

22nd August, 1951.

PRESENT:

HIS EXCELLENCY THE GOVERNOR

SIR ALEXANDER WILLIAM GEORGE HERDER GRANTHAM, G.C.M.G.

HIS EXCELLENCY THE COMMANDER BRITISH FORCES

LIEUTENANT GENERAL SIR ERIC CARDEN ROBERT

MANSERGH, K.B.E., C.B., M.C.

THE HONOURABLE THE COLONIAL SECRETARY

MR. RONALD RUSKIN TODD, *Acting*.

THE HONOURABLE THE ATTORNEY GENERAL

MR. G. E. STRICKLAND (*Acting*).

THE HONOURABLE THE SECRETARY FOR CHINESE AFFAIRS

MR. RONALD RUSKIN TODD.

THE HONOURABLE THE FINANCIAL SECRETARY

MR. ARTHUR GRENFELL CLARKE, *Acting*.

THE HONOURABLE THEODORE LOUIS BOWRING, O.B.E.

(*Director of Public Works*).

THE HONOURABLE DOUGLAS JAMES SMYTH CROZIER.

(*Acting Director of Education*).

DR. THE HONOURABLE YEO KOK CHEANG

(*Acting Director of Medical and Health Services*).

THE HONOURABLE KENNETH MYER ARTHUR BARNETT

(*Chairman, Urban Council*).

THE HONOURABLE CHAU TSUN-NIN, C.B.E.

DR. THE HONOURABLE CHAU SIK-NIN, C.B.E.

THE HONOURABLE LEO D'ALMADA E CASTRO, K.C.

THE HONOURABLE PHILIP STANLEY CASSIDY.

THE HONOURABLE CHARLES EDWARD MICHAEL TERRY.

THE HONOURABLE LO MAN WAI, O.B.E.

THE HONOURABLE LAWRENCE KADOORIE.

THE HONOURABLE NGAN SHING KWAN

MR. ROBERT WILLIAM PRIMROSE (*Deputy Clerk of Councils*).

MINUTES.

The Minutes of the meeting of the Council held on 11th July, 1951, were confirmed.

PAPERS.

THE ACTING COLONIAL SECRETARY, by Command of His Excellency the Governor, laid upon the table the following papers: —

<i>Subject.</i>	<i>G.N. No.</i>
Sessional Papers, 1951: —	
No. 12—Report of the Harbour Ferry Services Advisory Committee.	
Proclamation No. 8 of 1951.	
Notification under section 10(2) of the Revised Edition of the Laws Ordinance, 1948	A. 120
Defence (Finance) Regulations, 1940.	
Possession of Gold (Goldsmiths) (Amendment) (No. 7) Order, 1951	A. 121
Removal of quarantine restrictions imposed against Bandoeng on account of smallpox	A. 122
Removal of quarantine restrictions imposed against Hoihow on account of smallpox	A. 123
Removal of quarantine restrictions imposed against Tsarnkong on account of smallpox	A. 124
Dogs and Cats Ordinance, 1950.	
Notification under Regulation 6(2) of the Dogs and Cats Regulations, 1950	A. 125
Defence Regulations, 1940.	
Price Control Order, 1946—Amendments to the Schedule	A. 126
Defence Regulations, 1940.	
Price Control Order, 1946—Deletions from the Schedule	A. 128
Nurses Registration Ordinance, 1931.	
Nurses Registration (Amendment) Regulations, 1951	A. 129

<i>Subject.</i>	<i>G.N. No.</i>
Removal of quarantine restrictions imposed against Rangoon on account of cholera	A. 130
Removal of quarantine restrictions imposed against Calcutta on account of plague	A. 131
Defence Regulations, 1940. Price Control Order, 1946—Amendment to the Schedule	A. 133
Defence Regulations, 1940. Price Control Order, 1946—Amendment to the Schedule	A. 134
Removal of quarantine restrictions imposed against Bassein on account of cholera	A. 135
Ferries Ordinance, 1917. Excluded Ferries (Ngau Chi Wan and Chakuling) (Amendment) Regulations, 1951	A. 136

He said: Sir, Included amongst these papers is Sessional Paper No. 12, the Report of the Harbour Ferry Services Advisory Committee. Honourable Members will find the text of the Report and a covering memorandum setting out Government's decisions thereon. In publishing the report, Government desires to record its appreciation of the valuable services which the Honourable Lawrence Kadoorie and the members of his Committee have rendered to the Colony by their painstaking enquiries and thoughtful recommendations.

ADDRESS BY THE GOVERNOR.

Honourable Members, on the Order Paper for today's meeting of the Legislative Council there appears in item "Compulsory Service Ordinance", and it is on that that I wish to address you.

It will be recollected that, when in January of this year, the Emergency (Registration of British Subjects) Regulations were promulgated, it was stated that the Regulations were the forerunner to compulsory service legislation. This Bill is that legislation. It has not been introduced earlier, because a great deal of preparatory work had to be done in drafting the Bill, and in setting up the necessary machinery for implementing the

legislation as soon as it had been passed. Everything has proceeded in an orderly fashion and we are now ready to go ahead. Let me emphasize that this compulsory service legislation is not the result of any recent developments in this part of the world or anywhere else, but is the logical follow-up of the Registration Regulations of seven months ago.

It may be asked what is the need for compulsory service. We are not at war. Admittedly the world, including the Far East, is in a state of tension, but we in Hong Kong carry on normally; that is as normally as present conditions permit. "Why then subject us to compulsory service; thereby adding another burden to our already overweighted backs?" "Why not rely on volunteers as you have done in the past", it may be said. "When the emergency arises we'll come forward in our hundreds, in our thousands, to join up. In fact we'll swamp you with our enthusiasm. Meanwhile leave us alone."

