OFFICIAL REPORT OF PROCEEDINGS

Wednesday, 8 July 1987

The Council met at half-past Two o'clock

PRESENT

HIS EXCELLENCY THE GOVERNOR (*PRESIDENT*)
SIR DAVID CLIVE WILSON, K.C.M.G.
THE HONOURABLE THE CHIEF SECRETARY
SIR DAVID ROBERT FORD, L.V.O., O.B.E., J.P.
THE HONOURABLE THE FINANCIAL SECRETARY (*Acting*)
MR. JOHN FRANCIS YAXLEY, J.P.
THE HONOURABLE THE ATTORNEY GENERAL
MR. MICHAEL DAVID THOMAS, C.M.G., Q.C.
THE HONOURABLE LYDIA DUNN, C.B.E., J.P.
THE HONOURABLE CHEN SHOU-LUM, C.B.E., J.P.
THE HONOURABLE PETER C. WONG, C.B.E., J.P.
DR. THE HONOURABLE HO KAM-FAI, O.B.E., J.P.
THE HONOURABLE ALLEN LEE PENG-FEI, O.B.E., J.P.
THE HONOURABLE HU FA-KUANG, O.B.E., J.P.
THE HONOURABLE WONG PO-YAN, C.B.E., J.P.
THE HONOURABLE CHAN KAM-CHUEN, O.B.E., J.P.
THE HONOURABLE STEPHEN CHEONG KAM-CHUEN, O.B.E., J.P.
THE HONOURABLE CHEUNG YAN-LUNG, O.B.E., J.P.
THE HONOURABLE MRS. SELINA CHOW LIANG SHUK-YEE, O.B.E., J.P.
THE HONOURABLE MARIA TAM WAI-CHU, O.B.E., J.P.
THE HONOURABLE CHAN YING-LUN, J.P.
THE HONOURABLE MRS. RITA FAN HSU LAI-TAI, J.P.
THE HONOURABLE MRS. PAULINE NG CHOW MAY-LIN, J.P.
THE HONOURABLE PETER POON WING-CHEUNG, M.B.E., J.P.
THE HONOURABLE YEUNG PO-KWAN, C.P.M., J.P.
THE HONOURABLE KIM CHAM YAU-SUM, J.P.
THE HONOURABLE JOHN WALTER CHAMBERS, O.B.E., J.P.
SECRETARY FOR HEALTH AND WELFARE
THE HONOURABLE JACKIE CHAN CHAI-KEUNG
THE HONOURABLE CHENG HON-KWAN
THE HONOURABLE HILTON CHEONG-LEEN, C.B.E., J.P.
THE HONOURABLE CHUNG PUI-LAM
THE HONOURABLE THOMAS CLYDESDALE
THE HONOURABLE HO SAI-CHU, M.B.E., J.P.

THE HONOURABLE HUI YIN-FAT
THE HONOURABLE RICHARD LAI SUNG-LUNG
DR. THE HONOURABLE CONRAD LAM KUI-SHING
THE HONOURABLE MARTIN LEE CHU-MING, Q.C., J.P.
THE HONOURABLE DESMOND LEE YU-TAI
THE HONOURABLE DAVID LI KWOK-PO, J.P.
THE HONOURABLE LIU LIT-FOR, J.P.
THE HONOURABLE NGAI SHIU-KIT, O.B.E., J.P.
THE HONOURABLE POON CHI-FAI
PROF. THE HONOURABLE POON CHUNG-KWONG
THE HONOURABLE HELMUT SOHMEN
THE HONOURABLE SZETO WAH
THE HONOURABLE TAI CHIN-WAH
THE HONOURABLE MRS. ROSANNA TAM WONG YICK-MING
THE HONOURABLE TAM YIU-CHUNG
DR. THE HONOURABLE DANIEL TSE, O.B.E., J.P.
THE HONOURABLE ANDREW WONG WANG-FAT
THE HONOURABLE LAU WONG-FAT, M.B.E., J.P.
THE HONOURABLE GRAHAM BARNES, J.P.
SECRETARY FOR LANDS AND WORKS
THE HONOURABLE DAVID GREGORY JEAFFRESON, C.B.E., J.P.
SECRETARY FOR SECURITY
THE HONOURABLE MICHAEL LEUNG MAN-KIN, J.P.
SECRETARY FOR TRANSPORT
THE HONOURABLE MICHELANGELO PAGLIARI, J.P.
SECRETARY FOR EDUCATION AND MANPOWER (*Acting*)
THE HONOURABLE CHAU TAK-HAY, J.P.
SECRETARY FOR DISTRICT ADMINISTRATION (*Acting*)
THE HONOURABLE YEUNG KAI-YIN, J.P.
SECRETARY FOR TRADE AND INDUSTRY (*Acting*)

ABSENT

THE HONOURABLE JOHN JOSEPH SWAINE, C.B.E., Q.C., J.P.
DR. THE HONOURABLE HENRIETTA IP MAN-HING, O.B.E., J.P.
DR. THE HONOURABLE CHIU HIN-KWONG
THE HONOURABLE PANG CHUN-HOI, M.B.E.

IN ATTENDANCE

THE CLERK TO THE LEGISLATIVE COUNCIL
MR. LAW KAM-SANG

Papers

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

Subject *L.N. No.*

Subsidiary Legislation:

Metrication Ordinance
Metrication (Amendment of Schedules) Order 1987 ..... 189/87

Companies Ordinance
Companies (Interest on Investments) (No.4) Notice 1987 ..... 190/87

Sessional Papers 1986-87:

No. 63—Annual Report of the School Medical Service Board for the Year ended 31 March 1987

Oral answers to questions

Undergraduate curricula in institutions funded by UPGC

1. MR. CHEUNG (in Cantonese): *Will Government inform this Council whether it has a comprehensive policy regarding undergraduate curricula in universities and those institutions funded by the University and Polytechnic Grants Committee; and if so, to what extent such policy will be affected by the recent restructuring proposals by the Senate of the University of Hong Kong?*

SECRETARY FOR EDUCATION AND MANPOWER: Sir, the Government, as a matter of policy, does not seek to determine or to influence the contents of curricula in institutions funded by the University and Polytechnic Grants Committee. It does, however, have a comprehensive policy on the provision of degree and sub-degree places at our institutions of tertiary education which seeks to meet the aspirations of our young people for higher education and also to provide trained manpower in specific areas to meet the needs of our community.

The UPGC-funded institutions make their academic proposals to the UPGC on a triennial basis and the UPGC scrutinises these to ensure that they are consistent with the student target numbers set by the Government, with the needs of the community and with the planned expansion of facilities at the institutions. The UPGC also assesses the funding requirement of these academic proposals and seeks to ensure that programmes are provided in the most economical manner and that duplication is avoided.

In its interim report for the 1985-88 triennium, which was laid before this Council on 25 March this year, the UPGC stated that it had been notified by the

Vice-Chancellor of the University of Hong Kong of the recent proposal by the Senate of the University to extend the curriculum for degree courses at the institution from three years to four years and of the subsequent establishment of a senate working party to ascertain the academic and financial implications of this proposal. It went on to say that when formal proposals were submitted, the committee would examine them carefully, with due regard for the impact on the university, on the other institutions of higher education and on the Hong Kong community, and that the committee's consideration would include the consequences for funding and for student number targets in the tertiary sector, bearing in mind competing demands for limited resources.

Academic proposals for the 1988-91 triennium were considered in depth by the UPGC earlier this year and block grant proposals based on them are in the final stages of completion. The effect of any restructuring proposals from the Senate of the University of Hong Kong, when and if they are made, would therefore not be felt until the academic year 1991-92 at the earliest.

Before any such changes took place, however, the UPGC would, as it stated in its interim report, examine them in detail to consider, in particular, their effects on funding and on student number targets and whether those effects could be justified. Members may be aware that the Education Commission is currently embarked on a study of the structure of the tertiary sector in the light of its recommendations on sixth form education. The UPGC will no doubt take account of the commission's recommendations when coming to its conclusions. The Board of Education will also require to be consulted should the UPGC's conclusions have implications for the structure of secondary education.

In short, Sir, the very serious implications of any restructuring proposal by the Senate of the University of Hong Kong for student numbers, for tertiary educational opportunities in Hong Kong, for the financing of education and for the structure and quality of secondary education, should not be underestimated.

MR. DESMOND LEE: *Sir, I refer to paragraph 1 of the answer which says, 'The Government, as a matter of policy, does not seek to determine or to influence the contents of curricula in institutions funded by the University and Polytechnic Grants Committee.' May I ask why the Green Paper and the White Paper on senior, secondary and tertiary education, published in November 1977 and October 1978 respectively, proposed that the Chinese University of Hong Kong should change to a three-year curriculum and that post-secondary colleges, namely: Baptist, Shu Yan and Lingnan, should adopt a 2-2-1 system?*

SECRETARY FOR EDUCATION AND MANPOWER: Sir, in all these matters the Government has taken professional advice. But, as I am sure the questioner is well aware, the Chinese University of Hong Kong has not altered its programmes to three-year degree programmes but indeed, continues to operate four-year programmes as it always has.

MR. CHEUNG (in Cantonese): *Sir, on what basis would the Government accept or refuse proposals to restructure the curriculum of universities?*

SECRETARY FOR EDUCATION AND MANPOWER: Sir, I presume Mr. CHEUNG is referring to the length of the curriculum rather than the academic content of the curriculum. The Government does not, as I said in my main answer, deal directly with matters of academic content of the curriculum. Proposals for any variation of academic content have to be made to the University and Polytechnic Grants Committee which is Government's expert adviser in this matter. They, in determining their recommendations, consider the financial implications, the effect on the student target numbers which have been laid down by the Government, and whether indeed these proposals are justified.

The Government will listen carefully to any recommendation that the University and Polytechnic Grants Committee may make on any proposal involving any switch in the length of the curricula of the university.

MR. DESMOND LEE: *Sir, I would like to follow up and ask whether or not the professional advice would overrule Government's policy of not giving directions to tertiary institutions?*

SECRETARY FOR EDUCATION AND MANPOWER: Sir, there is clearly a confusion as to what is meant by 'institutional autonomy'. 'Institutional autonomy' in my book means that the tertiary institutions are free to teach what subjects they want without Government interference. It does not mean that they have financial autonomy because they are funded entirely by the tax-payer. The Government is responsible to the tax-payer for the levying of those funds, and therefore has a duty to ensure that those funds are expended in the most efficient manner possible. To this end, it has the advice of the University and Polytechnic Grants Committee, who are experts in what is and is not required academically, to mount any specific course at a tertiary institution.

Courtesy campaign

2. MR. CHEONG-LEEN asked: *Will Government consider having an annual territory-wide courtesy campaign as part of the Government's effort to build up civic-consciousness and community identity?*

SECRETARY FOR DISTRICT ADMINISTRATION: Yes, Sir, the Government will certainly consider having a territory-wide courtesy campaign. Apart from the community involvement and civic education aspects of such a campaign, I think there is a great deal to be said for promoting courtesy as an end in itself.

In saying this, I do not mean to pass any judgment on the courteousness of the Hong Kong people. The point is rather that, however courteous we may already be, there must always be room for improvement.

Sir, the Government's publicity campaigns are organised and funded annually on a financial year basis. Funds for the 1987-88 programme of campaigns have all been allocated and we shall only be able to give consideration to a courtesy campaign as a part of the 1988-89 programme. As regards Mr. CHEONG-LEEN's reference to an annual campaign, I would suggest that we wait until we have had the first one before considering whether there should be subsequent ones.

MR. CHEONG-LEEN: *Sir, can we make the campaign, when it takes place, a really big and sustained one and not something that will fizzle out halfway, like a deflated balloon?*

SECRETARY FOR DISTRICT ADMINISTRATION: Sir, first of all we would have to get agreement within the Government to include such a campaign in next year's programme, and to provide sufficient funds for it. Assuming that that can be done, we will of course, try and have a good campaign.

Employment of illegal immigrants

3. DR. HO asked: *Will Government inform this Council how many illegal immigrants have been caught working and how many employers have been prosecuted for employing illegal immigrants for each of the last three years; and whether the effectiveness of the existing measures to curb employment of illegal immigrants will be reviewed?*

SECRETARY FOR SECURITY: Sir, from 1 January 1985 to 30 June 1987 a total of 251 illegal immigrants were caught by the Immigration Department working in Hong Kong. Of these, 55 were intercepted in 1985, 122 in 1986 and 74 in the first six months of 1987. Many more have been caught by the police in raids on construction sites and other premises, often in the course of other investigations. The police have not been keeping consolidated records until this year but since 1 January 1987 they have found 309 illegal immigrants on construction sites as a result of 93 raids up to 6 July.

Seventy-nine local employers were prosecuted for employing illegal immigrants. Of these, 15 were prosecuted in 1985, 33 in 1986 and 31 in the first six months of 1987.

During the same period the Labour Department, which is mainly responsible for inspecting records kept by employers, initiated a total of 57 prosecutions against employers who failed to produce or properly to maintain such records. Fifty-three employers were convicted.

We are having another look at the effectiveness of the measures aimed at curbing the employment of illegal immigrants. Proposals are currently being formulated to improve the existing controls. These will probably include refinements to police procedures for dealing with such cases and amendments to the Immigration Ordinance to tighten up the requirements for employers to keep proper records and to check the validity of identity documents presented by new employees. I must say, Sir, that I take a very serious view of employers who employ illegal immigrants. They are doing so to the detriment of our own labour force.

DR. HO: *Sir, what lines of work are the illegal immigrants usually engaged other than in construction sites? Have sufficient staff resources been allocated to the Legal Department and police to check out on a regular basis those places in which illegals are known to have been found working and finally, what measures will be taken to ensure that the employers are sufficiently warned not to continue to hire illegal immigrants?*

SECRETARY FOR SECURITY: Sir, the other areas in which we tend to find illegal immigrants being employed are in restaurants and other forms of simple manual labour, for example, some are found on the streets helping hawkers. My hon. Friend's second question was whether the police and the Legal Department were allocating sufficient resources to get on with the job. The answer in the case of the police is, I think, yes; do not forget that with the police beat radio system, it is very easy for the police to check people to see if they have got any identity cards at all and if they have not, there is immediately a very strong case that a person is here illegally. As to the Legal Department, I am afraid I do not know the answer.

As regards the third part of Dr. HO's question, in my opinion, Sir, employers know only too well that they are not allowed to employ illegal immigrants, but certainly when we have completed our current review of the legal provisions, it might not at all be a bad idea if we instituted a publicity campaign.

MR. YEUNG: *Sir, will the Secretary for Security state, as a result of the 93 raids carried out in the first six months, how many local employers have been successfully prosecuted in court?*

SECRETARY FOR SECURITY: Sir, I am afraid I will have to give my hon. Friend an answer in writing; that is one of the statistics I have not got. (Annex I)

MISS DUNN: *Sir, are employers allowed to employ Chinese visitors here in Hong Kong on two-way visas and is the Government aware that there are allegations that there is widespread employment of this kind?*

SECRETARY FOR SECURITY: No, they are not allowed to employ people who come here on two-way permits. We have heard no stories ourselves that illegal employment of this sort is going on. We will certainly now keep our eyes open for it.

MR. DESMOND LEE: *Sir, is Government aware of a rumour that vast numbers of illegal immigrants work on construction sites and, if so, have investigations been conducted?*

SECRETARY FOR SECURITY: Investigations have, of course, been conducted into the employment of illegal immigrants on construction sites.

MR. ALLEN LEE: *Sir, what is the average fine for the employers who are convicted by the courts?*

SECRETARY FOR SECURITY: Sir, it is in my view far too low. It is around $1,000 to $2,000 for each conviction.

MR. CHUNG: *Will the Secretary inform this Council whether amendments to the Immigration Ordinance will include certain measures to try to enable the prosecution to prove the case more easily?*

SECRETARY FOR SECURITY: Yes, Sir, that is our hope. The object of the review is to make prosecution more effective. I hope we will be able to bring some amendments to the Immigration Ordinance before this Council fairly early in the next session.

MR. CHEONG*: Sir, the Secretary says that the fine is far too low. Is it that the maximum allowable under the Ordinance is set too low or is it because that is the general average fines imposed by the court?*

SECRETARY FOR SECURITY: Yes, Sir, The fine under the Ordinance is $50,000. I think the latter is the correct surmise.

Prosecutions under section 27 of the Public Order Ordinance

4. MR. MARTIN LEE asked: *With regard to*

(a) the recent publication by the Overseas edition of Outlook Magazine of a statement attributed to Mr. LI Hou, the Secretary General of the Basic Law Drafting Committee, that the introduction of direct elections in 1988 will be a breach of the spirit of the Joint Declaration, which statement was distributed by the Xinhua News Agency to a number of journalists in Hong Kong and, which statement was subsequently denied by Mr. LI Hou as having been made by him; and

(b) the publication of an article in the Hong Kong Standard on 20 June 1987 entitled 'Keep your nose out, Britain tells China', in which certain statements were attributed to 'a Foreign Office spokesman' which statements were later denied by the Foreign and Commonwealth Office as having been made by them;

will the Administration inform this Council as to the following:

(1) whether any prosecutions will be instituted under section 27 of the Public Order Ordinance in relation to the publication of each of the said statements with regard to:

(a) the falsity of the news;
(b) the publication thereof; and
(c) the likelihood to cause alarm to the public or a section thereof;

(2) whether any investigation has been conducted or is being conducted by the law enforcement agencies in relation to the said publications?

ATTORNEY GENERAL: Sir, no investigation has been, or is being instituted, in relation to these publications. Nor can I see any prospect of a prosecution under section 27 of the Public Order Ordinance in the light of the facts disclosed by the question. When the Bill was debated last March, this Council supported this section on the basis that it was directed at the irresponsible publication of blatant falsehoods and would be used only as a measure of last resort. There is nothing in the question to suggest that these cases come anywhere near the intended scope of this offence. Indeed, I am rather surprised that Mr. LEE should be suggesting that consideration should be given to using section 27 in such cases.

MR. DESMOND LEE: *Sir, would the Administration kindly confirm or indicate otherwise if section 27 of the Public Order Ordinance is necessary to protect the community from rumour-mongering, which might undermine confidence in this Territory and accordingly confirm, or to indicate otherwise, that offending rumourmongers ought therefore to be prosecuted under the section, particularly in the light of the fact that no defence has been put forward to bolster the truth of these rumours?*

ATTORNEY GENERAL: Sir, as to the first part of the question, yes; as to the second part of the question, I do not know what case Mr. LEE is referring to. If it is a hypothetical case, I could not comment on it.

MR. MARTIN LEE: *Sir, will the Attorney General please elaborate his brief oral answer which has been deliberately withheld from Members of this Council, contrary to convention, which asks that written answers be supplied to Members of this Council prior to the commencement of a sitting, by informing this Council whether his decision not to prosecute anybody has been the result of consideration that we are dealing with a pro-Peking publication?*

ATTORNEY GENERAL: Sir, as to the first part of that question, I understood that this was a question that was put down for oral reply and indeed I have given Members of this Council my oral reply. As to the second, the answer is that, as I have indicated already—indeed, when I answered a previous question in this Council, public interest considerations are taken into account when prosecution decisions are taken and they may well be relevant at the investigation stage as well. But, Sir, I have already indicated that in this two particular cases that Mr. LEE has referred to, the primary consideration is that which I have indicated.

MR. JACKIE CHAN (in Cantonese): *Could the mass media take this as a precedent in order to decide how they should report news and if this is the case, will it defeat the original purpose of the Public Order Ordinance?*

ATTORNEY GENERAL: Sir, I have already indicated what I conceive to be the purpose of this legislation. If cases arise in which there appear to be no more than disputes about what was said in the course of an interview to a reporter, I do not think that that is ordinarily the business of the criminal law.

DR. LAM: *Sir, would the Attorney General kindly confirm that none of the publishers of Mr. LI Hou's statement including in this particular case the New China News Agency, have sought to contend after Mr. LI's denial that he had in fact made the statement?*

ATTORNEY GENERAL: Sir, it is a question which deals with particular matters of fact and I believe the answer is no, but I will certainly check again by reference to the cuttings to see if I can give a more accurate answer. (Annex II)

MR. DESMOND LEE: *Sir, in my earlier question to the Attorney General, the rumours referred to are statements that direct elections in 1988 are contrary to the Joint Declaration, which statement has subsequently been refuted by a Hong Kong Government announcement.*

ATTORNEY GENERAL: Sir, the Standing Orders make it clear that no question can be asked in relation to hypothetical propositions. Is Mr. LEE putting a hypothetical case to me? Because he is not entitled to an answer if he is, or is he not, in which case he ought to give full particulars of the matter which he wishes me to deal with.

HIS EXCELLENCY THE PRESIDENT: Mr. Desmond LEE, was what you were saying a question?

MR. DESMOND LEE: *I don't think what I said was a hypothetical case. There were such statements reported in the local press.*

HIS EXCELLENCY THE PRESIDENT: What exactly is your question, Mr. LEE? Could you put it into a question?

MR. DESMOND LEE: *My question is, the rumours I referred to are statements that direct elections in 1988 would be contrary to the Joint Declaration and these statements were published in many news media. I was asking the Attorney General whether or not these rumours constitute rumour-mongering in my earlier question.*

ATTORNEY GENERAL: The question of whether or not direct elections are consistent with the Joint Declaration is a question of opinion. It is not a question of fact at all. My guidelines have made it perfectly clear that we are not concerned with matters of opinion. Everyone is entitled to express their opinion.

MR. MARTIN LEE: *Sir, what were the considerations which led the learned Attorney General to the conclusion that there was no prospect of securing a conviction under section 27 in relation to these matters? Is it because he takes the view that there was no false news published? Or was he of the view that there was no sufficient publication or was he of the view that there was no likelihood of causing alarm to a section of the public?*

ATTORNEY GENERAL: Sir, it was none of those alternatives so conveniently offered by Mr. LEE. My answer is that I do not believe that anything in the cases as described in the question comes anywhere near the intended scope of this offence. That is the reason I have given to this Council.

MR. JACKIE CHAN: *Sir, would the Administration kindly confirm that a statement of a politically sensitive nature would not be falsely attributed to persons holding official rank in the People's Republic of China, the British or the Hong Kong Government, bearing in mind in particular the psyche of this community at a time of constitutional reform in the run-up to 1997?*

HIS EXCELLENCY THE PRESIDENT: Mr. CHAN, that question doesn't seem to relate to the original question. Could you rephrase it in a form that relates to the original question?

MR. JACKIE CHAN: *I just would like to know about the false attribution of a statement of a political nature to persons in Hong Kong.*

HIS EXCELLENCY THE PRESIDENT: I think, Mr. CHAN, that is a separate question and if you wish to pursue it as a separate question, it ought to be put down as a separate question.

MR. MARTIN LEE: *Sir, does the Attorney General not think that instead of trying so hard to defend the offenders of section 27 of the Public Order Ordinance, he should instead defend the public of Hong Kong by removing section 27 from our statute book?*

ATTORNEY GENERAL: Sir, I have not defended what Mr. LEE is pleased to call an 'offender.' That is in itself an imputation of criminality which I think he should withdraw. The question of repealing this Ordinance does not arise from these facts; I have made it perfectly clear that because this matter which he has drawn to my attention does not seem to fall within the scope of the offence, it does not follow in any way that the Bill or the Public Order Ordinance is defective in this way. It remains to fulfill the purposes that were indicated by this Council when it was passed, as a very important measure to deal with blatant falsehoods and irresponsible reporting.

MR. MARTIN LEE: S*ir, is the Attorney General refusing to answer my question earlier asked? Is he saying the news has not been false; is he saying there has been no sufficient publication; or is he saying there is no likelihood to cause alarm to the public?*

ATTORNEY GENERAL: If I was in a witness box being cross-examined, I would be enjoying this but whether or not I am refusing is really a matter for the Chair and not for me. I am giving the best answer that I can to assist this Council.

Written answers to questions

Promotion and development of tourism

5. MR. CHEONG-LEEN asked: *Will Government inform this Council of its policy objectives for the promotion and development of the tourist industry in Hong Kong, and the strategy it has drawn up to achieve those objectives?*

FINANCIAL SECRETARY: Sir, the Government's policy objectives are, in effect, those laid down upon the Hong Kong Tourist Association in paragraphs (*a*)—(*e*) of section 4 of the Hong Kong Tourist Association Ordinance, viz—

(*a*) to endeavour to increase the number of visitors to Hong Kong;
(*b*) to further the development of Hong Kong as a tourist destination;
(*c*) to promote the improvement of facilities for visitors;
(*d*) to secure overseas publicity for the tourist attractions of Hong Kong;
(*e*) to co-ordinate the activities of persons providing services for visitors to Hong Kong.

The Government seeks to achieve these objectives mainly through the medium of the Hong Kong Tourist Association which is a statutory corporation whose board of management consists of individuals from the various sectors of the industry. Although the Government does not involve itself directly in the promotion and development of tourism, it tries to ensure the provision of the necessary infrastructure to meet the tourist industry's needs, either by providing

the requisite facilities itself for example, Hong Kong International Airport, or by enabling the private sector to do so, for example, the availability of additional hotel sites.

Neighbourhood Police Units

6. MR. POON CHI-FAI asked: *Will Government inform this Council whether, since the abolition in 1984 of the measure to station police officers at Neighbourhood Police Units 24 hours a day, any review or study has been undertaken on the adverse effect, if any, of the abolition of this measure on law and order in the Territory and on the public reaction to it; and whether Government will give consideration to re-introducing this measure at blackspots of crime, densely populated areas and areas remote from police stations, to meet the need in such areas?*

SECRETARY FOR SECURITY: Sir, neighbourhood police units (NPU) were set up in 1974, before the police had beat radios, to strengthen police coverage of selected areas and to allow a quick and effective response to reports from the public. Each NPU provided beat policemen and office staff for 24 hours a day.

In 1981 a review of Uniform Branch deployment revealed certain defects in the NPU scheme, particularly the inefficient use of manpower. Shifts in population and crime patterns and improved communications within the police through the new beat radio system had eroded the need for many of the NPU. A study made in 1983 showed that the majority received less than six reports a day. Crimes reported were even fewer, with 68 per cent of the 90 NPU receiving less than four reports each week. To improve the efficiency of NPU, and as part of a larger reorganisation of the Police Uniform Branch, NPU were redesignated neighbourhood police offices in June 1984, with operating hours adjusted to reflect public demand. NPU beat patrols were redeployed to normal patrol duties within their divisions. At the same time, a new category of full-time police community relations officer was introduced to strengthen contact with the community. There are now 82 such neighbourhood police co-ordinators, all sergeants, and the aim is to increase this number to around 140.

The effectiveness of the new NPO system was carefully monitored between June and December 1984 and the police completed a review in April 1985.

The great advantage of the new scheme is that divisional commanders have more men available for beat patrol and can deploy them with greater flexibility. Additional beat coverage can be provided in densely populated areas and in particular crime blackspots as necessary or, as in some divisions, task forces can be set up to supplement beat duties and to carry out specific operations. The 1985 review concluded that the NPO scheme, through more efficient deployment of men and resources, had enhanced the overall effectiveness of the police force

in its fight against crime. Coverage of the former NPU areas had not decreased and public criticism of the new NPO system had been slight. The review did recommend that NPO be equipped with external telephones giving a direct line at all times to either the nearest police station or Regional Command and Control Centre ('999'). This has been done and any member of the public may now communicate immediately with police even if the NPO is unattended. The control centre can then, as necessary, co-ordinate a quick response from the policemen patrolling in the vicinity using the beat radio system.

A second review of the NPO scheme is nearly complete. It resulted from suggestions by some district fight crime committee that another look should be given to NPU. But it is unlikely that significant changes will be recommended given the favourable findings of the NPO described above.

Statutory age limits for various offences

7. MRS. TAM asked: *In regard to offences against children, young persons and juveniles, different statutory age limits are set for various offences, for example, in the Control of Obscene and Indecent Articles Ordinance, a juvenile is defined as a person under the age of 18; whereas in the Protection of Women and Juveniles Ordinance, a juvenile means a person who is 14 years of age or upwards and under the age of 18 years. Will Government inform this Council what criteria and principles are adopted by the authorities concerned to determine the age limits in the above examples and whether Government will consider introducing legislation to set fixed age limits for children, young persons and juveniles in order to achieve uniformity?*

ATTORNEY GENERAL: Sir, Mrs. TAM draws attention to the fact that the word 'juvenile' is defined to mean different age groups in different Ordinances. I can well understand that this could be confusing.

For the purposes of the criminal law there are a variety of different ages at which young persons are held both to be responsible for their own actions and to require protection. These ages will vary according to the differing concepts and criteria which the underlying policy adopts to achieve its disparate aims.

For example, a child under seven is not capable of committing an offence at all and a person between the ages of seven and 14 is presumed not to have formed the necessary intent to commit an offence.

Different penalties are imposed on persons convicted of sexual offences against young persons, according to the age of those young persons. Thus, unlawful sexual intercourse with a girl under 13 attracts a penalty of life imprisonment whereas unlawful intercourse with a girl aged between 13 and 16 attracts a penalty of five years imprisonment. The intent of the legislature is, of course, to give a greater degree of protection to a girl under 13.

These few examples illustrate the difficulty of achieving the uniformity to which Mrs. TAM refers.

I think it would be wise to maintain our existing approach, even at the risk of causing some confusion. I believe this approach best enables the criminal law to deal justly with the wide variety of offences and situations involving young people.

