

11th June, 1952.

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**PRESENT:**

HIS EXCELLENCY THE GOVERNOR

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

THE HONOURABLE THE COLONIAL SECRETARY

MR. ROBERT BROWN BLACK, O.B.E.

THE HONOURABLE THE ATTORNEY GENERAL

MR. G. E. STRICKLAND, Q.C., *Acting*.

THE HONOURABLE THE SECRETARY FOR CHINESE AFFAIRS

MR. BRIAN CHARLES KEITH HAWKINS, C.M.G., O.B.E., *Acting*.

THE HONOURABLE DOUGLAS JAMES SMYTH CROZIER

*(Director of Education)*.

DR. THE HONOURABLE YEO KOK CHEANG

*(Director of Medical and Health Services)*.

THE HONOURABLE KENNETH MYER ARTHUR BARNETT

*(Chairman, Urban Council)*.

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

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

THE HONOURABLE MAURICE MURRAY WATSON.

THE HONOURABLE CHARLES EDWARD MICHAEL TERRY.

THE HONOURABLE NGAN SHING-KWAN

THE HONOURABLE HUBERT JOHN COLLAR, C.B.E.

THE HONOURABLE KWOK CHAN.

MR. RONALD THOMPSON *(Deputy Clerk of Councils)*.

**ABSENT:**

HIS EXCELLENCY THE COMMANDER BRITISH FORCES

LIEUTENANT-GENERAL SIR TERENCE AIREY, K.C.M.G., C.B., C.B.E.

THE HONOURABLE THE FINANCIAL SECRETARY

MR. ARTHUR GRENFELL CLARKE.

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

*(Director of Public Works)*.

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

**MINUTES.**

The Minutes of the Meeting of the Council held on 28th May, 1952, were confirmed.

**PAPERS.**

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

	<i>Subject.</i>	<i>G. N. No.</i>
The Dutiable Commodities Ordinance, Chapter 109.		
The Dutiable Commodities (Amendment) Regulations, 1952 . . . . .		
		A. 99
Removal of quarantine restrictions imposed against		
Sourabaya on account of smallpox . . . . .		
		A. 100
Removal of quarantine restrictions imposed against		
Bangdoeng on account of smallpox . . . . .		
		A. 101
Removal of quarantine restrictions imposed against		
Marseilles on account of smallpox . . . . .		
		A. 102

**GENERAL LOAN AND STOCK BILL, 1952.**

THE ATTORNEY GENERAL moved the First reading of a Bill intituled “An Ordinance to declare the terms and conditions applicable to loans authorized to be raised by the Government of Hong Kong and to provide for the creation of Hong Kong stock.” He said: Sir, the Bill replaces the existing Ordinance and I have nothing to add to the Objects and Reasons.

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:—

Our General Loan and Inscribed Stock Ordinance, Chapter 72, has not been amended since 1913.

2. Similar legislation has been enacted in other Colonial territories and a Model Ordinance was prepared in 1949. The latter incorporated amendments found necessary or desirable through experience. Although the Ordinance has not been used here, it is thought desirable that it should conform with the Model and as the amendments are numerous, the course of repealing and replacing the existing Ordinance has been preferred to amendment.

## **IMPORTATION AND EXPORTATION (AMENDMENT)**

### **BILL, 1952.**

THE ATTORNEY GENERAL moved the First reading of a Bill intituled "An Ordinance to amend and consolidate the law relating to the importation and exportation of goods into the Colony." He said: Sir, I wish to make a few remarks in amplification of the Objects and Reasons, partly because the Bill amends a sphere of the law which has considerable interest for a Colony like Hong Kong and partly because the Bill has somewhat tardily reached the hands of Honourable Members.

As Honourable Members are no doubt aware, the principal Ordinance is in the main an enabling Ordinance conferring powers on the Governor in Council to regulate imports and exports by order. It was enacted in 1915 and has in the main stood the test of time. Nevertheless in these days when control depends upon so many divergent and often complicated considerations, the machinery provided has not always proved satisfactory. In fact, it has proved necessary to supplement that machinery by the enactment of orders by the competent authority under Defence Regulations and recently by the enactment of Emergency Regulations by the Governor in Council.

