

23rd November, 1949.

PRESENT:—

HIS EXCELLENCY THE GOVERNOR (SIR ALEXANDER WILLIAM GEORGE HERDER GRANTHAM, K.C.M.G.)

THE COLONIAL SECRETARY (HON. J. E. NICOLL, C.M.O.)

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

THE SECRETARY FOR CHINESE AFFAIRS (HON. E. R. TODD).

THE FINANCIAL SECRETARY (HON. C. Q. 8. FOLLOWS, C.M.G.)

DR. HON. I. NEWTON (Director of Medial Services).

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

HON. E. A. BOYCE (Director of Public Works).

HON. CHAU TSUN-NTN, C.B.E.

HON. SIR MAN-KAM LO, KT., C.B.E.

DR. HON. CHAU SIK-NIN.

HON. LEO D'ALMADA K CASTRO, K.C.

HON. M. M. WATSON.

HON. P. S. CASSIDY.

MR. G. C. HAMILTON (Clerk of Councils).

ABSENT:—

HIS EXCELLENCY THE GENERAL OFFICER COMMANDING IN CHIEF
(LIEUTENANT-GENERAL SIR E. C. R. MANSERGH, K.B.E., C.B., M.C.).

HON. D. F. LANDALE.

MINUTES.

The Minutes of the Meeting of the Council held on 16th November, 1949, were confirmed.

PAPERS.

THE COLONIAL SECRETARY, by command of His Excellency the Governor, laid upon the table the following papers.

The Stamp (Bank Authorization) No. 5 Order, 1949. (G.N. No. A. 247 of 1949).

The Vehicle and Road Traffic (Motor Vehicles) (Direction Indicator) Regulations, 1949. (G.N. No. A. 248 of 1949).

The Prohibited Exports Order, 1946,—Addition to the Schedule. (G.N. No. A. 249 of 1949).

The Prohibited Exports Order, 1946,—Additions to the Schedule. (G.N. No. A. 250 of 1949).

The Price Control Order, 1946,—Amendments to the Schedule. (G.N. No. A. 251 of 1949).

PENSIONS BILL, 1949.

THE ATTORNEY GENERAL moved the First reading of a Bill intituled “An Ordinance to consolidate and amend the law regulating the granting of pensions, gratuities and other allowances in respect of public service.” He said: Sir, the legislation in force at the present time governing the matter of pensions for members of the public service of the Colony is contained in the Pensions Ordinance, 1932, and as regards non-gazetted officers of the Police Force, is contained in Pensions Regulations made under the previous Police Ordinance, the Ordinance of 1932.

Sir, before the war, various amendments to the Pensions Ordinance, 1932, were made from time to time. Nevertheless, the amendments were incomplete and did not draw our pensions legislation into closest conformity with the Model Pensions legislation applicable almost universally throughout other Colonies. The position had therefore become unsatisfactory and confused. This situation was further affected extensively by reason of the recommendations of the Salaries Commission. It therefore becomes manifest that entirely new legislation consolidating and amending the old should be enacted. To obtain this objective, considerable work and thought has been given to the matter both here and in London. The outcome, Sir, is the Bill before Council today.

The Bill is founded primarily on the Colonial Model Pensions Ordinance, the provisions of which have been very generally accepted and applied throughout the Colonies and by this means essential uniformity in principle has been secured. The extent to which there

has been departure from the Model is indicated in the comparative table which has been published, attached to the Objects and Reasons of the Bill before Council.

Sir, it will be seen that the Bill and its Schedule containing regulations presents a large canvas. For that reason the Objects and Reasons and the comparative table are more than usually explanatory. It will therefore, I think, suffice that I should today merely invite the attention of Council to prominent features of the Bill which constitute innovation in greater or less degree.

Now, Sir, by clause 3 it will be seen that that clause deals with the manner in which pensions, gratuities and other allowances may be granted. At the present time it is necessary that almost every pension matter receives the attention of Your Excellency in Council, even though in the majority of cases the exercise of discretionary powers is not called for and the decision is a formal one or a matter of routine. Clause 3 of the Bill consequently permits of, in effect, a change of procedure to allow of a reduction in the bulk of papers which require reference to Executive Council because upon enactment of the Bill it will thenceforth only be necessary to refer matters regarding pension, gratuity or other allowances to the Governor in Council where the grant is expressly stated to be made under provision which requires the attention and decision of Executive Council.

