

20th March, 1947.

PRESENT: —

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

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

THE COLONIAL SECRETARY (HON. MR. D. M. MACDOUGALL, C. M. G.).

THE ATTORNEY GENERAL (HON. MR. J. B. GRIFFIN, K.C.).

THE SECRETARY FOR CHINESE AFFAIRS (HON. MR. R. R. TODD, *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. T. M. HAZLERIGG, C. B. E., M. C.

HON. MR. T. MEGARRY.

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

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. DR. CHAU SIK-NIN.

HON. MR. M. M. WATSON.

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

ABSENT: —

HON. MR. R. D. GILLESPIE.

MINUTES.

The Minutes of the meeting held on 13th March, 1947, were confirmed.

PAPERS.

THE COLONIAL SECRETARY, by command of H.E. the Governor, laid upon the table the following papers: —

The Holidays (Exclusion of Public Offices) Regulations, 1947, made by the Governor under Section 5 of the Holidays Ordinance, 1947, Ordinance No. 1 of 1947, dated 14th January, 1947.

Additional items and amendments made by the Acting Director of Supplies, Trade and Industry under Defence Regulation 50 of the Defence Regulations, 1940, to the Schedule to the Price Control Order, 1946, on 15th January, 1947.

Additional item added by the Acting Director of Supplies, Trade and Industry under Regulation 50 of the Defence Regulations, 1940, to the Schedule to the Prohibited Exports Order, 1946, on 10th January, 1947.

Order made by the Governor in Council under the Quarantine and Prevention of Disease Ordinance, 1936, Ordinance No. 7 of 1936, rescinding the Order of 6th September, 1946, declaring Swatow an infected place on account of cholera, dated 17th January, 1947.

Order made by the Governor in Council under Section 18 of the Quarantine and Prevention of Disease Ordinance, 1936, Ordinance No. 7 of 1936, declaring Saigon an infected place on account of smallpox, dated 24th January, 1947.

Additional items and amendments made by the Acting Director of Supplies, Trade and Industry under Defence Regulation 50 of the Defence Regulations, 1940, to the Schedule to the Price Control Order, 1946, on 20th January, 1947.

Items deleted by the Acting Director of Supplies, Trade and Industry under Regulation 50 of the Defence Regulations, 1940, from the Schedule to the Prohibited Exports Order, 1946, on 21st January, 1947.

Amendment made by the Governor in Council under Section 4 of the Nurses Registration Ordinance, 1931, Ordinance No. 1 of 1931, to the regulations made under the said Ordinance, dated 15th January, 1947.

The Industrial and Reformatory Schools (Establishment) Order in Council, 1947, made by the Governor in Council under Section 10 of the Industrial and Reformatory Schools Ordinance, 1932, Ordinance No. 6 of 1932, dated 26th January, 1947.

Amendments made by the Acting Director of Supplies, Trade and Industry under Defence Regulation 50 of the Defence Regulations, 1940, to the Wholesale (Kowloon) Marketing (Vegetables) Order, 1946, dated 29th January, 1947.

Additional items and amendments made by the Acting Director of Supplies, Trade and Industry under Defence Regulation 50 of the Defence Regulations, 1940, to the Schedule to the Price Control Order, 1946, on 29th January, 1947.

List of goods prohibited for export under the Prohibited Exports Order, 1946.

MOTIONS.

THE ATTORNEY GENERAL moved: —

That the Slaughter-houses (Amendment) By-laws, 1947, made by the Urban Council under sections 5 and 7 of the Public Health (Food) Ordinance, 1935, Ordinance No. 13 of 1935, on 4th March, 1947, be approved.

He said: These by-laws provide for increases of fees which are necessitated by increased costs and the by-laws require to be approved by this Council before being passed into law.

THE COLONIAL SECRETARY seconded, and the motion was carried.

MARRIAGE (AMENDMENT) BILL, 1947.

THE ATTORNEY GENERAL moved the First reading of a Bill intituled "An Ordinance to amend the Marriage Ordinance, 1875." He said: The purpose of this Bill, as explained in the Objects and Reasons, is to assist in the augmentation of revenue of the Colony by the increase of licence fees for such licences other than ordinary licences as are mentioned in the Table of Fees occurring in the Second Schedule to the Bill before the Council.

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

Objects and Reasons.

The "Objects and Reasons" for the Bill were stated as follows: —

1. As a result of prevailing conditions and the need to augment the revenue of the Colony, it has been thought desirable to increase fees, which have remained the same since 1902, in cases where the normal procedure in obtaining a marriage licence is not followed.