Dismissal by reason of redundancy

8. MR. TAM asked: *At present, section 31B of the Employment Ordinance provides that if an employer moves the place of work from Hong Kong Island to Kowloon or the New Territories or vice versa, his employee, if dismissed under this situation, is entitled to severance pay as compensation. In view of the fact that under certain circumstances, the changing of the place of work from Kowloon to the New Territories or vice versa may cause even greater inconvenience and losses to an employee, will Government inform this Council whether it will consider making appropriate amendments to the legislation to better serve the need of the employees?*

SECRETARY FOR EDUCATION AND MANPOWER: Section 31B(2)(*b*) of the Employment Ordinance, which deals with an employer's move from Hong Kong Island to Kowloon or the New Territories or vice versa, describes only one of the situations under which an employee is to be regarded as having been dismissed by reason of redundancy and thereby entitled to severance pay. Section 31B(2)(*c*) provides an additional circumstance, namely that

> 'the requirements of that business for employees to carry out work of a particular kind in the place where the employee was so employed have ceased or diminished or are expected to cease or diminish.'

If, as a matter of fact in any particular case, the changing of the place of work anywhere within the territory of Hong Kong causes so much hardship as to render it impossible for the employee to continue with the employment, the employee would be deemed to have been constructively dismissed. In that case, such a constructive dismissal could amount to redundancy in the circumstances by virtue of section 31B(2)(*c*).

Adequate protection is therefore available to employees in the circumstances described in the question and there would be an entitlement to severance pay.

Statement

Vietnamese refugees in Hong Kong

SECRETARY FOR SECURITY: Sir,

Introduction

During the last adjournment debate on the Vietnamese refugees that took place in this Council on 7 January 1987, Members asked for a progress report in six-months' time. I will now give Members a summary of developments since then.

Refugee population

The present position is that we have a total of 7 852 refugees in the camps, with 4 613 (59 per cent) in closed centres and 3 239 (41 per cent) in the open centre. At the beginning of January this year we had 8 039 refugees. Of those who are left, about 4 600 have been here for three years and around 3 200 have been here for five years.

Arrivals

In the first five months of this year, arrivals were 28 per cent down on arrivals in the same period of last year. But a sudden increase in June (a total of 405 arriving compared with 191 in June last year) now means that the total number of arrivals so far this year, at 976, exceeds last year's figure for the same period by four. With the coming of the summer season, we can expect more refugees to reach Hong Kong in the following two or three months. A worrying factor is that about 76 per cent of the arrivals so far this year are from North Vietnam. They tend to be very difficult to get resettled. They often do not have family connections in resettlement countries and thus cannot meet those countries' resettlement criteria. And there is an understandable reluctance on the part of some of the resettlement countries to take any North Vietnamese at all.

So far this year, the number of births in the refugee camps has been 144 (compared with 181 during the same period last year).

Resettlement

On the resettlement side, only 1 309 refugees have been resettled so far this year compared with 2 372 for the same period last year. If the present trends continue, we estimate that there will be around 2 200 arrivals and roughly the same number of departures for the full year. Thus, adding in births, we can expect the total refugee population to increase towards the end of the year.

The reason for the lower rate of resettlement is that fewer refugees seem to meet the criteria the resettlement countries insist they must meet. Invariably, the main criteria is that the refugees must already have close family connections in their countries. A second reason is that many of the resettlement countries are having quite serious problems with refugees and illegal immigrants from other places in the world, and are having to limit the numbers they can take from Hong Kong. A third reason is the reluctance, to which I have already referred, of some countries to take northerners.

But I must not be too pessimistic. There has been one very encouraging development. As the Minister of State, Home Office, announced on 8 May 1987, Her Majesty's Government has decided to accept a further 468 refugees from Hong Kong for resettlement in the United Kingdom under the relaxed family reunion criteria which Her Majesty's Government introduced for the 1985-86 resettlement programme. But, to ensure that United Kingdom reception facilities are not overstretched, the offtake will be at a rate of about 20 a month. Processing of these cases has started and we expect that the first group will leave Hong Kong for resettlement in the United Kingdom later this month.

Following Her Majesty's Government's announcement, both the British and Hong Kong Governments have made vigorous efforts to put Hong Kong's case to resettlement countries, aimed at persuading them to increase the number of refugees they take from Hong Kong this year and particularly those refugees who have been here a long time. Her Majesty's Government have also asked the United Nations High Commissioner for Refugees to make parallel approaches to resettlement countries to lobby for additional resettlement places for Hong Kong's refugees. The UNHCR have agreed to treat long-stayers in Hong Kong as a priority in their resettlement efforts.

In Hong Kong, I have met and discussed our refugee problem with the consuls-general and commissioners of 17 countries which have been helping us in resettling refugees. All their initial responses have been sympathetic and they have agreed to pass on our pleas to their governments to consider. It would be premature of me to speculate on what their responses will be. But I would like to repeat our earnest hope that they will once again be able to help us and to take some more refugees from us this year. And it would be particularly valuable to us if they could take some of the long-stayers, those who are not meeting the family reunion criteria most resettlement countries usually apply. May I say again, publicly, how much we have appreciated their invaluable assistance last year. Without the assistance of all the resettlement countries, we would not have started this year with the lowest number of refugees we have had in Hong Kong since 1979.

From my meetings with the Legislative Council Ad Hoc Group on Vietnamese Refugees, I am acutely conscious of the concern of Members at the difficulties we are experiencing over resettlement and at the number of refugees who have been here many years. I am most grateful to the ad hoc group for the suggestions it has made. As examples, the group has recently asked us to re-examine the cases of the 160 or so refugees who have in the past refused offers of resettlement in the United Kingdom. The group is also concerned about the cost to the taxpayer of supporting refugees in the closed camps and has asked whether means could be found of reducing this burden. We are looking at both these suggestions.

But whatever might be done in the short term to improve the prospects of resettlement and to lighten the burden on our community, we are all here in full

agreement that there has to be a long-term solution. And we are all agreed that the only viable one is to repatriate all those who cannot establish that they are genuine refugees, provided we can be satisfied they will not be treated inhumanely. In this context, we are only too conscious of the way we have to treat illegal immigrants from China. Sir, the Minister of State of the Home Office, in his announcement on 8 May, stressed the importance of concerted international action to find a durable solution and he said that the British Government would be seeking to put to the United Nations High Commissioner for Refugees and the main resettlement countries the case for a common approach. Her Majesty's Government is doing all it can to help Hong Kong in this respect. But as I have said before, in this Council, the search for a durable solution will be a slow and difficult process.

Sir, given that, as a place of first asylum, Hong Kong has to accept all who arrive illegally from Vietnam, we are continuing to remind London of the considerable concern in Hong Kong at the difficulties we are having in getting Vietnamese refugees resettled and of the wide support among Members of this Council and in the community both for a greater degree of resettlement in the short term and for a long-term solution involving repatriation of those who can not be resettled because they are not in fact refugees. And at the group's request we shall be briefing and consulting the ad hoc group every two months on progress in respect of both these issues.

Government Business

Motions

BANKRUPTCY ORDINANCE

THE FINANCIAL SECRETARY moved the following motion: That the Bankruptcy (Amendment) (No.2) Rules 1987 and the Bankruptcy (Fees and Percentages) (Amendment) Order 1987, made by the Chief Justice on 25 June 1987, be approved.

He said: Sir, I move the first motion standing in my name in the Order Paper.

Section 113 of the Bankruptcy Ordinance empowers the Chief Justice, with the approval of this Council, to make rules providing for the carrying into effect of the objects of the Bankruptcy Ordinance.

The Bankruptcy (Amendment) (No.2) Rules 1987 amend rule 59 of the Bankruptcy Rules in consequence of the amendment to section 9(1) of the principal Ordinance, effected by the Bankruptcy (Amendment) Ordinance 1987.

These amendments introduce a requirement for the personal service of bankruptcy notices and bankruptcy petitions, with provision for substituted service by court order in appropriate circumstances.

Section 114 of the Bankruptcy Ordinance empowers the Chief Justice, with the approval of this Council, to prescribe a scale of fees and percentages to be charged in respect of proceedings under the Bankruptcy Ordinance.

The Bankruptcy (Fees and Percentages) (Amendment) Order prescribes a new scale of fees to be paid in respect of assets realised and brought to credit in bankruptcy proceedings. These fees are to be charged on the submission of accounts by bankruptcy trustees, at rates similar to the new ad valorem fees laid down in the Companies (Fees and Percentages) (Amendment) Order.

The Chief Justice made the Bankruptcy (Amendment) (No.2) Rules 1987 and the Bankruptcy (Fees and Percentages) (Amendment) Order under sections 113 and 114 respectively of the Bankruptcy Ordinance on 25 June 1987.

Sir, I beg to move.

Question put and agreed to.

COMPANIES ORDINANCE

THE FINANCIAL SECRETARY moved the following motion: That the Companies (Winding-up) (Amendment) (No.2) Rules 1987 and the Companies (Fees and Percentages) (Amendment) Order 1987, made by the Chief Justice on 25 June 1987, be approved.

He said: Sir, I move the second motion standing in my name in the Order Paper.

Section 296 of the Companies Ordinance empowers the Chief Justice, with the approval of this Council, to make rules for carrying into effect the objects of the Companies Ordinance and to prescribe fees in respect of proceedings under the Ordinance.

The Companies (Winding-Up) (Amendment) (No.2) Rules 1987 amend rule 160 of the Companies (Winding-Up) Rules in consequence of the amendments to section 295 of the principal Ordinance, effected by the Companies (Amendment) (No.2) Ordinance 1987.

The Companies (Fees and Percentages) (Amendment) Order 1987 prescribes a new scale of ad valorem fees to be paid in respect of the assets realised and brought to credit in the compulsory winding up of a company. The new fees are payable upon submission of a liquidator's account to the Official Receiver or, where the Official Receiver is the liquidator, before he is released. Compared with the existing audit fees, the ad valorem fees tend to be marginally higher in

small cases and considerably lower in large cases. The replacement of audit fees by the new scale of ad valorem fees would not result in any significant change in total revenue.

The amendment order also provides for transitional arrangements which set out the manner in which liquidators' accounts that have already been submitted will be treated. The underlying principle is that the fee to be charged should be the lower of the fee calculated under the old scale and that under the new scale.

The Chief Justice made the Bankruptcy (Amendment) (No.2) Rules 1987 and the Bankruptcy (Fees and Percentages) (Amendment) Order 1987 under section 296 of the Bankruptcy Ordinance on 25 June 1987.

Sir, I beg to move.

Question put and agreed to.

TELEPHONE ORDINANCE

THE FINANCIAL SECRETARY moved the following motion: That the Schedule to the Telephone Ordinance be amended—

(*a*) by inserting, after item 4 of Part VI, the following—

'5. For international toll free calls from outside Hong Kong—

(*a*)	Registration	$2,000.
(*b*)	Service	$9,000 per annum.
(*c*)	International telephone call	Such charges as are contained in the terms referred to in section 25 of the Ordinance.';

(*b*) in Part VII—

(i) in item 6, by inserting, after paragraph (*m*), the following—

'(*n*)	Conquest handset	$168 per annum. (see Note 2.)
(*o*)	Inductive coupler	$72 per annum. (see Note 2.)
(*p*)	Autodialler	$444 per annum. (see Note 2.)
(*q*)	Speakerphone	$132 per annum. (see Note 4.)
(*r*)	Pressac tone ringer—	
	(i) rental	$84 per annum.
	(ii) connexion or removal	$250.';

(ii) by inserting, after item 10, the following—

'11. For non-standard telephone instruments—

(*a*)	Big button telephone	$156 per annum. (see Note 4.)

(*b*)	Executive I telephone	$180 per annum. (see Note 4.)
(*c*)	Easaphone telephone	$336 per annum. (see Note 4.)
(*d*)	Satellite telephone	$312 per annum. (see Note 4.)

(iii) in Note 2, by deleting 'and 6(1)' and substituting the following—'6(*l*), 6(*n*), 6(*o*) and 6(*p*)'; and

(iv) by inserting, after Note 3, the following—

'4. In items 6(*q*), 11(*a*), 11(*b*), 11(*c*) and 11(*d*) no connexion fee will be charged for a telephone instrument installed at the same time as the related exchange line or for an additional telephone instrument installed at the same time as the related internal extension. A fee of $140 will be charged for changing a telephone instrument and a fee of $50 for changing an additional telephone instrument.'.

He said: Sir, I move the third motion standing in my name in the Order Paper.

The Hong Kong Telephone Company Limited has proposed to provide Services for the Elderly and Handicapped and an International Toll-free Service. The Services for the Elderly and Handicapped comprise items of telephone equipment of particular utility to these groups. These include telephone sets of use to those with dexterity problems and telephone aids for the impaired of hearing.

The International Toll-Free Service will facilitate toll-free calls to subscribers in Hong Kong. It is considered to be of particular value to companies with international business as it enables customers from abroad to ring without their having to bear the charge.

Under section 26(2) of the Telephone Ordinance, all amendments to the Schedule of charges of the Telephone Ordinance require a resolution of this Council. My motion before the Council therefore seeks to add to the Schedule charges for the Services for the Elderly and Handicapped and the International Toll-Free Service. As regards the proposed services for the Elderly and the Handicapped, professional advice in the field of rehabilitation has confirmed that the introduction of such services can be supported. The proposed charges as contained in the resolution accompanying this motion have been examined by the Administration and have been found to be reasonable.

Sir, I beg to move.

(At this point, Mr. David LI, as the Chairman of the Hong Kong Telephone Company Ltd. and Mr. CHAN Kam-chuen, as a director of the Hong Kong Telephone Company Ltd. declared their interest and abstained from voting.)

Question put and agreed to.

MAGISTRATES ORDINANCE

THE ATTORNEY GENERAL moved the following motion: That the Magistrates (Forms) (Amendment) Rules 1987, made by the Chief Justice on 24 June 1987, be approved.

He said: Sir, I move the motion standing in my name on the Order Paper.

The Magistrates (Forms) Rules are made under section 133 of the Magistrates Ordinance, Cap. 227. This amendment is no more than a useful housekeeping exercise, tidying up and bringing up to date the various forms used in the magistrates courts. The existing forms 1A and 1B are replaced by a new combined form 1A. The new form simplifies the format and takes into account changes to section 8A(5) of the Ordinance (which increased the amount of costs that a magistrate may order), and the proposed revision of the Fourth Schedule to the Ordinance (which will add references to officers of the Regional Services Department and replace obsolete titles of departments and officers by new terminology).

These rules have been made by the Acting Chief Justice, but before they can become law, they require the approval of this Council, which I now seek.

Sir, I beg to move.

Question put and agreed to.

LANDLORD AND TENANT (CONSOLIDATION) ORDINANCE

THE SECRETARY FOR DISTRICT ADMINISTRATION moved the following motion: That the Landlord and Tenant (Consolidation) Ordinance be amended—

(*a*) in section 10(1) by deleting '30' and substituting the following—

'35'; and

(*b*) in section 74B(1) by deleting '1987' and substituting the following—

'1989'.

He said: Sir, I move the resolution standing in my name in the Order Paper.

In 1980, in view of the then rental situation, the Government set up a committee to examine the policies and legislation governing rent control and the relationship between landlords and tenants. The committee found that controlled rents for pre-war premises were about 20 per cent of market rents and those for post-war premises about 40 per cent. It was clear that this rent level was unduly low and that this was discouraging investment in housing production and the availability of rental housing in particular. The committee

concluded that, as soon as circumstances permitted and consistent with the need to avoid social and economic consequences, every effort should be made to accelerate the phasing out of rent control.

This conclusion was adopted by the Government as its long-term objective. Consequently, amending legislation has been passed by this Council each year since 1981 for pre-war premises, and each year since 1983 for post-war ones, in order to raise progressively the controlled rents, bringing them closer to market levels and eventual decontrol.

The first proposal in the resolution, Sir, is a further step towards achieving the Government's long-term objective. It seeks to raise the rents of pre-war premises, which are covered by part I of the Ordinance, to more realistic levels. Rents of pre-war premises are derived from a standard rent as at 25 December 1941. The current permitted rent is set at 30 times this level, and it is now proposed to increase this to 35 times the standard rent.

This change would bring the average permitted rent of pre-war premises up to 70 per cent of the market level. It would result in an average increase of about $190 per month, or 17 per cent, on current permitted rents and would affect 1 860 domestic premises.

The resolution, Sir, also proposes a further extension of two years to the life of part II of the Ordinance, from 19 December 1987 to 18 December 1989.

Part II of the Ordinance provides the dual protection of rent control and security of tenure to 90 000 post-war tenancies plus an undetermined number of sub-tenancies affecting about 180 000 households or some 650 000 persons. The average controlled rents for these tenancies now stand at about 70 per cent of the prevailing market rent. For about two thirds of these tenancies, however, the ratio is below this overall average and for about two fifths, the rents are less than 60 per cent of market rents. If part II is allowed to expire after 18 December 1987, the tenants concerned will face, on average, an immediate rent increase of more than 40 per cent and a large number will have their rents nearly doubled. The likely hardship and dislocation will be serious and socially disruptive.

Part II of the Ordinance permits a maximum biennial increase of 30 per cent on current rent, provided that the new rent does not exceed prevailing market levels. This will have the effect of bringing rents for part II tenancies progressively closer to prevailing market rents. The current property and rental market is stable and this is likely to continue because of the ample supply of new flats in the next few years. The Government, therefore, expects that it will be possible to phase out rent control in about four years, even if no increase is made this year in the minimum percentage component in the rent increase mechanism for part II tenancies. The Government considers that four years is a reasonable period in which to achieve the aim of eliminating rent control and,

therefore, proposes that the life of part II of the Ordinance should be extended for two years in this instance, subject to a further review in 1989.

As Members are aware, the Government reviews the working of the Ordinance annually, taking account of the state of the property market and the social and economic consequences before proposing changes to the Ordinance. Members and the public can be re-assured that any further steps towards decontrol will be carefully considered in the light of the situation at the time and will take account of the needs of both tenants and property owners.

Sir, I beg to move.

At this point, the following Members declared their interest:

Miss Lydia DUNN as a director of a company which is a landlord.

Mr. S.L. CHEN as a landlord and a director of a company which is a landlord.

Dr. HO Kam-fai as the spouse of a landlady.

Mr. F.K. HU as a director of a company which is a landlord.

Mr. CHAN Kam-chuen as a director of a company which is a landlord.

Mr. CHEUNG Yan-lung as a director and the spouse of the director of a company which is a landlord, a landlord and the spouse of a landlady.

Miss Maria TAM as a landlady.

Mr. Peter POON as a director and the spouse of a director of a company which is a landlord, a shareholder and the spouse of a shareholder of a company which is a landlord.

Mr. Kim CHAM as a director and shareholder of a company which is a landlord.

Mr. CHUNG Pui-lam as a landlord.

Mr. Thomas CLYDESDALE as a director of a company which is a landlord.

Mr. HO Sai-chu as a director of a company which is a landlord.

Mr. HUI Yin-fat as a landlord.

Mr. Richard LAI as a landlord.

Dr. Conrad LAM as a landlord, a director and shareholder of a company which is a landlord, and as a tenant.

Mr. Desmond LEE Yu-tai as a tenant.

Mr. David LI as a director of a company which is a landlord.

Mr. LIU Lit-for as the Vice-chairman of a company which is a landlord.

Mr. NGAI Shiu-kit as a landlord, a director of a company which is a landlord, the spouse of a landlady, and a director and shareholder of a company which is landlord.

Mr. POON Chi-fai as a tenant.

Mr. Helmut SOHMEN as a landlord and a director of a company which is a landlord.

Mr. SZETO Wah as a tenant.

Mr. TAI Chin-wah as a landlord and a tenant.

Mr. LAU Wong-fat as a landlord.

Mr. WONG Po-yan as a director of a company which is a landlord.

Question put and agreed to.

DUTIABLE COMMODITIES ORDINANCE

THE SECRETARY FOR TRANSPORT moved the following motion: That the Schedule to the Dutiable Commodities Ordinance be amended in Part III by inserting after paragraph 2 the following—

'3. Where it is proved to the satisfaction of the Commissioner that light diesel oil on which duty has been paid under paragraph 1(*b*) has been used in road vehicles owned and operated by the Kowloon-Canton Railway Corporation under section 4(1)(*d*) of the Kowloon-Canton Railway Corporation Ordinance (Cap. 372) in maintaining bus services within the North-west Transit Service Area, a sum amounting to $0.65 per litre of the light diesel oil so used shall be refunded to the Corporation.'.

He said: Sir, I move the motion standing in my name on the Order Paper.

Under section 4(2)(*b*) of the Dutiable Commodities Ordinance, this Council may by resolution amend the Schedule to the Ordinance to waive or remit any duty imposed therein to any extent whatsoever.

The existing policy is to allow the duty on light diesel oil used in vehicles owned and operated by franchised bus operators to be refunded at a rate of $0.65 per litre. In the Northwest Transit Service Area, the Kowloon-Canton Railway Corporation will operate the Light Rail Transit system and a network of feeder bus services to meet the demand for internal travel. The Light Rail Transit system and its complement of feeder bus services will replace the existing franchised bus services in that part of the Territory. It is therefore proposed that the same current facility for refund of fuel duty be extended to the bus operation of the Kowloon-Canton Railway Corporation in the Northwest Transit Service Area.

Sir, I beg to move.

Question put and agreed to.

First Reading of Bills

HONG KONG COUNCIL ON SMOKING AND HEALTH BILL 1987

BUILDINGS (AMENDMENT) BILL 1987

PRISONERS (RELEASE UNDER SUPERVISION) BILL 1987

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

Second Reading of Bills

HONG KONG COUNCIL ON SMOKING AND HEALTH BILL 1987

THE SECRETARY FOR HEALTH AND WELFARE moved the Second Reading of: 'A Bill to establish the Hong Kong Council on Smoking and Health, to define its functions and powers, to negative personal liability of members and employees, and to provide for matters incidental thereto or connected therewith'.

He said: Sir, I move that the Hong Kong Council on Smoking and Health Bill 1987 be read the Second time.

During the five years since the enactment of the Smoking (Public Health) Ordinance in 1982, the Government's anti-smoking policies have achieved a considerable degree of success in making the community aware of the dangers of smoking, in encouraging smokers to stop smoking and in discouraging non-smokers from starting to smoke. We realise, however, that smoking and health is a dynamic area which requires prompt and continuous responses to

new research, changing public attitudes, new legislative requirements and the activities of the tobacco industry. Experience in other countries indicates that the most effective method of keeping abreast of such developments is to set up an independent public body to serve as a focal point for action and information on this subject. The Bill therefore proposes the establishment of an independent statutory Council on Smoking and Health.

The council's main tasks will be to collate the latest information and research connected with smoking and health, to organise anti-smoking publicity and education programmes, to advise the Government on the implementation and development of anti-smoking measures, and to liaise with other local bodies and international agencies on smoking and health matters.

The council has been operating in a provisional form since December last year. It is the Government's view however that statutory incorporation is desirable in that it establishes the council as a legal entity separate and independent from the Government, provides a formal framework for the council's operations and confers protection on members and employees of the council against personal liability for any act done by the council in good faith in the course of its operations. This last provision is contained in clause 20 of the Bill.

The Bill follows closely the pattern of other legislation establishing statutory bodies of a similar nature. It sets out the aims, functions and powers of the council, provides for appointment of chairman and member by the Governor, and lays down procedures at meetings. It also empowers the council to appoint its own staff, as well as financial and accounting arrangements. The council will be subvented by the Government and a sum of $1.2 million has been included in this year's Estimates.

Although the establishment of the council will relieve the Government of some of the executive duties connected with anti-smoking measures, the Secretary for Health and Welfare will remain responsible for formulating the Government's policy in this area and for ensuring the implementation of that policy. I would like to assure Members that the introduction of this Bill in no way indicates any weakness in the Government's resolve to continue to deal with the problem of smoking and health.

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

Motion made. That the debate on the Second Reading of the Bill be adjourned.

Question put and agreed to.

BUILDINGS (AMENDMENT) BILL 1987

THE SECRETARY FOR LANDS AND WORKS moved the Second Reading of: 'A Bill to amend the Buildings Ordinance'.

He said: Sir, I rise to move the Second Reading of the Buildings (Amendment) Bill 1987.

This Bill makes several amendments for the Buildings Ordinance to update it and to achieve greater efficiency in its application.

The Authorised Persons and Structural Engineers Registration Committee comprises three Government and six non-Government members. A quorum for the committee requires six members including all three Government members. This has created some problems of indisposition and has rendered scheduled meetings and other pre-arranged professional interviews abortive. In clause 3 of the Bill, the Ordinance is modified so that the quorum only requires two Government members and is reduced to five.

Although there is a right of appeal against decisions of the Authorised Persons and Registered Structural Engineers Registration Committee, a similar right is not available for deferrals, and as deferrals can be imposed repeatedly this is unfair. In clause 3 of the Bill a subsection is added to the Ordinance which only permits an application to be deferred once.

More importantly, aluminium and other metals, glass, plastic and composite materials are in increasing use in building construction, but do not come within the scope of the Buildings Ordinance. Neither do excavation, piling, and foundation works which warrant tight supervision and monitoring to ensure public safety. Clause 4 of the Bill expands the scope of the Ordinance to include these.

The Building Authority under the Ordinance can carry out various works in the interests of public safety, and can recover the direct costs incurred from persons who have failed to carry out the works themselves. However, incidental costs are often involved which are not recoverable. So clauses 5 and 6 of the Bill amend the Ordinance to include for these. These works and services will, however, be kept to a minimum.

Under the Ordinance, building works, not involving the structure of a building, may be carried out without approval from the Building Authority. But if alteration to existing drains are involved, however minor, the full approval process is required. This reqirement delays the processing of licence applications particularly for restaurants and licensed premises. Clause 8 of the Bill modifies the Ordinance to allow minor drainage works to be carried out without approval from the Building Authority.

Sir, I move that the debate be now adjourned.

Motion made. That the debate on the Second Reading of the Bill be adjourned.

Question put and agreed to.

PRISONERS (RELEASE UNDER SUPERVISION) BILL 1987

THE SECRETARY FOR SECURITY moved the Second Reading of: 'A Bill to provide for the release of prisoners under supervision on the recommendation of an advisory board; and for connected purposes'.

He said: Sir, I move that the Prisoners (Release under Supervision) Bill 1987 be read for a Second time.

The idea of introducing a system of parole in Hong Kong has been under consideration for more than 15 years. We have long considered that there are considerable benefits both for society and for the persons involved in such a scheme. The problem has been, in the past, a lack of experience in this field and a doubt as to whether the public would support it. I am pleased to say that I believe both problems have been overcome.

Briefly, parole involves the early release under supervision of carefully selected prisoners whom it is considered would be most likely to be successfully reintegrated into society. The benefits are—

(*a*) for the society as a whole, one of the most important requirements of a penal system is to protect the community from criminals. The success of a system largely depends on the extent to which it reduces the number of prisoners returning to crime on release from prison. A parole system, in this context, provides a good opportunity for prisoners to be released into the community at the time when, unless they are hardened criminals, they are most likely to be able to re-establish themselves without reverting to crime. By thus providing for prisoners who are not harden criminals to be released on parole, we should be able to reduce the risk to society of their subsequently misbehaving; and

(*b*) for the benefit the prisoners themselves, a parole system provides one of the best means to help them to adjust from a highly disciplined prison environment to the freedom of living normally in the community. As a result of this help, they should be in a better position to lead a law-abiding life and not to return to crime again.

With regard to experience in the Correctional Services Department to run aftercare supervision, we are now sure that the department, with almost 35 years of experience in the aftercare of persons who have been in training centres, detention centres and drug addiction treatment centres will be able to render appropriate assistance to the adult prisoners who will be released on parole. Some additional staff will be provided for this purpose.

On the reaction of the public, it is now evident that people here recognise the importance of rehabilitation in treating prisoners. In 1986, in considering the Government's discussion document on options for changes in the law and in the

administration of the law to counter the triad problem, members of the public frequently raised the need for more rehabilitative measures in our correctional systems. Indeed many Members of this Council made the same point. Since the Bill was gazetted on 26 June, we have been closely watching the reactions to it. The proposed schemes seem to have been well received as a means better to rehabilitate offenders. Given this public support, we have no doubt that the proposed schemes have a good chance of being a success.

Sir, the object of this Bill is to give legal effect to two proposed schemes for prisoners to be released on parole, namely, the release under supervision scheme and the pre-release employment scheme.

The Bill provides for the establishment of a release under supervision board, which will make recommendations to the Governor on matters which require decisions under the legislation.

Under clause 7, subject to a prisoner meeting basic criteria as to the length of sentence imposed and the amount of it that he has served, the Governor will have the authority to order his release on the board's recommendation, and to set the conditions of that release.

A released prisoner may be required to reside in a hostel which is under the administration of the Correctional Services Department, and if so, unauthorised absence from the hostel will be punishable. But whether or not he is required to reside in a hostel, he will receive a supervision order from the Commissioner of Correctional Services, which will set out the conditions agreed for his release and will specify the date on which the order will expire. The conditions of his release would include a requirement to meet regularly with his supervisor and to disassociate with criminal elements, and could include a requirement to live in a certain location, to contribute to his family and if necessary to have medical attention.

A prisoner whose application for release under supervision is refused will be able, under clause 12, to apply for a review of the decision to refuse his release.

With regard to part III of the Bill, it provides for cases in which a supervision order may be terminated before its due expiry date. A supervision order will be capable of being revoked by the Governor on the board's recommendation, or by the Commissioner of Correctional Services in circumstances where the public interest requires immediate action. Also it will cease to have effect in the event of a further sentence of imprisonment being ordered against the same person. The prisoner will then be liable to be reimprisoned for the full remainder of his sentence for the first offence, but will be able to apply to the board for a review of his case.

Sir, we intend to proceed cautiously. We expect that not more than 100 prisoners, or 5 per cent of those eligible, may be initially released under

supervision. We intend to carry out a comprehensive review three years after implementation, or earlier if necessary. And a report on the board's work will be tabled at this Council annually.

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

Motion made. That the debate on the Second Reading of the Bill be adjourned.

Question put and agreed to.

BROADCASTING AUTHORITY BILL 1987

Resumption of debate on Second Reading (24 June 1987)

MR. ALLEN LEE: Sir, I rise to support the Broadcasting Authority Bill 1987 as the convener of the Legislative Council ad hoc group to study this Bill.

