

*Thursday, 24th October, 1946.*

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**PRESENT: —**

HIS EXCELLENCY THE GOVERNOR (SIR MARK AITCHISON YOUNG, G.C.M.G.).

HIS EXCELLENCY THE GENERAL OFFICER COMMANDING THE TROOPS  
(MAJOR-GENERAL F. W. FESTING, C.B., C.B.E., D.S.O.).

THE COLONIAL SECRETARY (HON. MR. R. R. TODD, *Acting*).

THE ATTORNEY GENERAL (HON. MR. G. E. STRICKLAND, *Acting*).

THE SECRETARY FOR CHINESE AFFAIRS (HON. MR. T. MEGARRY, *Acting*).

THE FINANCIAL SECRETARY (HON. MR. C.G.S. FOLLOWS, C.M.G., *Acting*).

HON. DR. P. S. SELWYN-CLARKE, C.M.G., M.C., (Director of Medical Services).

HON. MR. C. H. SANSOM, C.M.G., C.B.E., (Acting Commissioner of Police).

HON. MR. V. KENNIFF (Director of Public Works).

HON. DR. J. P. FEHILY, O.B.E., (Acting Chairman, Urban Council).

HON. MR. D. F. LANDALE.

HON. MR. CHAU TSUN-NIN, C.B.E.

HON. MR. LO MAN-KAM, C.B.E.

HON. MR. LEO D'ALMADA E CASTRO.

HON. MR. R. D. GILLESPIE.

HON. DR. CHAU SIK-NIN.

HON. MR. M. M. WATSON.

MR. D. R. HOLMES, M.B.E., M.C., (Deputy Clerk of Councils)

**MINUTES.**

The Minutes of the meeting of the Council held on Thursday, 17th October, 1946, were confirmed.

**NEW MEMBER.**

The Hon. Mr. M. M. Watson took the Oath of Allegiance and assumed his seat as a member of the Council.

**QUESTIONS.**

The HON. Mr. R. D. GILLESPIE asked: —

Is Government aware that the delay in recommencing the disposition of Crown Land by auction or private treaty is seriously retarding building development in the Colony; and will Government state its future policy with regard to Crown Lands suitable for building sites?

The COLONIAL SECRETARY replied: —

The disposition of Crown Land by auction or by private treaty was suspended during the period of the British Military Administration, which ended on 30th April, 1946, and has since then been the subject of correspondence with the Secretary of State.

Lacking the guidance of any land sales for over four years Government has necessarily had to give careful consideration to the rates of premia and Crown rentals which should be charged on the resumption of the disposition of Crown Land but it is anticipated that terms will be communicated to applicants in the very near future.

Government is not aware of the occurrence of any serious retardation of building development by reason of the fact that the disposition of Crown Land has not yet been resumed, but is fully alive to the particular importance at the present time of making Crown lands available with the least possible delay and inconvenience to applicants.

**HAWKERS AMENDMENT BILL, 1946.**

The ATTORNEY GENERAL moved the First reading of a Bill intituled "An Ordinance to amend the Hawkers Ordinance, 1935."

He said: I would like to add a few observations to the objects and reasons. In the objects and reasons paragraph 3 it is stated that the position is aggravated by the fact that many market stallholders and proprietors of special food shops, properly licensed by the Urban Council are unable to sell their goods in

their stalls and shops, and, consequently are tempted to resort to the illegal and unhygienic method of offering their wares in public highways and by-ways. I would like to quote one example with which I am familiar. Queen's Road East, until very recently, was crowded with hawkers. That was a very serious obstacle to traffic. The impediment to traffic is to a large extent removed by the action of the police who have managed to drive the hawkers into adjoining streets. That of course does not answer the threat to public health, but the curious fact is that Wanchai market is still empty, although the stalls have been let. It is with great difficulty that stallholders have been persuaded to actually take up their stalls and sell their wares in their stalls. I should also like to explain paragraph 6 of the objects and reasons. It is stated that in practice the by-laws will be subject to the approval of the Legislative Council. I should like to emphasise that by saying that under Section 3 of the original ordinance of 1935 all by-laws made by the Urban Council under Section 2 which is the section amended by the present bill shall be submitted to the Governor and shall be subject to the approval of the Legislative Council. It is not a question of practice but of present necessity. The passage of the bill will not therefore commit the Legislative Council to any specific by-laws or prevent it from objecting to any by-laws on the ground that the by-laws are arbitrary or unreasonable. When the Urban Council seeks approval of the Legislative Council it has still to satisfy the Council of the reason for the by-law.