2. Clause 3 of the Bill is designed to give effect to such policy by repeal and replacement of the Table of Fees in the Second Schedule to the Marriage Ordinance, 1875, (hereinafter referred to as the principal Ordinance). As power is sought by Clause 2 of the Bill to enable the Governor in Council to amend the Schedule by the increase of fees, it is convenient to number the various items of the Schedule to assist future amendments of the Table or alteration of the fees stated therein. In fact the new Table of Fees will reflect only two changes of fees, namely by increase of the fees for a grant of licence and special licence under sections 9 and 11 of the principal Ordinance from the sums of 10 dollars to 30 dollars and 50 dollars to 150 dollars respectively.

3. The proviso to section 35 of the principal Ordinance enables the Governor in Council to make alterations to the Second Schedule to the Ordinance (*i.e.* to Table of Fees). It is not clear whether such power of alteration includes power to increase fees. In these circumstances Clause 2 is intended to remove such doubt by providing expressly that the power, by Order-in-Council, to alter fees will include power to increase fees.

FOREIGN MARRIAGE (AMENDMENT) BILL, 1947.

THE ATTORNEY GENERAL moved the First reading of a Bill intituled "An Ordinance to amend the Foreign Marriage Ordinance, 1903." He said: This Bill is complementary to the Bill which is before Council, in that it also provides for an increase of the licence fees in respect of special licences issued under the Foreign Marriage Ordinance, 1903.

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

Objects and Reasons.

The "Objects and Reasons" for the Bill were stated as follows: —

Clause 2 of the Bill provides for the amendment of section 6 of the Foreign Marriage Ordinance, 1903, to effect an increase of the fee mentioned therein from ten dollars to thirty dollars. Such increase is in line with the policy of increasing fees in appropriate cases to augment the revenue of the Colony.

VEHICLE AND ROAD TRAFFIC BILL, 1947.

THE ATTORNEY GENERAL moved the First reading of a Bill intituled "An Ordinance to repeal the law relating to the use of vehicles and the control of traffic and to re-enact new provisions." He said: The Objects and Reasons which have been printed and appear in this Bill are very full. It is therefore, I think, not incumbent on me to occupy the time of Council too long in the explanation of this Bill. Briefly, it may be stated that at the present time the existing law as contained in the Vehicles and Traffic Regulations Ordinance, 1912, provides merely or largely enabling powers which enable regulations to be made governing traffic. The Ordinance as it stands does not contain the more modern provisions regarding traffic laws which have been enacted in the United Kingdom under the Road Traffic Acts of 1930 and 1934. The main purpose of this Bill is therefore to embody such provisions which deal with the subject of reckless and dangerous driving and with the capacity to endorse licences of persons in charge of vehicles who are found to have been intoxicated or under the influence of drugs. The Bill also provides for enhanced general penalties for offences committed under the Ordinance or Regulations, and it also sets out the penalties, which are heavy, on conviction for the offences for which the Bill provides.

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

Objects and Reasons.

The "Objects and Reasons" for the Bill were stated as follows: —

1. The object of the Bill is to increase the effectiveness of the law regulating the use of vehicles by incorporating certain provisions of the law applicable in the United Kingdom into the law of the Colony, by an increase in fines which may be imposed for offences relating to the use of vehicles and the creation of the additional sanction in such cases of disqualification for holding a licence. The Bill effects this by a repeal of the existing law and re-enactment with amendments and additions.

2. The offences of reckless and dangerous driving are at present contained in the Regulations made under the Vehicles and Traffic Ordinance, 1912, and are punishable only on summary conviction. When an indictment is preferred against a person for manslaughter and the offence is found by the jury to be not proved it is necessary to institute further proceedings if the person acquitted has been guilty of reckless or dangerous driving whereas under the Road Traffic Act, 1934, provision is made whereby the jury can convict of such an offence at the trial for manslaughter. Clause 13 of the Bill contains a provision similar to the Road Traffic Act, 1934.

3. There is no provision in the existing law of the Colony for the disqualification of drivers who have been convicted of driving offences. This is considered a sanction of strong deterrent effect and in consequence this sanction has been made available for punishment of the offences of reckless and dangerous driving, driving under the influence of drink or drugs and careless driving. It is appropriate that these offences should be dealt with by Ordinance rather than by regulations and the offences and particular penalties are contained in Clauses 4, 5, and 6 of the Bill. The provision enabling the penalty of disqualification to be applied is contained in a separate Clause, namely 10(1)*a*. Clause 6 also permits of the conviction of careless driving in the event of a jury before which an offence of reckless or dangerous driving is being heard finding such an offence not proved.