Members will recall that the setting up of a Broadcasting Authority is among the major recommendations in the Broadcasting Review Board Report. This recommendation was also supported by Members at the adjournment debate in this Council on 19 March 1986.

We therefore welcome this Bill which establishes the Broadcasting Authority and sets out in legal terms its powers and functions. However, in our scrutiny of the Bill, we identified a number of points for clarification with the Administration resulting in improvements to be made to the Bill by way of four Committee stage amendments. I shall deal with them one by one.

First, the membership of the authority. Bearing in mind the importance of the authority whose duty is to ensure the provision of an adequate, comprehensive and balanced service which is responsive to the diverse needs and aspirations of the community, we feel that its membership should consist of as wide a cross-section of the community as possible so that it could carry out its functions effectively. Whilst I am sure the Administration will take this into account in the appointment of the authority's members, we consider that clause 4(1)(*b*) should be further qualified by a requirement that non-government members should be persons who have had no less than seven years ordinary residence in Hong Kong prior to appointment. This will ensure that those who serve on the authority will have a good background knowledge of the local community and will be better able to serve the public interest.

The other three amendments are more technical in nature. Clause 6(3) will be amended so that the Standing Orders regulating the procedures of meetings could make reference to other relevant sections of the Ordinance, such as clause 7.

Members consider that section 36A of the Television Ordinance, Cap. 52, which requires the authority to consult the licensees before any broadcasting is to be prohibited, is sufficiently important for it to be incorporated into clause 9(1)(*a*). This clause will be amended to make it clear that the obligation to consult before prohibition is also a major function of the authority.

As it stands, clause 13(3) gives the impression that the Commissioner for Television and Entertainment Licensing could decide on his own initiative whether to tender advice to the authority 'as he thinks fit'. The amendment will refine the wording to make it clear that in fact, to advise the authority is one of the major functions of the commissioner.

There are also a number of other points which we feel that the Administration should bear in mind and take appropriate action in the context of either the implementation of the Broadcasting Authority Bill or in the review of the Television Ordinance and the drawing up of the future Broadcasting Ordinance.

For example, on the question of the renewal of the existing television licences, Members consider that the Administration should ensure that the relevant recommendations of the Broadcasting Review Board would be included as new licensing conditions. We also think that the Broadcasting Authority should be able to impose additional conditions, if necessary, before the licences are renewed.

Members are aware that the responsibilities of the authority will be extended from the wireless television to cover radio and cable television. The Administration should take this opportunity to conduct an overall review of policy considerations associated with the various proposals and their inter-related implications. For example, it is perhaps necessary to consider whether the powers and functions of the Broadcasting Authority should be modified in any way to see if they are adequate or appropriate in the wider context of all aspects of broadcasting.

In conclusion, may I record our appreciation of the Aministration's prompt and helpful response to our suggestions. I am sure Members will agree that the speedy and smooth passage of this Bill despite the limited time we have, owes much to the spirit of co-operation between the Administration and the ad hoc group. Much credit should also go to members of the ad hoc group for their generous contribution of time and effort to the discussion in pointing out useful areas of possible improvement to the Bill. Finally I wish the Broadcasting Authority every success and good speed in its unenviable task of having to draw up the necessary licensing conditions before the end of this year.

With these remarks, Sir, I support the motion.

DR. HO: Sir, the establishment of a Broadcasting Authority to replace the Television Advisory Board and the Television Authority in the administration of the Television Ordinance is definitely an improvement in two aspects. Unlike

the Television Advisory Board, the Broadcasting Authority is vested with executive power and thus will be more efficient in the control and regulation of television broadcasting. Greater public participation in policy formulation in the broadcasting industry is made possible by way of a non-official chairman and a majority of non-official members. However, in order for the public preferences and viewing standards to be truthfully and adequately reflected in the policy, the quality of the non-official members to be appointed to the Broadcasting Authority is of primary concern. A much longer period of residence in Hong Kong for a member, say seven years, than the 180-day or 300-day requirement as specified in clause 4(8)(*a*) and (*b*), should be considered. This length of residence is necessary for the member to be well acquainted with the social, cultural and moral conditions and standards of the local community. I am glad to say that the Administration has agreed to support amendments to this effect at Committee stage.

The question as to whether persons intimately involved in the electronic media should be made members of the authority, is open to debate. My personal view is that the member's professional knowledge and practical experiences in broadcasting are valuable to the deliberation of policy issues, but his pecuniary interest should not be allowed to exert undue influence on policy decisions by way of voting. Clause 12 of the Bill provides for the setting up of advisory committees and the appointment of co-opted members. Through this channel of consultation, the necessary expertise and technical input of the industry can be judiciously exploited, without having to run the risk of evoking a conflict of roles in a full member.

The provision of a complaints committee under the authority is a much more desirable option than a complaints tribunal as recommended in the Broad-casting Review Board Report. I recall that at the adjournment debate held in this Council in March 1986, some Members expressed the wish that the redress of public grievances and dissatisfaction in respect of television programmes and advertising should be dealt with in accordance with the normal procedures of our existing judiciary system.

As a means of stepping up the monitoring of television broadcasting, the public must be made aware of their entitlement to make complaints. To this end, the Broadcasting Authority should make it a condition of licence for the television licensees to broadcast such announcements from time to time. In addition, the complaints committee should be advised to attend to complaints as speedily as administratively possible, say within a period of 30 days after the receipt of the complaints, in order to sustain the confidence of the public in the complaints committee.

Sir, with these remarks, I have much pleasure in supporting the Broadcasting Authority Bill 1987.

MR. YEUNG (in Cantonese): Sir, since its formation on 13 February 1984 and up to the completion of its report on 12 August 1985, the Broadcasting Review

Board had held a total of 112 meetings. The time spent is of secondary importance. It is most pleasing to see that the first step to implement the recommendations of the report has now been formally taken.

The 1987 Broadcasting Authority Bill was introduced to implement one of the major recommendations listed in the report, that is, the functions of the existing Television Authority and the responsibility of the Commissioner for Television and Entertainment Licensing for radio broadcast should be taken over by a Broadcasting Authority. Initially, the authority, established with statutory powers, will be responsible for monitoring and regulating television broadcast. When appropriate legislation is drawn up at a later date, the terms of reference will be extended to cover radio and cable television. The proposed authority received strong support from educational and social groups during the consultation period as well as support from Legislative Council Members during a previous adjournment debate. Hence it can be said that the purpose of this Bill is very appropriate.

Sir, airwaves are natural resources which belong to the whole community. As there is a limit on its availability for use, the Government should make sure that they are utilised in the best interest of the community. Broadcasters who are granted licences to use airwaves should therefore undertake to provide good quality programmes for entertainment, information and for educational purposes. They should also conform to all technical requirements and ensure that an adequate, comprehensive and balanced service is provided to meet the diverse needs and aspirations of the community. In order to ensure that television programmes and broadcasting techniques can reach the right standards and in view of the fact that the present television licences will expire by the end of December 1988, the establishment of a Broadcasting Authority, which will be responsible for regulating television, radio and cable television broadcasting, is a matter of great urgency. Thus the introduction of the Broadcasting Authority Bill is a timely move.

I believe that the selection of programme content should take into account the prevailing standards of our society. Since radio and television broadcasting pervade into almost every household in Hong Kong, it follows that there should be a greater participation by the public in monitoring the broadcasting industry. It is also very wise of the Government to introduce this Bill. Under this Bill, all matters relating to television, radio and cable television broadcasting are subject to regulation and monitoring. The Government should therefore take the second step for implementation as soon as possible, and should make known to relevant bodies and members of the public for their information the timing and procedures for the implementation of this legislation.

Sir, with these remarks, I support the Bill.

CHIEF SECRETARY: Sir, the amendments to the Bill proposed by the ad hoc group as summarised by Mr. Allen LEE are all acceptable to the Administration. In

addition to the points made by Mr. LEE in his speech, I would like to elaborate on a few points highlighted by the proposed amendments.

First, I agree entirely with Mr. LEE that clause 4(1)(*b*) should include a residential qualification for a non-official member of the Broadcasting Authority. The Government recognises the important role of the Broadcasting Authority and will ensure that the membership of the authority represents a wide cross-section of the community.

Secondly, we agree that the standing orders to be made under clause 6(3) should be consistent with all the provisions of the Bill, including clause 7 which provides for the disclosure of members' interest at meetings. I thank the ad hoc group for drawing our attention to this technical oversight.

Thirdly, the reason why the obligation to consult licensees under section 36A of the Television Ordinance, Cap. 52, was not included as one of the functions and powers of the authority under clause 9 was because at the time of the drafting, we intended only to highlight the major functions of the authority. The list was not intended to be exhaustive. We agree, however, that the duty to consult affected licensees before issuing an order under section 35(1) and 36 of the Bill is an important one and should be included into clause 9.

Fourthly, I concede that the original wording of clause 13(3) which provides the principal executive officer of the authority to render advice 'as he thinks fit' could conceivably be interpreted to allow him to refuse to give advice to the Broadcasting Authority. I can assure Members that this was never the intention. The proposed refinement to this clause will, Sir, I am sure, remove any such possibility.

Mr. LEE has also drawn attention to a number of points which should be borne in mind when the Television Ordinance is reviewed or when the future Broadcasting Bill is drafted. They have been duly noted by the Administration. As regards the many recommendations of the Broadcasting Review Board, referred to by other Members, I am sure the Broadcasting Authority when it is established will examine them carefully and, where appropriate, include them as conditions in the renewed licenses of the two television stations. The Administration will also carefully consider policies for cable television and radio before drafting legislations to enable the regulation of these broadcasting services.

Finally, Sir, I would like to thank the ad hoc group, and particularly Mr. Allen LEE, for the considerable time and effort they have contributed to enable the Second Reading debate on the Bill to resume within such a short time. It clearly indicates that Members are in strong support of the establishment of the Broadcasting Authority.

Question put and agreed to.

Bill read the Second time.

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

PREVENTION OF BRIBERY (AMENDMENT) BILL 1987

Resumption of debate on Second Reading (27 May 1987)

MR. PETER C. WONG: Sir, the OMELCO Standing Panel on Security was consulted by the Secretary for Security in May last year on a paper outlining the main proposals in the Prevention of Bribery (Amendment) Bill 1986 and Independent Commission Against Corruption (Amendment) Bill 1986. The two Bills introduced into Legislative Council on 27 May 1987 incorporated many of the suggestions of the panel. Sir, we welcome the Administration's continued efforts to review procedures and levels of penalties to enable the Independent Commission Against Corruption to carry out its duties with improved efficiency.

The Legislative Council ad hoc group set up to examine the two Bills supports the proposed legislation in principle. During the many working sessions, Members raised a number of issues and held in-depth discussions with the Administration. As a result, the group and the Administration were able to agree on five amendments which we believe, are an improvement to the already well drafted Bills.

In this speech, Sir, I shall confine myself to the Prevention of Bribery (Amendment) Bill 1987. Clause 4 of the Bill is without doubt the most important. It provides for the making of an order for the confiscation of property or pecuniary resources found to be in the control of a Crown servant who is convicted of a section 10(1)(*b*) offence, that is, being in control of unexplained pecuniary resources or property disproportionate to his official emoluments. In practical terms, the Bill is to give the court power to order the confiscation of property found at the trial to be in the control of the convicted Crown servant, whether it is in his possession or in the hands of a third party. In introducing the Bill, the Attorney General eloquently argued for the need to introduce this new power. It is necessary for the better administration of justice. While accepting the Attorney General's arguments, the group paid particular attention to the need to protect innocent third parties and the practical aspects of implementation. After lengthy discussion and deliberation, the group is satisfied that subject to certain amendments, the following limitations and safeguards in the Bill provide sufficient protection for innocent third parties—

—The application for an order for confiscation must be made by the Attorney General within 28 days after the conviction.

—where the assets are held by a third party, then the third party must be given a reasonable opportunity to show cause why the order should not be made.

—No order may be made upon assets held by a third party if the third party satsifies the court that an order would be unjust in the circumstances.

—A confiscation order and a monetary penalty order cannot be imposed in respect of the same assets.

—The third party is given a right of appeal.

Regarding the practical aspects of the implementation of the confiscation order, Members asked for a number of clarifications and put forward several useful suggestions. The group was assured by the Administration that it did not anticipate any serious problems in this regard. However, the Administration conceded that forewarned is forearmed.

Sir, may I now refer briefly to the power to detain a suspect's travel documents. Under the existing law, the maximum period for which travel documents may be detained is six months with a possible extension for a further three months on application to a magistrate. At the security panel meeting in 1986, the Administration proposed that a further additional three months extension should be allowed where a magistrate is satisfied that an investigation could not reasonably have been completed within the existing time limits of nine months, particularly in the case of complex and extensive corruption-related commercial frauds. The panel at the time was not in favour of the proposed additional extension in view of the fact that the detention of travel documents could cause great inconvenience and hardship to persons such as businessmen who had to travel frequently. I am pleased to note, Sir, that the advice of the panel was heeded and the existing law now remains unchanged. In short, travel documents may only be detained for a total period of nine months.

Another area where the group focussed its attention relates to the new provision whereby income from property may be frozen. In applying this new provision, it is possible that the suspected person may be left without means to support himself or his family or to pay for legal advice or representation. Members' concern was somewhat allayed by the Administration's assurance that the commissioner is always prepared to consider sympathetically an application for 'necessary expenses'. Furthermore, the suspected person may appeal against the commissioner's decision.

Sir, this is a piece of complex legislation. After detailed examination of the Bill on content as well as legal implications, we have proposed five amendments. These have been accepted by the Administration and I will move them at the Committee stage. In brief, Sir—

—The first amendment deals with the definition of 'public servant' in clause 2(*a*). The revised version makes the definition clearer and easier to understand.

—The second amendment, in addition to improving the wording in the new section 12AA(4)(*b*) in clause 4, affords protection to a bona fide purchaser for value and makes it clear that an order should not be made against such purchaser.

—The third amendment inserts a new section 12AA(8) which specifically provides that an order for confiscation may contain practical provisions for its implementation.

—The fourth amendment extends the period within which a third party may appeal against an order for confiscation from 14 days to 28 days. Since the Attorney General may apply for an order for confiscation within 28 days, it was felt that to be consistent, the third party should also be allowed 28 days to appeal. The Crown would not be prejudiced by such extension, as the property in any event would have been forzen.

—The last amendment deals with section 12AB(3). The amended version reflects the normal practice whereby either the court which makes the order or the Court of Appeal may direct a stay of execution pending appeal.

Sir, subject to the Committee stage amendments, I support the motion.

ATTORNEY GENERAL: Sir, I am most grateful to Mr. Peter C. WONG and the other Members of the Legislative Council ad hoc group for their thorough and helpful study of this Bill and its companion measure, the Independent Commission Against Corruption (Amendment) Bill 1987.

Indeed, Sir, as Mr. WONG has indicated, and we are glad that he is back in fine voice with us, the proposals in these Bills have survived a long and exacting process of examination, not only by this group, but also previously by the OMELCO Standing Panel on Security as well as the Bar Association and the Law Society. Many of the suggestions made by members of these bodies have affected not only what the Bills contain, but also what they no longer contain.

The public at large can, I think, now be assured by the fact that all parties are able to support the Bills as amended to incorporate the minor changes proposed by this ad hoc group.

Sir, Mr. WONG quite properly emphasised the concern of Members that the confiscation provisions in the Prevention of Bribery (Amendment) Bill should be carefully drawn to safeguard the rights of innocent third parties.

I am pleased to say that the amendments proposed by the group will improve these safeguards and at the same time enhance the overall effectiveness of the legislation. They are readily accepted by the Administration.

Sir, the latest Annual Report of the Independent Commission Against Corruption which was tabled in this Council only last month reminds us that there has been no drop in reports of corruption. The role of the commission in upholding standards of integrity and trust in the community remains as vital as ever.

As always, it is necessary carefully to maintain a fair balance between the rights of a law enforcement agency, even one with the high reputation of ICAC, and the rights of the law-abiding public going about its business.

I am confident that, with the help of all those who have scrutinised this measure, participated in this discussion, we have been able to maintain that balance.

Question put and agreed to.

Bill read the Second time.

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

INDEPENDENT COMMISSION AGAINST CORRUPTION (AMENDMENT) BILL 1987

Resumption of debate on Second Reading (27 May 1987)

MR. PETER C. WONG: Sir, I have briefly touched on this Bill in my speech on the Prevention of Bribery (Amendment) Bill 1987.

The Attorney General in his speech on 27 May 1987 explained in simple terms clauses 4 and 6 of the Bill which provide for new offences and powers of arrest by officers of the commission. The Legislative Council ad hoc group set up to examine the Bill accepts the explanation offered by the Attorney General and is satisfied that—

—the range or scope of the commission's investigatory powers has not been extended by the inclusion of the new offences under clause 4, and
—the powers of arrest under clause 6 are no more and no less than those exercised by police officers under the Criminal Procedure Ordinance.

Sir, with these remakrs, I support the motion.

Question put and agreed to.

Bill read the Second time.

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

SUPREME COURT (AMENDMENT) BILL 1987

Resumption of debate on Second Reading (24 June 1987)

Question put and agreed to.

Bill read the Second time.

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

PROTECTION OF WOMEN AND JUVENILES (AMENDMENT) BILL 1987

Resumption of debate on Second Reading (1 July 1987)

MR. HUI: Sir, the Portection of Women and Juveniles (Amendment) Bill 1987 represents a timely step taken by Government to update an obsolete Ordinance. The Bill, which streamlines procedures for handling child abuse cases, wins plaudits from the social work field for its liberal, flexible and comprehensive provisions.

Members may recall our discussion of the KWOK Ah-nui case this time last year when the anomaly of the principal Ordinance enacted in 1951 was first brought to light. While appreciating the rationale behind the original provisions, attention was focussed on the power of the Director of Social Welfare in effecting entry into premises by the use of force. Members of the social work profession joined the public in questioning the extent to which authority could be exercised without inducing the abuse of power and infringing upon human right. Clause 7 in the new Bill, based on the recommendation of the Working Group on Child Abuse, offers a solution to the problem raised. It stipulates that before forcibly entering into premises, the Director of Social Welfare must obtain a warrant issued by a magistrate, juvenile court or district court acting as the third party in a move that affects the well-being of the family involved. Since the court can only issue a warrant on reasonable grounds, its decision would lend support to the professional judgement of social workers. We welcome this amendment that only upholds the client's dignity but also facilitates our work in handling child abuse cases.

With regard to clause 3 which requires children aged seven or above to give evidence in court and provides the court with the discretion to bring younger children before it if necessary, we acknowledge the law drafters' intention to avoid emotional trauma for young children. However, our concern is not so much whether children under seven are competent to give evidence, but whether under certain circumstances it is suitable for some older children to appear in court. We believe that instead of taking age as the only criterion for court appearance, the mental, psychological and social conditions of abused children should be taken into consideration as well.

The other sections of the Bill, which provide for prompt medical treatment for both the physical and mental condition of children in need of care and protection, further provide detailed, necessary revisions of an outdated legislation. Sir, it remains for me to urge the Government to speed up the exercise on a comprehensive review of the principal Ordinance enacted almost four decades ago, in the light of rapid social changes that are taking place in Hong Kong.

MRS. TAM: Sir, the Protection of Women and Juveniles Ordinance was first enacted 36 years ago and last revised some nine years before. Its effectiveness has long been open to doubts. The 'KWOK Ah-nui case' of last year only exposed its inadequacies in clear terms. It should, however, be commendable that the Government is able to respond promptly by firstly introducing the more urgent amendments to the Ordinance, while at a later stage, it will conduct a comprehensive review of the Ordinance.

I support in principle the four amendments in the Protection of Women and Juveniles (Amendment) Bill 1987, which is presented to this Council for Second Reading today. It is believed that these amendments will facilitate the enforcement of the law and improve its effectiveness. In support of the Bill, Sir, I would like to make two points. First, it is wise not to enlist the hospital as 'a place of refuge' under clause 5 of the amendment Bill in proposing to enabling the court to send a child direct to a hospital. Such measure is only a temporary arrangement for the child to receive medical examination or treatment in the hospital. Should a hospital be treated as a 'place of refuge', this will put an unnecessary onus onto the hospital for supervising the child. Second, in relation to appearance of children in court proceedings. It is in principle, a reasonable requirement in the amendment Bill, that only those children aged seven or above should appear before the court. It should, however, be noted that some people may neglect these legal procedures so that unco-operative parents may ignore such court notifications, resulting in the child's right not being safeguarded. The possibility of such a situation should warrant the attention of the relevant authority.

After today's piecemeal amendment, may I urge the Government to conduct as soon as possible a comprehensive and in-depth review of the Protection of Women and Juveniles Ordinance, with particular attention to such aspects of the Ordinance as the spirit, the scope of protection, consistency with other related Ordinances and the adequacy of panelties.

Sir, with these remarks, I support the Bill.

SECRETARY FOR HEALTH AND WELFARE: Sir, I would like to thank Mr. HUI and Mrs. TAM for their remarks in support of the Protection of Women and Juveniles (Amendment) Bill 1987. It is most gratifying that this important Bill has received a general welcome and that it will be in effect before the end of the present session.

I take Mr. HUI's point about the question of whether under certain circumstances it is appropriate for some children over the age of seven to appear in court. The main purpose of this provision is to enable the court to take the child's views into account. But I understand that the child need not attend the entire hearing, and the judge also has discretion to require the parent or guardian to withdraw from the court, if he wishes to hear the child's views on his own. We shall observe carefully how the amended provisions operate in practice, and if necessary further amendments can be considered as part of the comprehensive review.

This comprehensive review will amount to a major overhaul of the legislation and will inevitably take some time to complete. But I can assure Mrs. TAM and Mr. HUI that it will not be unduly delayed.

Question put and agreed to.

Bill read the Second time.

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

WEIGHTS AND MEASURES BILL 1987

Resumption of debate on Second Reading (10 June 1987)

MR. PETER C. WONG: Sir, I welcome and fully support Government's move to provide modern and effective legislation on weights and measures. The Bill now before Council is the latest example of government's efforts to promote fair and orderly trading. It will be welcomed by housewives and shoppers, providing as it does greater protection against those who set out to defraud in one form or another. It will also, I believe, be well received by manufacturers and traders. This Bill, together with the Trade Descriptions Ordinance, will now provide clearer guidance on how to conduct trading and manufacturing business in an orderly and straightforward manner.

Sir, the existing Weights and Measures Ordinance enacted more than 100 years ago and last amended in 1937 is totally inadequate for the complex society in which we now live. The Ordinance is just three and a half pages long, carries maximum penalties of $200 for using or manufacturing false weights and measures, and makes the Commissioner of Police the custodian of sample weights and measures. The present Bill, in contrast, takes a comprehensive approach to the subject. Its English text is 25 pages long and includes three schedules along with provision for regulations. It prescribes maximum penalties

of six months imprisonment and a $20,000 fine for offences containing an element of fraud. The Bill puts the main responsiblity for implementing and enforcing the legislation in the hands of the Commissioner of Customs and Excise, whose department has considerable expertise and experience in handling offences connected with trade.

The other important difference, Sir, between the present Bill and the one it repeals—and indeed every Bill passed by this Council during the 145 years of its existence—is that the Bill has been drafted and gazetted in both English and Chinese. This afternoon, we are only concerned with the English version of the Bill, since the Chinese version is the first of a series of test runs in the bilingual laws project and is not intended to become law. Nevertheless, this historical step deserves some comment. I shall do so later in my speech.

Sir, the ad hoc group set up to study this Bill is fully in support of Government's efforts to provide more effective consumer protection. Although the main concept is straightforward, the Bill itself is not. It contains a number of technical and trade-related terminologies which are by no means easy to understand. These, Sir, were carefully examined by the group. One of the group's tasks was to ensure that legislation designed to deter and penalise dishonest trading would not cause undue hardship or injustice to the honest trader. The group followed certain guiding principles, which reflected our various concerns. The Bill should be easily understood by those subject to its provisions or responsible for enforcing them. Innocent and harmless deviations from some of its less important requirements resulting from ignorance or confusion should be treated leniently.

Finally, Sir, the very thorough and comprehensive provisions of the Bill should not stifle trade and thereby threaten our prosperity by penalising specialised trades which have been using, in a perfectly honest and acceptable way, measures or weights not specified in the Bill.

Sir, our first area of concern has produced a number of textual amendments to the Bill, which I shall move at the Committee stage. Four of the five agreed amendments are intended to make the drafting clearer and more consistent. The Administration, Sir, will also move a number of textual amendments to improve the drafting of the Bill.

Our second concern, that of ensuring that there should be no injustice to the trader, has led us to examine very carefully the powers conferred by the Bill on the enforcement authority and the penalties prescribed. Since it would be very difficult to prove criminal intent in, say, the use of a false or defective weighing machine for trade, we accept that some of the offences in the Bill must carry strict liability. It is worth noting that imprisonment is only available for offences with an element of fraud, that is, where there is an intention to deceive. In order to avoid penalising the honest trader who unwittingly uses established and

accepted symbols that are not listed in the schedules, I shall move a Committee stage amendment to clauses 11(1)(*a*) to make it clear that a person only commits an offence if he uses a symbol or abbreviation of a unit of measurement not specified in the Second Schedule with intent to deceive. This will allow, Sir, among other things, the use of the time-honoured symbol of the apostrophe and double apostrophe to indicate feet and inches respectively where there is no intention to deceive.

Sir, our third concern, that the Bill should not hinder free trade, has been echoed by representations from a local oil company and the Federation of Hong Kong Industries. The oil company maintains that, in accordance with international practice, aeroplane fuel sold at Kai Tak Airport is measured in US gallons. Since the use of US measurements for trade is not authorised by the Bill, the oil company is concerned that unless airport fuel is specifically exempted, oil companies using US measures would be breaking the law. The federation is further concerned that the new legislation might create difficulties for manufacturers using fast-filling equipment to package goods. This equipment sometimes produces slight variations in the net weight of the packed goods. To ensure reasonable and realistic enforcement of the law, the federation argues for clear regulations to be made under clause 37(1) relating to the methods of sampling and the tolerance limits for pre-packed goods. There may well be other practical difficulties in respect of other trades or manufacturing undertakings, which may emerge after the Bill has been enacted.

Sir, these are legitimate concerns and both the group and the Administration have given them serious consideration. Fortunately, the Bill allows for flexibility. There is provision for exemptions of certain goods or classes of goods and for making regulations. In the 12 months between the passing of this Bill and the proposed enforcement of the Bill's provisions, I am confident that Government will systematically and energetically consult and educate traders and traders' organisations, listen with understanding to cases for special allowances to be made, and respond sympathetically and positively, and with a degree of flexibility, where a case can be made. In doing this, Government should bear in mind both the interests of the individual consumer and the fact that our prosperity as a community owes much to our policy of minimal interference in trading practices.

Sir, bilingual legislation is a new experience in the Hong Kong context. Our aim is to establish a working procedure whereby bilingual legislation may effectively be passed into law without undue delay and without sacrificing our usual detailed scrutiny of proposed legislation. Since the present Bill is only a test run, we have, as a matter of priority, completed our examination of the English version, which, I hope, will be passed into law this afternoon.

Sir, to the Chinese version, a preliminary study shows that the Chinese text very closely reflects that of the English version. However, the Chinese text is by

no means perfect and more concerted effort has to be directed towards the linguistic aspect. One simple example is the definition of 'premises'—

English text—'premises' means any building, place, stall, vehicle or vessel.
Chinese text—'樓宇'指任何建築物,場所,攤檔,車輛或船隻.

Obvioulsy, the English text is perfectly acceptable, but the Chinese text has raised quite a few eyebrows. It is difficult to envisage that a building could mean a vehicle or a vessel. Sir, we shall have to search for a better translation of the word 'premises'. There are other examples, but I shall not bother Members with details in my speech.

The group proposes to continue its work during the summer recess and we look forward to useful exchange of views with the Administration. Members will be pleased to know that a refined version of the Chinese text, incorporating the agreed amendments, will be published for public information in due course.

Sir, in conclusion, I would like to congratulate the Legal Department for producing two versions of the Bill, either of which appears to reflect consistently and accurately the provisions contained in the other. This is certainly no mean achievement. Anyone with knowledge of bilingual texts will readily acknowledge that the present exercise cannot be an easy task.

Sir, with these remarks, I support the motion.

MR. CHEONG: Sir, in relation to Hong Kong's reputation in the international trading community, the use of internationally accepted units of measurement is recognised to be important. In this regard, industry agrees that there is an obvious need to replace the limited and out-dated provisions of the existing Weights and Measures Ordinance by a new one.

Industry supports the spirit of the Bill in regulating trade transactions regarding goods supplied by weight or measure. However, legislation can serve its intended purpose only if compliance and enforcement are made practicable. In this connection, I would like to draw this Council's attention to some of the practical aspects regarding implementation of the Bill which would need to be resolved before the Bill takes effect.

First of all, the Bill stipulates under clause 16 that goods have to be supplied by net weight or measure. In the case of pre-packed goods, especially where the food industry is concerned, the use of high speed fast-filling equipment may result in unintentional slight variations in the net weight of individual prepacked items. To allow for realistic and practicable enforcement of the law, industry definitely prefers net weight to be interpreted as average net weight within acceptable deviation limits for specified sample sizes. Although clause 37(1) empowers the Governor in Council to make regulations to provide for, inter alia, tolerances for the amount of variation in the net weight of pre-packed goods, permission for the supply for trade of prescribed goods by

average quantity, and the methods of statistical sampling and tolerances for classes of goods, such regulations cannot be made until after the enactment of the Bill. while urging for the speedy introduction of such regulations, I fear that in the interim period, consumer-complainants' insistence on taking action in cases of slight weight deviations could bring hardship to manufacturers. I understand that in overseas countries, enforcement authorities of weights and measures legislation usually make allowances for quantity deviations up to a specified tolerance level. I should think that the adoption of similar enforcement guidelines by the Customs and Excise Department and the communication of these guidelines to the trade would be a sensible move.

