, judges of the SAR courts at all levels are required to swear to uphold the Basic Law and to swear allegiance to the SAR.

We have in fact explained to Members on previous occasions that Article 93 is not in conflict with Articles 88 and 104. The re-appointment procedure is a procedural formality. Article 93 states in very clear terms that judges and other members of the Judiciary serving in Hong Kong before the establishment of the SAR may all remain in employment. This mirrors the provision in the Joint Declaration on the continued service of judges and other members of the Judiciary. Their continued service has been very clearly and explicitly provided for in the Joint Declaration and the Basic Law.

Nevertheless, in the absence of the Bill, it could be argued that an existing judge could not lawfully be appointed to the JORC until he had been formally appointed as a judge of the SAR. We wish to avoid such a challenge but without suggesting that such a formal appointment is actually necessary.

I shall therefore move a Committee stage amendment stressing that the provision is essentially for the avoidance of doubt. The amendment will declare that a person who serves as a judge on 30 June 1997 remains a judge on the day following that day for the purposes of section 3(1)(c)(i) of the Judicial Service Commission Ordinance.

Mr President, subject to the proposed Committee stage amendments which have been agreed by the Bills Committee, I commend this Bill to Honourable Members.

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

Bill read the Second time.

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

Committee stage of Bill

Council went into Committee.

JUDICIAL SERVICE COMMISSION (SPECIAL PROVISIONS) BILL 1997

Clause 1 was agreed to.

Clause 2

CHIEF SECRETARY: Mr Chairman, I move that clause 2 be amended as set out under my name in the paper circulated to Members.

The Bills Committee on the Bill has suggested that the original clause 2 should be re-written. We have no objection to the suggestion by the Bills

Committee. The amendment to clause 2 of the Bill provides, for the avoidance of doubt, that a person who serves as a judge on 30 June 1997 remains a judge on 1 July 1997 for the purposes of section 3(1)(c)(i) of the Judicial Officers Recommendation Ordinance.

Proposed amendment

Clause 2 (see Annex IV)

Question on the amendment put and agreed to.

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

Long title

CHIEF SECRETARY: Mr Chairman, I move that the long title of the Bill be amended as set out under my name in the paper circulated to Members.

This amendment is consequential to the amendment which I have moved to clause 2 of the Bill.

Proposed amendment

Long title (see Annex IV)

Question on the amendment put and agreed to.

Question on long title, as amended, put and agreed to.

Council then resumed.

Third Reading of Bill

THE CHIEF SECRETARY reported that the

JUDICIAL SERVICE COMMISSION (SPECIAL PROVISIONS) BILL 1997

had passed through Committee with amendments. She moved the Third Reading of the Bill.

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

Bill read the Third time and passed.

Resumption of Second Reading Debate on Bill

JURY (AMENDMENT) BILL 1997

Resumption of debate on Second Reading which was moved on 19 March 1997

MISS MARGARET NG: Mr President, the Jury (Amendment) Bill 1997 introduced into this Council on 19 March 1997 seeks to amend the language requirement for jurors from English to "the language in which the proceedings are to be conducted", that is, either English or Chinese, and to exempt from jury service (a) the legal advisor of the Legislative Council Secretariat and any of his legally-qualified assistants who are in full-time employment of the Legislative Council Commission, and (b) the spouses of the Chief Justice, the Justices of Appeal and judges of the High Court.

At present, proceedings in the High Court, except appeals from the lower courts and tribunals and the Court of Appeal, can only be conducted in English. In order to meet the provisions of Article 9 of the Basic Law on official languages, it is the Judiciary's objective to put in place by 1 July 1997 a bilingual court system in which either English or Chinese can be used. There is a need to amend the Jury Ordinance to enable the Judiciary to conduct jury trials in the High Court in Chinese before that date.

A Bills Committee, of which I am the Chairman, has been formed to study the Bill. The Bills Committee has held two meetings with the Administration and has met representatives of the Hong Kong Bar Association and the Law

Society of Hong Kong. I will briefly summarize the main issues considered by the Bills Committee.

The first issue concerns residency requirement. Members note that in the proposed new section 4, the term "a resident of Hong Kong" is used instead of the existing "a person resident within Hong Kong". They have asked the Administration to advise whether the term is defined in existing legislation and to consider whether a residency requirement should be imposed as a condition for eligibility as a juror to ensure that jurors have some local knowledge. The Administration has advised that the word "resident" is not defined in existing legislation but it should follow its natural and ordinary meaning.

As regards the imposition of residency requirement, the Administration has explained that, while it has no objection in principle, there are practical difficulties in taking out from the jury list those who are unable to satisfy the residency requirements, say, of two years. There is a need for a new computer system and new forms for applying for a Hong Kong ID card have to be designed to include a statement relating to residency period. Therefore, the Administration proposes that the issue be examined in its forthcoming review of the qualification for jurors.

The second issue concerns the definition of spoken Chinese. Members have asked the Administration to consider whether there is a need for a definition of spoken Chinese. The Administration has pointed out that neither the Official Languages Ordinance nor Article 9 of the Basic Law defines what is "spoken Chinese". Since this has not been a problem to date with respect to the conduct of court proceedings in the Chinese language or the use of Chinese elsewhere, there is no reason why it should be a problem in respect of the Jury Ordinance. Members note that for court proceedings Chinese is the form of Chinese used by the judge for the proceedings of the trial.

The third issue concerns the standard of education required of jurors. At present, only persons who have attained an educational level of Form VII are included on the jury list and this arrangement is implemented administratively. In response to Members' queries, the Administration explains that the purpose of setting such a standard of education is to ensure that jurors have a sufficient knowledge of English to understand the proceedings of the trial. It agrees that

if Chinese is to be used in jury trials, there is a case for reviewing the present standard of education required since those who have attained a lower standard of education, say Form V, should be able to follow the trial proceedings in Chinese, and this would better accord with the principle of "trial by one's peers".

Members share the Bar's view that there should not be two lists of jurors: one list with a higher education standard for English trials, and another list with a lower standard for Chinese trials as it would be constitutionally and legally unacceptable. Similar to the residency requirement, the Administration has pointed out that there are practical difficulties, such as the existing computer system capacity, in lowering the standard of education at this stage. It is therefore of the view that the standard of education should remain at Form VII pending a review of the jury system in the light of experience in conducting jury trials in either English or Chinese.

To make sure that there is a statutory basis for administratively setting Form VII as a requirement to ensure language proficiency, Members have asked the Assistant Legal Advisor to the Bills Committee and the Administration to provide legal advice on whether the Bill empowers the Registrar of the Supreme Court to compile a list of jurors with at least Form VII educational level. Both have advised that the present administrative arrangement is not an unreasonable measure to ensure that the English language requirement for jurors under section 4 of the Ordinance can be met.

Members also note that a person may apply under section 9 or 11 of the Ordinance to the Registrar requiring that his name or the name of any other person be added to the list of jurors.

Members have also asked the Administration to clarify the good character requirement in the proposed section 4(1)(b). Noting that "good character" is one of the stated qualifications required, Members have asked whether the Government checks whether a person has a criminal record before his or her name is placed on the jury list. The Administration has informed Members that no criminal record check is done at present and it does not intend to change the present arrangement. Since there are about 260 000 persons on the jury list, any vetting procedure would create a tremendous workload for the relevant departments. The Administration also considers that any routine checking for

criminal record might constitute an unwarranted invasion of privacy of the persons to be put on the jury list.

As the Administration has proposed to defer consideration of further changes to a later review of the jury system in Hong Kong, Members have asked the Administration to advise on the scope and timing of the review. The Administration has informed Members that it proposes to conduct a comprehensive review of the jury service 12 months after jury trials conducted in Chinese have been introduced into the High Court. The main issues for review are:

(a) whether the present standard of education (that is, Form VII) used to ensure that jurors have a sufficient knowledge of English to understand the proceedings of the trial should be lowered; and

(b) whether a residency requirement should be imposed as a condition for eligibility to serve as a juror.

Although Members are disappointed any changes to the educational qualifications and residency requirement will only come about in a few years' time, they understand the difficulties involved and accept the Administration's proposal.

The Administration will move amendments at the Committee stage to give effect to the following proposals made by Members:

(a) to clarify the meaning of "an English-language examination or a Chinese language examination" in the proposed section 4A(1)(a);

(b) to exempt clerics of the Muslim and Hindu faiths in Hong Kong from jury service under section 5(h) of the Ordinance, as at present clergymen, priests and ministers of any Christian or Jewish congregation are already exempt from jury service; and

(c) to exempt the spouse of a coroner from jury service under section 5(o) of the Ordinance.

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

CHIEF SECRETARY: Mr President, on 19 March 1997, the Jury (Amendment) Bill was introduced into this Council. The main aim of the Bill is to amend the Jury Ordinance (Cap. 3) to facilitate the use of Chinese in jury trials in the High Court. The Bill also proposes to make some minor changes to the list of persons who are exempt from jury service.

I would first like to thank the Honourable Miss Margaret NG and members of the Bills Committee for their hard work and thorough examination of the Bill. We have responded positively to virtually all of the suggestions made by members of the Bills Committee, and these are reflected in the Committee stage amendments which I shall move later.

Mr President, I would like to outline the proposed changes to the Bill.

Firstly, in response to the Bills Committee's suggestion, I shall move a new subclause to clause 4 to clarify the meanings of "an English language examination" and of "a Chinese language examination" in the proposed section 4A(1)(a). The purpose of this proposed section is to enable the Registrar of the Supreme Court or the Commissioner of Registration in the compilation of a jury list to obtain the necessary information for the purpose of ascertaining whether a person has a sufficient knowledge of the official languages.

The Bills Committee has proposed that clerics of the Hindu and Muslim faiths in Hong Kong should be exempt from jury service, and that the spouse of a coroner should also be exempt from jury service, as the provisions of the Jury Ordinance apply to the selection of jurors at a coroner's inquest. The Administration supports both proposals. I shall move an amendment to clause 5 to give effect to them.

The Bills Committee has also asked whether a legislative amendment should be made to exempt senior staff of the Securities and Futures Commission (SFC) from jury service, because a possible conflict of interest may arise if senior

staff of the SFC, who may have been involved in initiating a prosecution against a person, are subsequently summoned to act as jurors in his case.

Decisions involving prosecutions against a person suspected of contravening the securities law are taken at the Executive Director level of the SFC. All Executive Directors of the SFC are invariably official Justices of the Peace and are therefore exempt from jury service under the Jury Ordinance. Therefore, a legislative amendment is not necessary and the Bills Committee has accepted our explanation.

Members of the Bills Committee have also raised a number of wider policy and operational issues regarding the jury system when scruntinizing this Bill. I can assure Members that we will conduct a comprehensive review of the jury service 12 months after jury trials conducted in Chinese have been introduced in the High Court. Issues of concern to Members, including the standard of education used to determine the language proficiency of a person and whether a residency requirement should be imposed as a condition for eligibility to serve as a juror, will be considered in that review.

Mr President, subject to the proposed Committee stage amendments, which have all been agreed by the Bills Committee, I commend the Jury (Amendment) Bill 1997 to Honourable Members.

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

Bill read the Second time.

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

Committee stage of Bill

Council went into Committee.

JURY (AMENDMENT) BILL 1997

Clauses 1, 2 and 3 were agreed to.

Clauses 4 and 5

CHIEF SECRETARY: Mr Chairman, I move that clause 4 be amended as set out under my name in the paper circulated to Members.

The amendment seeks to clarify the meanings of "an English language examination" and of "a Chinese language examination" in section 4A(1)(a).

Clause 5

Mr Chairman, I further move that clause 5 be amended by adding a new subclause to exempt clerics of any Muslim and Hindu congregation from jury service. The clerics of the two faiths are called "imams" and "priests" respectively. The clause is also amended to provide that the spouse of a coroner, in addition to the spouse of the Chief Justice, a Justice of Appeal and a judge of the High Court, shall be exempt from serving as jurors.

Proposed amendments

Clause 4 (see Annex V)

Clause 5 (see Annex V)

Question on the amendments put and agreed to.

Question on clauses 4 and 5, as amended, put and agreed to.

Council then resumed.

Third Reading of Bill

THE CHIEF SECRETARY reported that the

JURY (AMENDMENT) BILL 1997

had passed through Committee with amendments. She moved the Third Reading of the Bill.

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

Bill read the Third time and passed.

Resumption of Second Reading Debate on Bill

TRUSTEE (AMENDMENT) BILL 1997

Resumption of debate on Second Reading which was moved on 30 April 1997

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

Bill read the Second time.

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

Committee stage of Bill

Council went into Committee.