That's just it. When the emergency arises we would literally be swamped with enthusiasts. One can picture the near-chaos at the recruiting offices. What is most important is to ensure that as many square pegs go into square holes, and round pegs into round holes, as possible. That means preparatory work beforehand. And beforehand means now. It cannot be left until the emergency arises. That work has been done, over the past few months, by the Director of Manpower, Mr. Finnie, aided by a small committee, using as their basis the particulars filled in on the registration forms. And just as it is important that the man should be allocated to the job for which he is suited, so it is important that he should be trained in advance for the job he is to do—whether it be in the Defence Force, the Special Constabulary, or one of the branches of the Essential Services Corps. It is no good leaving it until after the balloon has gone up.

Of course if a sufficient number of persons had come forward to join the volunteer services of one kind and another, there would have been less need for compulsory service. Compared with other parts of the world our record has been good; and I am most grateful to those of our citizens who have volunteered. But the numbers are insufficient. It seems to be a phenomenon of the modern world that many people prefer to be directed into service rather than to volunteer into it. But, apart from anything else, is it fair that the volunteers alone, who are inadequate in numbers,

should bear the whole burden of manning the auxiliary services. I think not. They will of course form the core of the services which are now to be enlarged by the compulsory service legislation.

The amount of training to be done will vary according to the unit. It will not be onerous, but it may be inconvenient, as it will mean giving up some of one's spare time. To compensate for this it is proposed that a small instruction allowance shall be payable in respect of the time spent in training. The rates of these allowances will be the same for the Defence Force, the Essential Services Corps and the Special Constabulary. Call up for training, which is now proposed, does not of course mean call up for full time service. That would only take place in the event of an emergency. And here let me add that an emergency might be anything from a catastrophic fire, a general strike, to war. According to the nature of the emergency the units to be called up for service would vary. The rates of pay, pensions, etc. for full time service—which includes the annual camp for the Defence Force—are the same for the Defence Force and the Essential Services Corps as for the regular armed services. In the case of the Special Constabulary, they are the same as for the regular Police.

If Legislative Council passes the Compulsory Service Bill and the other connected Bills, as I hope it will do, the first call up will be of some 1,800 persons. As I have already indicated we want to do everything in an orderly fashion, and were everyone who has registered to be called up simultaneously the training facilities would be swamped. After the 1,800 have been digested—so to speak—the next batch will be called up.

Dominion nationals and aliens are not subject to the legislation; but they will be welcomed as volunteers. Many are in fact already so serving. And although women come under the Ordinance, it is not intended to call them up, not at the moment at any rate. They too will be welcomed as volunteers.

Later this afternoon when introducing the various Bills, the Attorney General will explain their provisions. Subsequently a press conference, or conferences if necessary, will be held, as there will inevitably be a lot of questions on points of detail. It has been my endeavour, in my address, to explain the need for the measures now proposed, and to make it clear that they are not the result of sudden panic, but are the logical sequence to the registration of last January: the whole scheme being a wise, unhurried precaution.

COMPULSORY SERVICE BILL, 1951.

THE ACTING ATTORNEY GENERAL moved the First reading of a Bill intituled "An Ordinance to make provision for compulsory service by citizens of the United Kingdom and Colonies resident in Hong Kong in the Royal Hong Kong Defence Force, the Special Constabulary and the Essential Services Corps, to provide for transfer of personnel from one of such bodies to another and to regulate the conditions under which certain members of such bodies may leave the Colony."

He said: Sir, my name is also down on the Order of Business to move the First reading of three other Bills which are linked with what I may call Government's plan for the reorganization of the voluntary services for the Colony. If Legislative Council approves this plan, as I hope it will, and passes into law the Bills before it, it is proposed to ask the Governor in Council or other authorities with the approval of the Governor in Council to make a number of regulations which will carry the plan out in greater detail so far as it affects the various units of the Royal Hong Kong Defence Force, the Special Constabulary and the Essential Services Corps. These regulations will, of course, be laid on the table of Legislative Council and Council will, if it so chooses, be able to amend them in any way it thinks fit and as I have said before they cannot even be made unless Legislative Council accepts, at all events, the main principles of the Compulsory Service Ordinance. In these circumstances it seems wrong to me in moving the First reading of this Bill to confine myself too narrowly to the legal provisions it contains. Were I to do this, Sir, Honourable Members might feel aggrieved in thinking that they were being asked to approve in principle what might perhaps not unfairly be termed "conscription" without knowing what is in the mind of Government. I therefore propose before dealing with the legal effect of this Bill to outline Government's plan so far of course as it is proposed to embody it in legislation. In doing so I shall, for the sake of completeness, deal also with some aspects of proposed subsidiary legislation trusting that Council will appreciate that it will have every opportunity of criticising not only the principles of the Bill, the first reading of which I am now moving, but also in due course the details of any Bill it has approved in principle as well as the subsidiary legislation necessary to give effect to the Government plan. Moreover, Sir, in outlining this plan I trust I will be in order if I state shortly and in simple language what I consider to be the cumulative effect of proposed legislation leaving the legal aspects to emerge from the

Objects and Reasons attached to each Bill supplemented, of course, by such remarks as I may add during the progress of each of the Bills before Council. Now, Sir, what is the plan we are asking Council to approve. Quite briefly it is this. We are seeking power to be able to direct citizens of the United Kingdom and Colonies resident in Hong Kong who are found to be medically fit for the duties to be assigned to them into one or other of the three organizations which have hitherto been run on a voluntary basis—namely, the Royal Hong Kong Defence Force, the Special Constabulary and the Essential Services Corps.