Secondly, under the existing Ordinance, the use of traditional United States units of measurement is allowed. However, such units of measurements will be excluded from the Second and the Third Schedules of the Bill and their use will thus become illegal in Hong Kong when the new Weights and Measures Ordinance comes into effect. This will render imported goods which are labelled in traditional United States units, even those indicated in parallel with metric units, illegal. To take account of the latter cases, consideration should be given to making the expression of weights and measures in systems of units outside those stipulated under the Bill legal if they are indicated in connection with units of measurement permitted under the Bill.

Thirdly, clause 13(1) makes it an offence for anybody to possess for use for trade any weighing or measuring equipment that indicates units of measurement unauthorised under the Bill. I think it is only reasonable that exemptions should be given to traders who possess measuring equipment calibrated in units other than those authorised under the new Ordinance if the equipment is used to weigh or measure goods intended for export or re-export to places outside Hong Kong where other weights and measures systems are used. For example, at least one oil company is presently using an equipment which is calibrated in United States gallon readings for measuring aviation fuel in the Kai Tak Airport. Similarly, manufacturers or testing laboratories which possess such measuring equipment for quality control or testing purposes should also be exempted from the coverage of this clause.

Fourthly, clause 37(3) states that regulations shall not come into operation before the expiration of three months after they are gazetted. I would like to seek clarification as to whether this clause can be interpreted as the minimum grace period given to the trade. Obviously, manufacturers will have to re-calibrate their measuring equipment or import new ones to meet the required standards. Moreover, account should be taken of the lead time needed for them to make relevant labelling and packaging adjustments. A three months' grace period would probably be insufficient in most cases. In order to minimise the difficulties posed to the trade, I would suggest that, should any of the regulations be drawn up, the trade should be involved from an early stage of the drafting process and consult the trade on a reasonable time-table for implementing the request.

Lastly, clause 3(2) of the Bill defines the scope of application under the future Ordinance. However, clause 3(2)(*b*) fails to give a clear definition as to what 'capacity' means. It does not indicate whether measurements for energy units such as horsepower or joule will be outside its coverage. Moreover, for certain products, a stated volume or capacity, say, a cubic metre of gas, is not meaningful without relation to a specified temperature and pressure. In the cases where the quantity of goods can be subject to variation by means of controlled adjustments in the temperature or pressure in the manufacturing environment rather than by climatic influences, provisions stipulating the temperature and pressure under which quantity should be measured would be necessary.

In reiterating the industry's willingness to comply with the provisions of the Bill, I wish to emphasise that its ability to do so is, to a large extent, dependent on whether practical implementational problems can be satisfactorily resolved. I sincerely hope that the above points in my speech would be given due consideration.

Sir, I support the motion.

MRS. CHOW: Sir, I welcome this Bill as a long overdue move to update and modernise weights and measures legislation and in particular to protect consumers from fraudulent or unfair trade practices in connection with quantity. As early as 1975, a working group was set up by Government to review the antiquated Weights and Measures Ordinance originally enacted in 1885, and after continuous rounds of deliberation, with the help of overseas expertise as well as local input including views from the district boards and the Consumer Council, the Administration has at last come up with the Bill before us.

I therefore support wholeheartedly the passage of this Bill, and urge the Government to spare no effort in public education in the next 12 months to ensure that the details and practical application of its content will be clearly understood, especially amongst hawkers and street traders, whose daily dealings are necessarily concerned. Government must take positive steps to make sure that all those affected must be given every opportunity to understand their legal obligation.

The Consumer Council, on its part, is looking into the possibility of installing a calibrated weighing machine in every district advice centre, so that consumers can resort to a dependable standard when they suspect fraudulent trading.

A point on enforcement. While I agree the direct control on weighing devices may be difficult to impose, enforcement staff should have the power to demand a certificate of calibration on instruments which are suspect. The Calibration Laboratory of the Industry Department should be able to handle this with ease. This could serve as an effective deterrent against temptation to tamper with weighing instruments.

Sir, I support the motion.

MR. CHEONG-LEEN: Sir, I would like to give my full support to this Bill.

It will replace the existing Ordinance—a very much out-of-date Ordinance— which was first enacted 102 years ago.

The new Weights and Measures Bill 1987 after more than 10 years in the making is now before us as—to use the words of the Secretary for Trade and Industry when he introduced the Bill on 10 June 1987, and I quote—

> '... a modern legal framework to facilitate the orderly conduct of trade, safeguarding the interests of both traders and consumers. It will also enhance Hong Kong's reputation overseas as a trading community that uses modern, internationally accepted standards'.

As this is the first Bill drafted and gazetted in both English and Chinese, I would urge that the widest possible and sustained publicity be given to the contents of the Bill.

Active co-operation from bodies such as district boards, area committees, MACs, the Urban Council, Regional Council, Consumer Council, commercial and industrial associations, hawker associations, retailer associations and so on, would be most helpful. I have in mind, Sir, the kind of support which was given to the Metrication Committee when it was promoting certain aspects of this Bill. The Urban Council, for example, have agreed to have properly calibrated metric weights put up at a certain number of markets.

A simpler bilingual version of the Bill would also make the contents more digestible.

I am glad to hear of the setting up of some sort of co-ordinating committee under the aegis of the Trade and Industry Branch to ensure that publicity will be sustained and effective before the Bill is finally brought into effect 12 to 18 months from now.

SECRETARY FOR TRADE AND INDUSTRY: Sir, I would like to thank Mr. WONG, Mr. CHEONG, Mrs. CHOW and Mr. CHEONG-LEEN, for their support for this Bill. I would also like to thank members of the ad hoc group for the time spent examining the Bill and for their pertinent and helpful comments on it.

Sir, Members of this Council were advised when the Second Reading of this Bill was moved that a number of clauses would benefit from improved drafting. These amendments, which amount to little more than textual improvements to achieve consistency, will be moved in the Committee stage. In addition, I would like to lend my support to those amendments to be moved by Mr. Peter C. WONG.

Sir, the Government has come across two main criticisms of the Bill since it was published. First, there have been comments that the Bill is somewhat

technical and difficult to understand. This is accepted, but with a Bill of this nature such criticisms are probably difficult to avoid. To help overcome this problem, the Government will over the next year or so organise appropriate educational publicity to explain the Bill and how it will affect traders and consumers, and we look forward to working closely with the Consumer Council and other organisations.

Secondly, concern has been expressed by certain trading groups that some provisions of the Bill will outlaw their established trading practices. Some of this concern has been reflected by Mr. WONG and Mr. CHEONG. The space of at least 12 months between enactment and the legislation being brought into force is evidence that there is no intention to disrupt trade. I can also confirm that the three months' grace period for any regulations made under clause 37 is a minimum. The Government is aware that, in a limited number of cases, certain trade practices may need to be exempted from the full rigours of the legislation. Certain clauses already provide for exemption where it is clear that exemption is both necessary and justified. In addition, further exemptions may be allowed by regulations made under clause 37. Any trader or group of traders may seek clarification from the Customs and Excise Department regarding the status of their trade practices, and they may propose that regulations be made to exempt them from the legislation altogether. The onus will be on those affected to make a case that to conform with the legislation would cause undue hardship or difficulty, but careful consideration will be given to any such proposal.

Turning now, Sir, to the points raised on specific clauses in the Bill, I would like to reassure Mr. CHEONG that, in accordance with international practice in the enforcement of weights and measures legislation, the Commissioner of Customs and Excise will permit, by administrative means, a tolerance on net weights or measures for most commodities. Secondly, in circumstances where scheduled units of weight or measurement are used in parallel with non-scheduled units, particularly in the case of certain imported goods, there would be no case for prosecution. Thirdly, as I mentioned earlier, it should be possible to make regulations under clause 37 to enable traders to possess weighing or measuring equipment in respect of non-scheduled units, in order to cover those situations where goods have to be marked in such units for export or re-export. Finally, it is not considered necessary to define 'capacity', as the Bill relates to goods and not to units of energy or other services, and the Schedules make clear the context in which the term 'capacity' is used in the Bill. Thus, for example, the Bill will cover the correct expression of the weight or volume of gas in a cylinder of LPG, but it is not concerned with the physical properties of that gas and, as I mentioned earlier, there is adequate scope for permitted tolerances up to certain levels.

Question put and agreed to.

Bill read the Second time.

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

EMPLOYMENT (AMENDMENT) BILL 1987

Resumption of debate on Second Reading (1 July 1987)

Question put and agreed to.

Bill read the Second time.

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

4.42 pm

HIS EXCELLENCY THE PRESIDENT: There is still a good deal on the Order Paper. I am sure that Members will wish to take a break at this point.

5.05 pm

HIS EXCELLENCY THE PRESIDENT: The Council will now resume.

Committee stage of Bills

Council went into Committee.

BROADCASTING AUTHORITY BILL 1987

Clauses 1 to 3,5,7 to 8,10 to 12 and 14 to 17 were agreed to.

Clauses 4,6,9 and 13

MR. ALLEN LEE: Sir, I move that the clauses specified be amended as set out in the paper circulated to Members for the reasons I have explained in my speech.

Proposed amendments

Clause 4

That clause 4(1)(*b*) be amended by inserting after 'Hong Kong' the following—
'and who have been so resident for at least seven years'.

Clause 6

That clause 6(3) be amended by deleting 'section' and substituting the following—

'Ordinance'.

Clause 9

That clause 9(1)(*a*) be amended by inserting after sub-paragraph (viii) the following—

'(viii*a*) consultation with licensees under section 36A of that Ordinance in respect of the issue of orders under section 35(1) or 36 thereof;'.

Clause 13

That clause 13(3) be amended by deleting 'and report on the implementation of its decisions and may tender such advice as he thinks fit' and substituting the following—

',tender advice and report on the implementation of its decisions'.

The amendments were agreed to.

Clauses 4,6,9 and 13, as amended, were agreed to.

Schedule was agreed to.

PREVENTION OF BRIBERY (AMENDMENT) BILL 1987

Clauses 1,3 and 5 to 14 were agreed to.

Clauses 2 and 4

MR. PETER C. WONG: Sir, I move that clauses 2 and 4 be amended as set out in the paper circulated to Members for the reasons as explained in my speech.

Proposed amendments

Clause 2

That clause 2(*a*) be amended in paragraph (*c*) of the definition of 'public servant' by deleting 'by virtue of the definition of "public body" in this section'.

Clause 4

That clause 4 be amended

(*a*) In new section 12AA(4)(*b*) by deleting 'subsequently so acted in relation to the pecuniary resources or property, whether by incurring expenditure or obligations or otherwise,' and substituting the following—

'so acted in relation to the pecuniary resources or property';

(*b*) in new section 12AA by inserting after subsection (7) the following—

'(8) An order under subsection (1) may make provision for taking possession of pecuniary resources or property to which the order applies and for the disposal of such resources or property by or on behalf of the Crown.';

(*c*) in new section 12AB(1) by deleting '14' and substituting the following—

'28';

(*d*) in new section 12AB(3)—

(i) by inserting before 'Court of Appeal' where it first occurs, the following—

'court which makes the order or the'; and

(ii) by inserting before 'Court of Appeal' where it occurs for the second time, the following—

'court or the'.

The amendments were agreed to.

Clauses 2 and 4, as amended, were agreed to.

INDEPENDENT COMMISSION AGAINST CORRUPTION(AMENDMENT) BILL 1987

Clauses 1 to 9 were agreed to.

Schedule was agreed to.

SUPREME COURT (AMENDMENT) BILL 1987

Clauses 1 to 45 were agreed to.

PROTECTION OF WOMEN AND JUVENILES (AMENDMENT) BILL 1987

Clauses 1 to 10 were agreed to.

WEIGHTS AND MEASURES BILL 1987

Clauses 1,5 to 10,12 to 15,18 to 20,22,25,29,31,32,34,38 and 39 were agreed to.

Clauses 2,3,11,26 and 35

MR. PETER C. WONG: Sir, I move that the clauses specified be amended as set out in the paper circulated under my name to Members for the reasons as explained in my speech.

Proposed amendments

Clause 2

That clause 2 be amended in the definition of 'quantity' by deleting 'weight or mass' and substituting the following—

'mass or weight'.

Clause 3

That clause 3(2) be amended in paragraph (*b*) by deleting 'weight or mass' and substituting the following—

'mass or weight'.

Clause 11

That clause 11(1) be amended

(*a*) by deleting paragraph (*a*) and substituting the following—

'(*a*) use for trade—

(i) any unit of measurement; or

(ii) with intent to deceive, any symbol or abbreviation of a unit of measurement,

which is not specified in the Second Schedule;'.

(*b*) In paragraph (*b*) by deleting 'linear, square, cubic, capacity,' and substituting the following—

'linear measure, square measure, cubic measure, capacity measure'.

Clause 26

That clause 26(3) be amended by deleting 'seize it and detain it for as long as it is so required' and substituting the following—

'seize and detain it'.

Clause 35

That clause 35 be amended by deleting 'person' wherever it occurs and substituting the following—

'public officer'.

The amendments were agreed to.

Clauses 2,3,11,26 and 35, as amended, were agreed to.

Clauses 4,16,17,21,23,24,27,28,30,33 and 35 to 37

SECRETARY FOR TRADE AND INDUSTRY: Sir, I move that the clauses specified be amended as set out in the paper circulated under my name to Members for the reasons given in my speech.

Proposed amendments

Clause 4

That clause 4 be amended by deleting 'any power, or to perform any function under this Ordinance' and substituting the following—

'or perform any function conferred or imposed on the Commissioner or an authorised officer under any provision of this Ordinance except sections 3, 7, 8 and 38'.

Clause 16

That clause 16(1) be amended by deleting 'shall supply' and substituting the following—

'shall in the course of trade supply'.

That clause 16(2) be amended by deleting 'supply for trade' and substituting the following—

'in the course of trade supply'.

Clause 17

That clause 17(1) be amended by deleting 'who weighs' and substituting the following—

'who in the course of trade weighs'.

That clause 17(2) be amended by deleting 'who sells' and substituting the following—

'who in the course of trade sells'.

That clause 17(3) be amended by deleting 'person sells' and substituting the following—

'person in the course of trade sells'.

Clause 21

That clause 21 be amended by deleting 'who sells' and substituting the following—

'who in the course of trade sells'.

Clause 23

That clause 23 be amended by deleting 'in the course of or for the purposes of supplying any goods for' and substituting the following—

'for the purpose of supplying any goods in the course of'.

Clause 24

That clause 24(1) be amended

(*a*) in paragraph (*b*) by deleting 'for' and substituting the following—

'in the course of'.

(*b*) by deleting 'he may' and substituting the following—

'may'.

(*c*) in sub-paragraph (i) by deleting 'premises, other' and substituting the following—

'premises other'.

Clause 27

That clause 27(1) be amended by deleting 'or an authorised officer'.

That clause 27(2) be amended by deleting 'or authorised officer'.

That clause 27(4) be amended by deleting 'or an authorised officer' and 'or authorised officer'.

That clause 27(5) be amended by deleting 'or an authorised officer'.

Clause 28

That clause 28 be amended by deleting 'section 24' wherever it occurs and substituting the following—

'this Ordinance'.

Clause 30

That clause 30(1) be amended in paragraphs (*a*) and (*b*) by deleting 'an authorised officer' wherever it occurs and substituting the following—

'the Commissioner or an authorised officer'.

That clause 30(2) be amended by deleting 'an authorised officer' and substituting the following—

'the Commissioner or an authorised officer'.

Clause 33

That clause 33(1) be amended by deleting 'supplied for trade' and substituting the following—

'supplied in the course of trade'.

Clause 35

That clause 35(2) be amended in paragraph (*a*) by deleting 'which' and substituting the following—

'whom'.

Clause 36

That clause 36(2) be amended

(*a*) by deleting 'for supply';

(*b*) by deleting 'supply for trade' and substituting the following—

'supply in the course of trade'.

Clause 37

That clause 37(1) be amended in paragraphs (*g*), (*k*), (*l*), (*p*), (*r*) and (*s*) respectively, by deleting 'for trade' and substituting the following—

'in the course of trade'.

The amendments were agreed to.

Clauses 4,16,17,21,23,24,27,28,30,33 and 35 to 37, as amended, were agreed to.

First to Third Schedules were agreed to.

EMPLOYMENT (AMENDMENT) BILL 1987

Clauses 1 to 4 were agreed to.

Council then resumed.

Third Reading of Bills

THE ATTORNEY GENERAL reported that the

INDEPENDENT COMMISSION AGAINST CORRUPTION (AMENDMENT) BILL 1987

SUPREME COURT (AMENDMENT) BILL 1987

PROTECTION OF WOMEN AND JUVENILES (AMENDMENT) BILL 1987 and the

EMPLOYMENT (AMENDMENT) BILL 1987

had passed through Committee without amendment and the

BROADCASTING AUTHORITY BILL 1987

PREVENTION OF BRIBERY (AMENDMENT) BILL 1987 and the

WEIGHTS AND MEASURES BILL 1987

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

Question put on the Bills and agreed to

.

Bills read the Third time and passed.

Member's Motion

PLACES OF PUBLIC ENTERTAINMENT ORDINANCE
FILM CENSORSHIP REGULATIONS 1987

MR. MARTIN LEE moved the following motion: That the Film Censorship Regulations 1987, published as Legal Notice No. 154 of 1987 and laid on the table of the Legislative Council on 10th June 1987 be amended as follows—

'In regulation 3A by deleting paragraph (vii)'.

MR. MARTIN LEE: Sir, I move the motion standing in my name on the Order Paper. But first of all, I wish to declare my interest in this matter. I am the President of Studio One, the Film Society of Hong Kong Ltd., but it is a purely honorary position.

This motion is to amend the Film Censorship Regulations 1987 made under the Places of Public Entertainment Ordinance, Chapter 172, by deleting regulation 3A(vii), the effect of which is to revoke the power of the censor to refuse to approve the exhibition of a film when he is of the opinion that the showing of the film in a public place 'would damage good relations with other territories.' And for the sake of convenience, I will refer to this paragraph as the 'good relations clause' in the rest of my speech.

I intend to divide my speech into three parts dealing with the following matters:

(1) why this motion is necessary when the Film Censorship Bill 1987 is still pending;
(2) political censorship of films; and
(3) the incompatibility of the good relations clause with Article 19 of the International Covenant on Civil and Political Rights.

Timing of the motion

Sir, I think that I owe it to my hon. Colleagues in this Council to explain to them why I think it necessary to move this motion to delete what has been called an interim measure when the Film Censorship Bill 1987 is still being considered by the public. My reasons are as follows:

First, this is a matter of principle as it concerns a fundamental freedom, namely, the freedom of expression. I therefore feel that the loss of such a freedom even for one day is one day too many and I urge my hon. Colleagues to ask themselves this question: What will we think if it is suggested that we must surrender one of our basic rights for one week or even one day, for example, the right not to be unlawfully arrested? Will any of us in these circumstances say that as this is only for a short duration, we should not make a fuss about it?

Secondly, during one of our earlier ad hoc group meetings with the Administration, I indicated that I would be willing to accept a compromise as an interim measure, that is, if the Administration agreed to restrict the good relations clause to the three exceptions allowed for in Article 19 of that international covenant and relied upon by the Foreign and Commonwealth Office justifying the existence of this particular provision. The relevant part of the FCO opinion reads:

> 'Restrictions on the right to freedom of expression, ect. may be justified in the case of particular films on the basis of at least three criteria in Article 19(3). These are:
>
> (i) 'rights or reputations of others', which may be relevant in the case of films attacking public figures in another country;
> (ii) 'the protection of national security' which should be interpreted as covering the security of Hong Kong which may be exposed to either external or externally-inspired threat. The degree of such a threat and the need to anticipate such a possibility are matters of perception by the Government concerned; and there is, as I have earlier said, a margin of appreciation.
> (iii) 'the protection of...public order' would also be available if there was reason to suspect that a particular film could lead to public disturbances or public disquiet leading to disaffection on the part of local public officials.'

My proposal was to add a proviso to regulation 3A(vii) as follows:

> 'provided that the censor shall not ban a film or any part thereof unless he is satisfied that the film or any part thereof:
> (i) infringes the rights or reputations of others including public figures in other countries; or
> (ii) threatens or is likely to threaten the territorial security of Hong Kong'.

This amendment would have taken care of two of the three criteria of the FCO. As for the third criterion, protection of public order, it is separately dealt with under paragraph 8 of regulation 3A, that is, 'encourage public disorder'. The Secretary for Administrative Services and Information lost no time in telling our ad hoc group that such an amendment would be unacceptable to the Administration, because it would mean that the banning of such a film would be more difficult to defend in a court of law in Hong Kong and more importantly, because the Administration would not like its power of censorship to be limited to the very narrow areas set out in my proviso. I submit that the first point is a thoroughly bad one because we believe in the rule of law and if a power is wrongly exercised by the Administration, then it is in the public interest that such an abuse of power be put right by judicial review. As to the second point, a simple example will illustrate that it, too, is a thoroughly bad one. Suppose I need $3 from a friend in order to buy a MTR ticket and I say to him: 'May I

have your wallet so that I can have $3 to buy myself a ticket? But I must say that once I have your wallet, I will take more than $3.' Will my friend in these circumstances let me have his wallet?

Sir, I am shocked by the bold stance taken by the Administration. This Council is being asked to allow the power given to the censor to continue, on the basis that it can be justified under Article 19 of the covenant in only three areas, and yet this Council is told that once the power is left intact, it will be applied to other areas not mentioned in Article 19. Is the Administration not insulting the intelligence of Members of this Council?

My third reason for moving an amendment to these interim measures is due to the Administration's failure to show that the restriction is necessary, principally because of the unlawful exercise by the censor of a power which was never given to him for over 30 years. During this period, many films have been banned on political grounds, with the result that the public cannot judge for themselves what effect these films would have had on our community. If my motion is carried, at least until the Film Censorship Bill 1987 is presented to this Council in a few months' time, there will be no political censorship of films of Hong Kong. The public can then judge for themselves whether we need a similar provision in the Bill, namely, to ban a film which is 'seriously prejudicial to good relations to territories outside Hong Kong.' But if my motion is defeated today, we will never know whether there is a real necessity for it.

Sir, I do not see any danger in suspending such a power for such a time because it is inconceivable that a film which offends this regulation and which is shown in a Causeway Bay or a Hung Hom cinema will bring the People's Liberation Army to Hong Kong.

For these reasons, Sir, I believe that it is necessary for me to move this motion even during the pendency of the Bill.

Political censorship of films

As we are moving towards 1997, the people of Hong Kong are extremely concerned about any legislation which has a likely effect of infringing any of our freedoms.

We are today concerned with a fundamental freedom, the freedom of expression, which has been enshrined in Article 19 of the International Covenant on Civil and Political Rights, which provides:

> '1. Everyone shall have the right to hold opinions without reference.
>
> 2. Everyone shall have the right to freedom of expression; this right shall include freedom to seek, receive and impart information and ideas of all kinds regardless of frontiers, either orally, in writing or in print, in the form of art or through any other media of his choice.

3. The exercise of the rights provided for in paragraph 2 of this article carries with it special duties and responsibilities. It may therefore be subject to certain restriction but these shall only be such as are provided by law and are necessary:

(*a*) for respect of the rights or reputations of others;

(*b*) for the protection of national security or of public order, (ordre public), or of public health or morals.'

As we all know, this international covenant has been enshrined in the Sino-British Joint Declaration. No doubt it will also be incorporated into the Basic Law.

It is important to bear in mind that freedom of expression constitutes one of the essential foundations of a free society and one of the basic conditions for its progress and for each individual's self-fulfilment. It applies, not only to information or ideas that are favourably received or regarded as inoffensive or as a matter of indifference, but also to those that offend, shock or disturb. Such are the demands of that pluralism, tolerance and broadmindedness without which there is no true free society.

In this regard I wish to pose the following questions for my hon. Colleagues' consideration:

(1) Do we really need political censorship of films today?
(2) If we allow political censorship of films to exist today, what safeguard can there be that political censorship will not in the future be extended to cover television, theatre, as well as the print media?

Sir, we must guard against starting a bad precedent which may well be followed in a few years to come. If one freedom is lost today, no other freedom is safe in the future.

And in this regard, may I refer to a letter to the Editor of the South China Morning Post, published today by Dr. JAYAWICKRAMA, otherwise affectionately known to his law students as Dr. J, a law lecturer of the University of Hong Kong. In this letter he refers to the Administration's reliance on the fact that a similar restriction exists in other countries. One of these countries is Sri Lanka. Dr. J says:

'It is interesting to note that Sri Lanka has progressed beyond the stage of political censorship of films. Apart from the fact that the major national newspaper group is by law under government control and pre-publication censorship of news and comment is commonplace, it is now a criminal offence in that country, punishable with imprisonment, to make a statement which is defamatory in nature concerning the conduct of a member of parliament, or which brings the president into contempt, or which attempts to excite feelings of disaffection for the Government. The snowballing Sri Lanka experience,

with which I can claim a special familiarity, should alert Hong Kong's legislators to the dangers inherent in the proposal to take the seemingly innocuous first step of legitimising political censorship of one medium of expression.'

Dr. J ought to know—he hails from Sri Lanka—indeed he was once the Acting Attorney General of Sri Lanka in 1970; and from 1970-77, he was the Permanent Secretary, Ministry of Justice, in Sri Lanka.

Please let us take heed and learn from the example of Sri Lanka.

Incompatibility of the good relations clause with Article 19 of the International Covenant for Civil and Political Rights

It is for the Administration to show that the good relations clause is necessary before it can be allowed to exist as an exception to the freedom of expression under the said Article 19. And in this respect, I must emphasise that the general rule is the protection of the freedom and that its restrictions are only exceptions. The restrictions therefore may not be applied in a way that completely suppresses the freedom.

In this context the word 'necessary' does not mean useful, reasonable or desirable. The leading cases in this respect all show that no matter how useful, reasonable or desirable a particular restriction is in the view of the government concerned, it will be considered to be an infringement of the said Article 19 unless it has been established that there is 'a pressing social need' for it. I repeat, 'a pressing social need' for it.

Further, the leading cases demonstrate that the reasons given to justify a restriction must be relevant and sufficient, in other words, not mere speculation. Up to now, we have not been given any good or sufficient reason by the Administration as to the necessity of such a provision, namely, that there is a pressing social need for it.

It is also well-established in the leading cases that all exception clauses must be strictly interpreted and no other criteria than those mentioned in the clause itself may be the basis of restrictions on the right protected.

Sir, while it is perfectly true that the contracting state does enjoy a certain 'margin of appreciation' or discretion in deciding whether a particular restriction should be imposed, the leading cases show this margin of appreciation or discretion is certainly not unlimited in scope and that it will depend on the nature of the restriction in question. For example, the contracting state will be allowed a wider margin of discretion in imposing restrictions on moral grounds than on political grounds.

Sir, it has been suggested that Hong Kong is in a very unique position and that we are so close to China as well as Taiwan and that if there is no political

censorship of films, then a number of political films will be produced, not for the purposes of profit but for the purposes of advancing the political objects of a particular government, thus causing instability to Hong Kong.

Sir, I must say that such a scenario is possible, but I am not at all convinced that it is likely; and in the absence of any concrete evidence produced by the Administration, the suggestion is merely speculative and certainly does not fulfill the test laid down by the authorities, namely, that the reasons must be relevant and sufficient.

We must not forget that the people of Hong Kong are entirely free to go or not to go to a particular cinema and watch a particular political film; and most people believe that political films will not attract a large audience. Is it, therefore, conceivable that the exhibition of one or more political films will really bring about instability in Hong Kong?

Two nights ago, more than 10 Members of this Council saw two films at the private cinema of Sir Run Run SHAW. As a matter of fact, all the non-government Members of this Council had been invited. The films were entitled, 'The Coldest Winter in Peking' and 'If I were for real.' Both were produced in Taiwan and both use life within the PRC as their setting. These two films were shown because I had been told by the Chief Censor that of all the 11 political films banned out of consideration of China, these were considered to be the worst, that is, they deserved banning more than any other film.

Having seen them, I cannot understand why they have been banned. I do not believe that any of us leaving the Shaw Studio bore any feeling of animosity towards the PRC, the Chinese Communist Party or the people of China. Sir, it is a great pity that the people of Hong Kong are unable to see these films. I completely fail to see how each of these two films can be said to damage the good relations with the PRC. Indeed, it may be thought by the people of Hong Kong, rightly or wrongly, that it is the PRC Government that does not wish them to see these films and it would put China in an unfavourable light with the people of Hong Kong. And during this transitional period, our Administration must not second guess China and ban a film merely because it thinks that China would be embarrassed by its exhibition in Hong Kong.

The Administration sought to justify this provision by relying on a legal opinion given by the Legal Adviser of the Foreign and Commonwealth Office, the most relevant part of which I have already read. I must however sound a word of warning here because the track record of the United Kingdom Government itself before the European Court of Human Rights is not very reassuring in that since 1967, of a total of 27 cases submitted to the European Court of Human Rights by the European Human Rights Commission, judgment was given against the United Kingdom Government in 14 of them whilst six are still pending.

In relation to the two films which we saw, neither constituted an attack upon the reputation of public figures in the PRC as the principal characters were all fictional: nor do they expose Hong Kong 'to an external or externally-inspired threat' from the PRC. It is really stretching one's imagination too far to say that if these films were shown in a Causeway Bay or Sham Shui Po cinema, or if a series of them were to be shown in Hong Kong, the PRC would be provoked to such an extent that she would send her army to attack Hong Kong. Indeed, Sir, I submit this is a ridiculous and fanciful suggestion, even though allowing for a certain 'margin of appreciation'—particularly after the signing of the Sino-British Joint Declaration.