TRUSTEE (AMENDMENT) BILL 1997

Clauses 1, 2 and 5 were agreed to.

Clauses 3 and 4

ATTORNEY GENERAL: Mr Chairman, I move that clauses 3 and 4, be amended as set out under my name in the paper circulated to Members.

The amendments have been formulated after discussions between the Administration and the Bar Association. The House Committee was kept fully informed of these exchanges and has indicated that it is satisfied with the amendments. The amendments have the following objectives: to clarify who may apply to the court in charity proceedings, to confirm the Attorney General's common law right to be made a party to such proceedings and to make a number of minor improvements in the drafting of the Bill.

Clause 3 is amended to set out comprehensively the persons who may apply to the court to complain of a breach of a charitable trust or to secure the better administration of such a trust. These consist of the Attorney General and the trustees, or persons administering the trust, as well as any two or more persons who have the written consent of the Attorney General.

The amendment to clause 4 relates to Order 120 of the Rules of the Supreme Court which provides rules or procedure in respect of charitable trust proceedings. The amendment seeks to do two things. Firstly, it brings the wording of rule 3 of Order 120 into line with the wording of the new section 57A of the principal Ordinance as the amendment to clause 3 would make it. In so doing, it will also eliminate some archaic language in the former rule 3 which has no relevance to contemporary Hong Kong. Secondly, by introducing a new rule 4 in Order 120, it expressly confirms the common law rule that the Attorney General is entitled to be joined as a party in all charitable proceedings unless the court, acting pursuant to some special exception, orders otherwise.

Mr Chairman, I beg to move.

Proposed amendments

Clause 3 (see Annex VI)

Clause 4 (see Annex VI)

Question on the amendments put and agreed to.

Question on clauses 3 and 4, as amended, put and agreed to.

Council then resumed.

Third Reading of Bill

THE ATTORNEY GENERAL reported that the

TRUSTEE (AMENDMENT) BILL 1997

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

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

Bill read the Third time and passed.

Resumption of Second Reading Debate on Bill

LAW REFORM (MISCELLANEOUS PROVISIONS AND MINOR AMENDMENTS) BILL 1996

Resumption of debate on Second Reading which was moved on 4 December 1996

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

Bill read the Second time.

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

Committee stage of Bill

Council went into Committee.

LAW REFORM (MISCELLANEOUS PROVISIONS AND MINOR AMENDMENTS) BILL 1996

Clauses 1 to 16, 18 to 39, 41 to 46, 48 to 79, 81, 83 to 93, 96, 98 to 108, 113, 114 and 117 to 121 were agreed to.

Clauses 17, 40, 47, Part IX Heading before clause 79, clauses 80, 82, 94, 95, 97, 109, 110, 111, 112, 115, and 116

ATTORNEY GENERAL: Mr Chairman, I move that clauses 17, 40, 47, Part IX Heading before clause 79, clauses 80, 82, 94, 95, 97, 109, 110, 111, 112, 115, and 116 be amended as set out in the paper circulated to Members.

Since the introduction of the Bill, the need to amend various additional pieces of legislation has been identified. The proposed additional amendments fall within the following categories:

(a) Firstly, amendments for the purpose of achieving correspondence with authenticated Chinese texts of legislation. Some of the legislation proposed to be amended by the Bill has been authenticated since the Bill was introduced in this Council;

(b) Secondly, consequential amendments necessitated by other enactments; and

(c) Thirdly, amendments to remove anomalies or inconsistencies found in legislative texts.

The amendments to the long title which I shall move later on, clauses 47, 80, 109 to 112, 116 and the Heading to Part IX are to bring the Chinese texts in those provisions in line with the authenticated texts of the relevant Ordinances.

The amendment to clause 17, which seeks to amend the Child Care Centres Ordinance (Cap. 243), is made necessary by the Child Care Centres (Amendment) Ordinance 1997 which was enacted after the introduction of this Bill.

It is proposed to delete clauses 40 and 115. The original purpose of those clauses was achieved, after the publication of this Bill, by the Post Office (Amendment) Regulation 1997 and by the production of an authenticated Chinese version of the Immigration Service Ordinance.

The amendment to clause 82 is to delete a clause the purpose of which was to substitute a new definition of "defective" in the Crimes Ordinance. This matter is being separately dealt with in the context of the Mental Health (Amendment) Bill.

The amendments to clauses 94 and 95 concern provisions of the Supplementary Medical Professions Ordinance (Cap. 359) relating to registration and practising certificates. They propose that a declaration of non-conviction of an offence punishable with imprisonment should suffice, instead of submission of evidence of non-conviction, as a condition of registration or the issue of a practising certificate under that Ordinance.

The amendment to clause 97, which refers to the original Schedule to the Bill, renumbers it as Schedule 1. This is necessary as I shall shortly be proposing amendments to introduce three additional schedules into the Bill.

Mr Chairman, I beg to move.

Proposed amendments

Clause 17 (see Annex VII)

Clause 40 (see Annex VII)

Clause 47 (see Annex VII)

Part IX Heading before clause 79 (see Annex VII)

Clause 80 (see Annex VII)

Clause 82 (see Annex VII)

Clause 94 (see Annex VII)

Clause 95 (see Annex VII)

Clause 97 (see Annex VII)

Clause 109 (see Annex VII)

Clause 110 (see Annex VII)

Clause 111 (see Annex VII)

Clause 112 (see Annex VII)

Clause 115 (see Annex VII)

Clause 116 (see Annex VII)

Question on the amendments put and agreed to.

Question on clauses 17, 40, 47, Part IX Heading before clause 79, clauses 80, 82, 94, 95, 97, 109, 110, 111, 112, 115, and 116, as amended, put and agreed to.

Heading before New clause 87A	Jury Ordinance
New clause 87A	Special powers of judge as to composition of jury
Heading before New clause 87B	Securities and Futures Commission Ordinance
New clause 87B	Bankruptcy orders
Heading before New clause 87C	Immigration (Vietnamese Migrants) (Detention Centres) Rules
New clause 87C	Illegal entry into detention centre
Heading before New clause 93A	Prevention of Bribery (Exclusion of Bodies and Members of Bodies of Educational Institutions) Notice
New clause 93A	Schedule amended
Heading before New clause 96A	Sex Discrimination Ordinance

New clause 96A	Education establishments and their responsible bodies
Heading before New clause 96B	University of Hong Kong Ordinance
New clause 96B	"畢業生議會" substituted for "評議會"
Heading before New clause 96C	Bankruptcy (Amendment) Ordinance 1996
New clause 96C	Sections substituted
New clause 97A	Amendment of Chinese titles of Immigration Ordinance, etc
New clause 97B	Amendment of Chinese titles of Immigration Service Ordinance, etc
Heading before New clause 100A	Professional Accountants Ordinance
New clause 100A	Offences and penalties
Heading before New clause 100B	Fire Services Department (Welfare Fund) Regulations
New clause 100B	Maintenance of fund
Heading before New clause 103A	Official Languages (Authentic Chinese Text) (Dutiable Commodities Ordinance) Order
New clause 103A	Annex amended
Heading before New clause 104A	Antibiotics Ordinance
New clause 104A	Control of sale and supply of substances to which this Ordinance applies

Heading before New clause 104B	Dairies Regulations
New clause 104B	Register of herd to be kept
New clause 109A	Marking of Mode A and Mode B stores
New clause 109B	Conditions for grant of licence
Heading before New clause 120A	Hong Kong Trade Development Council Ordinance
New clause 120A	Establishment and incorporation of the Hong Kong Trade Development Council
Heading before New clause 120B	Hong Kong Export Credit Insurance Corporation Ordinance
New clause 120B	Establishment of Corporation

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

ATTORNEY GENERAL: Mr Chairman, the heading before new clause 87A and new clause 87A, the heading before new clause 87B .....

CHAIRMAN: Attorney General, I have devised a new format to make things easier in that we do not have to read out the numbers for many different times.

ATTORNEY GENERAL: I am delighted to hear it.

CHAIRMAN: The format is "Mr Chairman, I move that the new clauses, the contents of which have been set out in the paper circularized to Members, and the section headings of which have been read by the Clerk, be read the Second time".

ATTORNEY GENERAL: I am obliged to you. The purpose of the proposed new clauses 87A and 87C is to amend the Chinese text of the legislation (respectively the Jury Ordinance and the Immigration (Vietnamese Migrants) (Detention Centres) Rules) to correspond with the English text.

The proposed new clauses 87B, 93A, 96A are consequential amendments.

The amendment proposed by new clause 96B relates to the University of Hong Kong Ordinance. It proposes to amend the Chinese term for "Convocation", and makes other consequential amendments.

The amendment proposed by new clause 96C relates to the Bankruptcy (Amendment) Ordinance 1996. Section 30C of the amendment Ordinance is a transitional provision which deals with bankrupts whose relevant periods for automatic discharge expire before sections 30 to 30B come into operation. The purpose of the present amendment is to include bankrupts whose relevant periods have not expired in order that the trustees can give the three months' notice to creditors of their discharge under section 30A(5).

The amendment proposed by new clauses 97A and 97B relate to the change of the Chinese short titles and citations of the Immigration Ordinance, the Immigration Service Ordinance and subsidiary legislation thereunder. The purpose of the amendments is to bring the Chinese titles of directorate grade officers of the Immigration Department in line with those of other officers of the Department.

The amendment proposed by new clause 103A relates to the Official Languages (Authentic Chinese Text) (Dutiable Commodities Ordinance) Order which will become effective from 27 June this year.

The amendments proposed in relation to new clauses 100A, 100B, 104A, 104B, 109A, 109B, 120A and 120B are all for the purpose of the language policy of giving equal status to the Chinese and the English languages.

Question on the Second Reading of the clauses and headings proposed, put and agreed to.

Clauses and headings read the Second time.

ATTORNEY GENERAL: Mr Chairman, I move that the new clauses the contents of which have been set out in the paper circularized to Members and the section headings of which have been read by the Clerk be added to the Bill.

Proposed additions

Heading before new clause 87A and new clause 87A (see Annex VII)

Heading before new clause 87B and new clause 87B (see Annex VII)

Heading before new clause 87C and new clause 87C (see Annex VII)

Heading before new clause 93A and new clause 93A (see Annex VII)

Heading before new clause 96A and new clause 96A (see Annex VII)

Heading before new clause 96B and new clause 96B (see Annex VII)

Heading before new clause 96C and new clause 96C (see Annex VII)

New clause 97A (see Annex VII)

New clause 97B (see Annex VII)

Heading before new clause 100A and new clause 100A (see Annex VII)

Heading before new clause 100B and new clause 100B (see Annex VII)

Heading before new clause 103A and new clause 103A (see Annex VII)

Heading before new clause 104A and new clause 104A (see Annex VII)

Heading before new clause 104B and new clause 104B (see Annex VII)

New clause 109A (see Annex VII)

New clause 109B (see Annex VII)

Heading before new clause 120A and new clause 120A (see Annex VII)

Heading before new clause 120B and new clause 120B (see Annex VII)

Question on the addition of the Heading before new clause 87A and new clause 87A, Heading before new clause 87B and new clause 87B, Heading before new clause 87C and new clause 87C, Heading before new clause 93A and new clause 93A, Heading before new clause 96A and new clause 96A, Heading before new clause 96B and new clause 96B, Heading before new clause 96C and new clause 96C, New clauses 97A and 97B, Heading before new clause 100A and new clause 100A, Heading before new clause 100B and new clause 100B, Heading before new clause 103A and new clause 103A, Heading before new clause 104A and new clause 104A, Heading before new clause 104B and new clause 104B, New clauses 109A and 109B, Heading before new clause 120A and new clause 120A, Heading before new clause 120B and new clause 120B proposed, put and agreed to.

Schedule

ATTORNEY GENERAL: Mr Chairman, I move that the Schedule be amended as set out under my name in the paper circulated to Members.

The Schedule is amended by the addition of new items 4A and amendments are also proposed to be made to items 23, 39, 51 and 52. The purpose of the amendments is to achieve alignment with authenticated Chinese texts.

The Schedule is amended by the addition of a new item 7B which relates to the Professional Accountants Ordinance. The amendment is consequential to the Professional Accountants (Amendment) Ordinance 1995.

The amendment to item 18 of the Schedule relates to the Estate Duty Ordinance. Its purpose is to clarify the term "bona fide purchaser without notice" in the Chinese text of the Ordinance so that it corresponds to the English text.

Item 6 of the Schedule is amended and new items 7A, 25A, 43A, 58A, 61A, 63A, 64A, 64B, 65A, 68 and 70 are proposed to be added to rectify erroneous references, improve language and to remove discrepancies and anomalies.