The Urban Council has recommended that it is not practical to deal with the problem by prosecution before the ordinary courts.

The question as to how far it is practical is, of course, a difficult one. It has got to be remembered that apart from the number of hawkers which has been pointed out in the bill and apart from the difficulty in the numbers of the police, and other crimes which have to be dealt with by the police, we are here dealing with perishable commodities. Any delay would be very serious in disposing of commodities. In any event we have to make some provision for the disposal of these commodities before the case comes to court, in which event the disposal would be of some satisfaction to the appellant but would not necessarily have the effect of restoring those commodities which have been disposed of. I should like also to take this opportunity of suggesting to the Urban Council that any by-law providing for forfeiture without the safeguards I have indicated should not come into force until the expiration of 15 days from the time it has been approved by the Legislative Council so as to permit of publicity being given. I suggest also for consideration that the greatest care should be taken in selecting any officers who are given powers of seizure and confiscation under any by-law.

The COLONIAL SECRETARY seconded and the Bill was read a First time.

### Objects and Reasons

1. The number of licensed hawkers is 16,000. It is difficult to estimate the number of unlicensed hawkers but it is considered there may be as many, as 50,000 to 60,000. Many of these are newcomers to the Colony and many deal in foodstuffs.

2. The altogether disproportionate number of hawkers obstructs traffic and renders almost insuperable the task of keeping the streets clean and healthy. More serious still is the threat of disease engendered by the sale of food without proper control of the source of supply and the methods of storage and preparation for sale.

3. The position is aggravated by the fact that many market stall-holders and proprietors of special food shops, properly licensed by the Urban Council, are unable to sell their goods in their stalls and shops, and, consequently, are tempted to resort to the illegal and Unhygienic method of offering their wares in public highways and by-ways.

4. The Urban Council considers that it is not practical to deal with the problem by prosecution before the ordinary Courts. Quite apart from the number of hawkers involved the confiscation and disposal of perishable commodities which may endanger health brooks of no delay. The Council has accordingly recommended that it should be enabled to provide by by-law for seizure, forfeiture and disposal of foodstuffs administratively without recourse to the Courts.

5. It is appreciated that the course suggested is an invasion of the rule of law but it is considered that drastic action is warranted. Clause 2 of the Bill accordingly gives effect to the recommendation by amending section 2 of the Hawkers Ordinance, 1935.

6. In practice, the by-laws will be subject to the approval of Legislative Council. Moreover unlicensed hawkers will only have themselves to blame if they persist in their undesirable practices after adequate warning. Government intends to ensure that such 'warning will be given before a by-law providing for forfeiture by administrative action is enforced.

### **EMERGENCY POWERS (EXTENSION AND AMENDMENT INCORPORATION) BILL, 1946.**

The ATTORNEY GENERAL moved the First reading of a Bill intituled "An Ordinance to give permanent effect to amendments made to various Ordinances by certain Defence Regulations and to make provision for the continuance in force of certain Defence Regulations for a limited period."