This direction is in the first instance provisional only that is to say it may be reviewed by the Compulsory Service Tribunal and any individual directed for service by the Director of Manpower who feels that he could serve better in some other capacity will have the opportunity, should he consider a wrong decision has been taken, to cause his case to be reconsidered by the Compulsory Service Tribunal. The Tribunal consists of a judge of the Supreme Court assisted by two assessors and the same Tribunal will also deal with claims that the Ordinance does not apply to a particular person or that he is or ought to be exempt from compulsory service. Subject to any such claim being upheld, a person called up will be directed to enrol in the organization selected for him. Thereafter he will not be permitted to quit such organization without the consent of the Director of Manpower until he reaches the retiring age. In the case of males, this is 45 for the Defence Force and 60 for the Special Constabulary And Essential Services Corps. An appeal also lies to the Compulsory Service Tribunal against the decision of the Director of Manpower to refuse consent to a person wishing to quit. Although persons directed for service cannot quit of their own accord, this will not, of course, prevent the exercise by the appropriate authorities of powers of dismissal or powers of a similar kind. Now, Sir, how does this affect persons who have already volunteered for service in one of the organizations concerned. The power of direction must, in all fairness apply, not only to those who will be called up under the proposed legislation but also to those who have already volunteered their services for one or other of the organizations mentioned and in clause 19 of the Bill introducing the Compulsory Service Ordinance, 1951, we seek power to transfer not only persons who have not previously volunteered for any service but also those who, as Your Excellency has observed, have already given up much of their leisure to training in one of the organizations affected. There should not be many such cases but it is clearly essential that

Government should be empowered to put the right man in the right place notwithstanding that he has already earned our gratitude for services performed. Nevertheless, we are anxious to record our debt to those who have already volunteered for service and unless it becomes necessary to transfer them to some other organization or unless they exercise their right to resign, which contemplated legislation maintains, their role of volunteer is preserved. If they resign then they will be in exactly the same position as if they had never volunteered, *i.e.*, the Director of Manpower will have to consider calling them for service and the machinery of the Compulsory Service Ordinance, 1951, will enable him to do so. This, however, will be the only distinction between volunteers and persons directed to join one of the organizations mentioned. Otherwise their pay and conditions of service will be the same and so will their training and instruction. As at present advised Government contemplates a maximum of 60 hours instruction and 14 days camp for the Defence Force, 60 hours instruction and 14 days training for the Special Constabulary and between 5 and 60 hours instruction for the Essential Services, a discrepancy which is explained by the fact that many persons in or directed to Essential Services will already be trained for the services they will be asked to perform or can more speedily be trained therein. Although I use the word "maximum" it is contemplated that persons may wish to do more training and qualify for a bounty which it is proposed should be \$50 or \$200 according to the additional training done. Whether or not a bounty is payable provision is made for an instruction allowance of between 90 cents and \$1.30 per hour according to rank for every instruction diligently performed.

The question of pay while on full time service as opposed to training and instruction has already been dealt with by you, Sir. There is also the question of pensions and other conditions of service which I consider are best dealt with when we consider the particular measures providing for them and accordingly, Sir, I propose now to confine myself to particular matters arising under the Bill the first reading of which I am moving.

Now, first, as to the class of persons liable for compulsory service: The Bill applies only to citizens of the United Kingdom and Colonies, *i.e.*, it does not apply to aliens nor to those British subjects who are such by virtue of their being citizens of a Commonwealth country. These latter countries may be said to have attained nationhood within the Commonwealth and it seems correct, therefore, to accord to their citizens the privileges which

would be accorded to citizens of foreign countries, though as you have said, Sir, if such persons wish to volunteer their services they will be welcomed.

Secondly, as to residence in Hong Kong: Clearly we do not wish to call up for compulsory service the casual visitor here for the purpose of business or pleasure. At the same time there must be some criterion as to when a person may for the purposes of compulsory service be treated as being a resident. Now, subclause (2) of clause 2 of the Bill, combined with para. (i) of clause 5, may appear to go too far as it makes it possible to call up persons whose stay in Hong Kong exceeds or is likely to exceed three months. It is not, however, always easy to establish how long a person does propose to reside and casual visitors have a way of staying on indefinitely. Moreover, the Director of Manpower has a discretion as to calling persons up for service and it is, I suggest, wiser to rely on a proper exercise of that discretion as regards temporary residents than to increase the period of three months mentioned in para. (i) of clause 5.

I think, Sir, some additional explanation is also required about the provisions of clause 7 which enables certain types of objections to be heard before medical examination. If a person wishes to contend that the Bill does not apply to him because, for example, he is here for a short temporary purpose only or is not a citizen of the United Kingdom and Colonies, it may prove to be a waste, not only of his time but also of that of a board of medical practitioners, to insist on a medical examination first. On the other hand, a conscientious objector can be directed into non-combatant service and that objection as well as some of the other objections provided for by clause 10 are best, in fact only properly, dealt with after medical examination and ascertainment of the Director's provisional selection. Clause 7 seeks to compromise by providing that if a person intends to object on grounds of conscience or on grounds of undue hardship as well as on the ground that he is outside the scope of the Ordinance it is considered that he should submit to a medical examination first and then make at one and the same time all his objections. On the other hand, the question of physical fitness or of being able to serve in some body other than that for which selected, may justifiably under clause 7 be raised by a person who has in the first place sought total exemption and he would not be precluded from raising these objections by the fact that he attempted to avoid complying with a medical notice.

I would now like to say a few words about the Compulsory Service Tribunal which is established under clause 11. Clauses 12 and 13 of the Bill also contain provisions in connection with this Tribunal. In times of stress a multiplicity of appeals should, where possible, be avoided not only because it is inclined to strain the available sources but also because, pending appeal, it becomes impossible to plan effectively in regard to the matters affected by the appeal. It is therefore considered that if a tribunal meriting public confidence could be constituted to hear appeals from the exercise of the Director of Manpower's discretion under the proposed legislation, the decision of such tribunal should, with certain exemptions, which I shall indicate later, be final. Clause 13 of the Bill so provides. It is thought that the most appropriate tribunal will be a judge of the Supreme Court assisted by a panel of assessors. The object of having a panel of assessors is partly to distribute the burden, but also to enable the appointment of persons most likely to be able to assist a judge in the determination of any particular objection or appeal. Thus, for example, ministers of religion may be suitable assessors in the rare cases where a conscientious objection is lodged, but business men might be more suitable in other cases and the race of the objector might also influence the choice of an assessor. As the tribunal is a final tribunal it has been thought preferable to have assessors to assist in the determination of objections rather than a tribunal where all members have an equal vote as otherwise the judge might be overruled on a point of law which would clearly be undesirable if, as is proposed, there is no further appeal.