The amendment to item 67 of the Schedule relates to the Inland Revenue (Amendment) (No. 2) Ordinance 1996. Its purpose is to improve the language of the Chinese text.

The Schedule is amended by the introduction of a new item 69 in relation to the Bankruptcy (Amendment) Ordinance 1996. The purpose of the amendment is to delete a selection of that Ordinance which is no longer required.

Mr Chairman, I beg to move.

Proposed amendment

Schedule (see Annex VII)

Question on the amendment put and agreed to.

Question on schedule, as amended, put and agreed to.

New schedules 2, 3 and 4

Schedules read the First time and ordered to be set down for Second Reading pursuant to Standing Order 46(7).

ATTORNEY GENERAL: Mr Chairman, I move that new Schedules 2, 3 and 4 as set out in the paper circulated to Members be read the Second time.

The amendments relate to new clauses 97A and 97B of the Bill which concern the Immigration Ordinance and the Immigration Service Ordinance. The amendments are consequential in nature.

Schedule 2 relates to clause 97A(1) and (2). It sets out the enactments in which a new Chinese term is substituted in the Chinese text of those enactments to reflect a change in the Chinese title of the Immigration Ordinance.

Schedule 3 relates to clause 97A(3). This sets out the enactments in which certain new Chinese terms are substituted in the Chinese text of those enactments to reflect a change in the Chinese title of the Immigration Regulations.

Schedule 4 relates to clause 97B(1). This Schedule sets out the enactments in which a new Chinese term is substituted in the Chinese text of those enactments to reflect a change in the Chinese title of the Immigration Service Ordinance.

Mr Chairman, I beg to move.

Question on the Second Reading of the new schedules proposed, put and agreed to.

New schedules read the Second time.

ATTORNEY GENERAL: Mr Chairman, I move that new Schedules 2, 3 and 4 be added to the Bill.

Proposed additions

New schedule 2 (see Annex VII)

New schedule 3 (see Annex VII)

New schedule 4 (see Annex VII)

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

Long Title

ATTORNEY GENERAL: Mr Chairman, I move that the Long Title of this Bill be amended as set out in the paper circulated to Members.

The amendment to the Long Title relates to the Affiliation Proceedings Ordinance and the purpose of the amendment is to reflect the authenticated Chinese text of the Ordinance.

Mr Chairman, I beg to move.

Proposed amendment

Long title (see Annex VII)

Question on the amendment put and agreed to.

Question on Long Title, as amended, put and agreed to.

Council then resumed.

Third Reading of Bill

THE ATTORNEY GENERAL reported that the

LAW REFORM (MISCELLANEOUS PROVISIONS AND MINOR AMENDMENTS) BILL 1996

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

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

Bill read the Third time and passed.

Resumption of Second Reading Debate on Bill

MENTAL HEALTH (AMENDMENT) BILL 1997

Resumption of debate on Second Reading which was moved on 29 January 1997

MR LAW CHI-KWONG (in Cantonese): Mr President, I speak in my capacity as the Chairman of the Bills Committee on the Mental Health (Amendment) Bill 1997. The objective of the Bill is to provide better legal safeguards for the mentally incapacitated persons (MIPs), particularly the mentally handicapped persons. In order to deal with issues about the Bill as proposed by the Bills Committee and all the deputations, particularly from the Hong Kong Council of Social Service and the related parent groups, the Government has agreed to submit amendments to the Bill.

I am going to explain two major amendments, one of which seeks to expand the coverage of the definition of "relatives" in the Bill so as to provide adequate flexibility for those eligible persons to take action as necessary for the welfare of the MIPs. The Administration has agreed to move an amendment to include all relations by marriage such as the son or daughter's spouse, the parents-in-law and the brothers-in-law and sisters-in-law and so on in the definition of "relatives".

The other amendment relates to the types of people eligible for making guardianship applications. The Bills Committee proposed that guardianship application can be made by the MIPs' relatives, registered medical practitioners or public officers in the Social Welfare Department. Many of the deputations proposed to include the heads of non-governmental organizations or social workers as eligible persons for making guardianship applications. The Government explained that it is extremely difficult to make a legally enforceable and clear definition for non-governmental organizations or its heads. The Administration thinks that the Bill has provided adequate flexibility for the non-governmental organizations staff with whom the MIPs had resided to act as applicants if necessary.

Furthermore, if the MIPs really need guardianship, the Director of Social Welfare may be requested for guardianship application. As the Bills Committee also considers that there are no problem in the legal definition of the term "social workers" after the Social Workers Registration Bill was recently passed in the Council, the Administration agrees to include social workers as eligible persons for making guardianship applications after it has considered the suggestion. The Administration also accepts the suggestions made by the Hong Kong Bar Association and it agrees to include several provisions of the British Mental Health Act 1983 in the Bill to make the Ordinance more comprehensive. The provisions deal with the dissolution of partnership and the rights and interests of management of estates of the MIPs.

Moreover, the Bills Committee members have also deliberated to use, for example, the "mentally incapacitated persons" with the Chinese translation as the generic name of the mentally disordered and mentally handicapped persons. But after the Honourable Members have heard me read with such difficulties, they must know that the "mentally incapacitated persons" in Cantonese is very difficult to pronounce. Our Committee proposed that it seemed to be clearer to change it to the mentally disordered and mentally handicapped persons. It is also suggested that the term "concerned person" will be used to replace some of the details in the provision.

The Administration thinks that it is preferable to use a generic name in the Bill to refer to these two groups of people, that is the mentally ill or mentally handicapped persons, or else, the former will be required to repeat as many as 200 times in the Bill. The Administration does not support the suggested term, and considers that the Chinese version of the term used now is excellent, and other suggestions such as translating the "mentally incapacitated persons" as the "mentally/intelligence incapacitated persons" are considered by the Administration to be too long. It insists that the existing translation is the most preferable. The Bills Committee and all the deputations finally agree that the present form remain unchanged after they have considered the explanations by the Administration.

Furthermore, the parent groups are concerned that the Bill provides that the barristers or solicitors may attend the procedures before the Guardianship Board on behalf of the people who make the guardianship applications. They think that it is most important for the Guardianship Board to interview the applicants to confirm if the person is fit for being a guardian. Therefore, the

Administration agrees that the provision can be included in the Guardianship Board rules, but not in the principal legislation. I hope that the Administration can implement this suggestion as soon as possible.

Moreover, the Administration has elucidated some concerns brought about by the deputations. I also hope that these clarifications can be put on record. Some parent groups are concerned whether people with autism, particularly those with average intelligence quotient, will be safeguarded by this legislation. The Administration explained that under the amended definition of "mentally disordered" in the Bill, the mentally handicapped or mentally disordered with autism will be safeguarded by this Bill. As explained by the Hospital Authority colleagues, people with autism with average intelligence quotient is still impaired in certain forms, including the deficiencies of social and communication capabilities, or repetitive behaviours. If these people are proved by medical officers as mentally disordered, they will be safeguarded by the existing and amended provisions of the Ordinance.

Another area of concern is related to the management of the financial affairs of the MIPs. The present approach provides that some non-governmental organizations staff will manage the MIPs' financial affairs through informal means, for example, to help them receive social security assistance payment. Some deputations are concerned whether it will continue to adopt the present approach after the Bill is enacted. The Administration has expressed that if the cases concerned are not controversial, when it continues to adopt the approach of managing the financial affairs as an informal trustee, it will not be considered as a breach of law. It is not a statutory provision and it is not a must to make guardianship applications for the MIPs. However, if the related people think that it is more preferable to set down formal arrangements, and an applicant eligible to make application under the Bill is available, they can also apply to be appointed the trustee of the estates of the MIPs.

Mr President, as a representative of the Social Welfare sector, I wish to express the views and feelings of the professional in the sector. The agencies, social workers and parents in the Social Welfare sector started to fight for legal safeguards for the mentally handicapped ten years ago. They requested that independent legislation other than the Mental Health Ordinance be introduced to safeguard the mentally handicapped. Despite years of struggles, their efforts came to no avail as they did not receive support from the Administration. Eventually, the parent groups made concession and turned to support the

amendments proposed by the Administration on the basis of the existing Mental Health Ordinance. We very much appreciated the efforts and patience of the parents in the course of their struggle in the past ten years. Today I hope that the Bill can be approved, and the Administration will expeditiously draft the relevant details and rules to implement the protection offered by the Bill.

Mr President, with these remarks, I commend this Bill to all Honourable Members.

SECRETARY FOR HEALTH AND WELFARE: Mr President, as I explained when I introduced this Bill into this Council on 29 January this year, the objective of the Bill is to strengthen the provision with a view to providing better legal safeguards for mentally disordered and mentally handicapped persons as well as people caring for them. The Bill aims to remove the misconception that mental disorder and mental handicap are the same by redefining the existing definition of mental disorder and introducing a new definition for mental handicap in the Mental Health Ordinance.

The Bill also specifies more clearly the powers of the High Court in dealing with cases involving management of the property and affairs of mentally disordered and mentally handicapped persons. Moreover, the provisions on guardianship for mentally disordered and mentally handicapped adults are improved with the establishment of an independent Guardianship Board and additional powers conferred on guardians.

The Bill also specifies the procedures and circumstances under which a doctor or dentist can administer treatment without the guardian's consent and the administration of special treatment with the High Court's approval.

I would like to thank members of the Bills Committee, especially its Chairman, the Honourable LAW Chi-kwong, for their hard work in examining the Bill. I should also thank members of the Welfare Panel and its Subcommittee on Legislation for the Mentally Handicapped, especially its Chairman, the Honourable Fred LI, for their keen interest and advice given to this Bill.

Mr President, the Administration has responded positively to most of the ideas put forward by members of the Bills Committee, as well as representatives of welfare organizations, parents groups and the legal and medical professions. As a result, I will be moving a total of 26 amendments at the Committee stage later this afternoon. I should like to take this opportunity to thank those concerned for their valuable comments and suggestions which helped to fine-tune the provisions of the Bill in the interests of the welfare of mentally disordered and mentally handicapped persons.

Mr President, the Bill and the proposed amendments to it are supported by all concerned sectors of the community. Indeed, they look forward to an early enactment of the Bill. Mr President, with these remarks and subject to the amendments as set out in the papers circularized to Members under my name, I commend this Bill to Honourable Members. Thank you.

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

Bill read the Second time.

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

Committee stage of Bill

Council went into Committee.

MENTAL HEALTH (AMENDMENT) BILL 1997

Clauses 1, 2, 4 to 7, 10 to 31, 33 to 42, 44 to 49, 51, 54 to 59 were agreed to.

Clauses 3, 8, 9, 32, 43, 50, 52 and 53

SECRETARY FOR HEALTH AND WELFARE: Mr Chairman, I move that clauses 3, 8, 9, 32, 43, 50, 52 and 53 be amended as set out in the paper circularized to Members.

Clause 3 is amended to further expand the coverage of the definition of "relative" so that more people are eligible to take action as necessary for the welfare of mentally disordered and mentally handicapped persons.

In response to the advice of the legal profession, clause 8 is amended by the addition of two new provisions. The first provision provides the High Court with greater flexibility than the provision under the existing section 19 of the Mental Health Ordinance in dealing with dissolution of partnership involving a mentally disordered or mentally handicapped person. The second provision empowers the High Court to preserve other persons' interests in the property of a deceased mentally disordered or mentally handicapped person.

Clause 50 is amended to include social workers in the list of eligible persons who can make guardianship applications.

Clause 52 is deleted as section 68 of the Mental Health Ordinance has recently been amended by the new Justices of the Peace Ordinance. The remaining amendments aim to improve the text of two sections of the Mental Health Ordinance and five clauses of the Bill.

Mr Chairman, I beg to move.

Proposed amendments

Clause 3 (see Annex VIII)

Clause 8 (see Annex VIII)

Clause 9 (see Annex VIII)

Clause 32 (see Annex VIII)

Clause 43 (see Annex VIII)

Clause 50 (see Annex VIII)

Clause 52 (see Annex VIII)

Clause 53 (see Annex VIII)

Question on the amendments put and agreed to.

Question on clauses 3, 8, 9, 32, 43, 50, 52 and 53, as amended, put and agreed to.

New clause 6A	Provision as to notice of inquiry
New clause 12A	Partner found to be mentally disordered

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

SECRETARY FOR HEALTH AND WELFARE: Mr Chairman, I move that new clauses 6A and 12A be read the Second time.

New clause 6A amends section 8 of the Mental Health Ordinance so that it will be consistent with the amended section 7 of the same Ordinance as approved by Members.

New clause 12A deletes section 19 of the Mental Health Ordinance consequent upon Members' earlier approval to amend clause 8.

Question on the Second Reading of the clauses proposed, put and agreed to.