He said: I would like before passing the Bill in Council to say a few words about the position in the United Kingdom. There the Emergency Powers Defence Act 1939 enables His Majesty to make defence regulations by an order-in-council. Similar powers were given to certain colonial territories including Hong Kong. The Imperial Act was extended by subsequent acts until 1945 and finally expired on February 28, 1946. Before it expired two other acts were passed. Under the former of these which I will refer to as the Supply and Services Act, certain defence regulations which had previously been contained in the Defence (General) Regulations of the United Kingdom were continued for the special purposes of that act, purposes which were in the main connected with the problems of price control and supply, rationing, distribution but which included other purposes connected with the end of the war such as relief of hardships. In the second of these acts which is again another emergency powers act, other defence regulations were continued for other purposes, a more restricted number of regulations and regulations which generally were in the nature of an emergency regulation, not regulations that would be required to be in constant use. This latter act also provided for certain amendments which had been made in the statute law of the United Kingdom being incorporated into the permanent law of the United Kingdom and other provisions were made keeping these defence regulations in force for a certain time with modifications. Now, in Hong Kong in February, 1946 we were still under military administration and no governor had returned to Hong Kong and so the powers which were given by the order-in-council enabling similar action to that which I have referred could not be exercised in Hong Kong. The expedient was accordingly adopted of taking temporary action by proclamation. The temporary action taken was this: The Defence Regulations were first of all divided into three categories—The first consisted of those Defense Regulations which was considered fell within the scope of the Supply and Services Order-in-Council and could be continued in Hong Kong for the purpose of that act. The second schedule contained defence regulations which could be continued in force under the provisions of the Order-in-Council made under the Emergency Powers Act. Both of these sets of defence regulations were to expire by November 1 this year unless renewed by order of the Governor. The governor is proposing to continue these special sets of regulations. The Bill before the Council to-day deals with the regulations which were on the third schedule of that proclamation, which also provides for their expiry on November 1 unless they are continued either permanently or temporarily after that date. In some cases we decided to omit defence regulations which expired. I pass now to deal with the bulk of the Bill which proposes that the amendments which are specified in the first schedule of the ordinance and become part of the permanent laws of the Colony. You will observe that the bulk of these amendments deal with the Trading With The Enemy Ordinance. A new war inevitably

leads to legislation dealing with enemy trading. This follows from the necessity of coping with new problems. Many of the amendments for example are required because of the necessity of treating as enemy territory, territory which was not actually in enemy occupation but was under the commercial control of the enemy. Similarly, persons who were not enemies in that they were not subjects of the state at war with His Majesty were specified as enemies because of their commercial connections with the enemy or because they were carrying on business in enemy territory although not resident there. The first amendment for example is an amendment of that nature.

The first paragraph deals with the power to specify persons. Turning over the page, the first amendment at the top of the page is an addition to the definition of enemy territory. The next amendment the sub-section in question deals with the power to appoint supervisors to the business and the amendment merely increase the cases in which it is possible to appoint such supervisors. The next amendment again extends the definition of an enemy. The next amendment is a question of proof and I think is self explanatory. On the top of page 3, under section 20 of the Ordinance, Government may vest property in the Custodian or give him the right to transfer it or require money to be paid to him. The amendment is intended to deal with problems where business was being carried on in connection with any property so required to be vested or so required to be paid. The amendment in 10 (a) is self explanatory. The amendment at the bottom of page 3 and at the top of page 4 is an amendment required to give effect to the new conception of enemy. The present section provides that the receipt of payment from an enemy and should not be deemed to be trading with the enemy if the receiver had discharged all obligations to the enemy before the commencement of war by which such person became an enemy, but a person may be specified as an enemy nonetheless, notwithstanding the fact that his country is not at war. The present amendment therefore is a logical corollary of that. The same can be said for the next amendment. Two amendments of the Winding Up Ordinance are self explanatory. Passing to the amendments dealing with the Volunteers, both amendments deal with discipline but section 15 deals with discipline when not on actual or military service and section 17 deals with discipline when on actual military service, and both the amendments are in the nature of permanent measures. With regard to the amendment to the Registration of Persons Ordinance, all amendments are amendments of part 2. As Honourable Members will recollect it deals with the registration of British subjects. That part of the Ordinance is not at present being enforced and it is a question as to how far it should be enforced and an amendment to make it work when it is enforced may properly be dealt with now. On page 6 power to enter, search and arrest under Section 11 (a) is provided under the Defences Areas Ordinance, 1936. The amendment,

you see, is a substitution of "ship" as defined in the Emergency Powers Ordinance for the word "vessel." That substitution has effect in the section which deals with exemptions. To deal with the question of Defence Regulations which are continued, I do not wish to add to the reasons for that continuance contained in the Bill, but I should like to stress that in Clause 3 of the Bill, they continue until December 31, 1947, or until such earlier date as the Governor may by order declare. It is the intention of Government to put an end to these regulations if the necessity for continuing them ceases before the date in question.