In view of the selection of a judge of the Supreme Court, it has been thought proper to clothe him with power to hear evidence upon oath, which will make the proceeding a judicial proceeding for the purpose of the Perjury Ordinance, 1922, to compel the attendance of witnesses and the production of documents and to punish summarily for perjury, contempt in the face of the Court and non-attendance of a witness in the like manner as a judge of the Supreme Court. Provision is made for appeal in the case of decisions imposing punishment. This is the exception to which I referred earlier on.

What are the powers of the Tribunal? The Tribunal will have power to dismiss or allow an objection, to defer calling up for service, to substitute service different from that selected and may refer questions of physical fitness to a Board of Medical practitioners constituted by the Director of Medical & Health Services, which will be set up as often as is necessitated by any such reference. It is clearly desirable to constitute a medical board

ad hoc because an objector may be suffering from an unusual complaint or a complaint in respect of which the Tribunal should have the benefit of specialist opinion and the D.M.H.S. will, by virtue of this provision, be able to select the right kind of medical practitioners to constitute the Board.

Apart from dealing with objections to compulsory service, the Tribunal may have to deal with objections to intended transfers from one form of service to another. Under clauses 18, 19 and 20 of the Bill the Director of Manpower can transfer either volunteers or persons who have become already subject to one form of compulsory service to another form. The latter eventuality is unlikely to arise in the near future as care will have been taken to make the appropriate direction in the first place, but it cannot be precluded that for health or other reasons it may become desirable that the form of service should change. It is, in any event, advisable, however, that medical examination should precede any transfer and that an opportunity should be given to the person transferred to object to the transfer. By virtue of clause 20 virtually the same steps have to be taken to effect a transfer as for calling up a person in the first place, including, if there is an objection, reference to the Compulsory Service Tribunal. The Tribunal is also given by clauses 16 and 17 power to deal with appeals from a refusal by the Director to permit a person called up for compulsory service to quit the organization to which he has been directed. Quitting is defined by sub-clause (1) of clause 16. In dealing with such appeals the Compulsory Service Tribunal is by sub-clause (2) of clause 17 given the additional power to release an appellant temporarily as there may well be a temporary reason why a person cannot discharge his duties of compulsory service of which he may not have been able to convince the authorities.

Finally, a word about penalties. No legislation is complete without sanctions and the Bill accordingly provides them for that reason and not because it is anticipated that many persons will attempt to evade their duties. Briefly, the following are offences: —

- (a) failing to comply with a medical notice (clause 7(2));
- (b) failing to comply with an Order of the Tribunal for medical examination (clause 7(3));
- (c) contravening the provisions of a final notice calling a person up for service (clause 14(3));
- (d) failing to enrol in the body to which one has been directed (clause 15(3));

- (e) leaving the Colony without permission after the Governor in Council has ordered permission to be necessary (clause 21).

Clause 24 makes a fine of \$5,000 and 2 years imprisonment the maximum punishment for all these offences. "Quitting" without consent, the Force, Constabulary or Corps to which a person has been directed has not been made an offence—it is merely unlawful and an attempt to quit is inoperative.

I move the first reading of the Compulsory Service Ordinance, 1951.

THE ACTING 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 this Bill is to enable certain specified classes of persons to be called up compulsorily for service in the Royal Hong Kong Defence Force, the Special Constabulary or the Essential Services Corps.

2. With certain exceptions (specified in clause 5), liability for compulsory service will extend to all citizens of the United Kingdom and Colonies of either sex who are ordinarily resident in the Colony or who become so resident after the date of enactment. The age limits for men are from 18 to 60 and for women from 21 to 50 but no person who has attained the age of 45 can be called upon to serve in the Royal Hong Kong Defence Force. Civil servants will be liable to compulsory service but (by clause 3(3) of the Bill) powers under the Ordinance will only be exercised in accordance with arrangements approved by the Colonial Secretary.

3. The first step in calling up a person for compulsory service is notice by the Director of Manpower to such person requiring him to present himself for medical examination (clause 7). Such person may object to complying with the medical notice on the ground that the Ordinance is inapplicable to him or that he is exempt under clause 5, but unless such claim is allowed he will be classified by a board of medical practitioners as fit or unfit for service in all or any of the following—

- (a) the Royal Hong Kong Defence Force;
- (b) the Special Constabulary; or
- (c) the Essential Services Corps. (Clause 8.)

4. The next step is for the Director of Manpower to send out a provisional notice to a person classified as fit for service, informing him that he has been provisionally selected for service, and specifying the body for which he has been selected (clause 9). Clause 10 empowers any person provisionally selected within 7 days to object by notice in writing to such selection on the grounds therein set out.