Clauses read the Second time.

SECRETARY FOR HEALTH AND WELFARE: Mr Chairman, I move that new clauses 6A and 12A be added to the Bill.

Proposed additions

New clause 6A (see Annex VIII)

New clause 12A (see Annex VIII)

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

Schedules 1 and 2

SECRETARY FOR HEALTH AND WELFARE: Mr Chairman, I move that Schedules 1 and 2 be amended as set out in the paper circularized to Members. Members have just approved new clause 12A to delete section 19 of the Mental Health Ordinance. Reference to section 19 in Schedule 1 of the Bill should therefore be deleted.

Amendments to Schedule 2 are mainly consequential amendments to recently-enacted legislation including the Criminal Procedure (Amendment) Ordinance 1996, the Enduring Powers of Attorney Ordinance, the Powers of Attorney (Amendment) Ordinance 1997 and the Coroners Ordinance. There are also consequential amendments to the Chinese version of the Bill arising from the recent authentication of the Chinese text of the Rules of Supreme Court and the Criminal Procedure Ordinance.

Mr Chairman, I beg to move.

Proposed amendments

Schedule 1 (see Annex VIII)

Schedule 2 (see Annex VIII)

Question on the amendments put and agreed to.

Question on Schedules 1 and 2, as amended, put and agreed to.

Schedule 3 was agreed to.

Council then resumed.

Third Reading of Bill

THE SECRETARY FOR HEALTH AND WELFARE reported that the

MENTAL HEALTH (AMENDMENT) BILL 1997

had passed through Committee with amendments. She moved the Third Reading of the Bill.

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

Bill read the Third time and passed.

Resumption of Second Reading Debate on Bill

NURSES REGISTRATION (AMENDMENT) BILL 1997

Resumption of debate on Second Reading which was moved on 19 February 1997

DR LEONG CHE-HUNG (in Cantonese): Mr President, I speak in support of the Nurses Registration (Amendment) Bill 1997 on the basis of the several principles as follows:

Firstly, all medical-personnel-related registration ordinances should be standardized, and the Medical Registration Ordinance, as well as the Midwives Registration Ordinance which we passed last week are developed towards this direction; secondly, the Nurses Registration (Amendment) Bill seeks to meet the needs by expanding the number of members of the Nursing Council (the Council), and to facilitate the operation and various types of work of the Council; thirdly, the Bill increases the number of lay members in the Council from one to two, not only to meet the needs, but also to enhance the transparency of the Council; and

fourthly, which I think is more important, is the introduction of directly elected components to allow people of the profession to have a chance to join in the Council. It is obviously a step forward to professional autonomy.

We all know that the existing Nursing Board, of which all the members are appointed by the Governor, will be renamed as the Nursing Council in the future. Of course, the majority of these members come from the nursing profession. As they are all appointed by the Governor, naturally they are accountable to the Governor, and not to their profession. This may hamper the development of professional autonomy. When the Panel on Health Services discussed this Bill, some associations of nurses objected to the introduction of direct election because they were not adapted to it. It really surprised me.

Although I have said that I support the Bill, I still think that the Bill has some problems. I hope that two of the problems which may not be followed up today, will be resolved in future. Firstly, I think that the introduction of six directly elected members are too few because the number of directly elected members is still below 50%, and the goal of professional autonomy has not been achieved. During the introduction of the Social Workers Registration Bill, this Council has carried out lengthy discussion. It finally agreed that the Council should have over 50% of the members within the profession returned from elections. I hope that if the Bill is amended in future, the number can be increased. The second point, which I think will cause more problems, is that there are only two lay members on the Council. I shall move a Committee stage amendment later to increase the number to three.

The reason for my so doing is purely for the operation of the Council, and not for political moves or for getting the merits as some people may have guessed. As we all know that one of the important duties of the Nursing Council is to conduct hearings when people in the trade are accused of violating codes of the profession. When the Council conducts hearings, it will certainly want the community to see that it adopts fair and open means, and not operates behind closed door. Naturally, the best way is to include lay members to assume the responsibilities of observing its operation. As we know well, there are two mechanisms responsible for hearing under the Nursing Council. One is the Preliminary Investigation Committee, and the other is the full Nursing Council group. These two hearing mechanisms need the participation of lay people to increase transparency.

The Bill provides that any member who has sat on the Preliminary Investigation Committee cannot hear the same case in the hearing group of the full Nursing Council. If there are only two lay members, when one of them is out of town or cannot attend for personal reasons, there will obviously be no layman to play the role of notaries in that hearing of the full Council. Therefore I shall move an amendment on this to the effect that the number of lay members is increased to three.

Mr President, as I have just said, I shall move a Committee stage amendment later to increase the number of lay members from two to three. I wish to make it clear to the nursing profession that, by so doing, we purely hope that the Nursing Council can operate smoothly and win acceptance by the public.

Thank you, Mr President.

MR MICHAEL HO (in Cantonese): Mr President, I speak in support of the Bill, and I hope that I can make the last effort to persuade our Honourable colleagues to support the Bill. I was told, during my discussion on the Bill with some colleagues earlier, that they intend to abstain from voting because they had heard many different views. I very much wish to persuade them to support the Second Reading of the Bill. Before our scrutiny of the Bill, we have received a letter from the Hong Kong Nurses (Public Service) General Union. A number of points have been made in the letter, one of which is that changes, which include the introduction of direct election, come too quickly. I hope that I can provide some information for Members' reference.

The existing Nursing Board of Hong Kong started discussing the introduction of direct election as early as 1993, or three to four years ago. In the second half of 1993, the Nursing Board of Hong Kong came to some initial conclusions, which included introducing an election mechanism. I have circulated some newspaper-cutting materials for Members' reference, and I now have with me six pieces of newspaper-cutting materials dated 28 December 1993. They appeared on the *Hong Kong Standard, Ming Pao Daily News, Tin Tin Daily News, Oriental Daily News, Sing Tao Daily, and Wah Kiu Yat Pao*, which has

been closed down. They reported in considerable length that the Nursing Board was prepared to introduce the one-man-one-vote election to return some members. Moreover, On 3 February 1994, Chairman WONG Ho of the Hong Kong Nurses (Public Service) General Union openly debated with me in a column of *Ming Pao Daily News* about the timing for the introduction of direct election. Please give this a thought. From open discussions on the matter in the press in 1993, formal approval of the decisions by the Nursing Board in early 1994, to the submission of the Bill to this Council after such a long time, the preparation period in fact lasted over three and a half years. I daresay that such a long preparation period is very sufficient, so the proposals in the Bill do not come all of a sudden. Besides, it was suggested in the deliberation that the age requirement for registration of nurses be lowered. The Bill contains no provisions on the age for registration. It just repeals the age requirement, which is 21 at present. I believe Members know that the age requirement of 21 was a product of the 1960s. The statutory age of a Hong Kong adult is 18 now. I hope that we may consider whether we must provide for the registration age through legislation, or we should leave this issue to the profession to decide for themselves. I hope that Members will support the amendments proposed today.

The amendment to be introduced by Dr the Honourable LEONG Che-hung later will increase the number of lay members from two, as suggested by the Bill, to three. I indeed hope that I can provide a piece of information here. After Dr LEONG Che-hung proposed this amendment, the Nursing Board circulated an internal paper among its members to ask each of them whether they would support Dr LEONG Che-hung's amendment. The result was that eight votes were in favour of the amendment, two against it and one abstained. In other words, the amendment to be moved by Dr LEONG Che-hung today has won support from members of the Nursing Board. Therefore, I very much hope that we will support the Second Reading of the Bill and Dr LEONG Che-hung's amendment when we cast our votes.

These are my remarks.

MR MOK YING-FAN (in Cantonese): Mr President, the Hong Kong Association for Democracy and People's Livelihood supports the Nursing Registration (Amendment) Bill 1997 for the following reasons. Firstly, we think that if the Bill is enacted and become formal legislation, it will enhance the

professional status of the nurses, and effectively improve the quality of medical services, as well as enhance the representation on the Nursing Council.

Moreover, we shall also support Dr LEONG Che-hung's amendment on increasing the number of lay members to three as the public will think that the amendment can enhance the transparency and accountability of the Nursing Council and protect the public interest on medical services.

Mr President, these are my remarks.

MR LAW CHI-KWONG (in Cantonese): Thank you, Mr President. We shall briefly put forward some opinions on the Nurses Registration (Amendment) Bill.

Two issues have been studied during the discussion in the Council on the other related professionals registration bills, which Dr LEONG Che-hung mentioned during his speech. The first is the number of layman representatives. When several similar bills were discussed in this Council in the past, it was mentioned that the percentage of 20% could be considered. The second issue is whether members returned by direct election in the profession should make up over half of the Council. Regarding this Bill, we have to consider whether these parameters can be met. After my calculations, I find that the number of members of the Nursing Council should be increased to 40 if we are to meet the parameters, that is, elected members and lay members will be increased to 50% and 20% respectively.

Why should this be? The problem lies in the existing legislation, under which many members are appointed by the Governor to represent various bodies, resulting in too many designated bodies with interests in the Council. I think that the problem is very complicated. Hence we do not propose to change the number of directly elected members. We all know that our colleagues in this Council have many different ideas. As the first step, it is already a big step forward if six out of the 20 members are elected, although the objective of professional autonomy has not been achieved yet. However, future developments should be directed at having half of its membership returned by election.

The second issue is about the number of lay members. Dr the Honourable LEONG Che-hung proposed to increase the number from two to three, and we agree with this. In fact, we think that it is most desirable to increase the number to four, but this is necessary only when the numbers of members in other groups are increased. In that case, the membership of the Nursing Council should be increased to at least 40. I hope that when we review the developments in future, we can try to appoint fewer representatives from the so-called designated bodies so that the numbers of lay members and members returned by election in the profession can be increased. Thank you, Mr President.

SECRETARY FOR HEALTH AND WELFARE (in Cantonese): Mr President, I am very grateful to the House Committee for agreeing not to set up a Bills Committee to scrutinize the Nurses Registration (Amendment) Bill 1997, so that the Second Reading debate on the Bill can resume as soon as possible. The purpose of the Bill is to improve the management structure of the nursing profession as well as strengthen the functions of that structure, so that the nursing profession can provide services of higher quality.

We propose to amend the Nurses Registration Ordinance with regard to the name, composition and mode of operation of the Nursing Board of Hong Kong (the Board) as well as the powers to exercise disciplinary actions. At present, the Board consists of 17 members, all appointed by the Governor. In order to encourage more nurses to participate in the affairs of the profession and enhance the representativeness of the management structure, we propose to increase the total number of members to 20. Of these, six members shall be elected by registered nurses and enrolled nurses and six shall be appointed by the Governor. The number of lay members shall be increased from one to two. Another two members, nominated by tertiary institutions which have a nursing programme, shall be appointed, while other members shall be representatives from the Health Department and the Hospital Authority. The Nursing Board of Hong Kong shall be renamed the Nursing Council of Hong Kong (the Council). We propose to increase the penalties and terms of imprisonment under the Ordinance to maintain the deterrent effect of the penalties and reflect the seriousness of the relevant professional offences. At present, although full-time Government nurses have recognized professional qualifications, they may be exempted from registration or enrolment. We propose to remove the relevant exemptions, since

we consider that these Government employees should be regulated by the provisions of the Ordinance as other nurses. In addition, we propose to remove the minimum age requirement for registration and enrolment in the provisions. In our view, to qualify for registration or enrolment, the persons concerned should have obtained the professional qualifications of a recognized training course, rather than attaining a certain age. The Bill also proposes to transfer some of the powers for making subsidiary regulations currently exercised by the Governor in Council to the Secretary for Health and Welfare and to the Council. This amendment will simplify procedures and encourage members of the nursing profession to participate in the affairs of the profession.

The various proposed amendments of the Bill have been discussed in the Panel on Health Services. The introduction of six directly elected members and the removal of the minimum age requirement for registration and enrolment have aroused the most concern. Many nurse deputations which attended the meetings of the Panel support these two proposals. They consider that elections can ensure that the Council would be able to represent the views of various sectors. The proposal to remove the age requirement is also considered appropriate, since the legal age of majority has been lowered from 21 to 18, and all nurses must attain the professional standards set by the Board and have nursing ability before they can be registered. As for deputations which raised objections, they consider that the members should be nominated by nursing organizations, instead of being directly elected. They also think the minimum age requirement can ensure that nursing personnel are mature enough to handle the physical and mental pressure resulting from the work of caring for patients. Nevertheless, we still consider the proposals of the Bill to be appropriate. The introduction of elected members can encourage professional nurses to participate actively in the affairs of the Board. We have retained six appointed members to ensure that the Board will have views from different sides. As regards the question of age, nurses have to receive systematic training and they already possess the skills required. The registration or enrolment of nurses by the Administration implies an official recognition of their professional standards. Therefore, we do not think it necessary to set a minimum age for registration and enrolment. Apart from the abovementioned proposals in the Bill, we will move several technical amendments at the Committee stage. I hope that Members will support the Bill in order to improve the operation and management system of the Nursing Council of Hong Kong and enhance the standards and quality of nursing services.