Now, Sir, turning to clauses 6 and 8 of the Bill, these clauses deal with the circumstances in which a pension may be granted and with the topic of compulsory retirement. Sir, these clauses provide, as at present, that the normal age of retirement for men shall be 55. But, Sir, in conformity with the recommendation of the Salaries Commission and, indeed, in line with the White Paper proposals regarding the organisation of the Colonial Service as a whole an innovation is introduced, the innovation being that retirement attracting pension may take place after the age of 45, either at the instance of an individual officer or at the instance of Government. Such procedure, however, would be exercised in accordance with the safeguards specified in the clauses; and furthermore, there is this aspect, that the innovation which I have described is intended to be regarded as experimental, and this fact has been made clear to members of the public service at the time they were called upon to exercise options in regard to the findings of the Salaries Commission. Thus it may be that if experience shows that provision for retirement at 45 proves unsatisfactory an amendment of the law in due course would be introduced to remove what I have described as the innovation.

In regard to clause 8 also, the clause also deals with the question of the compulsory retirement of women officers. At the present time there is an anomalous position in that certain women officers holding certain types of post are required under the law to retire at the age of 50, whilst women officers holding other types of appointment retire compulsorily at 55 as is the case with men. The clause now provides that the normal age of retirement for women officers in whatever appointment they may hold shall be the age of 50.

Sir, clause 17 will be seen to reproduce the existing provision in our law which deals with the situation where an officer dies as a result of injuries received in the course of his duty, but the provision as now inserted in clause 17 is amplified by making additional provision for the payment of pension to the children of an officer killed in the discharge of his duties, such pension to continue to the age of 18 in the case of boys and to the age of 21 or earlier marriage in the case of girls. Furthermore, provision has been included conforming with the Model which allows of a pension being paid to the dependent mother of an officer killed on duty where such officer dies without leaving a widow or children.

Now, Sir, turning to the Schedule, it will be seen that the Bill contains a full set of pensions regulations divided into parts. The Regulations are designed to replace the various groups of the Pensions Regulations now existing under the 1932 Ordinance and under the Police Force Ordinance. Furthermore, the Regulations embody certain of the matters which now appear in the existing Ordinance for the reason that they more properly appear in regulations. It will be noticed that the practice hitherto obtaining of having a complete and separate series of pension regulations governing officers according to the date of 'entry or by other category has been avoided. By this means, Sir, a source of present difficulty and confusion in the operation of the Pensions Regulations will, it is hoped and expected, be avoided.

One specialisation does, however, occur and necessarily so in that in Part V of the Regulations there is a special part dealing with non-pensionable officers. In that part, Part V, remedy and improvement in the position of non-pensionable officers as regards benefits on death or retirement have been incorporated on lines initiated by the proposals of the Salaries Commission and in the manner summarised in paragraph 11 of the Objects and Reasons.

Now, finally, Sir, and reverting to the Bill at clause 19, I invite the attention of Honourable Members to this Clause 19 which deals with the commencement and application of the Ordinance. It will be seen that subject to express provision to the contrary in the Ordinance or in the Regulations in the Schedule to the Bill, upon enactment the Bill is to be deemed as an Ordinance to have had effect from 1st January, 1947. Sir, the short reason for this provision is, of course, founded on the fact that recommendations of the Salaries Commission had effect from that date with inevitable repercussion on pay and on pension computation.

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 Pensions Ordinance, 1932, (hereinafter referred to as the existing Ordinance) has been amended extensively from time to time and for that reason and because of the recent revision of salaries and

conditions of service of Government servants which affects parts of the pension legislation it is considered necessary and convenient to replace the existing Ordinance by a new Ordinance. In view of the desirability of keeping legislation relating to pensions similar in principle to other Colonies the Secretary of State has supplied a model form of Ordinance to the Colonies and this model has been the basis of this Bill (see comparative table appended hereto) the object of which is to consolidate and amend the law regulating the grant of pensions, gratuities and other allowances.

2. By clause 2 which contains the interpretation of “pensionable office”, coupled with regulation 21 of the Regulations in the Schedule to the Bill, which regulation contains the provisions of section 6 of the existing Ordinance, in so far as not obsolete, it is proposed that persons pensionable under the existing legislation should remain pensionable and that pensionability for the future should be determined as at present by confirmation to a pensionable office. The same clause contains an interpretation of “pensionable emoluments” which conforms with the recommendations of the Salaries Commission by including expatriation pay but otherwise conforms in substance with the interpretations in section 2 of the existing Ordinance.