Nor can it be argued that the exhibition of either of these films 'could lead to public disturbance or public disquiet leading to disaffection on the part of local public officials'. After all, the learned Attorney General saw the first film and will in due course demonstrate his loyalty to the Administration by speaking against this motion.

Sir, of course, we have been only two of these 11 banned films; but since we saw the worst two, I am confident that there would be even less excuse in banning the other nine.

Sir, the PRC is pursuing an open policy. The horrors of the Cultural Revolution which were depicted so vividly in 'The Coldest Winter in Peking' have been openly condemned in China for the past 10 years. The abuses of privileges enjoyed by some top party cadres and their children which were so well exposed in 'If I were for real' have likewise been condemned by the Chinese Communist Party in recent years. Sir, against this background, is it being suggested by the Administration that the PRC is so bankrupt in self-confidence that she would not allow the people of Hong Kong to be told about the dark years of the Cultural Revolution or the excesses of some of her cadres? By second guessing the PRC, does the Administration realise that it is unwittingly putting the PRC in a very unfavourable light with the people of Hong Kong?

Sir, the issue before this Council today is not whether the public should have a wider choice of films to see, for most people in Hong Kong would not mind if that choice is somewhat narrowed down. But it concerns a much/wider principle—the pre-publication censorship of films. Before this Council votes on the motion, it is important to ask ourselves these questions: Where are we going from here? Are we going forward towards a government with a high degree of autonomy or are we entering an era when a nod or a shake of the head from someone in the New China News Agency will decide what the people of Hong Kong may or may not see?

Further, once we allow pre-publication censorship in films, there is no way to arrest the tide of political censorship from overflowing to the theatre, television and to the print media.

We have seen what happened in Sri Lanka. Let us stop it from happening in Hong Kong.

Sir, I beg to move.

ATTORNEY GENERAL: Sir, I should like to intervene at this stage of the debate to deal with the matters of law that Mr. Martin LEE has raised. Others, including my friend the Chief Secretary, will deal with the more general arguments that have been advanced and the political considerations that justify the regulations in the form in which they have been tabled. Members will wish no doubt to have early assurance from the Government that these regulations do not breach international law in that form.

Sir, I am sure all Members appreciate the trouble that Mr. Martin LEE has taken over this matter. It is now some three months since Dr. J at the Hong Kong University, if I may so refer to him, suggested that the form of legislation proposed in the White Bill was not compatible with Article 19 of the International Covenant on Civil and Political Rights. Mr. Martin LEE has demonstrated his own concern by arranging to obtain a legal opinion on the point from a leading academic writer, Dr. Eric BARENDT.

Sir, the question that is raised in this debate is not whether any restrictions can lawfully be placed upon the enjoyment of those rights because Article 19 itself sets out the restrictions permitted by international law. The question is whether the proposed power to restrict the exhibition of films could fairly be regarded as falling within the scope of the restrictions permitted by Article 19.

The question whether a particular course of action provided by legislation is consistent with Her Majesty's Government's obligations under international law, is a matter for Her Majesty's Government in the United Kingdom. If there were a breach of the covenant in Hong Kong, it would be Her Majesty's Government who would have to answer for it in the committee of the United Nations that is responsible for monitoring adherence to international covenants and for determining whether there have been departures from its obligations.

All the arguments that have been raised in Hong Kong, including Dr. BARENDT's opinion, have therefore been referred to the Foreign and Commonwealth Office by my chambers and considered by their lawyers and experts in this field.

Members will have seen perhaps two documents put into circulation by my chambers which set out in some detail the view taken by the Administration on the legal issues in the light of the advice we have received from the Foreign and Commonwealth Office as well as comments on the arguments deployed by Dr. BARENDT. I commend them to this Council as the basis for my assurance on behalf of the Administration that these regulations will not lead to any breach of the United Kingdom's obligations under the International Covenant on Civil and Political Rights.

Sir, I think it might damage my good relations with Members of this Council if I were to address them as if they were a body of judges. The sound of the clash of counsels' opinions tends to excite lawyers, but it also tends to weary those who prefer to look for the good sense of a matter and for a reasonable assurance of legality.

Let me try to put the matter very shortly for it is in essence quite straight-forward. First, the rights in Article 19 to express views and the right to receive them in the form of films or otherwise can never be absolute, can never be unlimited. They are ordinarily restricted in law in a variety of ways that are freely accepted, for example, to protect the interests of others, as in the law of libel or copyright, or to protect the interests of the community as a whole as in the law of sedition or in the case of obscenity. Such restrictions are clearly contemplated by Article 19.

Next, Article 19 lays down three criteria for the restrictions which it permits. The first of these is that they must be provided by law and that is clearly satisfied; we are debating a restriction which will have effect under regulations that will have the force of law if this Council rejects the motion proposed by Mr. Martin LEE.

The second of these is that the restrictions imposed must serve the purposes mentioned in Article 19. These include, respect of the rights or the reputations of others and protection of national security or of public order, otherwise interpreted as ordre public. Sir, it is the considered view of the Administration, based on the advice we have received that if the censor were to ban a film that the censor thought likely to damage good relations with other territories and therefore warranted restriction, his decision would fall within the scope of those purposes. Their ambit is quite wide. In particular the concept of ordre public, and I think Mr. Martin LEE perhaps failed to take account of this point. Ordre public is not a concept with which lawyers in the common law tradition are familiar. It is much wider than the English term, public order, which he has used. Dr. BARENDT suggests that it is perhaps synonomous with public policy or the national interest. One could not dispute his view that is has a wide meaning, somewhat elusive to capture in the English or indeed in the Chinese language.

Sir, I would stress the point made in the document circulated to Members, particularly because of the way in which Mr. Martin LEE has held the regulations up against the requirements of the covenants, that it is these regulations or the prospective Bill that can be called into question as breaches of international law. A breach could only arise if someone is denied the right to express his views or the right to receive views and whether at that point the censor's decision would violate the United Kingdom's obligations under international law, will naturally depend upon the particular circumstances of that case. All that one can say at this stage is that a censor who conscientiously

decided that a film or a particular series of films could not be shown without damaging good relations with other territories would be acting within the scope of the restrictions permitted by the covenant.

Sir, the third of the criteria in the covenant relates to necessity. The restrictions must be necessary to achieve the purposes that are permitted. Necessary. I agree it is not enough as Mr. Martin LEE said merely to show that they would be useful or desirable. But it doesn't have to be shown to be indispensable. They must be necessary. Here again there is scope for different views. Some might argue that there ought to be some universal test which strikes a constant balance between individual rights on the one hand and their restrictions on the other. But this, Sir, is not the way of the world. A concept such as the needs of national security in public policy vary from place to place, and from community to community. And so with the consequent necessity for restrictions upon the rights of the individual. And Members will not be surprised to find that a sensitive approach to this test, this judgment of necessity, has been adopted in a number of cases. It has been recognised that a contracting state has a margin of appreciation as to whether it is necessary to apply an authorised restriction, and if it is, how far it needs to go to reflect its assessment of the need.

I think Dr. BARENDT has acknowledged the validity of this approach and indeed Mr. Martin LEE acknowledged it too. But Dr. BARENDT went on to suggest that if a state believes it necessary to restrict the right of self-expression for a particular purpose, then a restriction on films could only be justified if it can be shown that similar restrictions have been imposed on the right of expression across the board in the media. But, Sir, it is our considered opinion that this view is not correct in law, and in particular that it is at variance with the decision known as the Handyside case, which is referred to in our comments on Dr. BARENDT's opinion, which illustrates how a community may properly deem it necessary to restrict an offensive publication in particular ways short of a total ban. So the fact that Hong Kong provides this form of censorship for the exhibition of films only would not undermine the case that the restriction was in comformity with Article 19. That is Hong Kong's appreciation of the special needs and the circumstances of this Territority.

Sir, I do not propose to take up time pointing to other communities which have similar powers of censorship to prevent damage to relations with other states or offence to their peoples. Examples have been given in our comments on Dr. BARENDT's opinion. Some of these have been in statutory form, sometimes in a voluntary code. Some are now in force and some have been repealed. It is sufficient to remark however that Hong Kong is not unique in seeking to use powers of censorship to prevent damage to its relations with other territories and so far as our researches go, no one, no one has previously sought to make the case that Article 19 would be infringed by censorship for such a purpose.

Sir, to be fair to Dr. BARENDT, I do not think he takes up a dogmatic stand. He has recognised that Hong Kong's position at the moment is one that has to be treated with some sensitivity. He said in a broadcast interview on the 25 June that it is possible that the Courts of Human Rights would take a sympathetic view of the position of the Hong Kong Government and has readily conceded that there is a lot to be said for the case that I have presented. I mention that, not to suggest that Dr. BARENDT's view is to be discounted or that he is not himself convinced of his point of view. But it shows that these are matters on which even experts in the field are forced to acknowledge the difficulties of a cut and dried judgment, given the very few cases that have been the subject of detailed analysis and the need in each particular case to focus on the element of local necessity.

I would like Members to reflect on the essence of the stance that the critics have taken up. Mr. Martin LEE would seem to take up the position that there should be no censorship of films on what he calls political grounds or putting it in the form appropriate to the present debate, on the ground that the showing of a film could seriously prejudice or damage good relations with other countries. He would go so far as to argue, so I follow his position, that films that are blatantly hostile to an overseas government or the morals or culture of another sovereign state, must be permitted to be shown in a territory that adheres to the international covenants, at least up to the point when their exhibition provokes an army sent to attack or public disturbances to take his particular examples.

Sir, it would seem to me odd if that were the result of an international covenant of this kind. It is, after all, an agreement between sovereign states who come together in an honourable accord, promising to enforce individual rights in their respective territories. The basis of international law is the comity of nations, their desire to live peaceably together and to diminish the scope for hostility or international recriminations. It would therefore be surprising to find that they have bound themselves by agreement to tolerate in their respective territories, attacks upon each other of a blatantly propagandist or hostile character.

The point I make is that good relations between territories is the fundamental basis of all international law and I should doubt whether the acceptance of the right of film-makers to express ideas is intended to be carried so far as to enable those good relations to be undermined by means of political propaganda that is likely to cause offence in overseas territories.

Of course, a balance has to be maintained and that is the approach of these regulations which give to a censor a discretion, for he may not disapprove a film for exhibition unless in his considered opinion there is a likelihood that its showing in a public place would damage good relations with other territories. In that way, the balance is struck between individual rights on the one hand and the need to maintain public order, security and the interests of the community on the other. Political responsibility for ensuring that the balance is

correctly struck here in Hong Kong, lies with the Government of Hong Kong and ultimately on the power responsible for Hong Kong's foreign relations, with the United Kingdom Government. Their position on the matter is clear and I hope I have made it plain, Sir, that the position of both Administrations on this point is not only clear but also well justified in terms of international law.

Mr. Martin LEE's arguments, Sir, in my submission, do not demonstrate that the regulations which are now in question would be any breach of international law. I invite Members of this Council to approve these regulations without amendment, not only for good legal reasons, but because they represent good common sense.

DR. HO: Sir, the question as to whether or not the good relations clause of the Film Censorship Regulations contravenes the International Covenant on Civil and Political Rights is best assessed by reference to the legal opinion of the Foreign and Commonwealth Office, because the United Kingdom being a signatory to the international covenant will have the obligation to defend any allegation of breach. The opinion of FCO is that the good relations clause is not inconsistent with or in violation of the international covenant.

The European Court of Human Rights and the Human Rights Commission have ruled in previous decided cases that a state is entitled to a margin of appreciation and is permitted to take into account the particular circumstances in determining what is necessary for achieving certain goals, considered essential for the peaceful function of the community. Given its extreme vulnerability to external influences, Hong Kong must maintain cordial relationships with other territories or countries, in order to sustain its economic and political stability. The right to freedom of expression is not an absolute right. It is subject to certain restrictions and must have proper regard to public interests. Public interest must override sectarian interests. Comparable provisions on film censorship on good relations grounds do exist in other countries which are party to the covenant.

Sir, the Television Ordinance Cap. 52, a provision requires that all film material intended for broadcasting shall be subject to the scrutiny and approval by a panel of censors established under the Film Censorship Regulations. Thus banning a film for exhibition in a cinema will result in its ban on television. In view of the pervasive influence of television, the absence of censorship restrictions on good relations grounds in the press and the other forms of media should not lead to an argument against the necessity of similar restrictions on film and television, as implied by Professor BARENDT, on whose opinion Mr. Martin LEE in part relied when moving his resolution in this Council.

Sir, in my view, once the Legislative Council is satisfied that a certain piece of legislation is necessary for attaining specified social goals and is not incompatible with an international covenant, he should assess the law with the greatest interest of the community, not sectarian interests in mind. I had an opportunity

to view one of the films mentioned by Mr. Martin LEE. Whether the contents of the film 'The Coldest Winter in Beijing' would be construed as provocative and offensive to the country to which the film refers is a matter for that country to judge. Perceptions and reactions are quite subjective, Sir. The censors must act cautiously and prudently when accepting a film of this sensitive nature in order not to prejudice our good relations with other countries. However, if a film distributor is aggrieved with the decisions of the censors, he can resort to the provision in the Film Censorship Regulations which provides for appeals to a board of review. On these grounds, Sir, I oppose the resolution moved by Mr. Martin LEE.

MR. CHEONG: Sir, the Film Censorship Regulations 1987 were introduced into this Council under very unfortunate circumstances.

If they were introduced prior to the Sino-British negotiations, I dare say hardly a murmur would have been raised. What seems to be a refinement and improvement of existing regulations and guidelines has somehow been cleverly used by some as a tool in their efforts to continuously sow seeds of distrust of the Administration in Hong Kong. In the midst of the newsworthy furore that has been created, the fact that the old regulations and the guidelines have been in smooth operation for over 13 years has been completely overlooked. More importantly, the ironic part is that those who vehemently oppose regulation 3A(vii) or the good relations clause of the new regulations have conveniently overlooked the fact that there was apparently no serious complaints lodged against the actual administration of the old regulations and guidelines throughout the years. The film industry accepted them, the theatre operators accepted them and the majority of the people of Hong Kong accepted them. In fact, all available evidence points to the fact that hardly anyone in Hong Kong had complained in the past 13 years about the regulations and guidelines having the effect of suppressing freedom of expression in Hong Kong.

Why is there a sudden change of attitude? Some have reasoned that they can most probably trust the Administration under the British flag, but they do have serious reservations about the Administration after 1997, for it is feared that it could then indiscriminately apply such censorship regulations to suppress freedom of expression in Hong Kong. Hence, the question of whether regulation 3A(vii) would contravene the International Covenant on Civil and Political Rights becomes a tool in a bid to influence this legislature, to erase certain provisions of the new regulations which, as perceived by some, will surely be misused after 1997.

It is perhaps understandable, or even natural, for some of us to have reservations about the situation after 1997. However, it will be disastrous for the future of Hong Kong if we were to take on every issue only with the attitude of unmovable distrust whilst shunting off the value of objective pragmatic analysis of the issues involved.

Sir, the interim measures recently introduced were unanimously accepted by all but a handful of my hon. Colleagues. These handful of my hon. Colleagues specifically declared in the in-house meeting that they only wished to reserve their position until a later date. Prior to the introduction of the interim measures, as a member of the ad hoc group set up to study the issue of film classification and censorship, I can recall that the question of possible legal contravention of the international covenant has already been raised. The FCO legal analysis was already available to us. The unique circumstances of Hong Kong that necessitate the Administration to have a stopper on films that might inflict damage to Hong Kong's stability and prosperity were also known to us. Whilst I recognise that each and every one of us has the right to accept or not to accept the Administration's arguments, the hon. Martin LEE's sceptism on the intentions of the Administration in general and in particular the FCO's opinion were also made known to us. Thus, the group did not come to the decision lightly in recommending the interim measures to other hon. Colleagues of this Council. It has done so after a lot of work, deliberation, as well as thought, by Members.

6.00 pm

HIS EXCELLENCY THE PRESIDENT: It is now six o'clock. Under Standing Order 8(2), the Council ought now be adjourned.

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

Question put and agreed to.

MR. CHEONG: Sir, I am grateful for the opportunity to pause for a moment. [laughter] To illustrate this point further, it is perhaps fitting to be made known that an urgent late afternoon meeting of the ad hoc group was called specifically to discuss the legal opinions of both FCO and Mr. BARENDT as soon as they were received, because all the members of the ad hoc group were very concerned that there would have been any contravention whatsoever of the covenant which is enshrined in the Joint Declaration. As the meeting was long and technical it would not serve any useful purpose to go into details of the discussions now, but what is important is that there seems to be a concensus of understanding reached at least amongst the majority of non-lawyer members of the group, and the concensus is that the two seemingly different legal opinions represent different angles of emphasis and different approaches in the interpretation of the new regulations vis-a-vis the violation or otherwise of the international covenant. No clear cut case, sir, has been or can be established beyond doubt as to which approach is the only right approach. Under that circumstances, in having to exercise judgment on this issue, we can only be guided by our own perception of what is and what is not in the best interests of Hong Kong as a whole.

Sir, as I mentioned before, the question of whether the interim measures or indeed the new regulations, if adopted, would contravene the provisions of the international covenant seems to me to be no more than a tool deployed to consolidate, or perhaps even to propagate one's own distrust of the post-1997 Administration. This approach, in my view, is not in the best interests for Hong Kong's future. Too deep-seated a distrust could easily lead to unwarranted imaginations and suspicions which in turn would create unnecessary barriers to smooth solutions of any future differences of opinion between Hong Kong and the sovereign state.

No one would deny that in the post-1997 era of Hong Kong, there will be differences of opinion over many issues between Hong Kong and the central authority of the sovereign state. These problems have got to be addressed and resolved, yet we must ask ourselves what is the best way of solving such problems. Should it be through mistrust, suspicion and open confrontation, or should it be through sincere, frank yet firm and skillful negotiations? In my humble opinion, Sir, the motion proposed this afternoon, if adopted, would run a great risk of leading Hong Kong down a path of open confrontation. This approach is certainly not conducive to Hong Kong's future stability and prosperity. And I therefore have no hestitation in opposing the motion.

Last but not least, Sir, I was one of the 10 who attended the private showing on Monday. My conclusion, unfortunately, was the opposite to that drawn by the hon. Martin LEE. Mr. LEE repeatedly stated that PRC would not send in armies, even if these two films were shown. Maybe they will not. But would it be our assessment, as responsible councillors, that the people of Hong Kong would wish to run even the slightest risk of military interference? The films, in my opinion, could well depict some grains of truth in the chaotic years of the Cultural Revolution. Yet, given nearly everyone in Hong Kong has reservations, and perhaps even fears, about PRC the subtle message that the films carry could well be instrumental in confusing the audience into thinking, or even believing that what is depicted in the films is what the general situation was, or may be even is, inside China today. This would certainly increase and propagate ones own fears and misunderstanding of the PRC. Is this really good for Hong Kong as a whole? Would this enhance our stability? I really wonder. I wonder how it would do good to the Hong Kong people, especially those who cannot leave or do not wish to leave by 1997, through the installation of more fears and more distrust on China.

Sir, Hong Kong faces a lot of problems in the years to come. We simply cannot hope to arrive at sensible solutions through the routes of distrust, suspicion and open confrontation.

MR. CHAN YING-LUN (in Cantonese): Sir, I believe that regulation 3A(vii), that is the clause on damage to good relationship between Hong Kong and other countries is a diplomatic issue and not an issue of freedom of expression. If we agree that we should censor films on moral grounds, then we should also agree

that films should be censored on diplomatic grounds. One of the chief contributing factors to our stability inprosperity is our good relationship with other countries and so how can we allow Hong Kong to become a diplomatic battlefield?

In the past, 18 films have been banned because of the reasons mentioned, that is, they are causing damage to good relationship between Hong Kong and other countries. Most of these films are produced in foreign countries and I think they should be subject to restrictions. Foreign producers can enjoy entire freedom of producing any films they like, but if they want to show these films to Hong Kong, in Hong Kong, I think they should be subject to our censorship regulations, in particular regulation 3A(vii).

As I said before, this is chiefly a diplomatic question and not an issue on freedom of expression. I think the film makers have been enjoying freedom of expression all along and I believe that they will enjoy the same freedom in future, and so I hope that our film industry will take regulation 3A(vii) as a provision to ensure our good relationship with other countries and not a measure to suppress freedom of expression in Hong Kong.

Sir, I oppose the motion.

MRS. FAN (in Cantonese): Sir, Mr. Martin LEE proposes the deletion from the Film Censorship Regulations the clause concerning films which will damage the good relations with other territories. His reasons have to do with the legal opinion that the provision would contravene the International Covenant on Civil and Political Rights, and that it infringes the principle of freedom of expression. I respect Mr. LEE's opinions but I hold a different view.

I would like to stress that the 1987 Film Censorship Bill is still in the consultative stage. In other words, whether the provision would be retained or in what form it would be retained has yet to be decided. Therefore, if we are to delete the provision of 'damaging good relations', we are, in fact, coming to a decision before the consultative exercise is over. This contravenes the spirit of consultation. Besides, it is debatable as to why we are in such a hurry to delete this clause. The existing regulation is only an interim measure. What we are doing is, in fact, converting the former film censorship standard into regulation in order to eliminate the doubts over the legal status of the practice of film censorship. As a matter of fact, existing regulation is exactly the same as measures adopted in the past, and the purpose of so doing is to avoid unnecessary confusion during the interim period. Therefore in my opinion, there is really no need to amend the interim regulation, nor is it appropriate. Why is there such urgency and necessity to propose the deletion of that clause immediately? Mr. LEE explained that this particular clause violates the international covenant on freedom of expression, so it cannot be allowed to remain on the law books for even one day. He also compared this clause to 'illegal detention'. I must say this is a bit of overstatement. In fact, these regulations had already come into effect a few weeks ago, and in the interim we had a number of meetings of this Council. Mr. LEE is raising the

motion today, does this indicate that there is no urgency in the matter? Or does it appear that Mr. LEE is a very tolerant person so he was able to tolerate the situation for 20 odd days. Anyway, I thank Mr. LEE for raising this motion today, thus giving me an opportunity to express my views on political censorship before the debate on the Film Censorship Bill takes place. Sir, hon. Colleagues, we can regard this debate as a preview to the later debate.

I do not refute the importance of freedom of expression, thoughts and creativity. As a matter of fact, I treasure very much the freedom we are already enjoying, and because of this, I would like to urge the Government to give an assurance not to extend political censorship to publications, television and drama.

In order not to damage our good relations with other territories, we have been banning the public exhibition of some films. This has been the practice in Hong Kong for some time. And so I feel that when one is considering abandoning such practice to strive for more freedom, Hong Kong's realistic situation must be borne in mind. Hong Kong is a trading centre. We need to maintain very good relationships with other countries so as to foster trade. Therefore we must avoid getting ourselves involved in controversy involving political ideologies. And because of this, if there are films which over exaggerates the negative aspects of another with the aim of criticising and discrediting that country, those films should be banned. Internally, Hong Kong is densely populated and our citizens should work together in full co-operation. What we need is stability. We have no intention of becoming victims of political struggle. If we are to ban political censorship we will gain the applause from people in the film industry as well as the general public. However, the deletion of the provision might enable some people to make use of films to achieve political and economic goals. And this move might cause Hong Kong to be a forum for political struggle between foreign influences. It might also place Hong Kong in political turmoil thereby damaging our good relations with other countries and affecting our trade and economy. So, is it really worth it, we need to think it over.

During the 14 years between April 1973 and March 1987, a total of 9 887 films have been shown in Hong Kong. During the same period, only 21 films were banned on political grounds, and 18 films were banned on the basis of damaging good relations with other territories. The ratio is in fact two to one thousand. Under such circumstances, would the members of the public be willing to take the risk of damaging Hong Kong's economic prosperity and social stability in exchange for a little bit more freedom which is not very significant? I am sure people would weigh the pros and cons, and make a sensible decision ultimately.

Some people mentioned that political censorship is to please China, and make it easy to exercise more control over the freedom of expression after 1997. Is this really true? Of the 18 films I mentioned, there was one produced in China. How then would this please China? There were also four other films which were produced in communist countries. Their criticisms were not directed at China,

but at another country which has a close trading relations with Hong Kong. To illustrate my point more clearly, I have attached a list of the 18 films including the places of production as well as the countries which these films were aiming at for Members' reference.

From this, it is noted that the purpose of political censorship is to protect Hong Kong so that the territory would not be affected by unnecessary political struggle. This is so now and it has been so in the past. Our community places a lot of importance on social stability and we do not want to lose a ship for a half penny worth of tar. We cannot just talk about principle and overlook the realistic situation and we have got to avoid getting ourselves involved in unnecessary political struggle. What we want in future regarding political censorship will be decided when the Film Censorship Ordinance is enacted. Today, and the consultative period ahead, we must watch out for specious comments, avoid being affected by the '1997 syndrome' as well as 'conspiracy complex'. To imagine that there is a snake in your cup just because of a shadow over the cup is negative and unnecessary, and it will do Hong Kong no good.

Sir, having said this I oppose the motion.

MR. YEUNG (in Cantonese): Sir, the Legislative Council in-house meeting endorsed a replacement of paragraph 5 of the Film Censorship Standards with a set of regulations as an interim measure before the Film Censorship Bill comes into effect at the end of May. The meeting also agree that this will only be a temporary measure and the Film Censorship Regulations 1987 were gazetted on 5 June this year by the Administration. As an interim measure, before the enactment of the Film Censorship Bill, the Administration also pointed out that the provisions of the Bill will not be affected by the regulations and the regulations will be revoked upon the enactment of the Bill. Up till today, we are still in the consultative period.

Mr. LEE raises a motion that regulation 3A(vii) should be deleted from the regulation. The provision stipulates that unless in the considered opinion of the censor that the showing of a film in a public place would damage good relations with other territories, otherwise he must not exercise authority to ban or excise the film. Under normal circumstances, this provision will give rise to two different sets of opinions. One view is that we are enjoying less and less freedom during the transition period. Hong Kong is becoming more political. It is not possible to subdue films on politics. Another view is that for the past several decades, Hong Kong has been enjoying political stability and this is beneficial to economic prosperity. And in fact, all along, we have political censorship. This is nothing new. Maintaining a good relationship with other territories will facilitate the smooth administration of Hong Kong and during the sensitive transitional period we should avoid political disturbance. As a matter of fact, since 1973, a total of 18 films have been banned for reasons that they would damage good relations with other territories. Eight of these films were produced in Taiwan, three in Hong Kong, one in China and three in North Vietnam. There

are also films produced in Italy, France as well as a joint production between Japan and USSR. And the themes of these banned films vary. Some of them might involve political propaganda, others were anti-Communist or politically sensitive. These films might arouse radical reaction among the audience, or perhaps the country concerned might not favour Hong Kong showing these films. Therefore, when weighing these factors the Administration must exercise caution, bearing in mind the different nature, situation and timing involved when making a decision. Before coming to the decision, TELA should consult government departments concerned and to ensure that the showing of a film will be harmful to Hong Kong. In view of the fact that Hong Kong's external economic relations are of vital importance to us, the Administration must not allow the showing of a film which bring tension to, or which damages our relations with other territories because in the final analysis, the loss will outweigh the gain. We must appreciate that communist as well as the democratic countries are all our trading partners. They should be treated the same as far as co-operation is concerned. This is a fact and this is also the most important factor in maintaining the Territory's stability and prosperity. With this in mind we should avoid showing films which might bring unnecessary political controversy.

Sir, argument does not confine to the contents of the films. There are differences of opinions on legal interpretation. The compatability of regulation 3(A)(vii) of the Film Censorship Regulations with Article 19 of the International Covenant on Civil and Political Rights is a good example. According to the Foreign and Commonwealth Office, the regulation will not contravene Article 19 of the international covenant. Human rights expert Prof. Eric BARENDT of Oxford University makes two assumptions under the laws of Hong Kong. First, there are no provisions similar to regulation 3A(vii) of the Film Censorship Regulations which applies to other mass media such as newspaper and drama. Second, there are no provisions in our criminal law making it an offence to damage good relations with other territories through whatever form of media. Prof. BARENDT is of the opinion that if his assumptions regarding Hong Kong criminal law and press law are correct, then the provision will be incompatible with the international covenant. However, he went on to point out that human rights court is very sensitive to special political situation. Also based on the present situation in Hong Kong, we must act cautiously. This is beyond doubt. He also points out that the court might express appreciation on the provision in question.

Sir, the Legislative Council Building once housed the Supreme Court, a place where members of the legal profession frequented. It was also a place where there were display of talents, eloquence and rhetoric. But rulings would finally rest with experienced judges. Today, we are at the same venue but the subject matter is the same and the situation is different. Debate over legal viewpoints is not meaningful, nor would it bring about satisfactory results. Therefore, bearing in mind we are still in the consultative stage and also the regulations would only be an interim measure, I am afraid I cannot accept the deletion of regulation 3A(vii) of the Film Censorship Regulations.

MR. CHEONG-LEEN: After much soul-searching I rise in support of the position that the Film Censorship Regulations 1987 be retained without deletion of regulation 3A(vii).

Two legal opinions have been expressed. One is that regulation 3A(vii) which has to do with the censorship principle relating to damage to good relations with other territories breaches the International Covenant on Civil and Political Rights. This is the view enshrined in an opinion by Mr. Eric BARENDT, a barrister. The other opinion is that the regulation in question does not breach the covenant, and such is the view both of the Attorney General and the Foreign and Commonwealth Offices.

I am of the view that at this point of time there is need to retain this regulation in the interests of the political security and well-being of Hong Kong.

In the case of this particular piece of legislation, I do not think that we should be excessively worried that Hong Kong will become a special administrative region 10 years from now. The Hong Kong Government has been following the spirit of this regulation by way of a guideline for over 13 years already, and it has not done damage to Hong Kong's political, economic, social or cultural viability, nor violated individual liberties, as far as I can ascertain. I would agree, however, that as we move forward towards 1997, Members of this Council can monitor the manner of enforcement of the regulation and if, at any time, the Administration should seem to be acting excessively or unreasonably in the enforcement of this regulation, thus causing much public concern about the violation of civil liberties, especially freedom of though and expression, the legislature by majority vote can at any tiem rescind regulation 3A(vii).