Thank you, Mr President.

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

Bill read the Second time.

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

Committee stage of Bill

Council went into Committee.

NURSES REGISTRATION (AMENDMENT) BILL 1997

Clauses 1, 2, 3, 5 to 19 and 21 were agreed to.

Clause 4

SECRETARY FOR HEALTH AND WELFARE (in Cantonese): Mr Chairman, I move that clause 4 of the Nurses Registration (Amendment) Bill 1997 be amended as set out in the paper circularized to Members. First, I propose to amend the Chinese translation of a term in clause 4, substituting the course name "護理" for "護士管理".

Proposed amendment

Clause 4 (see Annex IX)

Question on the amendment put and agreed to.

DR LEONG CHE-HUNG (in Cantonese): Mr Chairman, I move that clause 4 be further amended as set out in the paper circularized to Members. As I have

explained, the purpose of making further amendment to clause 4 is to increase the lay members from two to three. I am glad to hear the Honourable Michael HO, a representative of the Nursing sector, supports the amendment, and to hear no objections. I am also glad to hear that the Nursing Council supports the amendment and it reflects the spirit of professional autonomy of the nurses. I hope that my colleagues in the Legislative Council will cast votes for the amendment on the basis of their spirit of professional autonomy.

Proposed amendment

Clause 4 (see Annex IX)

SECRETARY FOR HEALTH AND WELFARE (in Cantonese): Mr Chairman, with regard to the amendment moved by Dr the Honourable LEONG Che-hung, I have already consulted members of the Nursing Board of Hong Kong through the secretary of the Board. I know that most members agree to the amendment moved by Dr LEONG. Since the professional body, the Nursing Board of Hong Kong, agrees to the addition of one lay member, the Government will not object to Dr LEONG's amendment.

Question on the amendment put and agreed to.

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

Clauses 20 and 22

SECRETARY FOR HEALTH AND WELFARE (in Cantonese): Mr Chairman, I move that the clauses specified be amended as set out in the paper circularized to Members. It is proposed to amend clause 20. The original text does not clearly explain registration matters which include registration and enrolment. I propose to make this amendment clearly stating that the Nursing Council of Hong Kong may by regulation provide for registration and enrolment. We also propose to repeal the original subsidiary regulations. The clause will officially come into force only after the drafting and passing of new subsidiary regulations to coincide with the time of commencement of the regulations.

Proposed amendments

Clause 20 (see Annex IX)

Clause 22 (see Annex IX)

Question on the amendments put and agreed to.

Question on clauses 20 and 22, as amended, put and agreed to.

New clause 23	Transitional powers of Council
New clause 24	Repeal

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

SECRETARY FOR HEALTH AND WELFARE (in Cantonese):Mr Chairman, I move that new clauses 23 and 24 as set out in the paper circularized to Members be read the second time. I propose to add clauses 23 and 24. Apart from some refinements of the text, they provide that the appointment of the original members of the Nursing Board of Hong Kong shall remain in force after the new Ordinance came into operation, until the expiration of their terms or until the members resign. They also provide that the original members of the Board shall have the power to make detailed regulations to provide for the first election notwithstanding that it lacks the elected members. Thank you, Mr Chairman.

Question on the Second Reading of the clauses proposed, put and agreed to.

Clauses read the Second time.

SECRETARY FOR HEALTH AND WELFARE (in Cantonese): Mr Chairman, I move that new clauses 23 and 24 be added to the Bill.

Proposed additions

New clause 23 (see Annex IX)

New clause 24 (see Annex IX)

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

Council then resumed.

Third Reading of Bill

THE SECRETARY FOR HEALTH AND WELFARE reported that the

NURSES REGISTRATION (AMENDMENT) BILL 1997

had passed through Committee with amendments. She moved the Third Reading of the Bill.

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

Bill read the Third time and passed.

Resumption of Second Reading Debate on Bill

PLACES OF PUBLIC ENTERTAINMENT (AMENDMENT) BILL 1997

Resumption of debate on Second Reading which was moved on 5 March 1997

MRS SELINA CHOW (in Cantonese): Mr President, the Second Reading of the Places of Public Entertainment (Amendment) Bill 1997 is resumed today. Before I go to my speech, I must apologize and express my gratitude to the Honourable colleagues and to the Secretary for Broadcasting, Culture and Sport. I must apologize because I moved a motion to adjourn last time to allow more time for the Legislative Council to scrutinize the Bill. In fact, it has delayed the

legislation procedures, but not for too long. I must apologize that Members may be somewhat shocked or faced with some inconvenience. Therefore, I thank my colleagues as the majority of them are so understanding towards the movie operators' worries and difficulties and agree to adjourn the Second Reading of the Bill.

I am glad to tell Members that our efforts bear fruit because the two municipal departments agree to speed up the process of issuing the theatre licence after they have consulted the Buildings Department and the Fire Services Department. With effect from 1 August, it will adopt new procedures similar to the system of licence issuance of food stalls to deal with the matters of licence issuance of theatres. I wish to state clearly that the Bill authorizes the two municipal councils to ban and close down any illegal places of public entertainment, and I have no doubts towards this principle. However, I am worried about the departments of law enforcement and licence issuance. The administrative aspect may totally be divorced from actual and commercial considerations because of dictatorship or bureaucracy and the result is that the theatre operators suffer from unfair treatment. Obviously there were many unfair cases in the past, but before related problems are resolved, it is really worth discussing or even not appropriate to authorize these departments the power to close the theatres. When the Administration resumes the Second Reading of the Bill today, the information from the Broadcasting, Culture and Sport Branch shows that the two municipal departments will speed up and smoothen the procedures of approval in five areas and I warmly welcome this. I specially welcome these policies because they have responded to a large degree to the ridiculous examples I have pointed out during my last speech. I hope that the Secretary for Broadcasting, Culture and Sport can introduce these policies to each Member. However, I think it is worth mentioning that these new procedures have clearly listed the procedures for each application and the time limit for the government departments to handle an application, so that the application will not be delayed endlessly. Moreover, if a theatre does not conform to the standard requirement, the Government has to state the problem and make suggestions on improvements so that the operator will know not only that it has failed to conform to the requirements, but also how to meet them. The other aspect which is worth our compliments is that the three licence issuing departments will join hands to make field inspections. Although this has not yet materialized my idea that one department would be responsible for the whole process, to a large extent, it has solved the problem of delay caused by each department making its own inspections and granting approval. As regards the

three-level verification system for safety of buildings to be introduced by the Buildings Department, I am not clear about the arrangement details. In replying to my letter, the Broadcasting, Culture and Sport Branch advises that this verification system is in fact equivalent to the provisional licence issuance system. The two municipal departments have also considered an amendment to the legislation to allow further issue of a provisional licence when necessary. Mr President, as members of the public, we hope that there are more safe theatres for our choice and we also hope that we can watch movies in a theatre that is formally licensed. Therefore, we certainly think that a good licence system is necessary. Only through this means can our safety be safeguarded. Setting the mind of the public at ease will enable the operators to a certain extent to attract more movie fans to watch movies in the theatre. This will help save the movie market during this low tide.

Mr President, I speak to support the resumption of Second Reading of this Bill.

MR MOK YING-FAN (in Cantonese): Mr President, on behalf of the Urban Council, I support the Places of Public Entertainment (Amendment) Bill 1997 introduced by the Administration. As the Honourable Mrs Selina CHOW said, the Third Reading of the Bill was delayed because of some procedural problems. But the delay does not matter very much. What is most important is the efforts of all parties concerned and the passage of the Bill by this Council today. After further discussions between various departments and cinema operators, the problems were eventually resolved. To describe the situation in my own words, "the clouds are dispelled and the sun is seen". The essence of the Bill empowers the two Municipal Councils, that is, the Urban Council and the Regional Council, to prohibit and close any cinema in case the operators fail to comply with the requirements laid down by the authorities and keep stalling their decoration work. In the past, however, the two Councils were not empowered to order the closure of these places as there was no such provision in the relevant ordinances. As a matter of fact, we can see that in both the urban area and the New Territories, there are some individual cinemas which have remained unlicensed for a year. From the perspective of public interest, this should not be tolerated. Due to the enactment of this legislation and, I believe, a higher degree of alertness on the part of the departments concerned, they would like to strengthen co-operation and communication with the cinema operators in order to make suitable changes and modifications to the procedural arrangement with a

view to serving the public better. The two Municipal Councils will also look into the possibility of issuing provisional licences and discussion will be held later. I indeed hope that there is no need for the two Municipal Councils to invoke this legislation and with the co-operation of the cinema operators and the Administration, the public will be able to enjoy going to the cinema. With these remarks, I support the Bill. Thank you, Mr President.

MR NGAN KAM-CHUEN (in Cantonese): Mr President, being a member of the Regional Council, I speak in support of the Places of Public Entertainment (Amendment) Bill 1997. All places of public entertainment in the New Territories are licensed by the Regional Council. Yet when faced with certain unlicensed places of public entertainment, such as unlicensed cinemas, the Regional Council, the licensing authority, has no power to apply for a closure order to close these premises. In other words, the Regional Council lacked corresponding powers to achieve the objectives laid down in the Ordinance and as a result, it was unable to eliminate any unlicensed keeping or use of place of public entertainment. The incompatibility between powers in law enforcement and objectives of legislation has posed potential danger to the public. While the fire tragedy in a karaoke in Prat Avenue in Tsim Sha Tsui still remains fresh in our memory, we can imagine that if, due to ineffective regulation, fires broke out in places of public entertainment such as cinemas and assembly halls which can accommodate a large number of people, some precious lives could be taken away.

The amendment Bill empowers the two Municipal Councils to apply to a magistrate for the grant of a Prohibition Order to prohibit the keeping or use of place of public entertainment. In the event that such Order is not complied with, the two Municipal Councils may apply for a Closure Order to close such places. In other words, the Bill just endows the licensing authorities with the last resort to enforce the law in order to have a deterrent effect. It will not create any unfair treatment to the owners of these premises because the two Municipal Councils have to give the premises owners prior notice of their intention to apply for a Prohibition Order or a Closure Order. Moreover, during the process, any interested party would be given sufficient opportunity to make presentation to the authorities concerned. When the Regional Council was being consulted about the Bill, Members unanimously supported and endorsed the amendments which would enable the Regional Council and the Regional Services Department to

have adequate statutory powers to enforce licensing requirements laid down in the legislation and effectively ensure the safety of users of these premises.

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

SECRETARY FOR BROADCASTING, CULTURE AND SPORT (in Cantonese): Mr President, the Second Reading of this Bill was originally resumed on 7 May, but was later adjourned for reasons just mentioned by the Honourable Mrs Selina CHOW to allow Members time to scrutinize the licensing procedures in this regard.

Today, I am pleased to confirm on behalf of the two Municipal Services Departments their commitment to streamline the licensing procedures applicable to cinema licensing.

Starting from 1 August this year, an improved licensing system, similar to that for restaurant licensing, will be introduced to handle applications for cinema licensing. The Hong Kong Theatres Association, which represents the cinema trade, has been informed of the new measures and has given its support.

The said new measures are purely administrative arrangements, and as regards the formal introduction of a provisional licensing system, the two Municipal Councils are considering the legislative amendments required, but this should not hold up the passage of the Bill.

I will propose some minor amendments at the Committee stage.

Thank you, Mr President.

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

Bill read the Second time.

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

Committee stage of Bill

Council went into Committee.

PLACES OF PUBLIC ENTERTAINMENT (AMENDMENT) BILL 1997

Clauses 1, 2, 3, 5 and 6 were agreed to.

Clause 4

SECRETARY FOR BROADCASTING, CULTURE AND SPORT (in Cantonese): Mr Chairman, I move that clause 4 of the Bill be amended as set out in the paper circularized to Members. The amendments seek to draft improvements to the Chinese text of the clause.

Proposed amendment

Clause 4 (see Annex X)

Question on the amendment put and agreed to.

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

Council then resumed.

Third Reading of Bill

THE SECRETARY FOR BROADCASTING, CULTURE AND SPORT reported that the

PLACES OF PUBLIC ENTERTAINMENT (AMENDMENT) BILL 1997

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

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

Bill read the Third time and passed.

