

OFFICIAL REPORT OF PROCEEDINGS**Meeting of 21st November, 1956.**

PRESENT:HIS EXCELLENCY THE GOVERNOR (*PRESIDENT*)

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

HIS EXCELLENCY THE COMMANDER BRITISH FORCES

LIEUTENANT-GENERAL WILLIAM HENRY STRATTON, C.B., C.V.O., C.B.E., D.S.O.

THE HONOURABLE THE COLONIAL SECRETARY

MR. EDGEWORTH BERESFORD DAVID, C.M.G.

THE HONOURABLE THE ATTORNEY GENERAL

MR. ARTHUR RIDEHALGH, Q.C.

THE HONOURABLE THE SECRETARY FOR CHINESE AFFAIRS

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

THE HONOURABLE THE FINANCIAL SECRETARY

MR. ARTHUR GRENFELL CLARKE, C.M.G.

THE HONOURABLE THEODORE LOUIS BOWRING, C.M.G., O.B.E.

(Director of Public Works).

DR. THE HONOURABLE YEO KOK CHEANG, C.M.G.

(Director of Medical and Health Services).

THE HONOURABLE DAVID RONALD HOLMES, M.B.E., M.C., E.D.

(Director of Urban Services).

THE HONOURABLE PATRICK CARDINALL MASON SEDGWICK

(Commissioner of Labour).

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

THE HONOURABLE CHARLES EDWARD MICHAEL TERRY, O.B.E.

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

THE HONOURABLE NGAN SHING-KWAN, O.B.E.

THE HONOURABLE DHUN JEHANGIR RUTTONJEE.

THE HONOURABLE CEDRIC BLAKER, M.C., E.D.

THE HONOURABLE KWOK CHAN, O.B.E.

DR. THE HONOURABLE ALBERTO MARIA RODRIGUES, M.B.E., E.D.

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

MINUTES.

The Minutes of the meeting of the Council held on 7th November, 1956, 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>
Sessional Papers, 1956: —	
No. 26—Annual Report by the Custodian of Property and Custodian of Enemy Property for the year 1955/56.	
No. 27—Annual Report by the Commissioner of Registration of Persons for the year 1955/56.	
No. 28—Annual Report by the Controller of Stores and Sand Monopoly for the year 1955/56.	
Royal Hong Kong Defence Force Ordinance, 1951.	
Royal Hong Kong Defence Force (Amendment) (No. 2) Regulations, 1956	A. 103.
Emergency Regulations Ordinance.	
Emergency (Detention Orders) Regulations, 1956	A. 104.

**SUPPLEMENTARY PROVISIONS FOR THE
QUARTER ENDED 30TH JUNE, 1956.**

THE FINANCIAL SECRETARY moved the following resolution: —

Resolved that the Supplementary Provisions for the quarter ended 30th June, 1956, as set out in Schedule No. 1 of 1956/57, be approved.

He said: —Sir: The items in the schedule have already been approved by the Finance Committee. Many of them are of a routine nature. Revotes of funds which lapsed on the 31st March this year total over \$700,000.

During the past few years a determined effort has been made to overcome the problem of housing our own servants. New blocks at Chater Hall and Leighton Hill have recently been completed, and two further blocks are now under construction in Argyle Street. The schedule contains further evidence of this drive, including as it does the sum of \$2½ millions for the purchase and rehabilitation of Peak Mansions, and \$100,000 for putting in order the block of flats in Kennedy Road known as Courtlands. It is hoped that when the two blocks in Argyle Street have been completed, our housing problem, if not solved, will be very much reduced.

THE COLONIAL SECRETARY seconded.

The question was put and agreed to.

**COMMONWEALTH COUNTRIES AND REPUBLIC OF
IRELAND (IMMUNITIES AND PRIVILEGES) BILL, 1956.**

THE COLONIAL SECRETARY moved the First reading of a Bill intituled "An Ordinance to provide for immunities and privileges to be granted in certain cases to Commonwealth officers or officers of the Republic of Ireland and matters ancillary thereto."

He said: —Sir: Although the Bill contains a certain amount of detail, particularly in the Third Schedule, its purpose can be quite simply stated. It is to extend to representatives of Commonwealth countries and the Republic of Ireland who perform functions in the Colony analogous to those carried out by Consular representatives of foreign countries the same privileges and immunities as attach to those Consular representatives. The privileges and immunities are granted on a reciprocal basis and this Bill will bring the law of the Colony on this subject in line with that in the United Kingdom. The matter is fully set out in the Objects and Reasons to which I have nothing to add.

THE ATTORNEY GENERAL seconded.

The question was put and agreed to.

The Bill was read a First time.

Objects and Reasons.