4. There is a provision in the Road Traffic Act, 1934, requiring the police to comply with certain formalities which make it certain that a person knows at the time of commission of the offence the exact circumstances out of which the offence with which he is charged arises and it is thought desirable in the interests of justice that a similar provision should apply to the same offences in the Colony. Clause 7 contains these provisions.

5. Disqualification is a serious penalty not merited for certain offences unless repeated or followed by some other offence arising out of the use of a vehicle and in consequence a provision is made whereby the driver's licence may be endorsed with a conviction; this is contained in Clause 10(1)*b* of the Bill. The administrative machinery necessary to make this effective and also provision for expunging endorsements after three years of driving without a conviction are contained in Clause 11 of the Bill. The licence with endorsements

becomes a useful means of bringing evidence of conviction for previous offences before a Court and Clause 12 contains sanctions to compel a person charged with an offence to produce his licence to the Court.

6. Advantage has been taken in revising the law on this subject to deal with the definitions contained in the Vehicles and Traffic Regulation Ordinance, 1912. Of these definitions only three are necessary for the purposes of the Ordinance and all are repeated in the Regulations. Clause 2 is confined to defining the three necessary terms.

7. Provision exists in the law for the Court to order a person convicted before it of an offence under the Ordinance or Regulations to pay compensation to any person damnified which if such person consents operates as a bar to civil action based on the same injury. The maximum compensation which may be awarded is \$50 which operates to remove the efficacy of the Section. Clause 14 re-enacting the existing provision amends the maximum compensation which may be ordered to \$300.

8. In the United Kingdom it is not an offence to take a vehicle without the owner's consent if the taker has a reasonable belief that consent would have been given if sought. Clause 8 incorporates this provision in preference to the offence constituted by Regulation No. 67 and the offence has been incorporated in the Ordinance because of the power now given to convict of this offence when a person is tried on indictment of stealing a car.

9. All offences are at present subject to a maximum fine of \$250 and the maximum fine for offences not dealt with specially under the Ordinance has been increased to \$500.

Specific offences for which higher fines can be inflicted are: —

(a) reckless and dangerous driving:

	Maximum fine—
Summary conviction	1st conviction \$1,000.00
	2nd or subsequent conviction \$2,000.00

Conviction on indictment—unspecified.

(b) driving a motor vehicle whilst under the influence of drink or drug:

	Maximum fine—
	1st conviction \$1,000.00
	2nd or subsequent conviction \$2,000.00

(c) taking a motor vehicle without the owner's consent:

Maximum fine—\$1,000.00

The maximum term of imprisonment has been increased in one case only, namely, reckless and dangerous driving where on conviction on indictment a term of two years' imprisonment may be imposed, though for reckless and careless driving imprisonment may be imposed additionally to a fine on a second or subsequent conviction.

TELECOMMUNICATION (AMENDMENT) BILL, 1947.

THE ATTORNEY GENERAL moved the Second reading of a Bill intituled "An Ordinance to amend further the Telecommunication Ordinance, 1936."

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.

Clause 3.

THE ATTORNEY GENERAL. —I move the amendment of this clause by the deletion of the clause which now appears and by the substitution of the following clause: —

“3. Subsection 5 of Section 31 of the Telecommunication Ordinance, Amendment 1936 is amended by the insertion of the words “or the Court” of Ord. No. 18 of 1936. between the words "magistrate" and "to" appearing therein.” S.30(5).

I should like to explain in connection with this motion that it appears that the Bill before Council was in fact prepared in relation to a copy of the Telecommunication Ordinance, 1936, which had not been amended up to date. In fact an amendment of Section 31 of the Ordinance had cured the defect in the marginal note for which provision is made in Clause 3 (*a*) of the Bill before Council. Further, the amendment of 1939 had placed the confiscation provision in a new Sub-section of Section 31 which is Sub-section 5, and consequently it is convenient that the whole Clause 3 before Council should be replaced in the manner which I have proposed.

The amendment was agreed to.

Upon Council resuming,

THE ATTORNEY GENERAL reported that the Telecommunication (Amendment) Bill, 1947, had passed through Committee with one amendment to Clause 3 and moved that it be read a Third time and passed into law.

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

SUPPRESSION OF ROBBERY BILL, 1947.

THE ATTORNEY GENERAL moved the Second reading of a Bill intituled “An Ordinance to enable capital punishment to be imposed in certain circumstances on persons taking part in armed robbery or assault with intent to rob where the death of a human being takes place in connection with the commission of such offences.”

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.

Clause 2.