Resumption of Second Reading Debate on Bill

PUBLIC HOLIDAY (SPECIAL HOLIDAYS 1997) BILL

Resumption of debate on Second Reading which was moved on 23 April 1997

DR PHILIP WONG (in Cantonese): Mr President, as Chairman of the Bills Committee on Public Holiday (Special Holidays 1997) Bill, I wish to report to the Honourable Members the deliberations of the Bills Committee.

The Bill seeks to declare 1 and 2 July 1997 as additional public holidays for the purpose of the Holidays Ordinance (Cap. 149) and additional statutory holidays for the purposes of the Employment Ordinance (Cap. 57). These two days are the Establishment Day of the Hong Kong Special Administrative Region (SAR) Government and the day following Establishment Day.

The employers' and employees' associations, and the major trades consulted by the Bills Committee have not indicated objection to the Bill. However, in discussing the Bill, Members hold divergent views as to whether the Bill should be supported. The following are the major issues deliberated by the Bills Committee.

Members are disappointed that the Administration has not submitted the Bill to the Legislative Council earlier, notwithstanding that a list of general holidays for 1997 was published by the Administration in June last year. According to the Administration, it is normal practice to publish a list of general holidays more than one year in advance, and that separate legislation will be necessary if there are changes to those holidays provided in the Holidays Ordinance (Cap. 149) and the Employment Ordinance (Cap. 57). The

Administration explains that it takes time to thoroughly examine the legal implications before a Bill can be prepared for submission to the Legislative Council. Members are however not convinced by this argument.

On whether the Labour Advisory Board (LAB) had been consulted on the additional public holidays, the Administration confirms that this has not been formally raised for discussion at the LAB, although some LAB members have presented their views to the Preparatory Committee for the Hong Kong Special Administrative Region of the National People's Congress some time last year about designating 1 and 2 July 1997 as special holidays. In this regard, some Members consider that the Administration should consult the LAB on the issue of additional public holidays,

Members of the Democratic Alliance for the Betterment of Hong Kong (DAB) have raised concern as to whether the legislative arrangements for public holidays beyond 30 June 1997 have been discussed by the Sino-British Joint Liaison Group (JLG). The Administration has advised in response that the subject of public holidays has been discussed in the JLG since 1993, but the question of legislation has not been discussed with the Chinese side. As regards the outcome of JLG discussion on the subject, the Administration maintains the position that the contents of JLG discussions are confidential and cannot be released to the Bills Committee. In this connection, Members of the DAB regret that the Hong Kong Government has not been able to reach agreement with the Chinese side to enable the Bill to be introduced at an early stage.

In the course of deliberations, the Bills Committee notes that the policy decision of declaring 1 and 2 July 1997 has been made by the Preparatory Committee rather than the Hong Kong Government. As such most Members of the Bills Committee, including myself, with the exception of Members of the Democratic Party, consider it inappropriate for the Hong Kong Government to introduce the legislation on the additional holidays on behalf of the SAR Government, as the latter will shortly be established in a matter of days.

Opposite views are held by Members of the Democratic Party and the Hong Kong Confederation of Trade Unions, and they are in support of the Bill. They consider that the Bill should be enacted as soon as possible to avoid uncertainty and to enable the employers and employees to make arrangements for these two additional holidays. The Honourable LEE Cheuk-yan has pointed out the need to give advance notice to employers and employees for arrangements

with regard to substituted holidays in accordance with section 39(2) of the Employment Ordinance (Cap. 57). The Honourable Andrew CHENG is also concerned that the courts will need to plan in advance whether hearings should be held on 1 and 2 July 1997.

The Bills Committee has not reached any consensus as to whether the Bill should be supported for resumption of its Second Reading. Personally, I do not support the Bill, having considered what the Provisional Legislative Council has done so far in relation to the law on public holidays in 1997 and 1998. For the same reason, I find it unnecessary for the Hong Kong Government to introduce a similar law in this respect.

This sums up the main issues discussed by the Bills Committee. Mr President, as the Committee does not have a consensus view on the Bill, I request the Honourable Members to note the various concerns and views expressed by Members of the Committee.

I so submit.

MR CHAN KAM-LAM (in Cantonese): Mr President, ever since the Administration tabled the Public Holiday (Special Holidays 1997) Bill to this Council up to the resumption of the Second Reading debate, I have been of the view that this is a mistake. It is a mistake for the Hong Kong Government not to get the consent of the Chinese side to have this Bill enacted by this Council when it first discussed the general holidays for the Hong Kong Special Administrative Region (SAR). However, when the Provisional Legislative Council was going to legislate on this matter, the Administration, like a child losing its temper, put on a rival show by rushing this Bill to this Council. Not surprisingly, this has invited strong response from the Chinese side. In fact, as a government official said at the meeting of the Bills Committee, given that the Preparatory Committee for the SAR had agreed that 1 and 2 July 1997 be designated special holidays, the Administration issued the list of 1997 general holidays in last June according to its decision. Although the Administration considered that this list of general holidays was for reference only, all calendar printers, as well as calendars printed by this Council, have included and printed these two days as general holidays on relevant printed matters. As regards the general public, all walks of life, schools and other organizations, I do not think

that they would query whether these two days are statutory general holidays or not.

Mr President, government officials have time and again stressed that it is in the interest of Hong Kong people to have legislation on this matter as soon as possible and it would dispel employers' and employees' doubts as to whether these two days are holidays. I fully endorse this view. But the problem is that in May, the Provisional Legislative Council has already enacted the Holidays (1997 and 1998) Bill which provides for special holidays during these two years and it would be subject to ratification at midnight on 1 July. This piece of legislation has included all the contents of this Bill. Some Members are worried that employers and employees may not have sufficient time to arrange substituted holidays for these statutory holidays, whereas the courts may be unsure whether hearings should be conducted on these two days. I think these worries are unnecessary. On the contrary, the bill passed by the Provisional Legislative Council clearly covers not only these two days but also other days in the remaining period of the years. Hence proper arrangement can be made beforehand and this is exactly what this Bill has failed to consider.

Mr President, the Democratic Alliance for the Betterment of Hong Kong (DAB) is of the view that since the Provisional Legislative Council has already enacted the Holidays (1997 and 1998) Bill, there is no need for this Council to make duplicated efforts. Furthermore, the scope covered by this Bill is even narrower than the bill enacted by the Provisional Legislative Council. In view of this, at the meeting of the Bills Committee, I suggested that the Administration should withdraw this Bill. Unfortunately, the Administration refused to accept my suggestion. In face of strong objection from the Chinese side, the Administration still tabled this Bill to this Council. Obviously this would intensify the row with the Chinese side. But I do not think this Council should be used as a forum for political dispute. All along, for any major legislative amendments or localization matters which straddle 1997, it is usually processed with the endorsement from the Chinese and the British sides. But in this case, the British side tries to enact this Bill without the blessing of its counterpart and I think it is unacceptable.

Mr President, with these remarks, I oppose the Second Reading of the Bill.

MR HOWARD YOUNG: Mr President, I rise to speak on the Public Holiday (Special Holidays) Bill. In doing so, I can quote from a public document which is relevant to the contents of my speech.

Mr President, "In January 1996, a body known as the Preparatory Committee was set up by the Government of the People's Republic of China to prepare for the transfer of Hong Kong from the sovereignty of the United Kingdom to the People's Republic of China on 30 June 1997. On 23 March 1996, the Preparatory Committee announced that a provisional legislature of the Hong Kong Special Administrative Region (SAR) was to be established and would commence work following the selection of the Chief Executive of the Hong Kong SAR."

And then, "on 21 December 1996, the Government of the People's Republic of China announced a selection of 60 members of the provisional legislature foreshadowed in the 1994 decision of the Preparatory Committee." I think this is a mis-quotation. It should have read "NPC". And then, Mr President, "further meetings of the body were held in Shenzhen on 22 February 1997, 22 March 1997", and so on and so on, and according to this document, at least up to 31 May 1997.

"All those present at these meetings possess copies of the Standing Orders of the Hong Kong Provisional Legislative Council which were similar to the Standing Orders of the Hong Kong Legislative Council", and so on and so forth, and the members, it is alleged, used the designation of the words "the Honourable".

Mr President, I think all of these will come clear at my final quotation from this document: "At the meeting of the body on 12 April, those present purported to give a First Reading and a Second Reading to a document described as 'The Holiday (1997 and 1998) Bill'. This document was printed in the format substantially the same as a Legislative Council bill and subject to signing by the Chief Executive it purported to amend the law of Hong Kong from a date to be determined."

And then it goes on to say that "a holidays bill" — which is the bill we are debating today — "with the same subject, is currently before the Hong Kong Legislative Council." Now, the dates. Mr President, I would point out that the

discussion of the first bill in question was all done in the Provisional Legislative Council in Shenzhen before this Bill was put to this Council. So, therefore, it is quite clearly in the document I have here which says: "At the meeting on 10 May 1997, the body purported to give a Third Reading to the document described as 'The Holidays (1997 and 1998) Bill'." In other words, all due process of the formation of the Provisional Legislative Council, the standing orders, the procedures, everything, were in high conformity to the work of this Legislative Council.

Mr President, this document is not a copy of my speech written by my personal assistant but in fact it is an extract from the document put forward by a Mr NG King-luen of the Democratic Party who put in in the Supreme Court of Hong Kong making certain allegations and asking for a judicial review of the functions of the Provisional Legislative Council.

My purpose of bringing out these points here now, Mr President, is that it is clear to everyone that the holidays that we are talking about, that is 1 July and the 2 July, have already been included in a bill passed through certain legislative procedures elsewhere and gone through its third reading, of course subject to ratification on the 1 July. Therefore, Mr President, it is my view that it is inappropriate and unnecessary to have this bill tabled before this Council today, and I fear, Mr President, as this document says, as lodged in the Supreme Court, that the objective or the allegation is that the usurpation of a certain person of a certain office, is usurping the powers of this Legislative Council in lawmaking. I have a fear that if we vote "yes" to this Bill and pass it, then there may be someone who takes out a writ against us and claim that we are usurping the powers of the Provisional Legislative Council.

Therefore, Mr President, please, Members of the Liberal Party will not vote for this Bill and will abstain.

MR LEE CHEUK-YAN (in Cantonese): Thank you, Mr President.

The Honourable CHAN Kam-lam said a moment ago that it was wrong for the Administration to have this Bill presented. I also opine that the Administration is wrong, but it is wrong in terms of timing, not in terms of the act of presenting it. I say that the Administration has chosen an inopportune moment to present the Bill because it would have been endorsed if the

Administration had presented this Bill last year. Even if this Bill can be endorsed today, it is still a belated act. Yet it is better late than never. Agreeing to Mr CHAN Kam-lam's comment that the Administration is wrong, I do not, however, agree that the presentation of the Bill is wrong. Timing is the only thing wrong.

Mr CHAN Kam-lam also compared the Administration to a child losing his temper. If some of us think that the Administration is behaving like a child in this matter, I do urge Members to support this Bill instead of losing their tempers. We now have a problem here. Many colleagues who have spoken indicate that they will vote against this Bill. To me, it is like a situation in which Members are losing their tempers. In the end, all of us are losing ours too. I want to raise one point here. How do you explain to the public if you oppose this Bill? How come you say "yes" in Shenzhen on Saturday and "no" in Hong Kong today, in response to the same policy? How do you justify such a different approach in your voting on the same issue? What is wrong with it? Why can you not support the Bill in this Council which is the only legislature in Hong Kong under the recognition of Mr QIAN Qichen. Why can it not be passed in this Council?

Let me discuss this Bill from the legal point of view and from the rights of the workers. I shall start with the legal point of view. I know that many people have recently telephoned the Labour Department before calling our office to enquire whether 1 July and 2 July are general holidays. The Labour Department has replied that decision has yet been made. It is inappropriate to say that such a reply is wrong because it is in fact undecided. Even though the Provisional Legislative Council has already passed the relevant bill, it is still subject to ratification on 1 July. However, if this Bill is endorsed by this Council, the department concerned can definitely tell all workers in Hong Kong that both 1 July and 2 July are statutory holidays. Meanwhile there is no legal ground to say that these two days are holidays. Hence, how do the staff of the Labour Department respond to those enquiries? If this Bill is passed today, its legitimacy can be supported. As regards holiday arrangement, Mr CHAN Kam-lam said that arrangement could still be made. The fact is that if this Bill is not passed, we will not be able to know whether these two days are statutory holidays or not, in which case employers simply do not have to make any arrangement. Even if this Bill can be passed today, loss to some extent has been inflicted on the workers. Under the Employment Ordinance, a substituted holiday can be granted or chosen within the period of 60 days immediately

preceding or next following the statutory holidays. Now we have less than 60 days before 1 July to enable employers to grant or employees to choose a substituted holiday. We have lost the opportunity and as there is only about one week to go, and we have seven days preceding and 60 days following the statutory holidays instead of 60 days immediately preceding or next following the statutory holidays. Loss has already inflicted on the workers.