This clause makes provision also for service in the District Watch Force and certain service in the Chinese Public Dispensaries, prior to these organizations being directly controlled by Government, being deemed to be service in a non-pensionable office. These organizations up to the time of the occupation of the Colony were indirectly controlled by Government through the Secretary for Chinese Affairs and certain benefits on retirement or death analogous to those paid to Government servants holding non-pensionable offices were payable out of the funds of that organization. After the re-occupation of the Colony it was found impracticable to carry on these services provided by these bodies otherwise than directly by Government. The funds out of which the benefits were payable by these organizations will be vested in Government.

3. The regulations relating to the award of pensions operative under the Police Force Ordinance, 1948, originally made under the Police Force Ordinance, 1932, made provision for pensions for non gazetted officers to be payable based on a higher fraction of salary per month of service than that applicable to officers whose pensionable status is governed by the existing Ordinance. In accordance with paragraph 89 of the Salaries Commission’s Report it was a condition of acceptance of revised salaries by police officers that they should be brought within the same terms regarding pensions and gratuities as other officers in the service of the Colony and it is proposed by this Bill to change the system. Section 7 of the existing Ordinance, therefore has no counterpart in the Bill.

4. The circumstances in which it is proposed that a pension may be granted are set out in clause 6 of the Bill. By reason of the adoption, with a view to improving the public service, of the recommendation of the Salaries Commission (paragraph 163 of the

Report) that there should be a reduction to 45 of the age at which compulsory retirement of all pensionable officers can be effected, sub-clause (1) provides that a pension may be granted at such age. Under the existing Ordinance 55 years is the general age at which a pension can be granted though in special cases the age is 50 years and for police officers the age is 45 years.

Though by clause 8 it is proposed that the normal age for retirement should be maintained as under the existing Ordinance it is considered proper that officers should have a right to retire also at the age at which they may be retired compulsorily as also recommended by the Salaries Commission (paragraph 163 of the Report). Clause 6 therefore is not restricted to compulsory retirement at 45 but includes voluntary retirement. Such voluntary retirement is, however, subject to the approval of the Governor and in some cases the additional approval of the Secretary of State. This administrative control is intended to ensure that the public service does not suffer through the voluntary retirement of an excessive number of experienced officers and will also provide an additional safeguard whereby a period of one year's notice will be required for both voluntary and compulsory retirement at 45. It is considered that these proposals should be tried for an experimental period and it has been made clear to officers in the service of the Colony that there may be a reversion to the existing law if the experiment does not prove satisfactory by June, 1951.

5. The provisions of the existing Ordinance relating to maximum pension have been maintained in clause 9 and though under the regulations under the Police Force Ordinance, 1948, a higher maximum pension is possible, it is proposed to bring police officers within the same provisions as other officers.

6. Clause 10 contains a proposal to provide for the re-employment of officers who have retired before reaching the age at which retirement is ordinarily possible e.g. on abolition of office or on medical grounds. The provision is not contained in a form which permits government to compel such retired officers to resume public service but it is considered desirable that there should be a sanction imposed on failure to resume service which is not contained in the existing Ordinance. There is provision in the clause whereby the interests of such officers as are liable to recall are safeguarded, and clause 11 which is a corollary to that clause contains safeguards for the further protection of the officer in so far as the pension previously granted to him is concerned. An analogous provision to clause 11 is contained in regulation 15 of Pension Regulations A and B under the existing Ordinance.

7. The principle of non-assignability and non-liability for attachment of benefits under the existing Ordinance contained in section 12 thereof is maintained in clause 12 but this clause contains a new provision whereby it is proposed that benefits may be used to satisfy an order of a Court to maintain a wife, former wife or minor child.

8. Under section 16 of the existing Ordinance a gratuity is payable to a pensionable officer who dies in the service of the Colony. Such gratuity is payable to the legal personal representatives unless not exceeding \$1,000 when it can be granted to persons named by the Governor in Council who may not be the legal personal representatives for the purpose of obviating proceedings for the distribution of an estate where the circumstances are such that no proceedings would have been necessary had there been no gratuity payable. By clause 16 it is proposed to continue such provisions but to substitute \$2,500 for \$1,000 in view of the variation in the value of money.