THE ATTORNEY GENERAL. —I rise to move amendment of this clause in the following terms: —

Firstly that Sub-clause (1) of Clause 2 of the Bill before Council be replaced by the following: —

“Capital punishment for Armed Robbery in certain circumstances. (1) If at the time of or immediately before or after or in escaping or attempting to escape alter a robbery or assault with intent to rob, violence resulting in the death of a human being is used by means of an offensive weapon by any person committing or taking part in the commission of any such robbery or assault then whether or not there is any evidence of any common intention to use violence every person committing or taking part in such robbery or assault with intent to rob shall be guilty of felony and on conviction thereof shall suffer death as a felon: Provided that if any such person shall prove that he was not aware and had no reasonable grounds for believing that any such offensive weapon was carried either by the person who used the violence resulting in death or by any other person taking part in the robbery or assault he shall riot be guilty of an offence against this section.”

and secondly that consequentially Sub-clause (3) of Clause 2 be renumbered as Sub-clause (2).

The position is that it is desired to amend Sub-clause (1) of Clause 2 so as to delete the words “shall suffer death as a felon” occurring in that Sub-clause and replace such words by the words "shall be guilty of a felony and on conviction shall suffer death as a felon", the intention being to bring that wording more into line with the punishment section for murder in Section 2 of the Offences against the Person Ordinance, 1865.

As regards the proviso which, under my proposal, will be included in the Sub-clause (1), an amendment occurs also in that the words "satisfy the Court" are removed from what is now the first and second line of Sub-clause (2), and the word “prove” substituted. The

purpose of this change is to make it clear or to remove every possibility of doubt that the question of whether an accused person has brought himself within the proviso shall be one for the jury and not for the Court.

The proposal to amend Sub-clause (2) by re-numbering it (3) is consequential to the other proposal.

The amendments were agreed to.

Upon Council resuming,

THE ATTORNEY GENERAL reported that the Suppression of Robbery Bill, 1947, had passed through Committee with two amendments to Clause 2 and moved that it be read a Third time and passed into law.

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

PUBLIC DANCE-HALLS TAX BILL, 1947.

THE ATTORNEY GENERAL moved the Second reading of a Bill intituled "An Ordinance to impose a tax in respect of payment for the services of dancing partners and a tax on food sold and consumed in public dance-halls."

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.

After Clause 4 had been agreed to the Attorney General said: I rise to move the insertion of a new clause as Clause 5 after Clause 4 of the Bill before Council, the new clause to read as follow: —

“5. For the purposes of Sections 3 and 4 of this Ordinance the amount of tax payable shall be computed to the nearest ten cents and any amount of less than ten cents shall be deemed to be ten cents.”

Computation
of tax to
nearest
ten cents.

I would explain that since the First reading of this Bill before Council, certain representations were received by Government from persons concerned in this legislation and it was urged that on the analogy of Section 5 of the Meals and Intoxicating Liquors Tax Ordinance, 1946, provision should be made for payment of tax to the nearest ten cents for greater ease in collection and administration of the Bill.

The amendment was agreed to.

Clause 5.

THE ATTORNEY GENERAL: I move that Clause 5 be consequentially re-numbered Clause 6.

The amendment was agreed to.

Clause 6.

THE ATTORNEY GENERAL: I move the replacement of Clause 6 as in the Bill before Council by the re-numbering of such Clause as 7 and by the replacement of the content of that clause in the following manner.

"Method of payment for services of dancing partners. 7. Payment for the services of a dancing partner shall be made by way of ticket purchased from the proprietor and such ticket shall be stamped with a stamp (not before used) denoting that the tax has been paid: Provided that it shall not be necessary for any such ticket to be stamped as aforesaid in any case where the proprietor has made arrangements approved by the Accountant General for furnishing returns of sales of tickets and has given security to an amount and in a manner approved by the Accountant General for payment of the tax."

The clause, if replaced in the form I have proposed, is also the result, of representations received which amount to a suggestion that provision for an alternative method of paying the tax should appear in this Bill similar to the provision that is contained in Section 6 of the Entertainments Tax Ordinance. The proposal is one which should commend itself on the grounds of ensuring greater ease in administration of the law.

Clauses 7, 8, 9, 10 and 11.

THE ATTORNEY GENERAL moved that Clauses 7, 8, 9, 10 and 11 of the Bill before Council be consequentially re-numbered as Clauses 8, 9, 10, 11 and 12 respectively.

The amendments were agreed to.

Upon Council resuming.

THE ATTORNEY GENERAL reported that the Public Dance-Halls Tax Bill, 1947, had passed through Committee with eight amendments and moved that it be read a Third time and passed into law.

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

ADJOURNMENT.

H. E. THE GOVERNOR. — That concludes the business before the Council, and the Council will now adjourn until Thursday, 27th March, 1947.