Unless the Director of Manpower wholly allows an objection every objection must be referred to the Compulsory Service Tribunal appointed by the Governor and consisting of a judge of the Supreme Court assisted by two assessors selected from a panel, but the opinion of the assessors will not bind the judge. The decision of such Tribunal, which will be final save where the Tribunal punishes a person for non-attendance or for contempt or for perjury, will be communicated in writing to the objector and to the Director. (See clauses 11 and 12.) Provision is also made by clause 11(3) for rules of procedure for the Tribunal to be made by the Chief Justice. It should be noted that under clause 13 the Tribunal has power, *inter alia*, —

- (a) to refer any objection made on the ground of physical fitness to a board of not less than three medical practitioners to be constituted in his discretion by the Director of Medical and Health Services as often as may be required by any reference hereunder and to take into account the findings of such board in determination of such objection;
- (b) wholly to allow the objection;
- (c) if it thinks that the objector should serve in a body different from that for which he has been selected, to substitute such service therefor;
- (d) to defer the calling up for service of the objector for such period as it may consider appropriate;
- (e) to dismiss the objection.

The Director may then serve upon a person, who has not objected to such provisional notice, or whose objection has been dismissed by the Tribunal, a final notice calling him up for service in the Royal Hong Kong Defence Force, Special Constabulary or Essential Services Corps. Every person served with such final notice thereupon becomes liable to enrol himself in the Royal Hong Kong Defence Force, Special Constabulary or Essential Services Corps for which he has been selected. (Clauses 14 and 15.)

5. No person called up for service will be permitted to resign without the previous written consent of the Director. A person

dissatisfied with the refusal of the Director to permit him to resign may appeal within 7 days from such refusal to the Compulsory Service Tribunal. (Clause 16.)

6. Part III of the Bill provides for the compulsory transfer, if in the public interest, between the various bodies and the procedure prescribed in Part II of the Bill is applied to such transfer (*i.e.*, provision is made by reference for medical examination, objection, etc.)

7. Part IV provides (clause 21) that members of the Royal Hong Kong Defence Force, the Special Constabulary or the Essential Services Corps who are citizens of the United Kingdom and Colonies may only leave the Colony, after such date as specified by the Governor in Council under a written permit granted by the Immigration Officer acting under the directions of the Governor.

8. Provision is made by clause 25 that the Ordinance introduced by the Bill shall come into force on a date to be proclaimed by proclamation of the Governor in Council.

9. It may be asked why it is considered necessary to introduce a measure of the nature contained in the Bill despite the fact that we are not engaged in hostilities, nor do we contemplate their outbreak. The main reason for the measure is the necessity to train sufficient members of the community in the duties which, in the event of an emergency, would have to be discharged by the Royal Hong Kong Defence Force, the Special Constabulary and the Essential Services Corps. That emergency might well take the form of internal disorder but training must necessarily include preparation for discharge of duties during war or operations akin to war because in these troubled times the occurrence of such events cannot be precluded. The services which the Royal Hong Kong Defence Force, the Special Constabulary and the Essential Services Corps will be called upon to discharge are a great deal more complex today than they would have been even ten years ago, and if they are discharged satisfactorily training must necessarily commence before and not after the occurrence of an emergency. While training has commenced of persons who have already volunteered for the bodies in question it must be apparent that it is in the best interests of the community that Government should have power to direct what services all those members of the community to whom the Bill will apply are best fitted to undertake not because such persons may not have volunteered or may not be willing to volunteer in an emergency, but to make the best and most economic use of their services and to make the relevant decisions at some leisure and not in haste.

ROYAL HONG KONG DEFENCE FORCE BILL, 1951.

THE ACTING ATTORNEY GENERAL moved the First reading of a Bill intituled "An Ordinance to provide for the establishment of the Royal Hong Kong Defence Force".

He said: Sir, in moving the First reading of the Bill introducing the Compulsory Service Ordinance, 1951, I indicated that changes would have to be made both in the Hong Kong Defence Force Ordinance and in the regulations under the Ordinance so as to give effect to the fact that if the principle of compulsory service is accepted then the Force will consist of persons directed to serve therein as well as of volunteers. The necessity for taking this course as a matter of policy you have, Sir, already explained and the Objects and Reasons to this Bill explain so far as the Bill is concerned, the modifications which, as a matter of law, have been considered necessary to give effect to this change in policy. I do not propose to re-iterate them here, but there is one matter which is insufficiently explained in the Objects and Reasons. Under subsection (1) of section 23 of the Hong Kong Defence Force Ordinance, 1948, a volunteer who, in the opinion of the Commandant, failed without reasonable excuse to complete the requirements of efficiency in any year, forfeited the sum of \$100 to the Commandant's Welfare Fund. Now, that provision may have been suitable for a volunteer force, but it is hardly suitable for the composite force with which we are now dealing. Moreover, it did not appear justifiable to make any distinction in the enforcement of discipline between a volunteer and a person called up for service. Sub-clause (1) of clause 25, which corresponds to subsection (1) of section 23, has accordingly been re-cast and it is now proposed to make it an offence for any member of the Force to fail without reasonable excuse to attend the training and instruction prescribed or to use his best endeavours to obtain the full benefit thereof or to discharge duties assigned to him in the course of such training and instruction. Now, although it was necessary to provide a sanction against malingering, it is not anticipated that much, if any, use will in practice require to be made of this provision. It is proposed by regulations to give power to deprive of instruction allowance a person whom I may, in non-legal language, term a slacker and that sort of disciplinary action should suffice, not so much because of the sum of money involved but of the reprimand it implies. It is, in any event, right and proper that the consent of the Commandant should be made necessary to a prosecution for the disciplinary offence created and the new sub-clause so provides, but as we are now dealing with an offence, it will be the magistrate