All this has made the law on the subject less readily ascertainable and more difficult to interpret. There has been the further complication of the existence of another Ordinance, the Registration of Imports and Exports Ordinance, the machinery of which has been employed in conjunction with the Importation and Exportation Ordinance.

One of the main objects of the Bill before Council to-day is to consolidate the provisions of the two Ordinances and at the same time to widen their scope so as to enable regulations under the Ordinance to replace when necessary the orders and emergency

regulations previously made. Such regulations will, of course, be laid on the table of this Council and be subject to such amendments as this Council thinks fit. The above object is carried out by clauses 3, 4, 5, 10 and 13 of the Bill.

I turn now, Sir, to what is really the vital part of any legislation, and that is enforcement and sanctions. The geographical position of Hong Kong is too well known to require elaboration here. It suffices to say that that position facilitates evasion of a law of this kind. It is all the more necessary therefore that the penalties for breach should be realistic. One of the defects of the existing legislation is that forfeiture of articles imported or exported in breach of the law is not automatic. It is automatic not only in the United Kingdom but also in numerous colonies where the opportunities of evading the law are not so many as those afforded by the geographical position of Hong Kong. It is sought to rectify this anomaly by the new section 15 introduced by clause 12 of the Bill.

The marginal reference to the first four subsections refer to the corresponding provisions of United Kingdom legislation and I may observe that the law of the Colony has been assimilated to English law so far as regards also forfeiture of the vehicle or vessel by which importation or exportation is effected. It is hoped that the clause and the provisions as to penalties made elsewhere in the Bill will prove an adequate deterrent, provided, of course, the offenders can be detected.

Now, it is admittedly the ordinary principle of English law that it is for the Crown to prove its case, but in dealing with offences of this kind the United Kingdom and other colonies applying English law have found it necessary to modify this principle. An example is furnished by the amendment made by clause 8 of the Bill and another by the provisions as to forfeiture I have just mentioned. Cases have, however, occurred where, to give an example, strategic materials have been found in places near the border or in vessels or generally in circumstances from which the man in the street would conclude that evasion of the law was contemplated. Prosecution has, however, proved premature and sooner or later the law is in fact evaded and not infrequently with impunity. It may therefore become necessary to make regulations restricting movement within the Colony of prohibited exports or shifting or lessening the burden of proof. Provision enabling this to be done is made by the new section 16 introduced by clause 12 of the Bill. Either method might prove effective or possibly both may be required.

There may well be other instances where regulations of this nature may be required in connexion, for example, with breaches of conditions imposed by a licence. It is, however, appreciated that the legislature should keep a watchful eye on regulations of this nature and the proviso to section 16 requires the express approval of Legislative Council before regulations of this nature may come into force.

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 :—

The present law relating to the importation and exportation of goods is contained in the Importation and Exportation Ordinance, Chapter 50, and orders made thereunder, in the Registration of Imports and Exports Ordinance, Chapter 51, regulations made thereunder and in orders made under regulation 50 of the Defence Regulations and also in the Emergency (Exportation) (Miscellaneous Provisions) Regulations, 1951, and the Emergency (Essential Supplies) Regulations, 1952.

2. The principal objects of this Bill are firstly by amendment of the Importation and Exportation Ordinance, to consolidate the law to enable all the provisions of a permanent nature contained in the above mentioned Ordinances, orders and regulations to be embodied in one Ordinance and regulations made thereunder and secondly to amend the provisions relating to the forfeiture of articles in respect of which an offence against the Ordinance has been committed.

3. It is considered that subsidiary legislation made under the Ordinance should be by regulation rather than by order as at present and amendments to effect this purpose are made by clause 3. Clauses 4 and 5 add a power to make regulations of the same nature as those contained in the Emergency (Essential Supplies) Regulations, 1952, and also a general power of making regulations to those already conferred by sections 3 and 4 of the Ordinance. Clause 10 adds a new section to the principal Ordinance which gives power to make regulations for the registration of imports and exports previously contained in the Registration of Imports and Exports Ordinance, Chapter 51, (repealed by clause 13 of the Bill.)