### **Objects and Reasons.**

1. The purpose of this measure is to make permanent certain amendments to Ordinances which, though not intended to be of a temporary nature, were, prior to the Japanese occupation, for reasons of convenience and expedition effected by Defence Regulations.

2. The amendments (which are set out in the First Schedule) comprise: —

- (a) Six amendments to the Trading with the Enemy Ordinance, 1914, and one to the Alien Enemies (Winding Up) Ordinance, 1914, neither of which Ordinances had been brought up to date at the outbreak of war.
- (b) Two minor amendments to the Volunteer Ordinance, 1933, both relating to matters of discipline.
- (c) Three amendments of the Registration of Persons Ordinance, 1939, the objects of which were to widen the application of the Ordinance as regards British subjects, to vary the procedure under the Ordinance, and to give powers of search and arrest.
- (d) One amendment of the Defences (Firing Areas) Ordinance, 1936, making a slight variation in the application of the Ordinance and increasing the penalty for breach of its provisions.

The last mentioned Ordinance serves no Purpose at the moment and the necessity for its retention will depend on future policy and development of the Colony; the same may be said of portions of the Registration of Persons Ordinance, 1939.

3. The Second Schedule contains a list of Defence Regulations hitherto kept in force by the Emergency Powers (Extension) Proclamation which it is considered advisable to retain for a further period. The remaining Regulations in Part II of the Third Schedule to the said Proclamation, together with those Regulations in Part I which are not included in the First or Second Schedules to the Proclamation will expire on the 31st October, 1946.

4. Section 3 provides for the Regulations in the Second Schedule to be continued in force until the 31st December, 1947, unless the Governor terminates them earlier by Order.

5. The Reasons for the retention of these Regulations may briefly be summarised as follows: —

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| (a) Defence Salvage Regulations, 1939.   | Under these Regulations it is an offence to conduct salvage operations without the prior consent of the Governor. In view of a number of wrecks in the Harbour this is still required.   |
| (b) Prison Rules Amendment Regulations, 1940.  | The rules provide for additional remission for males and for remission applying to short terms of imprisonment whereas previously remission did not apply to sentences of less than two years. This was introduced to relieve the congestion at Stanley Prison which is again overcrowded.   |
| (c) The Examination of Masters and Mates Amendment Regulations, 1941.                  | These were originally made at suggestion of the Secretary of State to conform with the practice in the United Kingdom. Further amendments have been made in the United Kingdom and the Harbour Master is contemplating comprehensive revision of the Schedule to the Merchant Shipping Ordinance, 1899 when he ascertains full extent of these amendments. |
| (d) The Hong Kong Defence Regulations, etc., (Collection and Proof) Regulations, 1941. | These provide the machinery whereby Defence Regulations collected in a convenient form by the Governor's authority are admissible in evidence. One such collection appeared in 1941 and it may be necessary to issue another.  |

#### **PAWNBROKERS AMENDMENT BILL, 1946.**

The ATTORNEY GENERAL moved the Second reading of a Bill intituled "An Ordinance to amend temporarily the Pawnbrokers Ordinance, 1930."

The COLONIAL SECRETARY seconded and the Bill was read a Second time.

On the motion of the ATTORNEY GENERAL, seconded by the COLONIAL SECRETARY, Council then went into Committee to consider the Bill clause by clause.

Council then resumed.

The ATTORNEY GENERAL reported that the Pawnbrokers Amendment Bill, 1946, had passed through Committee without amendment and moved the Third reading.

The COLONIAL SECRETARY seconded and the Bill was read a Third time and passed.

**FACTORIES AND WORKSHOPS AMENDMENT  
BILL, 1946.**

The ATTORNEY GENERAL moved the Third reading of a Bill intituled "An Ordinance to amend the Factories and Workshops Ordinance, 1937."

The COLONIAL SECRETARY seconded and the Bill was read a Third time and passed.

**ADJOURNMENT.**

H.E. The GOVERNOR. —That concludes the business before Council and Council is now adjourned until Thursday, 31st October, 1946.

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