and not the Commandant who will, if a charge is preferred, be required to determine whether there has been a dereliction of duty. With that exception, Sir, I think the Objects and Reasons indicate comprehensively the changes made by the Bill and the necessity in principle for the Bill depends upon the acceptance of the Bill introducing the Compulsory Service Ordinance, 1951. There is one new matter which might be regarded as a matter of principle and to which I should perhaps therefore direct attention, and that is the question of service outside the Colony. Hong Kong is geographically so situate that proper training and instruction for certain units such as the air and naval units, can scarcely take place within the Colony and if training in combined operations were to take place this might prove true also of other units. The Bill does not, however, make service outside the Colony compulsory save in two cases. Under clause 7 a member who on enrolment has volunteered for service outside the Colony, and there are many such, may be ordered to serve outside its limits and in any event a member other than a member of the Home Guard may be so ordered if the Service Commander considers that an operation outside such limits is necessary or expedient for the immediate defence of the Colony. The Bill introducing the Compulsory Service Ordinance, 1951 applies to women and although it is not proposed at present to call up women for compulsory service, the womens' units have not been excepted from these provisions as to service outside the limits of the Colony. The duties upon which such units may have to be employed may make it necessary for them to go outside the limits of the Colony even if only for the purpose of being transported from one place to another. It is to be hoped, however, that all persons irrespective of sex and irrespective of whether they are volunteers or called up for service will, on enrolment, take the sensible course of declaring that they are willing to serve outside the limits of the Colony.

The clause in question (clause 7) does not apply to the Hong Kong Royal Naval Volunteer Reserve as the position of this unit will, it is hoped, be regulated by the Hong Kong Royal Naval Volunteer Reserve (General Service) Ordinance, 1951, still in Bill form.

I would like to say a word about the position as regards "pensions" of Government servants. It is possible that a Government servant in the Defence Force may be able to claim a pension under the Bill for disability and have a similar claim in respect of the same injury under the Pensions Ordinance, 1949. It is not, however, the intention of Government that a double

pension should in fact be paid in such cases. The same observations also apply to claims by the widow or dependants of a deceased Government servant. As drafted, the Bill contains in sub-clause (7) of clause 18 a provision providing for the former contingency which gives an option to the person disabled to claim either, but not both, pensions.

The observation I have made as to not paying two pensions would, of course, have equal force with regard to the Special Constabulary or the Essential Services Corps, and it is accordingly considered preferable to amend the Pensions Ordinance in a comprehensive manner providing for an option in all such cases. That amendment requires reference to the Secretary of State, but if in the meanwhile before legislation is enacted a case should arise the Royal Warrant does provide that pension or gratuity may be reduced or withheld if pension from other sources has been or will be paid in respect of a person to or in respect of whom a pension or gratuity is being or may be paid. In the circumstances therefore I propose at the Committee stage of the Bill to move an amendment of clause 18 by the deletion of sub-clause (7).

I move the First reading of the Royal Hong Kong Defence Force Bill, 1951.

THE ACTING 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. This Bill is based substantially on the provisions of the Hong Kong Defence Force Ordinance, 1948 (hereinafter referred to as the Ordinance) but, owing to the number and nature of new provisions and to render it more readable as a complete whole, it has been thought preferable to repeal and replace the existing Ordinance.

2. The main objects of the Bill are—

(a) to enable the provisions of the Ordinance to give effect to the changes in the recruitment of the Force provided for by the Bill introducing the Compulsory Service Ordinance, 1951, (hereinafter referred to as the Compulsory Service Bill);

- (b) to take power to prescribe by regulations—
- (i) the minimum requirements of training to be performed by members of the various units of the Force;
 - (ii) the payment to members of pay, allowances and bounties in respect of training;
- (c) to make certain amendments with regard to payment of pensions.

3. The Bill also makes such changes in the provisions of the Ordinance as practical experience has shown to be necessary

4. Clause 3 of the Bill provides that the Force will be composed of volunteers and also of persons upon whom a liability to enrol therein is imposed by the Compulsory Service Bill.

5. Clause 5 introduces a rearrangement in the order in which the units had been set out in section 5(2) of the Ordinance. The auxiliary force constituted by section 5(2)(a) is in fact a military unit corresponding to the Home Guard in the United Kingdom and is now so named (clause 5(3)(e)). The Hong Kong Women's Volunteer Force constituted by section 5(2)(e) of the Ordinance had in practice always consisted of three separate units each under different commands and paragraphs (f) (g) and (h) of clause 5(3) so provide.

6. Clause 7, which makes officers and members of the Force liable for service outside the limits of the Colony, exempts from such liability the Naval Reserve, the Home Guard and any member who has not declared in writing that he is willing to undertake such service. The clause also enables the Service Commander to order any member of the Force with the exception of the Naval Reserve and the Home Guard to take part outside the Colony in any operations necessary or expedient in his opinion for the immediate defence of the Colony. In the event of actual hostilities it clearly would not be possible to employ the Force on the borders of the Colony if some of its members were entitled to disobey an order to cross its borders. The exception in favour of the Naval Reserve may cause confusion unless it is remembered that under clause 4 of the Hong Kong Royal Naval Volunteer Reserve (General Service) Ordinance, 1951, (which is still in the form of a Bill) such reservists are in fact liable for service outside the Colony and that by clause 6 of that Bill provision is made for the incorporation of such reservists in an emergency in the Royal Naval Volunteer Reserve.

7. Clause 8, which deals with the respective powers of command and punishment of officers of the regular forces and

officers of the Force when the Force is called out together with the regular forces or is undergoing training or instruction with them, has been modified. In the first place officers of the regular forces are given powers of command and punishment over members of the Force to the like extent as they would have had they been appointed as officers of the Force. This in fact assimilates the position, so far as possible, to powers given under enactments of the United Kingdom to officers of the Force over the regular forces. Such latter powers cannot be conferred by this Ordinance but clause 8 expressly authorizes officers of the Force to exercise such powers of command and punishment as are or may from time to time be conferred under and by virtue of the United Kingdom enactments. As officers of the Hong Kong Auxiliary Air Force are not included in the definition of "officer" in section 190(4) of the Air Force Act, it has not been possible to confer powers of punishing Royal Air Force personnel but they have been given powers of command. This difficulty does not arise in the case of officers of Force Headquarters and the Hong Kong Regiment as an Army Order made under the King's Regulations confers powers of command and punishment on such officers over military forces raised in the United Kingdom.