The regulation I believe, is enacted in the light of Hong Kong's circumstances and with Hong Kong's best interests in mind. And I will therefore vote against the motion to do away with the regulation today.

DR. LAM (in Cantonese): Sir, two days ago I went to see two films which were regarded as the worst of the banned films. They were: 'If I were real' and 'The Coldest Winter in Beijing.' Now, if the regulation is passed, it can easily be abused and the citizens will be deprived of their right to know. The themes of these two films reflect history and human nature. Members of the public do not have the chance to watch these two films. It is their loss. In fact, in the development of human history, we have the bright side as well as the dark and ugly side. If we report only on happy incidents, but omit all the sad events, or if we do the opposite, this is inappropriate. Just because we are afraid that we may do damage to good relations with other territories, we should not treat some media in a different way. There are a lot of films portraying the violence of Nazi Germany and imperialist Japan during the Second World War. People who are sensible and unbiased will not be prejudiced against modern Germany and Japan just because they have watched those films. So we should not exercise any favouritism. Now, if the regulations are pased, who can guarantee that the same

excuse will not be used to extend censorship to other forms of media. By that time, the freedom of speech and the freedom of expression will be lost. And the concept of one country two systems will no longer be with us.

Sir, I believe that Members here, whether they are in favour of the motion or against it, base their judgment on the interest of the people of Hong Kong. Before the Government comes to a final decision, will the Government consider giving members of the public a chance to go and watch the movies that have been banned on political grounds, and then listen to the views expressed by members of the public.

Sir, Mr. PANG Chun-hoi is ill, he is therefore not with us this afternoon. He authorisd me to speak on his behalf in support of Mr. LEE's motion. I also support the motion.

MR. DESMOND LEE: I would prefer to see an absence of advance censorship of publications and other forms of expression including movie films. Any form of control should be exercised through punitive measures which are imposed by law after the event. In order to obviate the risk of being punished, the publisher or producer may, if he so wishes, submit the publication or production for advance scrutiny or classification on a voluntary basis. This principle is used in the Control of Obscene and Indecent Articles Ordinance and should be applied to the Film Censorship Regulations.

Nevertheless, as advanced censorship of movie films has been the practice for many years, I do not propose to remove it completely at this stage, but would like to see the criteria concerning relationship with other territories excluded. I am not prepared to go into the argument of debtails about the International Covenant on Civil and Political Rights. Indeed, a lot of things can and should be decided by common sense, without reference to professional experts. Nobody would ask a dietician to analyse the nutrition value of a meal before taking it. If we know what food is good for our body we should also be able to determine what publications are good for our mind and soul. We want creative work which is freely expressed and which is not inhibited by excessive restrictions. Any steps which move towards political censorship, whether real or imaginary, will be viewed with suspicion by the people of Hong Kong, particularly at this sensitive time.

Some people are mindful about possible reactions from China. I accept that we should improve communication and mutual understanding with the mainland, but we must present the true position of Hong Kong to the Chinese authorities so that they understand the Hong Kong people and how we operate the place. It is wrong to anticipate what the Chinese leaders would be happy to see and hear and then do and say things to please them. Such action is measuring a gentleman's stomach with a small man's heart (以小人之心，度君子之腹). Chinese leaders have repeatedly stated that people can criticise the

communist party. Why should we not be forthcoming with honest views and present the truth to these leaders? Why is it necessary to exercise self-censorship?

The present regulations are intended as a temporary measure. The draft Bill for film censorship is still in its consultation period with two more days to run. This is a golden opportunity to try out whether or not deletion of the so-called political censorship would cause any harm to external relations of Hong Kong. If things run out of control, this kind of censorship can be considered for reinstatement in the main legislation. Otherwise the draft Bill should be amended to excluded political censorship.

Sir, I would consider contravention of human rights and unnecessary restriction of freedom not merely as undesirable at this time but as a backward step in human civilisation.

With these remarks, Sir, I support the motion.

MR. SOHMEN: Sir, I must confess I did not go to the movies on Monday. I oppose the motion introduced by Mr. Martin LEE but I do so with some reluctance. I am uneasy about censorship for political motives since the judgments which have to be made by the censor are more difficult and more prone to abuse than, for example, restraints imposed on the freedom of expression for moral reasons. History is full of examples of political censorship leading at best to the suppression of unorthodox ideas and at worst to persecution, torture or death. Pressures to conform have not and never will stimulate progress nor increase happiness. In retrospect mankind has always discovered that such measures have produced the very opposite effects. We should also not forget that censorship is an administrative device but not, at least in the first instance, a subject for adjudication by independent tribunals.

Mr. Martin LEE must be given credit for highlighting the problems inherent in this issue, and I must frankly confess that if this was totally new legislation we were considering—rather than a question of legitimising, as an interim measure —a practice that has been going on for some time, I would in all likelihood vote against the introduction of such new provisions.

I am not, of course, saying that Mr. Martin LEE's arguments are correct or fully valid. He has approached the issue in too legalistic a fashion, in that he has only focussed on the format and not on the substance of what need to be the limits of permissible censorship for the reasons contained in regulation 3A(vii). Mr. LEE's reference to the possibility of regulation 3A(vii) not being capable of being brought within the exemptions provided in Article 19(3)(*b*) of the International Covenant on Civil and Political Rights, only deals with the question of whether the censorship authority can be seen to be meeting the covenant's definitions of being 'necessary for the protection of national security or of public order'. This is not just a matter of legal interpretation but clearly requires a political evaluation as to whether the restrictions imposed upon the

freedom of expression are sufficiently and justifiably in the public interest, taking into account all the objective and subjective factors governing a particular situation, both as to time and place.

Even more simplistically put, the covenant has drawn us a square which can be left entirely blank or which we can fill in with as many colours as we choose, all the while accepting the fact that the borders of the square only determine the limits of the painted area and not necessarily the choice of colours.

Hong Kong, as we all know and as has been stressed by other Members, is in a rather peculiar situation, claiming an economic, social, political and cultural background quite different from the country to which ethnically and geographically the Territory is very close and of which it legally soon will be an integral part. The maintenance of good relations with China, especially during the transition period leading up to the change in sovereignty, is of paramount importance to Hong Kong. A change away from established practices, in particular when these do touch very directly on national political sensibilities elsewhere, in and by itself might be seen as a deliberate act intended to be prejudicial to good relations, irrespective of whether the need for change is imposed on us from the outside, is justified as a logical result of intervening developments or new circumstances, or which has no inherent harmful consequences.

After all, in this context we are dealing not only with a *domestic* perception of what expressions are obviously, or possibly, prejudicial or not prejudicial but have to face the possibility that the interpretation, or misinterpretation, put upon them *externally* could also give rise to unwanted friction. These assessments deal with subtle nuances, they are by their very nature political, and the answers obtainable are never fully in the affirmative or in the negative. Hence the discretion allowed governments under the covenant and whose determination is before us in this debate. I also believe, incidentally, that one can validly deferentiate films from other forms of expression for the purposes of this censorship, so that the singling out does not necessarily weaken the compat-ability argument.

It may well be, and I wish this could be the case, that the fears of possible prejudice to good relations through the content, artistic expression, or visual presentation of cinematographic material are exaggerated. But, Sir, this again depends upon political judgment rather than on legal definitions. We should, of course, bear in mind that the reactions, in China, to comment from abroad have of late become less defensive, and that the country's open-door policies have led not only to greater confidence at home but also to the better recognition of the existence in other places of many different views and approaches and a belief in the intrinsic value of criticism. However, in the absence of clear signals to the effect that tolerance is unlimited, particularly as regards comment

in and from Hong Kong, it would appear not to be in Hong Kong's best interests to provocatively test the boundaries of such acceptance or such a change in attitudes.

For this reason, Sir, I believe that it is necessary at this point in time for regulation 3A(vii) to remain included in the regulations, and I shall accordingly vote against the motion today while reserving my position on any future legislation.

MR. SZETO WAH (in Cantonese): Sir, I support Mr. Martin LEE's motion, and that is, that we should repeal regulation 3A(vii) of the Film Censorship Regulations 1987. This stand is consistent with my stand within the in-house meeting and the ad hoc group meetings. I have always expressed my objection to any kind of political censorship on films since discussion on this issue started.

In the past years, our law has not given power to the Government to censor films on political grounds, but this power has been abused by the authorities for many years. This might be due to negligence at first, but legal advisors to the Government had pointed out time and again the inappropriateness of censoring films on political grounds. But the Government did not take up remedial actions and continued to use the power which did not have any legal basis. Mistakes were made one after another, and each was more serious than the last. At this point in time, when we cherish the rule of law in Hong Kong, the disclosure of such mistakes would make us feel that this is most regrettable, shocking and alarming. Do we have similar instances other than film censorship? All of the citizens in Hong Kong must really take caution to safe-guard the rule of law which we cherish most.

As I said, mistakes were made one after another and each more serious than the last. I think such an attitude should be reprimanded.

When the newspapers disclose this, the Government hastily introduces the Film Censorship Bill 1987. Since we have to consult the public and amend the Bill, and we cannot pass the Bill within this session, the Film Censorship Regulations 1987 that we are discussing today is taken as an interim measure. Some Members think that since the Film Censorship Regulations 1987 was gazetted as a contingency measure so there is no need to go into in-depth discussion. We should just pass it and then we should wait until the time when we come to the Bill before we discuss all of the details. I think such an approach is wrong. Even if this is a contingency measure, it should not be passed at the expense of principles. Principles must be upheld anytime, anywhere. If we use contingency as an excuse, then why can we not repeal this clause on political censorship and after discussion, if we believe that it is really necessary, then we can add it once more to the Bill. In fact, a lot of people who are against the Bill today may not have expressed their stand on political censorship very explicitly, but I think that most of them in the forthcoming discussion will be against

repealing any political censorship regulations. Contingency is used only as an excuse. In fact, in their minds they have already insisted on their own principle, and that is, that there must be political censorship.

Members who are against the motion made by Mr. Martin LEE said that there is no absolute freedom, that in order to protect public interest we cannot have absolute freedom of expression. Actually, we are not asking for absolute freedom of expression without bounds. We are just opposing political censorship on films, and we are doing so because we want to protect public interest. Media other than films, for example, newspapers and magazines, are not subject to the restriction of a clause on the damage of good relationship between Hong Kong and other countries. So why do we not think that we are giving absolute freedom to other media? Why do not think that the freedom enjoy by other mass media can damage public interest? Why are other forms of expression enjoying privileges or rights that are not given to films? Freedom of expression is a concept that cannot be separated if we cut it into parts and say that such a medium should enjoy this freedom and another should not. Actually, we are already infringing on freedom of expression as a whole and we are already damaging public interest. Some people mention that if we do not have such a clause, Hong Kong will become a political battlefield. But, actually, we do not have such censorship for other media. Do we think that Hong Kong has already become a political battlefield?

Let us take a look at the 21 films banned. If we compare these films with the requirement that no film should damage good relationship between Hong Kong and other countries, we would all say that the decision made was laughable. There was a watershed. Before a certain period of time, we banned only films produced by China, and then after that period, mainly films produced by Tai-wan were banned. During a certain period, even documentaries on the celebration of the national day of PRC were banned. Since time immemorial, China has been a neighbouring country to Hong Kong. When such a film was banned the United Kingdom Government had already established formal diplomatic relationship with China. And the banning of such a documentary film has indeed damaged good relationships between Hong Kong and a neighbouring country. Why was such a film banned? People use good relationship as an excuse. What they have in mind is just the preference of a certain country. What kind of a standard is that?

The Chairman of the Central Advisory Commission of the PRC, Mr. DENG Xiaoping said that after 1997, Hong Kong citizens can still criticise the Communist Party, and of course they can do so before 1997. I believe that the criticism mentioned is not just criticism in our hearts. It must include criticisms in various media such as newspapers, books, magazines, films and television programmes. What broadmindedness and self-criticism did Mr. DENG display when he said those words. I believe he meant what he said, and I believe that his words would be kept. Criticism would certainly damage good relationships, but he said he did not mind. So the clause about being prejudicial to Hong

Kong and other countries is really contravening what he said. Actually, going against what he said is damaging our good relationship with Mr. DENG personally. When he said those words, he wanted to boost our confidence in the future, and if we go against these words, of course we will achieve the opposite effect.

It takes tremendous courage to introduce the concept of one country two systems. And if we want to implement this great concept we would also need tremendous courage.

What we need now is a further strengthening of our confidence so that we can face the future courageously. We said that we would like this clause to be repealed. We are not really using this as a tool to shake the confidence of the Hong Kong people in China. We just want the citizens to feel that we are enjoying more and more freedom of expression so that they will have greater and greater confidence.

Sir, with these remarks I support the motion raised by Mr. Martin LEE.

MRS. TAM (in Cantonese): Sir, the Film Censorship Regulations 1987 gazetted on the 5 June is essentially a contingency measure, and the objective of the measure is to provide a legal status to the existing Note of Guidance on Film Censorship Standards, and hence remove the legal loopholes during the interim. Since it is meant to be an expedient measure, there is really no need to amend hastily the note of guidance to avoid pre-empting public perception and opinions on the review of the existing legislation on film censorship. Therefore, I do not agree with Mr. Martin LEE's motion to delete the provision regarding political censorship from the Film Censorship Regulations 1987.

We know that the consultation period on the Film Censorship Bill has not ended. The Government and the Legislative Council are still listening to public views. So today I would not go into detailed discussion on whether we need political censorship as a long-term measure.

Today I hope Members will take note of one point. In a modern society, freedom of expression forms one of our basic human rights and, of course, nobody should be deprived of this right. However, the actual realisation of this freedom depends upon the objective environment of our society. I do not think we should have this freedom without limit. It is very important to us that we have good relations with other territories. Should we not take this factor into account when we provide for freedom of expression? Indeed, in reviewing the existing legislation on film censorship we should not only consider whether we should retain or delete this censorship standard of whether the film is seriously prejudicial to good relations with territories outside of Hong Kong. In retaining the standard, we should also consider such other options as introducing clear guidelines or setting up an appeal tribunal and so on, to avoid any abuse of power in the enforcement of the legislation. The public should really consider this problem in a comprehensive perspective.

Today, we are arguing on a matter of principle. Therefore, we should be calm and co-operative in order to have more exchange of views so that we can come up with a satisfactory solution.

Sir, I fully appreciate the view of certain sectors of the community who fear that this interim measure once adopted will be adhered to indefinitely. I, therefore, urge the Government to complete the review of the existing legislation on film censorship as soon as possible.

Sir, with these remarks I oppose the motion.

MR. ANDREW WONG (in Cantonese): Sir, I cannot support the motion raised by Mr. Martin LEE because of two reasons.

Firstly, I feel that to delete the criteria of damaging good relations with other territories at this stage is untimely. The background of the Film Censorship Regulations have been stated by other councillors, so I am not going to repeat those points. I just want to point out that the eight points of regulation 3A of the censorship regulation are similar to the original Film Censorship Standards, the legal status of which is now in doubt. The Film Censorship Regulations 1987 are only an interim measure. We are still awaiting the final decision when we come to debate the Film Censorship Bill.

Secondly, I think it is untimely to move the motion to delete the regulation relating to damaging good relations with other territories at this stage. Whether the enactment of this particular regulation would be incompatible with the International Covenant on Civil and Political Rights, we have solicited legal opinion. But the views differ tremendously, and the FCO feels that this has not breach the international covenant. However, Mr. BARENDT feels that this would be incompatible with the international covenant. Also, we are not too certain of the situation in other territories. Therefore, instead of rushing into a decision I think we should step up our examination of this issue. Also, even if we delete this particular regulation today, the debate on the Film Censorship Bill might still overrule today's decision. And if we do not delete this particular regulation, it will not reduce the controversial nature of the Film Censorship Bill when we have the debate later.

So is it really necessary to have a preview today? I would like to take this opportunity to mention that regulation 3A of the Film Censorship Regulations 1987 is identical with the Film Censorship Standard and has adopted similar wording. In other words, films which are not in breach of the regulations should not be banned. In fact, this is in line with the spirit of Article 19 of the International Covenant on Civil and Political Rights.

This reminds me of a popular European joke by Dr. FINNA. It goes like this: In England what is not legally prohibited is permitted. In Germany what is legally permitted is prohibited. In France what is legally prohibited is still

permitted. In Russia what is legally permitted is still prohibited. So I hope that I am not damaging our relations with other countries.

Sir, I think that we should continue to enact legislation based on the spirit of British law and that we should be pragmatic, and therefore I oppose the motion.

CHIEF SECRETARY: Sir, my friend the Attorney General has commented on the question of the compatability of our film censorship legislation with Article 19 of the International Covenant on Civil and Political Rights. I would like to comment more generally on the regulation which is the subject of this motion this afternoon.

The aim of regulation 3A(vii) is to safeguard the interests of Hong Kong by preventing it from being used as a propaganda base against other territories. In considering this motion, I hope that Members will give serious thought to three significant factors. First, the need to preserve individual freedoms, secondly, the importance to Hong Kong's economy of maintaining good relations with our trading partners and thirdly, the particular political and geographical circumstances of Hong Kong.

As in so many cases, the judgment on how to strike the right balance between the various principles is a difficult one to make. This problem is reflected in the differing views Members have expressed this afternoon on how much weight should be given to the factors involved. I hope that what I have to say may help other Members come to a decision which is in the best interest of the community as a whole.

When considering the need for the censorship of films, the Administration starts from the position that we should maintain freedom of expression as far as possible and that any exception to that principle must be proven to be for the overall benefit of the people of Hong Kong. If any restriction is to be imposed, it must be the minimum necessary to safeguard the common good.

Let me first address, therefore, the question as to whether there is a need to have any censorship based on regulation 3A(vii). As my friend the Attorney General has indicated that Hong Kong, in common with most other territories, has a natural desire to live peaceably with its neighbours and to diminish the scope for any hostility or international recriminations. Furthermore we have taken the view that because Hong Kong's whole economy and the livelihood of its people is uniquely dependent upon its ability to trade, our relations with trading partners must not be put at risk. For both these reasons, we do not see why we should risk damage to Hong Kong's relations with other territories by allowing it to be used as a place where political films, critical of either our neighbours or of our trading partners, should be shown. Sir, I should emphasise that generally we take the decisions not to show such films on our own initiative, based on our judgment of the likelihood of the film causing offence to other

territories. But we do not simply, as Mr. Martin LEE has suggested, second guess the reaction of other territories. Over the years, diplomatic protests have been made from countries, both inside and outside the region. Such protests are a clear indication that exception is taken to propaganda films being shown in Hong Kong and that there is indeed a need to protect our relations with other territories by not permitting such films to be shown here.

I turn now to the question as to what extent the freedom of expression might be curtailed by the retention of regulation 3A(vii). I believe the figures speak for themselves. Over the past 14 years, about 10 000 films have been submitted for censorship. A total of 15 films, only one or two a year, from nine different countries have been banned. And, Sir, as I have indicated, not all the films were in fact critical of China. Four were critical of the United States, one of France and one of South Korea. Mr. Martin LEE has said that the two films 'The Coldest Winter in Peking' and 'If I were For Real' have been described by the chief censor as 'the worst', that is to say, they deserve banning more than any other film. Mr. LEE has made much of this point and as 10 Members of this Council have seen these films, I think I owe it to the chief censor to read a statement which has just made to me about these films:

> 'Mr. Martin LEE approached the Commissioner for Television and Entertainment Licensing for examples of films which illustrate political overturns in relation to China which could cause a film to be banned on the ground that it could damage the good relations with other territories. I (as the chief censor's speaking) suggested three films and also provided the names of the distributors to enable Mr. LEE to see the films if he so wished. My reasons for suggesting the three films are firstly because they were the most talked about; and secondly, since these films were recently submitted to me for examination, they are likely to be available for showing to Mr. LEE. I have not suggested, at any point, the films of the worst cases. In fact they are not.'.

Sir, I am sure that most Members of this Council would agree that the individual rights and freedoms of people who make and watch films cannot be absolute. They have to be tempered by other peoples' rights and what is best in the interest of the community as a whole. Indeed, all Members of this Council, including Mr. Martin LEE, by accepting that some form of censorship should be maintained in Hong Kong, have recognised this reality which is common to most communities.

So, we have to decide whether the degree of infringement of this freedom, which is likely to result from the retention of this regulation is in the interest of the community as a whole. Whether the fact that Hong Kong people may be prevented from seeing, at the most, one or two political films a year is a reasonable price to pay to ensure that Hong Kong's relations with other territories are not damaged.

For all the years that Hong Kong has had this regulation the authorities have exercised it sparingly. Furthermore, I suggest that in using it they have had the understanding and support of the Hong Kong people who well accept the importance to Hong Kong of maintaining good relations with other territories.

I accept, of course, the point made by some Members that propaganda can be mounted through a variety of channels including books and newspapers and I recognise that the censorship of films is dealt with differently under the law. But I do believe that the people of Hong Kong expect different standards to be applied to the censorship of films than is applied to the print media. The impact of films is more immediate and more vivid and because they are shown to large audiences gathered together in one place, the reactions that can be provoked by them can be quite dramatic. The received wisdom is that youngsters can sometimes react even more strongly. What seems to be clear from all the many surveys that have been undertaken in this field is that the standards the censors have applied in the past have been broadly acceptable to the majority of Hong Kong people.

Sir, 'the thin end of the wedge' argument has been mounted by some Members today. That is, if we allow present arrangements to continue, we have somehow tacitly accepted that similar arrangements can be applied to other media in the future. But the fact is that we have had this regulation for some 14 years and have never seen the need to extend it to the print media. I see no reason why we should ever change that view. If it were ever proposed that such restrictions should be applied to the print media, new legislation would of course be required. There can be little doubt that opposition in the community to such a move would be strongly reflected in this Council and would, I suggest, ensure that no such measure could pass into law.

Sir, as Members are aware, the extension of these regulations is on a strictly temporary basis. In considering the new Film Censorship Bill we have again applied the principle that only the minimum of restrictions on the freedom of the individual should be imposed. I hope that Members who have expressed reservations about the need to retain this regulation in the longer term will study the proposed legislation most carefully. I believe they will find much comfort in the changes we have proposed. The new Bill, which was published in April for public information and comment, will further limit the powers of the censors. Under the Bill, the composition of the Film Censorship Appeal Board will be changed substantially. This will enable greater public participation in the censorship process and will indeed place the final decision as to whether or not a film is shown in the hands of a majority of unofficials rather than a majority of officials as at present.

Following further discussion with the ad hoc group and the film industry it is our intention, subject of course to Executive Council's approval, to introduce the new Bill into this Council as soon as practicable in the new legislative session.

Sir the Film Censorship Regulations 1987 tabled before this Council are designed for the sole purpose of putting beyond doubt the legal basis of the current film censorship practices. As such, they do no more than provide the framework to enable the existing censorship practices to be continued. The making of these regulations is without prejudice to the consideration of the new Film Censorship Bill 1987. These regulations will be revoked when new permanent legislation is in place.

Sir, the Administration believes that this clause, which Mr. LEE seeks to remove, is needed to safeguard the community as a whole and that the reasons for its retention are well understood by the people of Hong Kong. I hope that Members will consider very carefully all I have said about the real risk of damage to Hong Kong's relations with other territories which could result from its removal from these regulations and I ask Members, therefore, to reject the amendment proposed by Mr. Martin LEE.

DR. TSE (in Cantonese): Sir, I am against the deletion of regulation 3A(vii), but this decision actually was made late at night last evening and that is the reason why I was unable to include my name into the list of Members who wished to speak.

I am against this not from a legalistic point of view but because I represent the general public and I also represent the views of the academics. Before this was discussed at the ad hoc group meeting, I had consulted the Kowloon City District Board members; and after discussion we looked at the sensitive political situation of Hong Kong and felt that regulation 3A(vii) should be kept in the regulations. The Kowloon City District Board had also asked me to reflect their views to the ad hoc group. After that, I also talked to somebody who had been in the film industry for a long time. We talked about film censorship and he told me that movie was a most influential medium, especially when it dealt particularly with political themes which could be treated in a very sensible or provocative manner. He told me that Lenin had once said that films actually were the most influential tool in inciting the general public: on the one hand it could reflect the actual situation and create reality; on the other hand it could distort the actual situation and create falsity. Besides, most people in the film industry were extremely eloquent in the language of films and together with the visual effects, it would be very easy for the audience to identify themselves with people in the films.

From history, we know that a lot of people were, in fact, incited by films and there were, in fact, a lot of examples in the period of Nazi Germany and Fascist Italy. Such political inciting of the crowd can actually make them lose their minds and they cannot tell right from wrong any more. And in the history of films in Hong Kong, we also have a lot of such examples. During the Cultural Revolution in China there was a Chinese director who shot a film on the atomic bomb in Japan and he was very sympathetic towards the Japanese. When the film was shown, a lot of people were very angry and they wanted to burn the cinema. And so such forces actually are not really common to all forms of media

and, therefore, when we are in such a situation, when it is politically very sensitive, it is right for us to have political censorship. And so, on behalf of Kowloon City District Board members and at the same time, after listening to the very convincing views of the person in the film industry, I am against the motion.

MR. CHAN KAM-CHUEN: Sir, I have not prepared a speech and this is off the cuff.

I shall abstain from voting. The reasons are two: one is that I can have a second bite of the cherry when the Bill comes to this Chamber in the coming Legislative Council session; and the second is that neither can I vote 'no' because on every Sunday around 7 o'clock we can see something that is shown that would damage the good relations in trade with another country, and I now know why our trade relation is 11 to 1 with this country.

MR. MARTIN LEE: Sir, as expected, lip-service has been paid by Members of this Council to the freedom of expression and the necessity to preserve it. I say 'lip-service' because most of the Members who spoke against the motion pretended that they valued and treasured this freedom, and yet they found absolutely no difficulty in saying that they will vote against the motion. It really saddens my heart sitting here and listening to these so-called reasons being proffered as to why this freedom of expression should now be stifled.

We are not concerned with the freedom of having a wider choice of films. As I said, Sir, we are here concerned with the freedom of expression. The authorities are clear the Administration has to make out a case of 'a pressing social need'. What is that need? We have got bold assertions from both the learned Attorney General and the hon. Chief Secretary that we need it. But for what reason? Do we need it because without it, China will stop the supply of water to us, or the supply of meat, or will send her army to Hong Kong? Or is it because it is perceived by our Administration that the leaders of China would feel or might feel embarrassed by what one or two films a year might reveal to the people of Hong Kong?

My hon. Friend, Mr. SZETO Wah, has, with respect, as usual hit the nail on its head when he said that even the grand old man himself, Mr. DENG Xiaoping, had said: 'Yes, people have the liberty even in 1997 to criticise and curse communism because the Chinese Communist Party will not fall because of that'. And what, then, are we afraid of? What is that fear in our minds as to what China will or will not do to Hong Kong? Are we such a nervous little boy so afraid of father?

Sir, China says quite clearly that it will respect the wishes of the people of Hong Kong and that we will have a high degree of autonomy in the years to come. Why are we making decisions not even on the intervention of the PRC but only on our perception as to what the leaders, or some leaders, of China may feel?

Sir, let me deal first with the submission of the learned Attorney, who was courteous indeed in supplying me with a copy of his speech. Sir, he said that whether this particular provision is consistent with Her Majesty's Government's obligations under international law is a matter for Her Majesty's Government in the United Kingdom. He followed that by saying, and I quote: 'If there were a breach of the covenant in Hong Kong, it would be Her Majesty's Government who would have to answer for it in the committee of the United Nations that is responsible for monitoring adherence to the international covenants and for determining whether there have been departures from its obligations'.

Then may I respectfully ask: Who will take the matter there? Will the Hong Kong Government take the matter there? Will the United Kingdom Government take the matter there? Or will the PRC Government take the matter there?

The learned Attorney then said, and here I quote him again: 'All one can say at this stage is that a censor who conscientiously decided that a film or a particular series of films could not be shown without damaging good relations with other territories would be acting within the scope of the restrictions permitted by the covenant'. The question I raise is: Are these decisions really made by the censor or are they made by the political adviser?

Dr. HO Kam-fai said this in reference to 'The Coldest Winter in Peking': 'Whether it is offensive is for that country to judge'. In other words, it is for the PRC to judge. Do I take it, then, that it is not for the Hong Kong Government to judge? But I think Dr. HO is at least telling the truth when he said that, because I know from enquiries made that indeed the film censors will take the advice—or is it order—from the Political Adviser's Office. Is that really the conscientious or independent decision of the censor when he bans a particular film?

I asked expressly for the reasons why the two films which we saw two nights ago were banned. The Political Adviser's Office gave me a prepared answer over the phone and it is this: 'It is not our practice to disclose details of confidential discussions between our office and officials of other governments, including consular representatives in Hong Kong and the New China News Agency'. Is it suggested that there were indeed such protests made which resulted in these two films not being shown?

As for 'The Coldest Winter in Peking', it is even more odd. It was passed by the censor. It was shown in some cinemas in Hong Kong, but only for one day. It was then recalled. But why?

Sir, the learned Attorney General made reference to the famous Handyside case. That was a case where a little obscene book called 'The Little Red Schoolbook' was seized and destroyed. The argument advanced was: 'Look, there was really no necessity for that because it was not seized in some

other jurisdictions in Britain, so why was there a need to seize and destroy it in a particular jurisdiction?' That argument did not find favour with the European Court. But how can this argument assist the Administration? We are dealing, Sir, with different mass media. We have films, we have the theatre, we have television, and we have the print media. It is perfectly all right now in Hong Kong to write an article or to produce a television documentary or to produce a play incorporating the very themes of the films that have been banned, for that is permitted by law. What is the necessity, then, in banning films? And that was the reason advanced by the learned author of the Opinion, Mr. BARENDT. He said: 'If it is permissible in the other forms of the mass media, then prima facie, or on the face of it, there is no necessity made out to ban films for political reasons'. He also took another point with which, with respect, I agree: If somebody were to show a film which in the view of the Administration does damage good relations between Hong Kong and other territories, he does not commit any criminal offence under our laws. Does it not, therefore, show that this Council does not think that it was necessary?