Thinking from the perspective of the rights of the labour, should we regard the endorsement of this Bill as an insurance for the workers? If we should, then what kind of insurance have we taken out? We have taken out an insurance against the peril that the Provisional Legislative Council has no legal basis. If this Bill is not passed by this Council but by the Provisional Legislative Council, and in case if there is a legal challenge against the status of the Provisional Legislative Council and the court rules that the Provisional Legislative Council is unlawful, the dispute over the statutory holidays on 1 July and 2 July would be to the detriment of the workers. If a person subsequently sues his employer for failing to pay him for these two days before realizing that the Provisional Legislative Council is an unlawful entity, he will be very disappointed to know that his claim cannot be entertained. If this Council passes this Bill, we have to a certain extent an insurance to protect the workers' interests from being sacrificed simply because the Provisional Legislative Council has no legal basis. We should all vote for this Bill for the sake of such insurance.

Lastly, I would like to point out that I have difficulty in understanding the speech given by the Honourable Howard YOUNG because the contents of his speech have confused right with wrong. Why does he think that someone will sue this Council for its lack of legal basis? What has he been doing as a legislator for so many years? If he says that this Council has no legal basis, I wonder if whatever he did in the past few years as a legislator is unlawful. We all know that it is impossible. We do not know why he says something like that to confuse truth and fallacy. This is really regrettable.

Thank you, Mr President.

MR ANDREW CHENG (in Cantonese): Thank you, Mr President.

When the Bills Committee deliberated the Public Holiday (Special Holidays 1997) Bill or even when the Bill was under the First Reading, there was

already some dissenting voice saying that this Bill was unnecessary. But there are also some colleagues who questioned why the Administration only tabled the Bill so late. Mr President, there is one thing which I feel very queer. If my colleagues are really criticizing the Administration for tabling this Bill so late, which is exactly what the Democratic Party and the Hong Kong Federation of Trade Unions have been criticizing, then we should pass this Bill as soon as possible to avoid further delay. There are less than 20 days remaining before 30 June. Those who had initially crticized the Administration for not submitting this Bill on time actually dragged on and on in the Bills Committee. They kept asking why the Administration did not answer their questions properly. They said that if their questions were not answered satisfactorily, deliberation or passage of the Bill would become impossible. Finally, excuses of this kind were used to criticize this Bill as being meaningless. If we really wanted the Administration to present this Bill early enough so that diaries could have been printed with 1 and 2 July as public holidays last June, we should pass this Bill as soon as possible. The setting up of the Bills Committee was a dilatory tactic used to drag the issue on and on until today. Mr President, had we not insisted on resuming the Second Reading debate of this Bill in the Bills Committee, it could have been delayed until next week. If that were the case, as the Honourable LEE Cheuk-yan has just said, the failure to pass this Bill would lead to a consequence detrimental to all workers and employees in Hong Kong.

Many of our colleagues say that we should not politicize the issue. But why did the Bills Committee turn the issue into a very complicated matter in spite of the fact that this is a very simple Bill without any technical complexity? The very same Bill was passed by the Provisional Legislative Council. But when it comes to this Council, I am afraid the same Members will, instead, vote against it. I really have difficulty in understanding why they have adopted two different approaches towards the same question about whether 1 and 2 July should be designated as statutory holidays. Are they behaving in a schizophrenic way? Does the Provisional Legislative Council really thinks that once they have passed a Bill on simple matters, this Council should not deal with similar legislation? Is this Council working on things they do not have to do, or simply narrow-minded? Mr President, the bills we pass today will have a far-reaching implications on the future Special Administrative Region (SAR) Government. Are you saying that the bills enacted by this Council today or in the past should neither be discussed nor passed by this Council? Many two-hat legislators in this Council say that what we are doing is equivalent to enacting legislation on behalf of the SAR Government. Was there any law enacted by

this Council in the past not for the future SAR Government and the SAR citizens? We are being criticized for "fighting for things to do which we should not be". May I ask who is politicizing this issue? I have repeated time and again in the Bills Committee that it was inappropriate to have 1 July and 2 July printed on the diaries as public holidays. Mr President, all public holidays have to be gazetted before they are tabled before this Council for enactment. We have to respect the law. As legislators, we cannot irresponsibly say that these two days have already been printed on all calendars and diaries as holidays and the Provisional Legislative Council will subsequently pass the relevant legislation and people will then know that these two days are public holidays.

Mr President, Hong Kong is an international financial centre. Banks have to decide whether their doors should be open on 1 July and 2 July. The question applies to the Judiciary, the magistracies and the courts. I have talked to those working in the Judiciary in order to know whether they will fill the slot for cases on 1 July and 2 July. It is not surprising for them to say that their Chief Justice has full powers to make decision on this. Have we ever thought about the accused? Mr President, this Bill will affect the enforcement of other statutory provisions. In many instances, we have to count the number of days before we can decide how to put up our defence in civil litigation. Under the Company Ordinance, the number of days is important in submitting documents of the companies. All these are affected by this Bill. We cannot simply dismiss its significance. Can we not use a clear mind here today to decide on the fate of this Bill? We might have duplicated our efforts in lawmaking, Mr President, but is it beneficial to the people of Hong Kong? I sincerely urge Members who happen to be Members of the Provisional Legislative Council to think twice on this issue. Please do not just raise your hands to show your approval for designating 1 July and 2 July as public holidays on a Saturday in the long past without debating it at all on the one hand, while adopting a delaying tactic in the scrutiny of this Bill today and at the meetings of the Bills Committee on the other. One day when the same Bill is presented by the Administration, you blame it for moving this Bill so late. I think this will only end up in jeopardizing the interests of the public, particularly employees of various sectors, who do not know if they are entitled to the holidays.

Mr President, Dr the Honourable Philip WONG, chairman of the Bills Committee, has just said that it is the view of the majority that it should be retained as a responsibility of the SAR Government. I hope our colleagues do not share his view. The Bills Committee only consists of five members. To

my understanding, with the exception of Mr LEE Cheuk-yan and me, the other three members are members of the Provisional Legislative Council. Three to two can hardly be said as a substantial majority. As this Bill seeks to designate 1 July and 2 July as public holidays, I urge colleagues to comprehend its contents thoroughly and be aware of its impact on the operation of Hong Kong as an international financial centre on these two days, as well as its far-reaching implication on all relevant ordinances and even the proper functioning of the Judiciary. I urge Members to think twice.

With these remarks, I support the Bill. Thank you.

MR LEUNG YIU-CHUNG (in Cantonese): Thank you, Mr President.

The Honourable Andrew CHENG and the Honourable LEE Cheuk-yan stated the importance of supporting today's motion by repeatedly elaborating their viewpoints from the labour rights. I have no doubt about their very sincerity in fighting for the rights of the labour. However, I do not know if it is offensive for me to be frank and straightforward. They are really too naive. I say so because no one is discussing this issue from the perspective of labour rights. Instead, everybody is expressing his agreement or disagreement to the Bill only to demonstrate their political stance.

We all know that the sooner you let the public know of these statutory holidays the better. Is it a good idea to announce today that tomorrow is a public holiday? Definitely the answer is no. So the sooner we start working on the Bill the better. Unfortunately, as the two Honourable colleagues has said, owing to the incessant wrangling between the British and Chinese Governments, we did not have the First and the Second Reading of the Bill until today. Consequently we are unable to make adequate preparation. Should the people of Hong Kong suffer the consequence of their dispute? Similar incidents did occur in the past. The Provisional Legislative Council is one of the best examples. It is still fresh in our memory that when the two Governments wrangled about the issue of the Provisional Legislative Council, they said that it was only a difference of views. To put it bluntly, they fell out. But we Hong Kong people have to involuntarily bear the evil consequence, which is the birth of an abnormal entity — the Provisional Legislative Council. The dispute we have today is only another example of the same kind. Once again, we have to bear the consequence arising from the two Governments' dispute. I want to

raise a question here. Why are we Hong Kong people often being fooled and manipulated? Whatever the two Governments do, the consequences we often have to take are undesirable or unwelcome. Why should we be burdened with these evil consequences? Why can we not genuinely legislate for the interests of the people of Hong Kong? The two Honourable Members deliberated this issue sincerely from the people's interests. But we do not actually need to be so today. In fact, everyone of us is discussing the issue in a way to demonstrate our political stance. Hence it is more appropriate for us to talk much less on labour rights and much more on politics in our debate.

Mr President, I think the debate we have today is something quite unusual. In deciding whether they should vote for or against a bill, the legislators do not consider the contents of the legislation. Instead, they consider from the political point of view, in particular, the legislators' own political stance. This is saddening and disappointing. What is the point of such legislative process or what does such mentality mean? What point does it have for the people of Hong Kong? The answer is absolutely in the negative. Everyone says that we should talk less about politics. But the actual situation is on the contrary. Politics is the theme of all subjects. Of course, I do not mind talking about politics because it is a matter of our concern and it has a bearing on our life and social relationship. However, I do urge my Honourable colleagues to ponder the impact the Bill will bring about for the people of Hong Kong and that is the most important thing.

Mr President, I support the motion on behalf of the Neighbourhood and Workers Service Centre. I also urge Members to pass this Bill soon for the benefit of the general public. Thank you, Mr President.

MR ALBERT HO (in Cantonese): Mr President, I would like to remind Members that apart from labour rights and some political considerations, there is an even more important area which we should address, and that is, the efficiency of the rule of law in Hong Kong, and the legal spirit and legal traditions of Hong Kong.

Why do I say this? I say this because I am afraid that some colleagues might tell us today that it is unnecessary to pass this Bill because the provisional legislature had already passed a similar bill and it would become law. So, we

should treat it as law. Our administration, institutions, courts, workers, employers and everyone will be instructed or led to regard a piece of document that has only gone through Third Reading, and is not even recognized by the Provisional Legislative Council as a formal piece of legislation to be the law. Then, everyone will have to be prepared that no cases will be heard in the courts, the banks and government departments will have a holiday on those two days, and everyone will make arrangements according to the instructions.

Mr President, this will set a very dangerous precedent for Hong Kong and will give Hong Kong people a wrong message that we will have a new way of doing things in future. People may think we can take something as law without thinking just because our Government or leaders have given an instruction, or just because certain authoritative persons have issued a directive to say that something is law. Then, we will act accordingly without even considering whether there is any legal basis for us to do so. I believe this will be fatal to our legal tradition, legal spirit and our legal system as a whole. Now, colleagues of this Council, who are also Members of the Provisional Legislative Council tell us that everyone, including the Administration, the courts and financial institutions can regard the legislation which has been passed by the provisional legislature as law. But, is this in line with our legal principles? I hope Members will think about this carefully.

We, legislators, should know what the law is. Only legislation endorsed by the legislature is legally binding, and only provisions which are legally binding can be used as directives, and the Government can only be able to make effective decisions if there are legal binding provisions. So, it is very dangerous and absurd to consider something which has not yet been passed by the legislature as the law just because some Members of this Council who are also Members of the Provisional Legislative Council tell the Government to ignore these issues, and that all bills passed by the Provisional Legislative Council would become law, and they guarantee that they would become law in future.

Mr President, I do not know whether the Honourable Howard YOUNG was joking, trying to be humorous, or what he was trying to do when he made his speech just now. He first quoted the statement of a member of the Democratic Party made through his representative lawyer in a proceeding against the Provisional Legislative Council, and he then applied his own argument to say that if this Council enacted the Public Holidays (Special Holidays 1997) Bill, Members of the Provisional Legislative Council may take a writ against us and

claim that we are usurping the powers of the Provisional Legislative Council. Mr President, unlike some people, I would not say it is wrong and that it would cause confusions or waste public funds. I would certainly not act in the same manner as our designated Chief Executive who applied pressure on the Legal Aid Department and the Judiciary and asked them not to carry out such proceedings because such proceedings will waste public funds. I would certainly not do that. Mr President, I welcome these challenges and would fully support any person who applies for legal aid. I hope someone will use public funds to clarify whether this Council has the power to enact this law. I am also sure that, in the hearts of the Members, they would have no doubts that this Council has the power to pass the Bill.