8. Section 10 of the Ordinance enables volunteers, except during an emergency, to quit the force. This right is preserved by clause 10 but it has been thought proper to rephrase the section so as to relate the restriction on quitting to the calling out of the Force or part thereof by proclamation rather than to the emergency as a volunteer would be unaware of the latter until the publication of the proclamation.

9. In view of the proposed introduction of compulsory service clause 11 provides that no person other than a volunteer may quit the Force save under the provisions of the legislation providing for such compulsory service. Nevertheless the provisions of the Compulsory Service Bill are wide enough to make a volunteer who so quitted liable to be called up for service thereunder.

10. Section 14(3) of the Ordinance prescribed a period of 7 days for any person who failed to report as directed when called out under subsection (1) to show good cause why he should not be liable for desertion. Clause 16(3) reduces this period to 4 days.

11. Subclause (3) of clause 15 of the Bill which modifies section 13 of the Ordinance, has been drafted with the express

intention of enabling a modification of the training and instruction which will be prescribed under regulations to be made in special cases where there is good reason shown why a volunteer or member of the Force cannot undergo the actual training and instruction prescribed. The subclause is necessary to negative the rule "*delegatus delegare non potest*".

12. Clause 17 enables the payment of an instruction allowance (subclause (2)) and an annual bounty (subclause (3)) to officers and members under instruction to be provided for by regulations.

13. Clause 18, which provides for the payment of pensions in accordance with the provisions of the Force Pay and Pensions Code to disabled officers or members or the dependants of officers or members who lose their lives when called out or when in training recasts with substantial modifications the provisions of section 16 of the Ordinance in order to assimilate the law on this subject to the law existing in the United Kingdom. These modifications include the omission of subsections (5) and (6) and the inclusion of an extensive power to make regulations in relation to the granting of pensions under which it will be possible to establish a Pensions Appeal Tribunal. Provision is also made by subclause (3) that the expressions "wife", "widow" and "child" will have the meanings given them in the Pensions Ordinance, 1949. Subclause (7) of this clause enables a person entitled to receive a pension under this clause and also under the provisions of the Pensions Ordinance, 1949, in respect of the same illness or injury, to elect to receive either, but he may not receive both such pensions.

14. Clause 19(1) modifies section 17 of the Ordinance so as to provide that an officer or member during the period of a disability will obtain full rates and allowances only until he has been awarded a pension or gratuity in respect of such disability.

15. Under clause 21(1) of the Bill which replaces section 19(1) of the Ordinance the application of the appropriate Service Discipline Act to officers and members of the Force is excluded in the case of both of the naval units. The reason in the case of men is that provision is made by the Hong Kong Royal Naval Volunteer Reserve (General Service) Ordinance, 1951, and also by the Hong Kong Royal Naval Volunteer Reserve Regulations, 1951, regulation 37, and in the case of the women that the Admiralty regard the Naval Discipline Act as inappropriate for application to women.

16. Clause 38 repeals the Hong Kong Defence Force Ordinance, 1948.

17. Clause 39 provides that this Bill shall be brought into operation by proclamation in the *Gazette*.

18. A comparative table has been prepared and is annexed.

**HONG KONG ROYAL NAVAL VOLUNTEER
RESERVE (GENERAL SERVICE) BILL, 1951.**

THE ACTING ATTORNEY GENERAL moved the First reading of a Bill intituled "An Ordinance to provide for the placing at the disposal of His Majesty's Royal Navy for general service officers and men of the Hong Kong Royal Naval Volunteer Reserve, and ships of war maintained by the Colony".

He said: Sir, this Bill provides the machinery whereby the Governor may place at the disposal of His Majesty such officers and members of the Hong Kong Royal Naval Volunteer Reserve as have been enrolled on the express terms of accepting general service in the Royal Navy in an emergency. In such event such officers and members would form part of the Royal Naval Volunteer Reserve.

The Bill also makes officers and men of the Hong Kong Royal Naval Volunteer Reserve liable to service training or instruction outside the Colony and makes them subject to the disciplinary provisions applicable to the Royal Navy with certain modifications set out in the Schedule.

As paragraph 3 of the Objects and Reasons explains, notwithstanding the provisions for service and training outside the Colony the primary function of the Hong Kong Royal Naval Volunteer Reserve, which is the defence of the Colony and its sea approaches, would always be kept in view.

I move the First reading of the Hong Kong Royal Naval Volunteer Reserve (General Service) Bill, 1951.

THE ACTING 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 clauses of this Bill follow the language of the clauses of a model Ordinance prepared by the Colonial Office in consultation with the Admiralty and are not dissimilar to the provisions of the Naval Volunteer and Defence Ordinance, 1939, now repealed.

2. The Schedule to the Bill is a reproduction, with slight verbal amendments, of the Schedule to the repealed Ordinance and contains modifications of the Naval Discipline Act and substitutes the Governor for the Admiralty in the application of King's Regulations and Admiralty Instructions as well as of such Act to the Naval Reserve.

3. With regard to the implications of clause 4 of the Bill relating to service and training outside the Colony, it may be explained that the primary function of the Naval Reserve is the defence of the Colony and its sea approaches, and that, although emergencies might arise necessitating the employment, in the interests of the Colony or for its defence, of the Naval Reserve away from its waters, that primary function would always be kept in view.

4. With regard to training outside the waters of the Colony, it will be appreciated that to confine the movements of the Naval Reserve to the comparatively restricted limits of the Colony's territorial waters would be prejudicial to effective naval training. It is not contemplated that training would be carried out at such a distance from the Colony as would result in serious interference with the civilian duties of the members of the Naval Reserve.

ESSENTIAL SERVICES CORPS (AMENDMENT) BILL, 1951.