Then the Attorney General said that no one previously has sought to make the case that Article 19 would be infringed by allowing censorship for such a purpose. If I am the first to challenge it, I am proud to do so. Or perhaps it is because Hong Kong is such a free territory that we can do so in this Council. But it hurts my heart even more when I realise that we can do this because this is a free place, and yet some of my colleagues do not even seem to realise what they are doing to the basic freedom of expression.

Now, if the Administration's position is the correct one, one would expect that other civilised countries would also have such a provision, and yet we do not find such a provision in the democratic countries of the world. Why not? Is it because they treasure the freedom of expression much more than we do?

No answer has been made to a basic point in my speech, that although there were only three reasons given to justify the retention of this particular provision, yet we are told quite frankly that once this provision is retained in our statute books it will be applied to other areas. Is that what the Chief Secretary means when he says: 'Well, it will be confined to a minimum'? 'Minimum' and yet covering more areas other than those permitted in the covenant?

Let me now deal with some of the points made by my hon. Colleagues in the order in which they were made. The hon. Mr. Stephen CHEONG made a rather serious attack on some Members of this Council—perhaps he had me in mind—that we were sowing seeds of distrust in the Government of Hong Kong. He then went on to say that the fact that for 30 years the scheme had seemed to work smoothly has been 'completely overlooked'. With respect to him, the system had indeed been used for 30 years but, as we now know, unlawfully.

Perhaps the functional constituency from which he hails would allow him to say that that was a perfectly good scheme. I am afraid the functional constituency where I come from will not permit me to countenance such a blatant breach of the law.

He then says: 'Well, there is no serious complaint lodged by the film industry'. Hardly surprising, because they did not expect the Government to be breaching the law for 30 years. The hon. Mr. CHEONG then said: 'Well, the people of Hong Kong should take care because they would not wish to run the slightest risk of military intervention from the PRC'. I wonder whether Mr. CHEONG is serious in suggesting that the PRC will send her army to Hong Kong if we do not censor our political films? If so, what is there to prevent this censorship or pre-publication censorship from being extended to the other forms of the mass media?

The sole concept of 'one country two systems', and 'high degree of economy' will come to nought if the hon. Mr. CHEONG is right. His statement, with respect, will damage the credibility of the PRC in the hearts of the people of Hong Kong.

My hon. Friend, Mrs. Rita FAN, asked why I only raise the matter now. The answer is simple: I only got Mr. BARENDT's opinion recently. She asked the Government for an assurance that pre-publication censorship will not be extended to the theatre, television and the printed media. The Chief Secretary did not give us that assurance. He merely said: 'Ah, but surely if the future Government were to introduce or were to seek to introduce such legislation, Members of this Council would say "no"'. I wonder.

My hon. Friend, Mr. Andrew WONG, said that this motion is made at the wrong time and so on. The difficulty as I see it is that if the motion is not carried, we will never know whether there is such a need because quite wrongly, for over 30 years, the censorship of political censorship of films has been enforced. And if the Administration were to tell us later on that it is necessary then to extend it to television, I wonder how many of us would say 'no' to that?

The hon. Dr. TSE quoted Lenin on the influence of films on people. With respect, that must be a rather old-fashioned quote because Lenin was pre-television era. If Lenin were alive today, he would say: 'Ban television'.

May I now come to the submission or the speech of the Chief Secretary. He quoted a note he got from the chief censor in effect suggesting that I was wrong in saying that these two films were the worst according to him. I say it in this Council consciously and deliberately that that was what he said to me. I asked him in the clearest possible language: 'I want the two or three worst films— meaning the films that you consider were most worthy to be banned'. He gave me first of all two names: 'The Coldest Winter in Peking' and 'If I were For Real', in that very order. And then he said: 'Let me now just check from the list of films that we have banned over the years'. And he added a third: 'Twilight in

Geneva'. But I was unable to get that; and even if I had got it, I think to show Members three films in one night would be too much for any councillor to swallow.

I say it for the record that he did indicate to me in the clearest possible language that these three films were in his view the worst. It would be odd indeed, Members may think, why he should have given me these two names or three names at all.

Now, the Chief Secretary tries to make a distinction between the effect of a film as opposed to the effect of books and newspapers. We are now, of course, dealing with political films. It has been said by experts that when you come to political films, perhaps the effect is not as strong as a political essay, or a political editorial. Certainly nobody would ever try to distinguish the effect of a television production and a film. I think the Chief Secretary was wrong when he said that we have had this regulation for 14 years. No, we only had it for 28 days. This is the last day for which I could challenge the regulation. It was laid before this Council 28 days ago.

The Chief Secretary said that we need it to safeguard the community as a whole, and that we need to protect it from the real risk of damage. But bare statements of this kind will not do, according to the authorities. The Administration has to prove a case of a 'pressing social need', and all the reasons which have been given so far indicate only one thing: that China or the leaders of China, it is thought, will be embarrassed.

Let us not forget the terms of the Joint Declaration. It is said quite plainly that for 50 years after 1997, we will continue to be a capitalist system here in Hong Kong. And not only that, the socialist system and socialist policies shall not be applied to Hong Kong. I ask Members to consider the implication of that. In other words, communism and the communist way of life will not be applied to Hong Kong. So what is wrong if there is a film which ridicules communism? It only reminds us to keep to the terms of the Joint Declaration, to make sure the communist way of life, the communist policies, will not be allowed to be extended to Hong Kong. What is wrong with such a film, then? On the contrary, Members may think that if a film is produced which praises communism, then it can be said to be in breach of the spirit of the Joint Declaration.

Sir, in conclusion, I want to repeat this and I want to emphasise it: If one freedom is lost today, no other freedom is safe tomorrow.

Question put and negatived..

7.42 pm

HIS EXCELLENCY THE PRESIDENT: We will have a certain amount of business—an adjournment debate. I think Members will wish to take a further break.

8.09 pm

HIS EXCELLENCY THE PRESIDENT: Council will resume.

8.09 pm

Adjournment

Motion made. That this Council do now adjourn—THE ATTORNEY GENERAL.

HIS EXCELLENCY THE PRESIDENT: There are 15 Members of the Council who have given notice of their intention to speak in the debate, so I will exercise the discretion I have under Standing Orders, to allow Members adequate time to complete their speeches and also to allow adequate time for the Official Member to reply to those speeches before putting the question on the adjournment.

Long Term Housing Strategy

MRS. CHOW: Sir, when the Government Long Term Housing Strategy Policy Statement was first published in April this year, the OMELCO Housing Panel undertook to study the document, raising questions of panel members as well as members of the public with the Administration. It then became clear that an adjournment debate in the Legislative Council would be in order for views to be aired in the proper forum and a Legislative Council ad hoc group was then formed. Hopefully, the Administration will find Members' opinions helpful as reference points in the fine-turning of the strategy. As convener of the group, I will concentrate on the common ground all Members or a large majority of the Members of the group manage to find regarding the main topics in the policy statement.

All Members agreed that this policy statement is timely and necessary for adjusting the focus on the way ahead.

On the policy objectives outlined in the statement, Members accepted there is a growing demand for home purchase, and agreed that such demand should be met as far as possible. However, the question is raised as to how the need for all types of housing is to be satisfied, whether this is indeed in accordance with established priority, or whether this does not in fact represent a shift in established priority. Members share the query raised by some members of the public how this recognition of aspiration for home purchase would affect the ratio between public rental housing and Home Ownership Scheme, and whether the flexibility to determine the ratio according to demand will not adversely affect eligible rental applicants and tenants who are undoubtedly those most in need of help. Members are generally concerned that this statement has not

demonstrated in any way that Government is giving priority attention to the extremely long waiting list, and while endorsing the aim to improve living condition of those already residing in the public housing sector, we question the ranking of this priority over the relief of the waiting list. A majority of Members agree with the new concept of supplementing public housing production by tapping private sector resources through the introduction of the Home Purchase Loan Scheme, while a minority of Members echo the objection raised by some interest groups in the community based mainly on the following grounds: They regard this proposal as a form of government subsidy to boost profits of property developers. It may produce the undesirable effect of inflating the property market as well as our economy. They are particularly worried that even those who could not afford it would be tempted to purchase and this would lead to hardship and other social problems. The majority on the ad hoc group, however, concluded that everything considered, especially taking the macro view on housing, the scheme is worth supporting, and decision to buy should rest with the applicant. It was also agreed that the scheme should be made as attractive as possible so as to achieve its supplementary function. Mr. H.K. CHENG will spell out in more detail what most of the group thought should be amended in the originally proposed HPLS to enhance its attraction, while maintaining a proper sense of balance in the market. We remain uncertain as to how far this proposal and the proposal to interchange PRH/HOS units, will succeed in netting more vacant rental flats for the more needy, given the considerable wastage in terms of unavoidable idle time during which recovered units have to remain vacant prior to redevelopment.

There are of course some differences in opinion regarding policy objectives and their implementation, and members will no doubt elaborate on them.

Members are sensitive to public housing tenants' queries over the pattern and scale of both domestic and commercial rent increase in public housing in future. It is evident to Members also that with this long-term strategy, there is a phasing out of the social welfare function in housing. With new estates coming on-stream and the redevelopment of old ones, rent levels may be beyond the reach of an increasing number of eligible tenants. Government should spell out clearly measures it will adopt to assist this needy minority.

To the group's view I would like to add my own.

Government is in no position to argue that there is any increase in its commitment to housing under the revised strategy. Equally, it cannot be said that there is any intention to cut back on the commitment, as the 40 000-unit annual production in the public sector will be maintained. It is perhaps equally true to say that eligible tenants are being assisted to increase their commitment to housing through induced and assisted home purchase. In spite of this I am in full support of this new direction, as I am convinced that we are a very different community from what we were when the existing housing programme started in the early '70s, and not only our public housing residents, but the entire Hong Kong has benefited from it economically and socially. As our quantitative and

qualitative demand on housing is upgraded with our growing affluence, the time is ripe to readjust the burdens of responsibility according to affordability and need. It is the only fair thing to do.

My support of the HPLS is not totally unqualified. The reason that HOS is considered preferable over private developments is that, rightly or wrongly, the quality and value of the former are perceived to be better. The element of government subsidy in the HPLS as well as the need to ensure its attraction and success must surely demand that minimum standards should be met before private developments can qualify for the scheme. By promoting such standards, all home purchasers, subsidised or not, will be guaranteed the consumer protection they deserve but is presently not available.

The waiting list is disappointingly long, and to aim to satisfy all applicants under this category in nine to 10 years, while clearances with no income eligibility criteria and sitting tenants are given priority of rehousing, is clearly unjust. It is certainly an area that requires serious rethink.

Many Members have spoken out in the past for the sandwich class in this Council. I am therefore surprised that Government did not include them in the statement. As we are looking into the future, I urge Government to come up with a form of assistance, such as tax relief or low interest first instalment, for families whose income fall immediate outside the waiting list income limit to buy their homes. It is by actively promoting home ownership that we can truly breed a sense of belonging, commitment and responsibility among our people.

DR. HO: Sir, the proposal for a Home Purchase Loan Scheme as part of a strategy to promote home purchase and to broaden the choice of home purchase is worthy of support. However, in order for this strategy to work effectively, I wish to offer some suggestions for the improvement.

The first and foremost consideration of a person in deciding whether to take advantage of the Home Purchase Loan Scheme is his assessment of his ability to make the monthly mortgage repayments. According to government statistics, the median monthly household income for 1986 was $5,200. When a family of this income level buys a home on mortgage loan, monthly instalment payments may be as high as 40 per cent to 50 per cent of the household income, depending on the amount of mortgage. To make home ownership affordable, the Administration must therefore consider increasing the interest-free home purchase loan substantially enough to cover other necessary items of expenses associated with home purchase, such as legal fees, stamp duties, fire insurance premiums and decoration. The financial burden on the home buyer would be reduced if the Government makes mortgage repayment tax exempted. If the loan is only subject to a certain maximum amount but not a 10 per cent of flat price ceiling, this arrangement will inevitably render the monthly mortgage repayment less onerous for the loan recipients.

In the private housing sector there is a substantial number of families living in shared accommodation and in substandard conditions. The income of many of these people is not better off than that of the public housing tenants and yet they are paying a relatively higher level of rent for their accommodation. Representations received from interest groups argued that the Home Purchase Loan Scheme should be extended on equity grounds, to these private sector tenants who meet the income criteria for the Home Ownership Scheme and to the vetted waiting list applicants for public rental housing. If this suggestion is accepted, the number of people eligible for the Home Purchase Loan Scheme will be considerably enlarged and I propose that the initial 2 000 loans should be doubled. In order not to make a sudden impact on the property market it has been argued that private sector flats constructed in the past five years should be considered eligible for the Home Purchase Scheme. A five-year limit is suggested because such a flat is normally capable of securing a mortgage-loan worthy of 90 per cent of the value.

Finally, the Administration must consider and publish a contingency plan for those loan recipients who are unable to fulfil their mortgage repayment obligations for reasons beyond their anticipation and control. Perhaps, they might be allowed to move back to a public rental housing until if they still meet the income criteria.

To sum up improvements in three areas are proposed to make the Home Purchase Loan Scheme work more effectively:

1. to render home purchase more affordable by relaxing some of the terms of the loan scheme;
2. to extend the Home Purchase Loan Scheme to include private sector tenants and vetted waiting list applicants for public rental housing and to double the initial number of loans to provide more opportunity for home purchase; and
3. to formulate a contingency plan in the event of defaulting mortgage repayments.

MR. HU: Sir, in principle I support the Long Term Housing Strategy which is a continuation of the present housing policy but with additional refinements coupled with flexibility to cope with the changing situation aiming at maximum utilisation of resources from all sources. As it is not a new policy, there is no necessity for public consultation as suggested by some organisations.

The basic housing policy is to provide housing at affordable rent to those households in need. Purchase of HOS, PSPS flats should be encouraged as it promotes a sense of belonging especially for those living in public rental housing and those on the public housing waiting list with income below an agreed limited. I shall confine my comment on the redevelopment programme.

It is obvious that priority in the provision of public rental housing must be given to those on the waiting list and those affected by clearance. When the

Housing Authority has basically resolved the housing needs from these two categories, attention can then be given to those living in older public rental housing, including Marks IV to VI estates, and self-contained former government low cost housing estates, which if redeveloped, will require an additional 125 000 public housing units to rehouse the affected tenants. At present there are 135 blocks totalling 107 000 units of Marks IV to VI design in 32 estates.

Redevelopment of older estates will undoubtedly improve the environmental and the living conditions, but redeveloped estates, due to additional construction costs, will also mean considerably higher rents for tenants. On the other hand, additional routine maintenance for older estates will have considerably less effect on the rent. It is important that the Housing Authority should keep a range of public rental housing estates with different rental charges, depending on the standard of living conditions and supporting facilities for the applicants, or tenants to choose. We have to keep some old and new cost low rent housing estates especially for the lower income group. This applies particularly to housing estates which have been fully developed and the redevelopment cannot produce additional accommodation.

The tenants in these older housing estates can move to either newer estates with higher rents or puchase HOS, PSPS flats, or flats from the private sector if they can afford the removal financially. The vacated units can be allocated to applicants or tenants who prefer lower rental in payment.

Redevelopment of older housing estates can be considered if redevelopment can produce additional accommodation which will be beneficial to the waiting list applicants.

Older housing estates not to be redeveloped, may have limited environmental and facility improvements for the purpose of raising the living conditions, but without seriously affecting the rent for these estates.

We must bear in mind that redevelopment of older housing estates should not seriously disturb the lives of affected tenants who would prefer to be rehoused in the nearby area for many reasons including employment, nearness to school for children and so on and it is important to have regard to the wishes of the affected tenants as far as possible.

MR. CHAN KAM-CHUEN: Sir, I rise to give general support to the speeches of my colleagues. Although I am proud of the accomplishment of our Government in providing public housing to well over 2 million persons, many of whom are Hong Kong born, I feel sad that our Government's policy has drifted further and further away from the original objectives of providing suitable accommodation for as many as possible of those people who are living in overcrowded or otherwise unsatisfactory conditions and cannot afford to pay the rent for comparable accommodation in the open-market.

In the days when permission for providing private car-parks in better private residential housing was very restricted, the public housing was already providing private car-parks in which Jaguars and Mercedes were parked. A mere millionaire has to think twice before buying one of these new cars. This demonstrates that we are not providing solely for the needy or poor people, unless our definition for the 'fringe of poverty' is around HK$10 million minimum standard.

I believe that public housing should only be built by public funds to a minimum standard. We should save the money to build more flats for those on the long waiting list. One must bear in mind that each year over 27 000 cross the border for residence in Hong Kong, and in seven years they become permanent residents and an additional burden to our housing requirement. By a 'minimum standard' I mean they should be self-contained flats that is, with water and electricity, individual kitchen, balcony, flush toilets; and tenants should be permitted to erect partitions for privacy. Communal facilities, such as lifts for high rises, sufficient schools and necessary supporting shops should be provided. I was shocked to learn that by demolishing old types of low public housing and rebuilding as high rises, it may not increase the accommodation floor area as there are more open spaces. Is this good value for money?

Moreover, flats should only be built up to a certain size, say according to the prevailing standard floor space permitted for each tenant. Those better-off, and who wish to live in a larger flat with better or luxurious facilities, should buy or rent it from the private sector, otherwise there will be unfair competition between the public and private sectors.

Housing is not only important to a family because it affects their health and welfare, it also affects the economy of the Territory. Only a few years ago, the private property market failed and it dragged the banking, construction, supporting industries, and local consumer market down resulting in some bankruptcies, and some workers suffered from unemployment.

Equal opportunities

When two colleagues of the same pay apply separately for public housing; one got a flat, and with the savings in rent, bought several flats on the private market. But the other was lower on the waiting list and with subsequent annual raises in pay—as the former colleague—he was subsequently disqualified. This is what the Chinese call '一線隔天涯' that is, 'the fine line of the horizon' separated them into heaven and earth. Is this fate?—or unequal opportunity?

We still do not have a fixed term tenancy for public housing for say, a 10-year review. We still do not evict well-off tenants, even when they own flats and have no housing problem. Should we continue to subsidise them with public funds and sacrifice the opportunities of the more needy in the years-old waiting list?

We still have to provide alternative accommodation to the tenants of Gerry and aged public housing. Tenants in the private sector, rich or poor, do not enjoy this privilege.

The stick and the carrot

On the 29 October 1986, I said in this Chamber: 'I hope' repeat 'hope, that a softer tactic of increased rent could replace eviction of well-off tenants.' By not using the stick of 'eviction', absentee or well-off tenants will use these much needed vacant flats as storage or 'fung shui' purposes; some have even emigrated. Instead the whack of the stick was changed to an increase in rent for all tenants but this failed to make the well-off tenants move out, and lower-income tenants paid more. The carrot of home ownership flats in exchange for surrender of public housing has also failed to get these selfish well-off tenants out. Now, we are talking about larger carrots of interest-free loans in this strategy. This time I do not 'hope' but 'pray' that too many carrots will not create the illusion that if they stay-put, more and larger carrots will rain down from the heavens.

With these observations, Sir, I request that the right 'stick-and-carrot' strategy be used to produce the maximum number of flats in the minimum of time and money. And, above all, that justice is seen to be done in eliminating the selfish fraud of public subsidy by the well-off tenants.

MR. CHEUNG (in Cantonese): Sir, overall speaking, I think the spirit of the Long Term Housing Strategy is commendable. Firstly, this is based on the anticipated situation from now until 2001 and it identifies the need for changes to the existing strategy, therefore, this is a long-term strategy. Secondly, the proposals aim at satisfying all outstanding demand for housing by 2001 so that suitable accommodation can be provided to all, and at affordable rent, or price. Therefore, it has a clear objective. Thirdly, this strategy proposes redevelopment of older housing estates which are below the existing standard, so that the living conditions of the tenants can be improved. It also recognises the home purchase aspirations of the people and provides more opportunities for them in the said respect. This strategy is therefore both paying attention to quantity and quality. Fourthly, apart from the development of public housing, the strategy also looks at the effective utilisation of private sector resources and the co-ordination between the two sectors. This is therefore, a comprehensive and panoramic strategy.

Now I would like to speak on the key points of the strategy one by one. These main points are: redevelopment of Marks IV to VI estates and former government low cost housing blocks; flexible adjustment of the ratio between Home-Ownership Scheme and public rental housing according to preferences of the residents to provide appropriate housing for those eligible; and, introduction of the Home Purchase Loan Scheme. Because of the shortage of time, I will only elaborate on the last two points.

With regard to the flexibility in the production of HOS and PRH, I think this is a good and practical approach. Judging from the recent enthusiastic response from the sitting tenants and prospective tenants to the sale of HOS flats and the relatively low success rate, it can be concluded that there is an under-provision of HOS flats. If we can assess the preferences of the prospective tenants and those affected by redevelopment, and adjust flexibly the construction programmes of HOS and PRH so that appropriate housing will be provided, then those concerned will find it more satisfactory and more practical. At the same time, if more sitting tenants can move to HOS, according to their wishes, more public rental units can then be released and be reallocated to the more needy. In this way, the housing subsidy which the tenants are receiving will be more related to their needs and the public resources which are allocated for housing purposes, can be better utilised.

In this Long Term Housing Strategy, the introduction of the HPLS is perhaps the most controversial. This scheme, in my view, is an innovative idea and the crux of the proposal is that, apart from HOS an additional option for assisted home purchase for those eligible, is provided. Since the scheme is purely voluntary, it will not adversely affect the rights of any person. This is a very important principle, therefore the choice is really with those eligible. They can take into account the specific conditions, needs, and aspirations of their families, and then decide whether to apply or not.

However, in the policy statement, details of the scheme are not given. During the past months, members of the public have expressed their views on the scheme and I think the Government should consider these comments in drawing up the plans for implementation. In particular, the maximum of $50,000 should be increased, and it should also be extended to the waiting list applicants.

An important assumption of the strategy is that more sitting tenants and those affected by redevelopment would opt for home purchase to improve their living conditions. However, once there is a change in the demand for home purchase, the implementation of the strategy will be affected. Therefore, if we want to implement the proposals of the strategy effectively, careful planning, close co-ordination and effective monitoring are needed, so that when there are changes in circumstances, there can be quick response. Whether it be making redevelopment plans, or deciding on the number of HOS and PRH flats every year, or devising an appropriate quota and amount for the loan scheme, or monitoring the trend and fluctuation in the property market, we need an effective co-ordination system. One possible way is to design a particular type which can be easily modified to become suitable for HOS or PRH purposes to meet the changing demand.

Here, I would also urge the Government, in implementing the proposals, to regularly review the assumptions which form the basis for the strategy, to consider views expressed by members of the public and professionals, and

strengthen the existing co-ordination housing programmes. In the implementation of the strategy, I think the Housing Authority should play an important role. All proposals on redevelopment, public housing production and the Home Purchase Loan Scheme should be submitted to the authority for consideration and comments first, before they are put into practice.

MR. CHAN YING-LUN (in Cantonese): Sir, the desire for home purchase is prevalent. Let us take the example of people living in squatter huts in Shau Kei Wan. Last year, Government announced clearance plans, and at the same time in Quarry Bay, the Kornhill HOS Development was opened for applications. Clearees were told that they could apply by using the green form and they were overjoyed. Over 200 households applied, but since so many people applied, most villagers were disappointed. The unsuccessful applicants wrote to Mr. FORD, the then Secretary for Housing, to express their disappointment and their views. The proposals for the Home Purchase Loan Scheme and the inclusion of clearees are in fact a response to public demand.

The good things about the loan scheme is that it is interest-free and people can choose the most suitable location. However, it is still less attractive than HOS, therefore, provided that the taxpayers do not have to give more subsidy, the Government should use other means to reduce the burden of payment for loan-recipients, to make the scheme more attractive. These green form applicants are given preferential treatment by banks, including 5 per cent down payment, a repayment period of 20 years, and an interest rate of 0.5 per cent above prime. Some banks even charge prime rate to get accounts. These are possible because the Government provides guarantees and reduces the risk factor for the banks. I hope that Government will do the same for HPLS so that loan-recipients will also get preferential terms. Besides, if the loan-recipients have to make mortgage payments and repay the loan at the same time, it may be a great burden. Therefore I would like to suggest that in the first year, the loan-recipient should start in a gradual manner that is, paying less at first. year, repayment should start in a gradual manner that is, paying less at first. Since income will also gradually increase, they will be able to afford more.

Apart from solving the housing problem, home purchase is also an investment. I am in full support of the scheme.

MRS. NG (in Cantonese): Sir, the simple words: 'three proper meals a day and a roof above one's head'—may well describe the common expectations of many of our citizens in the lower strata. This is particularly true of the 32 000 residents living on dangerous slopes; the 6 500 boat-dwellers living in deep distress; the 3 900 cage-homers; 120 000 THA residents; and the street-sleepers so vulnerable to being battered by wind and rain. Their demand for housing is indeed very urgent. But today, the Long Term Housing Strategy makes no mention about the needs of these people and I find this most regrettable.

Although at present, over 45 per cent of our population live in public housing units, some residents are still living in old estates and the living environment truly warrants urgent improvement. So I am all for the extended redevelopment programme suggested in the policy statement. I think it is very good that we can now improve the living environment of the 125 000 residents living in Marks IV to VI public housing estates. But we know the residents will face a lot of difficulties, for example, they have to change schools for the children; they have to change jobs; and they have to face higher rents. So, I think the Government should set up a redevelopment co-ordinating committee.

Other than the Housing Department, the committee should comprise other departments, for example, the Labour Department, Education Department, district offices, and the Social Welfare Department. They should, in concerted effort, try to help the residents affected by the redevelopment programme to solve their problems.

As for the HOS, since its implementation in 1978, about 200 000 citizens have been able to own their own flats. The provision of public housing rented units and HOS flats is in the ratio of 1 to 3. I think we should review this ratio according to the changing demands of our residents.

We know that people applying with white forms only have a success rate of 4.7 per cent, and those with a green form only have a success rate of 7.2 per cent. In other words, a lot of people would fail to get their own flats through the balloting scheme and it is a proven fact that we have not been able to cater to the needs of the residents, for example, those who are affected by clearance schemes or redevelopment schemes. Those affected by clearance schemes have very little alternative other than to go into rented units. Although they can apply with a green form, we know that the success rate is also very low. So I think the Government should first of all assess the preference of the applicants before we adjust the ratio between rented units and HOS flats.

Finally, I urge that the Government should review the wage limit for application for rented units, and we should also raise the ceiling limit for those applying for HOS flats, so that we can better cater to the needs of the sandwich class.

MR. CHENG: Sir, generally I support the Long Term Housing Strategy which extends the existing housing policy to increase Government's commitment to satisfy all identified demand at an earlier date.

The main changes devised in the amended strategy to overcome the present deficiencies are the redevelopment of Marks IV to VI estates and former government low cost housing estates and the introduction of a Home Purchase Loan Scheme.

In consultation with members of my functional constituency, particularly the Hong Kong Institute of Surveyors and the Royal Institute of Chartered Surveyors (Hong Kong Branch), Joint Working Party, and upon receiving advice from interest groups, I wish to make some comments on these changes.

While redevelopment is necessary of the older estates to improve environment and living standards with a better balance in the housing mix, Government should ensure that such redevelopment will increase the number of flats to accommodate a great deal more households, bearing in mind that the demand for housing remains to be substantial.

In planning any redevelopment, it is important that care should be taken not to provide units of too many varied sizes, some of which have proved to be unsuitable for average household need in redevelopments. Past experience has alerted that in future redevelopment, Government should ensure quality not only in design but also in construction, to avoid such deficiencies that would require yet another redevelopment after a relatively short life span.

Sir, I fully support the policy of home purchase. In the long run, it is beneficial to both Government and the general public. In this regard, I am very much in favour of the introduction of a Home Purchase Loan Scheme. Nevertheless, I have reservations about the scheme now proposed by Government. Indeed, it is not at all attractive to assist many potential families in overcoming the problem of initial financing which covers down payment as well as other necessary expenses, such as stamp duty and legal costs. I would propose that a maximum loan of $50,000 be suitably increased to solve the initial financing problem, and that the limit of 10 per cent of the flat price be deleted.

I am not quite happy about the proposal that the vendor would be required to repay the Government an amount allowed for profit taken at resale of flats as a disincentive to speculation. I will stress that this proposal is most unfair and should not be applicable after a time limit—say a period of five years—after which, in my opinion, any resale would be very unlikely to be speculative.

In the implementation of the Long Term Housing Strategy, it is necessary for Government, in collaboration with the property profession in the private sector, to monitor closely the implications of the extended policy on proportion of housing mix, private housing market, and efficiency of supply to meet demand. Within the context of the new housing policy, I would like to see a gradual reduction and eventual removal of government subsidy for those who no longer need it. Government has the responsibility to stabilise the property market and ensure a sufficient supply of flats at affordable prices to successfully meet the housing policy objectives.

MR. CHEONG-LEEN: Sir, it would be difficult not to express general support for Hong Kong's public housing policy, when a total of 2.4 million people, or 45 per cent of our population, are living in accommodation under the management of

the Housing Authority and the Housing Society. There will also be about half a million people scheduled to be accommodated by the Housing Authority and the Housing Society by the end of this decade and large production programmes will continue into the decade of the '90s as well. This is a record which we in Hong Kong should be proud of.

So what we are debating today is the Government's Long Term Housing Strategy, covering aspects such as priorities for the different types of families in need of housing and redevelopment plans for the older estates.