4. Clause 6 makes the contravention of any condition contained in a licence and the making of false statements when applying for a licence or a certificate offences under the Ordinance. These provisions are based on regulations 7 and 8 of the Emergency (Exportation) (Miscellaneous Provisions) Regulations, 1951, and regulation 4 of the Emergency (Essential Supplies) Regulations, 1952. They are now included in the principal Ordinance as it is considered they should form a permanent part of the law and because it is desirable that they should apply to import licences in addition to export licences. Paragraph (a) of clause 7 of the Bill which provides power to seize and forfeit means of conveyance in which it is reasonably suspected that goods have been imported or exported contrary to the Ordinance, is based on regulation 6(1) of the first mentioned Emergency Regulations. Paragraph (b) specifies the penalty for obstruction under subsection (3) of section 9.

5. The amendment made by clause 8 of the Bill puts the burden of proof in certain cases upon the defendant. There is a similar provision (section 259) in the Customs Consolidation Act of the United Kingdom.

6. Clause 9 amends section 12 of the principal Ordinance to enable fees charged under that section to be made to vary according to the value of the commodity concerned and to be paid in such manner as may be prescribed instead of by stamps as at present.

7. Clause 11 provides that a maximum penalty of one hundred thousand dollars may be imposed for breaches of regulations made under section 3, 4 or 5 of the principal Ordinance. This penalty had previously been prescribed for exportation offences by the Emergency (Exportation) (Miscellaneous Provisions) Regulations, 1951, and it is considered that it may properly be extended to importation offences also.

8. Two new sections are added to the principal Ordinance by clause 12. The new section 15 provides for the forfeiture of any article in respect of which an offence against the Ordinance has been committed and of means of conveyance made use of in the importation or exportation of any articles contrary to the provisions of the Ordinance. Similar provision exists in the present law in respect of the forfeiture of articles in subsection (3) of section 14 of the principal Ordinance and in respect of means of conveyance used for exportation in sub-regulation (2) of regulation 6 of the Emergency Exportation (Miscellaneous

Provisions) Regulations, 1951. The new section 15 however provides a new procedure for the forfeiture of articles and means of conveyance. This procedure is substantially that provided for in the Customs Consolidation Act which has been adopted by several other colonies. The appropriate sections of the United Kingdom Act are indicated in clause 12 by means of marginal reference. The present provision enabling the Governor in Council to give effect to any moral claim in respect of anything forfeited is retained. Subsection (7) of this new section is designed to enable packets transmitted by post contrary to certain regulations made under the principal Ordinance and delivered to the Director by direction of the Governor under section 14 of the Post Office Ordinance to be deemed to be seized under the principal Ordinance for the purpose of forfeiture proceedings.

9. The power of imposing absolute liability has previously been exercised in orders made by the Governor in Council under the principal Ordinance. The exercise of this power has been recognized in a recent decision of the Supreme Court and paragraph (a) of the new section 16 is therefore declaratory. It is often found necessary for the proper enforcement of the provisions of the Ordinance to shift the onus of proof to the defendant that a regulation has not been contravened and paragraph (b) ensures that regulations making such provision are *intra vires*. It is however considered that regulations of this nature should require the approval of Legislative Council. Incorporated in the regulations made under sections 3 and 4 will be lists of commodities subject to import or export control, lists of countries of origin or destination of commodities and other lists of a similar nature. According to prevailing conditions such lists may require frequent amendment and it is considered that where a policy decision has been reached by the Governor in Council as to the constitution of such lists it may be expedient and convenient to permit such amendment to be delegated to the Director. The purpose of paragraph (d) is to enable such delegation to be made in appropriate cases.

### **WATERWORKS (AMENDMENT) BILL, 1952.**

THE ATTORNEY GENERAL moved the Second reading of a Bill intituled "An Ordinance to amend the Waterworks Ordinance, Chapter 102."

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

Council then went into Committee to consider the Bill clause by clause.

Council then resumed.

THE ATTORNEY GENERAL reported that the Waterworks (Amendment) Bill, 1952 had passed through Committee without amendment, and moved the Third reading.