THE ACTING ATTORNEY GENERAL moved the First reading of a Bill intituled "An Ordinance to amend the Essential Services Corps Ordinance, 1949".

He said: Sir, in the case of the Essential Services Corps most of the amendments resulting from the proposal that the Corps shall also consist of persons directed for service as well as volunteers require to be made to the regulations, but Council will note that the necessary amendment has been made so far as the

Ordinance is concerned by the repeal and replacement of section 4 (see clause 2 of the Bill). There is also an amendment to section 8 which is worthy of mention. As is apparent from the schedule to the principal Ordinance, a schedule to which clause 6 of the Bill adds further essential services, the duties of the Corps are manifold and it has always been envisaged that it may be necessary to authorize some individual units called out in an emergency for actual service to be what, in non-legal language, might be termed "their own policeman", *i.e.*, to assume for the particular purposes of each unit powers conferred for general purposes on the Police Force. Previously section 8 provided that such powers should be conferred by regulations made by the Governor. If, however, we face the problem realistically, should internal disorder occur the decision whether the Police can discharge their duties without assistance may have to be a rapid one and is primarily one for the Commissioner of Police. I have no doubt that, in so far as planning has not already foreshadowed which units will require police powers in certain events, the Commissioner will, whenever possible, consult both the Attorney General and the Governor, but even consultation is rather more rapid than enacting special regulations which might quite soon, in such circumstances, prove to be no longer required or no longer precisely what is in fact required. The amendment accordingly enables the Commissioner of Police to authorize the exercise of police powers by members of the Force called out for actual service. To pass to another matter, you, Sir, I suggest, have rightly interpreted the modern approach in saying that in these days many persons, when confronted with a situation such as that we face today, prefer direction to volunteering. In truth the ordinary citizen of Hong Kong, anxious as he may be to help Government, has not the same facilities for estimating either the value of his services in a particular post or the nature and proportion of a threatened danger as those whose primary duty it is to assess both these factors. It is of first importance therefore that persons directed into Essential Services should not in any way feel aggrieved that they are asked to play a non-combatant role. Their value to the community may, indeed, be far greater than that discharged by a person trained to perform combatant duties and I would even go so far as to say that one's primary duty is to be sufficiently disciplined to accept readily the duties assigned to one without too much regard for one's personal preferences. In this connection I invite attention to two further clauses in the Bill which are an indication of the importance that Government does attach to the Essential Services Corps. First, clause 5, which assimilates the position as regards complaints and obstruction in the course of

duty to that of the Royal Hong Kong Defence Force and secondly, clause 3, which introduces power to prescribe penalties for breaches of the regulations governing the Corps. This latter power, if conferred, will be used to provide a sanction for failure to carry out diligently necessary training. I move the first reading of the Essential Services Corps (Amendment) Ordinance, 1951.

THE ACTING 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. This Bill amends the Essential Services Corps Ordinance, 1949. Its objects are—

- (a) to provide for the inclusion in the Corps of persons upon whom a liability to enrol therein has been imposed under the Compulsory Service Ordinance, 1951, (now in Bill form);
- (b) to provide for penalties for breaches against the regulations, see clause 3 amending section 7;
- (c) to enable the members of the Corps to have the same privileges protection and immunities as members of the Hong Kong Police Force if so authorized by the Commissioner of Police, instead of by regulations, which is the case now. See clause 4 amending section 8 of the Ordinance;
- (d) to incorporate in the Ordinance provisions as to complaints and obstruction of members of the Corps in performance of duty on the same lines as contained in the proposed Royal Hong Kong Defence Force Ordinance, 1951. See the new sections 12 and 13 introduced by clause 5 of the Bill; and
- (e) by adding further essential services to the list in the Schedule.

SUPPLEMENTARY PROVISIONS, 1950-1951.

THE ACTING FINANCIAL SECRETARY moved the following resolution: —

Resolved that the Supplementary provisions for the quarter ended 31st March, 1951, as set out in Schedule No. 4 of 1950-51 be approved.

He said: Your Excellency, the special warrants set forth in the schedule now before Honourable Members have all been approved by Finance Committee, but it is now necessary for the covering approval of this Council to be formally signified. The total of over \$63 million seems large but it will be observed that almost \$50 million of this amount is accounted for by one item which is to be found on page 9 of the schedule. Members will recollect that the Rehabilitation Loan Ordinance of 1947 authorized the raising of \$150 million by loan. In fact, only \$50 million has yet been borrowed. In the Budget Debate on 7th March it was indicated that with the concurrence of Finance Committee and the Secretary of State it had been decided that in view of the improbability of Government being able to borrow at a reasonable rate of interest within the near future, it would be preferable to charge off to expenditure as much as possible of the cost of rehabilitation which had been incurred in advance of raising the loan. This has now been done. The exact amount charged off is slightly under \$50 million and full details are shown on page 110 of the printed Estimates for 1951/52. This method of financing our rehabilitation has saved the Colony a great deal of money when one remembers that at the proposed rate of interest the annual cost of borrowing \$50 million is \$1¾ million.

THE ACTING COLONIAL SECRETARY seconded, and the Motion was carried.

ABANDONMENTS OF CLAIMS AND WRITE-OFFS OF LOSSES.

THE ACTING FINANCIAL SECRETARY moved the following resolution: —

Resolved that the abandonments of claims and the write-offs of losses and deficiencies as specified and explained in Schedule No. 1 of 1951-52, be approved.

He said: Your Excellency, the schedule of write-offs and abandonments of claims is in four parts. The items set out in Parts A and C have already received the approval of Finance Committee, but those included under Parts B and D have been approved by the Financial Secretary under the authority which has been delegated to him by Finance Committee.

THE ACTING COLONIAL SECRETARY seconded, and the Motion was carried.

ADJOURNMENT.

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

THE ACTING ATTORNEY GENERAL: —A fortnight from today, Sir.

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