In fact, over the past few years, ever since the endorsement of the Sino-British Joint Declaration, this Council has enacted many pieces of legislation, and we can foresee that they will straddle 1997. Mr President, you are going to chair a series of meetings up to 27 June or even 28 June 1997, and during this period, we will have to enact more than 30 pieces of legislation. Are we saying that they are only made for Hong Kong under British administration? Of course not. We certainly hope that those pieces of legislation will remain in force after 1997 in accordance with Article 8 of the Basic Law. Some colleagues say that our motive is very obvious and the fact that we enact this Bill is a plot to make laws for the SAR Government. Then, are we really infringing upon the rights of the SAR Government and the future legislature? If some colleagues think we need the approval of China before we can enact laws that straddle 1997, otherwise such laws will not be binding, I would like to ask those colleagues a question. We enacted many laws in the past, including those we passed in this session, such as the Legal Aid Services Council Ordinance and the Fugitive Offenders Ordinance. Everyone knows that these laws are to consolidate some of the provisions in the Sino-British Joint Declaration, but when Members voted for these laws, were there any documentary evidences to show that mutual agreements had been reached between China and Britain? Were there any directives to say that the consent of both Britain and China must first be sought before we can enact any laws? If not, why did they vote in support of these pieces of legislation? Had they gone beyond their authorities by doing so? Mr President, we believe that when our colleagues voted for these pieces of legislation, they were perfectly aware that in accordance with the Sino-British Joint Declaration and the provisions of the Basic Law, the laws we passed would be maintained as long as those laws do not contravene the Basic Law. Unless our work is in contravention with the Basic Law, the legislation

we have enacted is for today and tomorrow as well as for 1 July and beyond. I want to ask those colleagues who are against this Bill whether they can find anything in this Bill which is in contravention of the Basic Law. I believe there will not be any, or else the Provisional Legislative Council would not have passed a Bill that is identical to the one we are moving today. In fact, the legislative power of the Legislative Council is not to be questioned. Therefore, I have to reiterate that Mr Howard YOUNG is most welcomed to challenge the legislative powers of this Council and to sue us for infringing upon the rights of the Provisional Legislative Council in the manner he has just mentioned. I would even give him my support if he applies for legal aid to clarify the constitutional problem.

Mr President, it is true that the Hong Kong Government has been wrong in submitting this Bill to this Council at such a late stage, but it does not mean that we should not pass this Bill today. If my colleagues say we should not pass this Bill, they are saying that we should not have holidays on 1 July and 2 July. If that is the case, the Provisional Council should not have endorsed this Bill. However, I believe that Members are not against the content of this Bill. So, why should they be making criticisms that are irrelevant to the Bill which we are moving today?

Mr President, finally I have to point out that many of our colleagues have complained that the disputes between Britain and China have created a lot of trouble. Of course, I understand how they feel, but Members who are sitting here today should bear in mind that we have pledged allegiance to the people of Hong Kong and that we will serve the Hong Kong community. As long as we are still sitting in this Council, we have to carry out our duties faithfully, and we have to do a good job in enacting laws for Hong Kong for the benefit of the public, no matter how much the political scene has changed outside this building. I want to ask those colleagues who are against this Bill today a question. If they are going to vote against this Bill in a moment, how can they be accountable to the public, what message will this give the public, and how are they going to explain the chaos that will be caused? If this Bill is not passed today, our law-abiding Government, our law-abiding Judiciary and other law-abiding public organizations cannot take those two days as public holidays until we have formally passed the Hong Kong Reunification Bill in the early morning of 1 July. Then, how are they going to account for the chaos that will be caused and how are they going to explain to the public?

So, I have to remind my colleagues for the last time that all those of us who are sitting here today should remember the oath which we took at the beginning of this session. We do not have any other explanations or excuses for not passing this Bill today and leave our Administration, the public organizations and the public at large unprepared for the two days of holidays to which they are entitled.

With these remarks, I support this Bill. Thank you, Mr President.

DR LAW CHEUNG-KWOK (in Cantonese): Mr President, it is an undeniable fact that the Provisional Legislative Council has approved 1 July and 2 July as special holidays because of the handover. However, as the British Government keeps challenging the credibility of the Provisional Legislative Council, some members of the public have doubts if 1 July and 2 July will be statutory public holidays. These sentiment is understandable.

I think that it is not necessary for the Hong Kong Government to propose this Bill. But as the Bill is now "on the agenda", the Hong Kong Association for Democracy and People's Livelihood (ADPL) will support it. The ADPL looks at this Bill from a pragmatic perspective. It aims to make it clear to the public of Hong Kong that 1 July and 2 July are holidays to mark the return of sovereignty so that everyone of us can enjoy the celebration.

Thank you, Mr President.

MR IP KWOK-HIM (in Cantonese): Mr President, in regard to the question of whether 1 and 2 July 1997 are public holidays, many Members have clearly indicated in their speech that Hong Kong people are undoubtedly aware that these two days are holidays. However, in the examples just given by some Members, millions of "employees" are not sure whether these two days are statutory holidays, and those in the financial sector also share the same doubts. I think this is an insult to the intelligence of Hong Kong people. Why is the Democratic Alliance for the Betterment of Hong Kong (DAB) opposed to this Bill? The reason is that the Bill is mainly to legislate for the two days of holidays on 1 and 2 July, and under Article 8 of the Basic Law, laws previously in force in Hong Kong shall be maintained, except for any that contravenes the Basic Law. If this Bill is to be introduced in 1996 as part of the 1997 general

holidays under the existing Ordinance, there should not be any contention. However, this Bill was not submitted to the Legislative Council until May 1997 and the sole objective of the Bill is to make 1 and 2 July general holidays.

Mr President, we know that the power of this Council is derived from the Letters Patents and the Royal Instructions, but from 1 July 1997 onward, Hong Kong will become the Hong Kong Special Administrative Region (SAR). So, if this Bill is solely moved in order to legislate for the two days of general holidays on 1 and 2 July, we will consider this as legislating on behalf of the SAR. We do not think that this is the right thing to do. We are not having an argument on whether 1 and 2 July should be general holidays. The fact is that the present Bill is obviously an attempt to legislate on behalf of the SAR Government, and that is the reason why we are against this Bill.

Mr President, the DAB is opposed to this Bill.

MISS EMILY LAU (in Cantonese): Mr President, the Public Holiday (Special Holidays 1997) Bill is the 13th bill which this Council is going to scrutinize today. Since all the 13 bills we move today are not going to become invalid in 10 days' time, it can be said that they are all legislated for the benefit of the Hong Kong Special Administrative Region (SAR) Government. Mr President, as I have mentioned before, we hope that all legislation enacted in the past is for the benefit of the future government. Of course, we cannot prevent the future legislature from moving amendments to some of the laws, and we are sure that this will happen. This being the case, I really cannot understand why, out of the 13 bills we move today, the Democratic Alliance for the Betterment of Hong Kong (DAB) has to single out this Bill to accuse us for trying to legislate on behalf of the SAR Government. How about the other 12 bills? Are they saying that all the other bills will become invalid after 30 June? I do not think that this argument is acceptable. I believe they have a valid reason for criticizing the Government. Why does the Government table this Bill at such a late stage? Actually, it should have been tabled a long time ago. In regard to the two days of general holidays, I would say that only this legislature is empowered to designate them. Last year, Mr QIAN Qichen, the Minister of Foreign Affairs, stated clearly and promised the British Government and the international community that there would not be two legislatures operating in Hong Kong at any point of time. But, unfortunately the Chinese officials have gone back on their words, and though the provisional legislature has moved to

Shenzhen, two legislatures are, in effect, operating at the same time. I believe that this is not what our Members, the public at large and the international community would accept or support. So, before 30 June, this Council should be the only legislature which can legislate for Hong Kong. After 30 June, this job will be taken up by the SAR Government. Therefore, I find that I cannot agree with the DAB at all. I am glad that this Bill has the support of the Hong Kong Association for Democracy and People's Livelihood, and I hope that it will soon be read the Second time and passed.

Thank you, Mr President.

MR CHEUNG MAN-KWONG (in Cantonese): Mr President, I just want to say a few words in response to the Honourable IP Kwok-him's remarks. Nowadays, the phenomena of confusing right and wrong and twisting the facts are becoming so common that we find it incredible. Let me quote an example. If you are a human being, it is only natural for you to try to protect your rights as a human being, and that is, what we call human rights. However, there are people who would not only refuse to protect their own rights, but also enact laws like the Public Order Ordinance and the Societies Ordinance to deprive themselves of their human rights, and such examples reflect how absurd their behaviours are. I would like to give you another example. If you are a member of this society, you would naturally hope that you are a member of a democratic society. However, some people would make new electoral rules to deprive themselves of their own democratic rights, and even go so far as to retrogress the state of democracy. This is really the most absurd thing in the world. But, as compared with these absurd behaviours, the ideas Mr IP Kwok-him put forward today are even more absurd. Though he was elected Legislative Councillor to participate in the work of the legislature, he is now saying that he wants to deprive himself of his own legislative powers. I would like to know where on earth we can find such a place where legislators would say that they want to deprive themselves of their own legislative powers and even openly claim that it is the most natural thing to do? Do we really have to say such absurd things in order to make the transition? Should we at least retain the most basic principles? The duty of a legislator is to enact laws, but he actually has the impudence to say that the legislative powers of the Legislative Council should be taken away. I do not think that anything can be more absurd than his remarks. If these absurd remarks represent the stance of the Democratic Alliance for the Betterment of Hong Kong (DAB), I think the DAB should no longer stand for elections,

because the voters may think that the DAB Members will continue to call for the deprivation of their own legislative powers, and will eventually deprive the public of all their rights.

Thank you, Mr President.

SECRETARY FOR EDUCATION AND MANPOWER (in Cantonese): Mr President, first of all, I have to reiterate several main points in this Bill. First, as I said when I introduced the Bill to this Council on 23 April, the sole purpose of the Public Holiday (Special Holidays 1997) Bill is to provide a legal basis for making 1 and 2 July, that is, the Establishment Day of the Hong Kong Special Administrative Region (SAR) and the day following the Establishment Day, additional general holidays for the purposes of the Holidays Ordinance and additional statutory holidays for the purposes of the Employment Ordinance. This amendment is purely a legal and technical matter. After passing this Bill, we can establish and clarify the rights and obligations of employers and employees before the holidays. It is not only for labour relations, but also for commercial activities etc. that we need to establish these two days as statutory holidays. Hong Kong is an international trading centre. Therefore, we have to make sure that commercial activities such as banking, clearing and settlement of the stock exchange, as well as payments related to negotiable instruments will not take place on 1 and 2 July 1997. This is extremely important. After the Bill is passed, we can stipulate according to the provisions of the Holidays Ordinance that all banks will close on these two days and no person need to make payment related to negotiable instruments or do any other related acts on these two days. Instead, payment should be made or any other related acts should be done on the first day after these two days which is not a public holiday. For the above reasons, I urge Members to support the Public Holiday (Special Holidays 1997) Bill.

Question on the Second Reading of the Bill put.

Voice vote taken.

PRESIDENT (in Cantonese): Council will 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 Second Reading of the Public Holiday (Special Holidays 1997) Bill 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? The result will now be displayed.

Mr Martin LEE, Mr SZETO Wah, Mr Albert CHAN, Mr CHEUNG Man-kwong, Mr Frederick FUNG, Mr Michael HO, 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 Andrew 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, Mr MOK Ying-fan, Miss Margaret NG, Mr TSANG Kin-shing, Dr John TSE and Mr YUM Sin-ling voted for the motion.

Dr Philip WONG, Mr CHAN Kam-lam, Mr CHAN Wing-chan, Mr CHENG Yiu-tong, Mr David CHU, Mr IP Kwok-him, Mr Ambrose LAU, Mr LO Suk-ching and Mr NGAN Kam-chuen voted against the motion.

Mr Allen LEE, Mrs Selina CHOW, Dr LEONG Che-hung, Mr Eric LI, Mr Howard YOUNG and Mr LEE Kai-ming abstained.

THE PRESIDENT announced that there were 27 votes in favour of the motion and nine against it. He therefore declared that the motion was carried.

Bill read the Second time.

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

Committee stage of Bill

Council went into Committee.

PUBLIC HOLIDAY (SPECIAL HOLIDAYS 1997) BILL

Clauses 1 and 2 were agreed to.

Council then resumed.

Third Reading of Bill

THE SECRETARY FOR EDUCATION AND MANPOWER reported that the

PUBLIC HOLIDAY (SPECIAL HOLIDAYS 1997) BILL

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

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

Bill read the Third time and passed.

SUSPENSION OF SITTING

PRESIDENT (in Cantonese): In accordance with Standing Orders, I now suspend the sitting until 9.00 am on Wednesday, that is tomorrow, 18 June 1997.

Suspended accordingly at twenty-seven minutes past Five o'clock .