9. Clause 17 contains provisions for the payment of pensions to dependants of an officer killed on duty. Under section 18 of the existing Ordinance similar provision is made; the pension is 1/6th of the pensionable emoluments or \$100 per annum whichever is the greater and it is payable jointly to widow and orphans. It is proposed by clause 17 to increase the figure of \$100 to \$480 and in addition make that sum payable to the widow. Although under the existing Ordinance there is a provision which enables the Governor in Council to award a pension to a widow up to 3/3rds of the pensionable emoluments of the deceased officer, it is considered that this is too generous in view of the general practice in the United Kingdom and in other Colonies and it is proposed that this maximum pension of a widow should be reduced even in special circumstances to 1/2 of the officer's pensionable emoluments. A further variation from the existing Ordinance, however, is proposed which also is of general application elsewhere which enables the payment of pensions in addition to children whilst the mother is alive. Each child to a limit of six will receive in addition 1/8th of the widow's pension while the widow is alive or 1/4 if she is dead. If there are neither widow nor orphans but the officer's mother was dependent upon the officer the mother may be awarded a pension equivalent to that which might be awarded to the widow.

For the purpose of this clause a definition of "wife", "widow" and "child" have been included which corresponds with the interpretation given to the words in practice under the existing Ordinance.

It is proposed in addition by sub-clauses (4) and (5) to extend the application of this section, as has already been done in other Colonies, to provide benefits where death is occasioned in circumstances arising during particular movements of an officer to and from the Colony.

10. Clause 20 is a clause to enable certain officers who were in the service of the Government of Palestine immediately prior to the termination of the Mandate in Palestine to be regarded for pension purposes as though they remained in such service up to their appointment to the service of this Colony. The officers concerned are those who were at such date on duty connected with the Palestine Government or were seconded from, or on leave following service of such Government.

11. The Schedule to this Bill is intended to replace the various regulations made under the existing Ordinance, the Police Force Ordinance, 1932, and the Police Force Ordinance, 1948. Certain provisions which are contained in the existing Ordinance, have been transferred to the proposed regulations and vice versa according to the place considered more appropriate. It is no longer considered necessary to have a complete separate series of regulations for officers according to the date of their entry into the service of the Colony or according to their category and distinctions. The preservation of existing rights arises in such few cases that reference is made to the legislation which it is proposed to repeal for the appropriate provisions to be applied. The most fundamental proposals are as follows:—

(a) That married women should, if they have served in other Colonies which are within the Scheduled Group, be permitted to include such service for the purpose of computing the gratuity payable on retirement by reason of marriage. (Regulation 13).

(b) That officers who have served in non-pensionable posts and subsequently serve in posts which are pensionable and to which they are confirmed should be permitted to count a larger fraction of their service in the non-pensionable office as pensionable. From 1937 the fraction has been a half except in so far as earlier existing rights were preserved but it is considered necessary in view of the changes 1 which are proposed in (c) below to alter the fraction to $\frac{3}{4}$ but still preserving existing rights.

(c) That comprehensive provisions should be made for non-pensionable officers. Under the present law there is a loose framework provided within which administrative rulings are applied. The Salaries Commission recommended that no differentiation should exist between permanent and non-permanent officers in respect of benefits by way of pension and gratuity. It is not considered feasible to give effect to this proposal but changes to increase benefits are considered desirable. The distinction between monthly paid officers and persons paid on daily rates has been continued, but the existing distinction between monthly paid officers paid out of an open vote and those paid out of an ordinary vote has been abolished as it is considered unnecessary. The qualifying period for monthly paid officers to qualify for annual allowance at $\frac{3}{4}$ of that applicable to pensionable officers which is at present 15 years, has been reduced to 10 years, the same period as for pensionable officers and the existing $\frac{1}{2}$ rate for service up to 15 years abolished; service in a non-pensionable office in excess of 25 years is to count as though it were pensionable service. It is considered that monthly paid menial staff on very low rates of pay should more appropriately receive a lump sum gratuity rather than an annual allowance and provision has therefore been made accordingly. Under the existing Ordinance daily paid employees are similarly required to serve for 15 years before they qualify for the higher rate of gratuity and for 10 years for the lower rate. The latter rate is 10 days' pay per year of service and the former rate 15 days' pay per year of service. It is proposed to abolish the lower rate and to allow the higher rate of gratuity 'to be granted after at least 5 years'

service at age 55 or on invaliding. Certain other improvements to meet criticism of the existing system have also been incorporated, the chief of which is an increase in the rate of death gratuities for monthly paid and daily paid employees to respectively $\frac{3}{4}$ and $\frac{1}{2}$ the rate for pensionable officers. These proposals are contained in Part V of the regulations, and there are provisions referred to separately where the position of pensionable officers and non-pensionable officers has been assimilated.