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

### **EMERGENCY (RESETTLEMENT AREAS)**

#### **REGULATIONS, 1952.**

HON. K. M. A. BARNETT moved the following resolution :—

Resolved that the Rules made by the Urban Council on the 27th day of May, 1952, under regulation 10(1) of the Emergency (Resettlement Areas) Regulations, 1952, be approved.

He said: Sir, the Emergency (Resettlement Areas) Regulations, 1952, were made by Your Excellency in Council on January 15, 1952 and were laid upon the table of this honourable Council on January 23. The Emergency (Resettlement Areas) Amendment Regulations, 1952, were made by Your Excellency in Council on May 20, 1952 and were laid upon the table of this honourable Council on May 28.

Honourable Members will be aware of the plan which is now in course of implementation for the resettlement under decent conditions of the squatters, estimated in January to number at least 300,000, who had previously been living in conditions of indescribable filth and squalor. I do not think I need recapitulate the considerations of public health, public order, and common humanity which have led Government to set aside 19 areas of Crown Land in which the Urban Council may resettle the squatters as fast as they can be cleared. Perhaps I may here be permitted to inform Honourable Members that the number resettled at the end of May, 1952, stood at 25,797.

These 19 areas of Crown Land will, it is hoped, be sufficient to take all the resettled squatters, but if anyone who is so minded is allowed to move in freely, all these areas and more could easily



be taken up and leave the squatter problem unsolved. It is, therefore, essential that strict control be retained of all the resettlement areas to ensure that they are used only for the purpose to which they have been devoted. It was, therefore, laid down as a point of policy, and the principal Regulations accordingly provide, that admission into the resettlement areas shall be only by permit of the Urban Council, which is empowered to impose conditions and prescribe fees for the permits, to make Rules to control the settlers and the buildings they occupy, and to evict from the area any person who is found there without permission or any permit holder who has broken the Rules or the conditions of his permit. The Rules which have been made and which I now submit for the approval of this honourable Council provide the detailed implementation of the policy laid down in the principal Regulations. They are, as the name indicates, General Rules applicable to all areas. It will probably be necessary at a later date to make additional Rules to meet circumstances arising only in certain areas and to provide for the control of light industries and trades which are being gradually established in suitable localities.

Rules 3 to 11 of these Rules govern the issuance, renewal, amendment, replacement and inspection of permits. Rule 12 provides for the inspection of premises. Rules 13 to 15 impose restrictions on the size and construction of domestic structures. Rule 16 provides for the planning of areas. Rule 17 provides for the maintenance of registers. Rule 18 provides a remedy less drastic than eviction for certain breaches of condition. The First Schedule sets out the form of permit, and the Second Schedule prescribes fees and renewal dates. The need for providing that all permits in the three largest areas, A, B and D shall be renewable by sections will be obvious when the numbers are considered. Area A will have 6,000 permits; the part of Area B which is now being developed will have 8,000, and Area D will have about 7,000.

Honourable Members will notice that Rule 14 provides that all kitchens shall be constructed of non-inflammable materials. The reason for this is obvious. In two areas, however, a number of wooden huts without fireproof kitchens still exist, having been erected before the resettlement scheme came into force, and there are some other buildings which do not comply with the stipulated conditions.

The Chief Resettlement Officer and his staff are persuading the occupants of these structures gradually to improve them and

stress is laid in the first instance on fire-proofing, but to require this to be done all at once would be oppressive and the Urban Council proposes therefore to give a reasonable time for compliance, meanwhile making use of the general discretion conferred by Regulation 6 of the principal Regulations, so that no settler need fear prosecution or eviction unless after reasonable time he fails wilfully to comply with these very necessary requirements.

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

**BY-LAWS UNDER PUBLIC HEALTH (FOOD) ORDINANCE,  
CHAPTER 140.**

HON. K. M. A. BARNETT moved the following resolution:—

That the By-laws made by the Urban Council on the 20th day of May, 1952, under section 5 of the Public Health (Food) Ordinance, Chapter 140, be approved.

He said: Sir, the effect of this by-law is simply to add to the list of markets the name of the new market recently opened at Hung Horn to replace the one which was destroyed by Allied bombing during the Japanese occupation.

THE 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 ATTORNEY GENERAL:— Two weeks' time, Sir.

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