I would agree that top priority should be given to providing public rental housing for all qualifying low income families in need of such housing. The Housing Authority's policy statement states that the outstanding demand for public rental housing from clearance and redevelopment of non self-contained public rental housing flats and from the waiting list will have been substantially met by 1996 and 1997.

I am prepared to accept such estimate provided that the Housing Authority reviews the situation on an annual roll-forward basis, with a careful monitoring of the contribution of the private sector from year to year in this particular type of housing, to ensure there is good co-ordination all round. The main thrust will have to remain with the Housing Authority since cost of land is free. The stress should be improved quality, more units, good transportation and infrastructural facilities.

I support the redevelopment plans proposed in the strategy paper, on the understanding that priority be given to redeveloping those estates which can be more fully developed and provide additional accommodation for an increased number of people.

Another category which I believe should be given greater priority is the Home Ownership Scheme, which interlocks with the Private Sector Participation Scheme. It appears that a further 60 000 flats will be available for sale over the next five years. I would urge that this scheme be reviewed regularly to ensure that expansion can meet the demand as much as possible in order to encourage and build up a solid sense of commitment to and of identity with Hong Kong.

I would also support the introduction of the Home Purchase Loan Scheme, although the amount could be increased to 15 per cent interest free on the flat price. I understand that the scheme will start with an initial quota of 2 000 loans, in order to allow private developers sufficient time to increase their production. In due course, I urge that the scheme be extended to waiting list applicants as well as the sandwich class families whose incomes are just above the accepted limits.

In order to encourage more home ownership, the Financial Secretary should be urged to grant tax exemption to permanent Hong Kong residents on their annual mortgage payments.

As a related but important issue, having to do with quality and standards of management, I would suggest that the Housing Authority ensure that the standards for Home Purchase Loan Scheme accommodation are comparable to what are accepted under the Home Ownership Scheme.

With the setting up of the Land Development Corporation in the urban area, I suppose that a comparatively limited number of public housing units will be built either by the Housing Society or perhaps even by the Housing Authority at a later date, depending on suitable sites that can be made available. In this regard, I would suggest that Government look into the feasibility of enabling the sandwich class or middle income families, to buy their own homes on terms that they can afford.

Between now and 1997, about 10 per cent of our population may actively be considering emigrating to other countries and I think it should be public policy to encourage our middle class, many of whom are in the professional, managerial and technical groups, to remain in Hong Kong and to put their faith in the future of Hong Kong as a challenging, dynamic, international city with much promise for themselves and their children. Home ownership on terms that they can afford will be an added incentive for them to do just that, especially since we now seem to be running into a period of high rents in the private sector accommodation.

MR. CHUNG (in Cantonese): Government's Long Term Housing Strategy is about the housing policy in the next 15 years and the provision of some 1 085 000 housing units at affordable price and rent to.

The 15 year programme has one characteristic, and that is, to progressively change the relative proportion of the three types of housing in Hong Kong. It is estimated that by the year 2001, the total number of flats in Hong Kong will reach 2.04 million, of which public rental housing would account for 32 per cent, HOS 14 per cent and private sector flats 54 per cent. The corresponding figures as at present are, total number of flats reach 1.3-odd million of which rental housing accounts for 42 per cent, HOS 5 per cent and private sector flats 53 per cent.

Obviously the basic concept of the new strategy is for Government to make the best use of market conditions and private resources in the development of housing to meet the large demand but, at the same time, maintaining the principle of appropriate subsidy. So the main purpose of the programme is to encourage the public to purchase HOS flats or other property, gradually reducing the need for more PRH units provided by the Government.

The procedure for change is this, the Government will take appropriate measures to help public rental housing tenants who can afford to purchase HOS flats or subsidised housing, and to provide them with another choice of subsidised housing. This will enable other needy families to have a chance of moving to public rental housing units. If we can implement the strategy, then

those who are in housing needs will have demands met and we can also make use of the scheme to provide support to property construction and financial markets. This is having the best of both worlds and it is beneficial to the social stability and economic prosperity of Hong Kong.

Somebody mentioned that the Home Purchase Loan Scheme would not be beneficial to buyers like the Home Ownership Scheme. My view is that the size, facility, quality, location, environment and price of these flats are different. So we cannot simply look at the direct cost of the value of the flat and compare the flats provided by the two schemes. In any case, the crux of the matter has to do with the availability of the Home Purchase Loan Scheme. However, in the strategy, apart from statistics to indicate the needs, we do not have any information to support that the scheme will be a success. Therefore, I have several suggestions concerning the new strategy as well as the Home Purchase Loan Scheme.

Now, if we are placing priority in the development of private housing flats, then the Home Purchase Loan Scheme will be confined to those who are in the greatest need for public housing. In other words, we will be setting a restricted area in our policy and so I suggest that, at an appropriate time, the Government should extend the Home Purchase Loan Scheme to those who are having genuine need for these schemes. We should also extend the scheme to white form and well as green form applicants.

The Secretary for Housing has stressed that we must, first of all, take care of applicants with a monthly income of less than $8,500. However, this scheme only provides for an interest-free loan equivalent to 10 per cent of the value of the flat, or a ceiling of $50,000. Take the urban area, for example, a flat measuring 500 sq. ft. will probably cost about $500,000 and the bank will probably grant a mortgage of 80 per cent. In other words, if the buyer is to borrow $400,000 from the bank, with a 10-year repayment period, he will have to pay about $4,856 per month and, taking into consideration rates, it will be in the region of $5,000. So how can we expect a family with an income of $8,500 to purchase a flat which is comparable to those provided by the Home Ownership Scheme? So I suggest that we should increase the interest-free loan to 20 per cent of the value of the flat and a maximum amount of $80,000. I think Government should have the resources to cope with this demand and we should not stipulate that the buyers must buy a new flat. I think second-hand flats, so long as the age of the building does not exceed 10 years, should also be acceptable because second-hand flats are usually cheaper and the flats are usually larger and more appropriate for large families. Also these 10-year old buildings should still be structurally sound and most of the banks are willing to mortgage flats constructed within the last 10 years.

People, once they have benefited from the scheme, will have to abandon their right to public rental housing units. And when they resell the flats after they have settled the loan, there should not be any other conditions imposed on them

because they will only resell their flat under very special circumstances, for example, if they have to emigrate or if they would like to buy a large-sized flat. I do not think there would be a lot of opportunities for people to speculate.

As for the repayment period and the method of repayment, I think we should be flexible. When it is necessary, I think the financial institutions should arrange for a progressive form of repayment. This way we would be able to facilitate the implementation of the scheme and it would also help to stimulate economic growth.

I suggest that the Government should give a special assurance to all recipients of the loan and to stipulate clearly that, for example, when the recipient announces bankruptcy; or when the major earner of the family passed away; or when there are any other special incidents, and they can no longer afford to repay the loan; then they should be allowed to return the flat and have suitable public rental housing flat.

Now, we are talking about a 15-year housing programme, and in the next 10 years there might be a lot of changes and unstable conditions; so we urge the Government to ensure that there will be flexibility in the implementation of the new policies. We should also review it periodically to ensure that we respond to any changes that may arise.

Sir, I support the Long Term Housing Strategy. I believe that if we overcome the obstacles, the scheme will definitely be a success.

MR. HUI: Sir, housing is one topic that never fails to draw my attention, as it directly affects the livelihood of Hong Kong people. Government's efforts in public housing are often commendable and the Long Term Housing Strategy is no exception. In the light of the dwindling public demand for public rental housing units, the growing need for home purchase, the modified strategy represents a responsive step taken by Government to meet changing housing needs in Hong Kong.

However, there are two shortcomings in their strategy. First, the adoption of the Home Purchase Loan Scheme instead of a Private Sector Participation Scheme as the lease strategy; and second, the exclusion of the housing needs of the sandwich class, for which reason the document would be more appropriately entitled 'Long Term Housing Strategy for the Lower Income Group'.

Sir, although the Home Purchase Loan Scheme offers a better choice of accommodation to those who can afford to buy their own flats, increased demand for home purchase would easily inflate the prices of public flats, which would in turn push up the cost of living. If the loan of $50,000 is the carrot, then the envisaged rising mortgage payments will be the stick that bludgeons the home buyers into bearing the brunt of the property market. Indeed, if the interest rate spiralled from its present level, those HPLS purchasers, who are former PRH tenants, will be helping Government to buy its flats by paying

private developers higher flat prices. Thus, although the loan scheme aims at assisting the lower income group to buy their own homes, it in fact benefits the private developer by way of increased land sales, boosted banking business and invigorated construction activities, which altogether help to overheat the property market. For this reason, Sir, I must demur to the scheme that protects the interests of the rich at the expense of the lower income group in our midst.

On the other hand, the PSPS carries all the merits of the loan scheme without the latter's defects. The PSPS not only reaps for Government land premium plus interest from private developers but like the Home Ownership Scheme, also generates regular profits from the sale of flats. Further revenue can also be produced if the flats are sold above guaranteed prices. With private developers financing and building flats to Government's specifications, the only cost that Government has to bear is administrative expenses. Since PSPS flats are readily convertible back to PRH units, when demand and supply situation requires, the scheme offers the most ideal strategy for Government to meet the growing demand for home purchase with minimum financial commitment on its part.

Indeed, Sir, if Government is anxious to meet the demand for home purchase, then it has to increase its commitment in terms of land, money and staff resources for building more HOS and PSPS flats. Furthermore, it should consider constructing different types of low cost housing units, suited to the needs fo various categories of low income home buyers. While strongly disagreeing with Government's intervention in the property market, I wish to point out that HPLS ought to be pursued as a supporting strategy to satisfy the demand left unsatisfied by HOS, PSPS flats production. In this respect, a correct balance between public and private housing production should be kept constantly under review in accordance with the demand and supply situation. And, if necessary, a limit on the percentage increase of flat prices should also be imposed.

Sir, there is every reason to believe that Government may have overestimated the demand for home purchase amongst its public housing tenants, whose income and living standard can hardly qualify them for HPLS flats. The fact that some 45 per cent of PRH tenants is estimated to have exceeded the waiting list income limit cannot be equated with the number of home purchasers, since many of them would choose to stay in PRH units with improved amenities. Rather than providing these people with a double subsidy through the loan scheme, assistance should be given to private housing tenants who do not qualify for public housing. This marginal group, that is, people with a monthly income of HK$8,500 to HK$12,000 bracket, are paying high rents for substandard accommodation in the private sector. Some of them sharing flats with other families, while many have been on the public housing waiting list for many years. According to Government's definition of 'adequate housing', which requires living quarters to be at a rent or a price within the household's means and not overcrowded, these people are definitely inadequately housed. The housing problem is aggravated by the introduction of the loan scheme. In

fact, another reason why I oppose the HPLS lead strategy is the repercussions the increased flat prices may have on the sandwich class. Bearing in mind the income level of the sandwich class, an alternative to the loan scheme would be granting them tax allowance on home purchase down payments. At the same time, Government should also consider giving further tax allowance to the sandwich class to cover their annual mortgage payment, a policy which is being practised in quite a number of developed countries.

Sir, the launching of the HOS in 1978 shows Government's sensitive response towards changing housing needs. Government not only subsidises the poor through its public housing programme, but also goes beyond public housing to cater for home purchase needs not met by private housing. The Long Term Housing Strategy, however, tends to make a retrogressive step. By adopting the private sector lead strategy, it is turning a social welfare service into an investment-oriented project that benefits private developers. Only by increasing its commitment in the production of HOS, PSPS flats, and assisting qualified home purchasers in the middle-lower income group to buy those flats can Government measure up to its laudable achievements in housing, about the only substantial welfare scheme Hong Kong has for our people.

MR. LAI (in Cantonese): Sir, the construction of public housing in Hong Kong is a very important link in the social policy of Hong Kong. At present public housing in Hong Kong provides accommodation to 45 per cent of our population. Therefore, if the Government modifies the direction of development of the entire housing policy, it will have far-reaching implications. But, even though the changes are major ones, the Government did not consult the public in advance, giving people the impression that the Goverment is rather dictatorial.

On the content of the strategy, I want to make the following comments. First, I am in support of the spirit behind the whole policy, promoting home purchase, introducing a Home Purchase Loan Scheme, redeveloping Marks III to VI public housing estates and low cost housing estates, will help to improve the living environment of the tenants and will give greater choice to public housing tenants and applicants for public housing and HOS units. But in the strategy there are details and assumption that should be carefully re-analysed and improved upon. We must make sure that the strategy does not aim at the deliberate creation of a booming property market or subsidising the property sector. Rather the strategy should have as its ultimate aim the solution to the housing problem in Hong Kong. We know that the property sector is important to the economy of Hong Kong, but we should rely on the basic principle in the market, that is, the market should be regulated by the demand and supply situation. Promoting or encouraging public housing tenants to buy their own homes by providing interest-free loans is of benefit to the better-off people, because they can then move out—but, if such an incentive constitutes a subsidy

to the property sector, it goes against the long-standing positive non-intervention policy of Hong Kong.

Now, I have some reservation as to the effectiveness of the loan scheme. For group B estates, of course, the living environment will be improved, but for group A estates, with better facilities, an interest-free loan of $50,000 may not be good enough attraction for the tenants to move out. So I suggest that the scheme should cover all the people who can make use of the green forms to apply for public housing and more people should be allowed to make use of the green form.

Now, we know that people who receive interest-free loans will not normally be allowed to go back into public housing. I suggest that when these people subsequently give up their private housing, they should be allowed to be re-included in the waiting list.

Basically, I support the idea of a loan scheme and home purchase but as to how the scheme will turn out in practice, we will have to wait and see. Therefore, I feel that regular reviews and consultation are necessary. At present we have only defined the direction of future development but, at the present stage, the implementation of the policy will be only a pilot scheme. We will have to see whether the better-off tenants are willing to move out; whether the amount of loan is adequate; and whether the Long Term Housing Strategy will be able to achieve its objectives.

Moreover, we should also consider whether we should turn our attention to tenants in private buildings or estates run by the Housing Society. We should also guarantee the low income people are protected when we talk about redevelopment because we do not want people to speculate in housing for their personal gain. In order to maintain the entirety of the community, we should try as far as possible to resettle the people affected in their original area.

To sum up, I am in favour of the strategy but as to how the scheme will turn out to be—well, I have some reservations. But we should insist on some key elements in the direction of development of our policy. For example, we should regularly review the results of the strategy and to make suitable amendments to take care of low income households. I believe that most members of the public are interested to see whether this strategy will really be able to go one step further in solving the housing problem in Hong Kong.

MR. DESMOND LEE (in Cantonese): As the Chinese saying goes, aspirations for a home and some farming land do not count as great ambitions. The new housing strategy provides home purchase loans to public housing tenants. Though the aspirations thus satisfied are not great ambitions, this new strategy has far-reaching implications on the use of social resources. Therefore, during the implementation of the new strategy there must be frequent reviews. It would be best if a co-ordinating group could be set up and be responsible for the reviews.

The extended redevelopment scheme is a major item in the new strategy. It is alleged that the newly constructed housing units sometimes are not suitable for households whose accommodation has been affected by clearance and redevelopment. For example, in the Eastern District, a lot of three-person families have been affected by clearances but newly constructed units are not adequate as far as three-person households are concerned, so these people have to move to remote areas. Some shops in housing estates are also in a pitiful situation. The operators are conducting business on a small scale and if these estates are to be redeveloped, they have to move away. However they cannot really afford to change their trade because of their age. Furthermore, business declines as their patrons have moved out. I hope that the Housing Authority will look into this problem.

Public housing tenants who apply for HOS units are not subject to income ceiling, they can make use of green forms. The intention is that, if they are successful, they will surrender their units for re-allocation to other people. Now, we know that because there is an inadequate supply of HOS units, many of the applications are unsuccessful. Many of the public housing tenants, or some of the public housing tenants, have been living in public housing for 23 years. They will soon become the first batch of tenants to submit double rents. Now, it is hoped that for those who are to pay double rent and who have been repeatedly unsuccessful in applications for HOS units, they should be given priority treatment. Hong Kong is a prosperous society, many people have income that exceeds the income limit for public housing and HOS units. On the other hand, these people are not rich and they are not given housing allowance. These sandwich class people however find that the public housing tenants are well taken care of in various aspects. Now we have about as many public housing tenants as non-public housing tenants in Hong Kong and there is the danger of social polarisation, if the public housing tenants are given assistance while the non-public housing tenants are not given any assistance. So consideration should be given to the idea that the monthly installment paid by a household for the purchase of a flat for the first time be exempted from tax.

Sir, aspirations for a home and some farming areas are not really great ambitions. However, bearing in mind that there may not be very many people with great ambitions in society, satisfying the people's aspiration for a home does constitute a stabilising factor in our society.

MR. POON CHI-FAI (in Cantonese): Sir, Government anticipates that, in the next 15 years, the demand for PRH will decrease and the demand for home purchase will increase. The Long Term Housing Strategy has been formulated accordingly. If the projections are correct, then the proposals would definitely cater for changing circumstances and satisfy demand. Most people will have their own homes and our society will be more stable. People will have a greater sense of belonging. It will indirectly promote our prosperity. The proposals are therefore worthy of our support.

However, will the strategy proposed in the policy statement really help to achieve the objectives and is it possible that there might be side effects or opposite effects? These are points we must take into consideration. At the moment, public housing aims at helping the lower income groups. Even though the income of some of these families has improved and they can afford purchasing their own homes, there are 180 000 households on the waiting list and they have to wait for years before they are allocated housing units.

Therefore, Long Term Housing Strategy should continue to be PRH lead, with HOS coming second and supplemented by HPLS. We should first try to take care of applicants on the waiting list before we decided on the scope of the HOS and HPLS programmes. In fact, if the lower income groups purchase their own flats, it will be a great burden to them. Therefore, households with low income will not reshly give up their public housing units for HOS flats. Therefore the provision of PRH is still the best way to solve the housing problem of the lower income groups.

Sir, in the Budget debate, I clearly stated that I am for giving loans to people in the lower and middle income brackets to purchase their homes. At the same time, I also asked the Government to be careful, so that it will not create a great demand for flats and lead to a rocketing in prices. Otherwise, the lower income groups cannot benefit from the loan, instead they will suffer from rising prices in the property market. Therefore, I hope that the Government will set up a committee to monitor the Home Purchase Loan Scheme. to keep a close eye on the Hong Kong economy and property market, to make adjustments in the quota so that flat prices will not rise and real estate developers will not reap huge profits at the expense of the general public. At the same time, we can also prevent people from speculation by making use of the interest-free loans.

Undoubtedly, the living conditions of the people of Hong Kong have improved greatly compared with the ‘60s and ‘70s, and their financial position is much stronger. Under such circumstances, the Government should consider extending the loan scheme to the sandwich class. These people have never been eligible for PRH and yet they cannot affort private sector flats. We should help this group of people, who are caught between the two, to have their own units and to lead a happier life. At the same time, the scheme should not be restricted to new flats. We should allow the people more choices and, by so doing, we will not be further encouraging speculation in newly constructed buildings.

As for the $50,000, it is indeed too small an amount and will not be able to attract sitting tenants to give up their units and purchase private sector units. Besides, non-tenants are restricted in many ways in applying for HOS units and they do not really stand to gain that much, so they will not apply. It is, therefore, essential for the Government to review the scheme.

The extension of the redevelopment programme to Marks IV and VI blocks and former government low cost housing, should be popular with the public. It will improve the problems of overcrowdedness, maintenance, community facilities, and poor design. The living conditions of the lower income groups will be improved. However, the Government should ensure that poorer households affected by redevelopment will be allocated public housing units within their affordability and they should be given units in the same locality as far as possible to minimise the disruptions. Sir, with these remarks, I support the motion.

DR. TSE (in Cantonese): Sir, like the other Members who have expressed their views, I support in principle the Long Term Housing Strategy published by the Government in April of this year. From the viewpoint of the excellent use of resources, the strategy is commendable. It effectively mobilises the strength of our entire community. There is a flexible combination of the public, private and joint efforts to achieve the targets of the Government's housing strategy so that people can be provided with appropriate housing at affordable rents.

In the past, the Government used a lot of public money to deal with the housing crisis faced by people since the '50s so that one of the basic needs could be met. This indirectly led to the stability and prosperity of Hong Kong since the '70s. This is a significant achievement known to all.

Now the crisis is behind us and we are at a stage when we aim at improving our lot and making our homes more comfortable. The Government's appended strategy is timely. The responsibility for improving living conditions is now gradually being shouldered by those who stand to benefit, and indeed, by the private sector. So the limited resources of Government can be channelled into meeting the basic needs of the low income groups. This is, therefore, a wise deicision and is in line with the general principles of free enterprise in Hong Kong. At the same time, even though the Government did not conduct territory-wide consultation in the formulation of the strategy, I do not think there was anything improper. If Government conducted general consultations when it was merely introducing strategic improvements to an establishes policy, then its efficiency would be greatly affected. And if we are not careful enough it may also encourage certain departments to be overly dependent on consultation and not make responsible executive decisions. However, I also agree with the views presented by some organisations which represent public housing tenants. They say that in the practical implementation, for instance, regarding the ratio between large and small units in redevelopment, management and maintenance problems of PRH and HOS, the Government must improve communication with tenants affected so that decisions made by the Government will not be out of line with the actual needs of the tenants.

Coming to the redevelopment of public housing blocks, as far as I know a block may be marked for demotition but before that takes place there is usually a long period after the units are vacated. At the same time, tenants in group B

public housing may vacate their units when they purchase HOS flats. These units are not reallocated to waiting list applicants as a matter of principle. If we allow these units to remain vacant waiting for demolition, it may be an unnecessary waste. I would like to know whether the Government would consider using these vacant units an temporary housing in order to meet the demand for temporary housing created by emergencies such as floods or fires.

Lastly, I would like to talk about public housing tenants with income way beyond the income limit for public housing. In paragraph 17 of the policy statement it is stated very clearly that eviction of sitting tenants as a means of increasing mobility is ruled out. In recent years, the living conditions in public housing have improved greatly, and under the existing rental policy some tenants would much rather pay double rent than purchase their own home. This is because even if they pay double rent, it is still better than getting a loan and buying their own flat. The Government thinks that the most effective use of public money on housing is to ensure that the subsidy for each household does not exceed the basic need. In that case the Government should reconsider its rental policy so that those tenants who can afford it will have to pay an amount equivalent to the payment on a flat. In this way the Home Purchase Loan Scheme will be attractive to them and the mobility in public rental housing will increase.

With these remarks, Sir, I support the Government's Long Term Housing Strategy.

9.34 pm

CHIEF SECRETARY: Sir, I am most grateful for all the constructive comments of the 16 speakers that have been made this evening. But the hour is late and I suspect that Members will be relieved to hear that I will not answer each of the points in detail. But I am sure Members will be pleased to know that the Secretary for Housing and the Director of Housing are with us and, I am sure, taking a very keen interest in this debate. As far as I am concerned, I spent two happy years in the Housing Authority. I still feel like I have cement on my shoes and will take a great interest in the implementation of the policy which we are discussing this evening.

There has been much public discussion of the strategy since the policy statement was tabled by me in this Council on 8 April. I am most grateful to those members of the district boards, interest groups and the general public who have shown so much interest in the scheme and to the Members of this Council who this afternoon and this evening have helped to crystallise the many points made in public debate of the strategy.

The Long Term Housing Strategy does not depart from the existing policy which aims to ensure a supply of adequate housing at an affordable price or rent for all households. Rather it extends and reinforces this policy so that people

will be provided not only with adequate housing but also with a choice of either renting or purchasing their home. It aims to ensure that the best use is made of public and private sector resources and progressively to upgrade the standard of the older housing stock.

The Long Term Housing Strategy has three main strands. The most important one has perhaps attracted least attention in public debate. This deals with the balance between home ownership and public rental housing. Recent Home Ownership Scheme sales have shown a strong demand for home ownership and it is clearly desirable not only to plan to satisfy this demand but also to give due priority to the provision of public rental housing.

There are a considerable number of prospective public rental tenants who prefer Home Ownership Scheme flats but their chances of obtaining such flats under the present policy is very small and most have to move into public rental housing. Under the new strategy, it is intended to gauge the preference of prospective tenants before they are rehoused and to provide the right balance of home ownership and public rental housing units to match their demand.

Prospective tenants of rental housing will therefore not be competing in balloting exercises and the chances of success in balloting by other applicants who wish to buy their own homes will be improved.

Sir, some critics of the strategy have seen these proposals as shifting the basis of the public housing programme from rental to purchase. They are concerned that the needs of the lower income groups who cannot afford to buy will be neglected. But these critics have failed to grasp the essential principle of the new strategy which is to make housing provision demand led. Present indications and projections show an increasing demand for home purchase but if this trend should be reversed, the balance of the programme can readily be changed to meet an increased proportion of rental demand. This flexibility, which is inherent in a demand led strategy, should also allay the fears of those who see the projections as being too optimistic or over-emphasising people's ability to afford home purchase.

The second aim of the strategy is to increase the opportunity for assisted home purchase through the introduction of a Home Purchase Loan Scheme to supplement the Home Ownership Scheme and Private Sector Participation Schemes. Under these schemes the choice of location, size and layout of flats is limited and these schemes do not make full use of the financial and land resources available and of the expertise of the private sector. The Home Purchase Loan Scheme, which will offer a loan at nil interest to meet part of the purchase price of a flat of their own choice, is intended to solve these problems.

This part of the strategy has caused the most public comment and many Members have made helpful suggestions about it this evening. Some have

suggested that the introduction of the scheme will inflate flat prices, and much has been made of the size of the loan which many have described as inadequate. Others have suggested that the choice of flats should be increased by allowing those taking the loan to buy second-hand flats. It has also been suggested that the scheme should be extended to others than public housing tenants and clearees. It is obviously not easy to be sure of striking the right balance in a new scheme of this nature and the comments which have been made will be very helpful in finalising the details of the scheme. Later, adjustments can be made as experience is gained of the working of the scheme. I am satisfied that it will play a useful part in meeting future housing needs and aspirations, and following the comments of many Members this evening, you may rest assured that it will be monitored on a regular basis.

The third aspect of the Long Term Housing Strategy is the proposed redevelopment programme. The present redevelopment programme is restricted to non-self-contained blocks. The new strategy extends this to other older blocks where conditions will not be compatible with rising housing standards and expectations.

Sir, some concern has been expressed on three aspects of this proposal. The first is that an enlarged redevelopment programme will adversely affect the waiting list. As most of the redevelopment will take place in the second part of the 1990s by which time outstanding demand should be largely met, this should not happen.

The second concern is that those now living in these estates will be required to move to other areas. However, the redevelopment programme will be designed to ensure that alternative accommodation is provided in the same general area, with a mixture of home ownership and rental flats tailored to meet the needs of those affected by the redevelopment. I can assure you that the redevelopment scheme is not some devious device designed to enable Government to acquire desirable urban sites for sale to the private sector as some critics have suggested.

The last point is the concern that those affected by redevelopment may not be able to afford the rents in the new estates. I understand the comments of Members, but experience of present redevelopment projects suggests that this is unlikely to be a major problem, but it is obvious that the need to retain some cheaper flats must be incorporated into the redevelopment programme to ensure that the overriding criterion that housing should be available at affordable prices is maintained.

I have taken this opportunity to describe again the basis of the scheme and to deal with the major comments on its three main aspects which have come up in public discussion of the strategy. There are also some general points which have been made which I would like to deal with in this debate.

There has been comment on the lack of provision for the 'sandwich class'. Inevitably, resources are limited and we must work on a system of priorities, giving help where it is most needed. Despite the considerable progress which has been made in housing in Hong Kong we still have outstanding demand from our present target groups, and until this is met it is very difficult to justify expanding.

One suggestion which has been made is that Government should help by offering tax relief to home buyers. I notice the Financial Secretary raised his eyebrows. This represents indeed a radical departure from our present tax policy and suggests a system which has had wide economic implications in other countries. It, therefore, merits a very thorough examination in a wider context than that of housing before any view can be taken.

There have been suggestions that we should speed up the programme by increasing production. This is of course the ideal solution but how are we to achieve it? There are signs that the construction industry, of which housing is only a part, is fully stretched. No doubt with improved methods and improved training, the capacity of the industry will increase in the future. But this expansion will take time and I think it is wise to base the strategy on what is a very high figure, 70 000 to 75 000 flats a year. We know this is to be attainable, and I think we are wise to count on this rather than on some future increase which may not be achieved.

Finally, I must deal with the point which has been publicly expressed that Government is reducing its commitment to housing. As I said at the beginning of this speech, the new strategy far from reducing our commitment to housing does indeed extend it. It provides an opportunity to clear outstanding demand for housing, and very importantly to do so in accordance with people's own preferences. Moreover, the living conditions of no less than 125 000 families in older public rental estates will be improved through redevelopment. It also provides the opportunity to achieve these improvements at no significant additional economic cost. No one will be adversely affected by the strategy, the new options are voluntary and not compulsory and there will be the opportunity to choose freely in accordance with individual preference.

The Long Term Housing Strategy cannot be more than a framework within which detailed programmes can be planned. Implementation must be dynamic and the subject of constant review upon made by many Members this evening. It will require a sophisticated planning system, sensitive to changing demand and able to react quickly to such changes. Sir, I am sure that the Housing Authority and the Government can meet these challenges and that the strategy can provide a sound foundation on which to plan our future housing programmes.

On this basis, Sir, I recommend the Long Term Housing Strategy to this Council.

Question put on the adjournment and agreed to.

Next sitting

HIS EXCELLENCY THE PRESIDENT: It is now a quarter to ten, I congratulate Members of this Council on showing considerable durability. In accordance with Standing Orders I now adjourn the Council until 2.30 pm on Wednesday, 15 July 1987.

Adjourned accordingly at a quarter to Ten o'clock.

Note: The short title of the motions/bills listed in the Hansard Report have been translated into Chinese for information and guidance only, they do not have authoritative effect in Chinese.

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