(d) Regulation 22 contains new proposed provisions for the computation of pension on retirement in consequence of abolition of office or reorganization. Where there is service in excess of 10 years the existing principle of adding to the pension computed normally is proposed but the computation of this addition is to be varied in accordance with the model legislation supplied by the Secretary of State and adopted generally in the Colonies to permit an increase by reference to each 8 years of -completed service instead of each 5 years as at present. This results in a more gradual increase in pension according to years of service but on the other hand the additional pension is slightly less. Moreover, such a pension will be granted irrespective of whether an officer has over or under 10 years' service instead of as at present a gratuity when service is less than 10 years. The proposed change is more advantageous to persons retiring in these particular circumstances prior to completion of 10 years' service but slightly less advantageous to those retiring after more than 10 years' service. In view of the revision of salaries, however, the benefits payable on retirement in circumstances provided for by this regulation are higher than hitherto.

ESSENTIAL SERVICES CORPS BILL, 1949.

THE ATTORNEY GENERAL moved the First reading of a Bill intituled "An Ordinance to provide for the establishment of an Essential Services Corps." He said: Sir, at the present time, by the Hong Kong Defence Force Ordinance, provision is made for a Unit of the Defence Force known as the Hong Kong Auxiliary Force. Recruitment to that Unit has taken place and the Force now contains a membership, albeit rather too small a membership. In the interval since the Defence Force was constituted and recruited further consideration has been given to the form in which provision should be made for the establishment and permanent being of an organisation which would in emergency come forward to assist in the performance or the maintenance of essential services. As a result of that consideration the view has been reached that it would be appropriate and most suitable that there should be a separate organisation, an organisation separate from the Defence Force and standing on its own and styled the Essential Services Corps.

Sir, the object of this Bill before Council to-day is to provide legislation which would authorise the raising and maintenance of such a body. The purposes and the services to which volunteers to such an organisation would address themselves in the event of emergency

are described in the Schedule to the Bill, to which Schedule the Governor, by clause 3, is given power to add from time to time by Order published in the Gazette.

It is thought and it is foreseen that it would be better that an organisation of the nature envisaged in the Bill should have elasticity in organisation. It is for that reason that the Bill is a short one and for that reason that it does not contain many matters of detail regarding the organisation, membership, powers, privileges pay and benefits of the Corps. The device or method adopted has been to provide by clause 7 for very wide powers in the making of regulations to deal with these matters of organisation. Such powers are given by clause 7 of the Bill.

The Bill furthermore by clause 10 deals with the position of the Essential Services Wing of the Hong Kong Auxiliary Force to which I referred in my opening remarks. It will be seen that provision is made that those members of that Force now serving may at their option transfer to the new organisation, the new civilian corps, on establishment, but, on the other hand, they will be free to remain with the Defence Force should they so elect.

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. Experience in Hong Kong as elsewhere has shown the need in times of emergency for volunteers to be available to assist in maintaining services essential to the life of the community, such as health, water, light and fuel services. In the event of emergency it is common experience that many persons come forward to assist. But assistance given in this manner has the defect of improvisation. It is therefore considered preferable that an organization be kept continuously in being which is capable of affording early reinforcement in maintenance of essential services as and when necessity arises.

2. The object of this Bill is therefore to make legislative provision to authorize the establishment and enrolment of such an organization to be styled the Essential Services Corps.

3. The Bill (clause 4) empowers the Governor to raise and maintain a body of persons by voluntary enrolment to assist in the maintenance or performance of essential services. Essential services are defined by clause 3 of the Bill which also empowers the Governor from time to time by Order to add to the list of essential services specified in the Schedule to the Bill.

4. The Bill is a short one. It is of an enabling nature only. The intention is to give to the organization elasticity in organization and in operation. Consequently the Bill, by clause 7, proceeds by

way of the grant of wide powers to make regulations. In this way all matters regarding enrolment, organization, discipline, powers, privileges pay and benefits attaching to membership of the Corps are left to be prescribed by regulations.

ADJOURNMENT.

H.E. THE GOVERNOR:—That concludes the business, Gentlemen. When is it your pleasure that we should meet again?

THE ATTORNEY GENERAL:—I suggest this day fortnight, Sir.

H.E. THE GOVERNOR:—Council will adjourn until this day fortnight.