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

The purpose of this Bill is to provide for immunities and privileges to be accorded to officers of Commonwealth countries or the Republic of Ireland analogous to consular officers appointed to the Colony by their respective Governments and to property acquired or to be acquired by such Governments for the purpose of establishing offices substantially corresponding to consular offices in the case of a foreign sovereign power.

2. The Bill contains three Schedules. The First Schedule specifies the countries to which the Bill applies; the Second Schedule specifies the offices in respect of which holders thereof are entitled to enjoy privileges and immunities; the Third Schedule specifies the particular privileges and immunities which may be granted.

3. The privileges and immunities accorded to the holder of an office correspond to those granted to a consular officer of a foreign sovereign power with which Her Majesty has entered into a consular convention, and are set out in Part I of the Third Schedule. The right to enjoy such immunities and privileges is limited by sub-clause (1) of clause 5 of the Bill to officers who, in the opinion of the Governor, shall in fact perform duties substantially corresponding to those which, in the case of a foreign sovereign power, would be performed by a consular officer. Parts II, III and IV of the Third Schedule specify respectively the privileges and immunities which may be accorded to members of such officer's official staff and family, and in like manner correspond to those which in the case of a foreign sovereign power with which Her Majesty has concluded a consular convention would be accorded to members of the official staff and family of a consular officer.

4. The above legislation is required in order to bring the law of the Colony relating to immunities and privileges into line with that of the United Kingdom.

LAW OF PROPERTY (ENFORCEMENT OF COVENANTS)**BILL, 1956.**

THE ATTORNEY GENERAL moved the First reading of a Bill intituled "An Ordinance to provide for the enforcement of covenants and agreements relating to buildings divided into separately occupied premises."

He said: —Sir: The provisions of this Bill are of a technical character, and I do not propose to go into a lengthy exposition of the problem which has arisen. It has to do with the enforcement of covenants, such as those relating to repair, insurance and so forth, as between persons who have purchased flats or other separately occupied parts of a building: the position is explained in paragraph 2 of the statement of objects and reasons. Sir, this Bill makes such covenants enforceable as between the owners for the time being, as a matter of law and without recourse to elaborate conveyancing machinery which would otherwise be necessary whenever a flat changed hands. It is in my view a desirable piece of legislation, and it has the support of the local Law Society.

THE COLONIAL SECRETARY seconded.

The question was put and agreed to.

The Bill was read a First time.

Objects and Reasons.

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

The purpose of this Bill is to make provision for the mutual enforcement of covenants or agreements relating to the use, maintenance, repair, insurance or management of buildings divided into separately occupied premises, or relating to the support, demolition or re-building thereof.

2. If a building is divided into two or more flats, it is desirable in the mutual interests of the persons who shall from time to time be the owners of such flats that provision should be made for the use, maintenance, repair, insurance and management of the building as a whole and for the support, demolition or re-building thereof. While a covenant relating to such matters which requires the expenditure of money or the performance of any other positive act is binding on the covenantor himself, it is doubtful to what extent the burden of such a positive covenant can at law be made to run with the land of the covenantor. Such a covenant therefore may not be binding on a person claiming through the covenantor unless such person himself enters into a Deed of Covenant for that purpose. It is frequently

impracticable to ensure this, and it is accordingly proposed to legislate for the purpose of enabling the burden of all such covenants, positive as well as negative, to be made to run with the land and to be enforceable by and against the owners from time to time of the various parts of the building, except in so far as the covenant itself expressly provides otherwise.

3. Clause 4(1) provides that a deed or other document mentioned therein executed before the issue of the Crown lease shall continue in force after the issue of the Crown lease, and clause 4(2) is supplementary thereto.

PROBATION OF OFFENDERS BILL, 1956.

THE ATTORNEY GENERAL moved the First reading of a Bill intituled "An Ordinance to provide for the probation of offenders."

He said: — Sir: The treatment of delinquency is a matter of public concern not only on humanitarian grounds but also for economic reasons; because each delinquent who can be saved from slipping into habitual crime is no mean saving to society and the taxpayer.

Our present probation system works successfully under the Juvenile Offenders Ordinance, but is only available for persons under the age of twenty one years. This Bill is intended to extend the system to include adults; and the opportunity has been taken to bring our law into line with that relating to probation in the United Kingdom. The result will be that the Juvenile Offenders Ordinance will cease to relate to probation which will be covered comprehensively under this Bill and will be modelled on probably the most up-to-date legislation of its kind.

The "Objects and Reasons" annexed to the Bill set out in some detail the effect of the various provisions, and I do not think it necessary at this stage to enlarge upon them.

THE COLONIAL SECRETARY seconded.

The question was put and agreed to.

The Bill was read a First time.

Objects and Reasons.

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

1. The purpose of this Bill is to extend the probation system to include adults. At present a court has only two means of dealing with an offender over the age of twenty-one years—

(a) to send him to prison or to fine him; or

(b) to exercise the powers conferred by section 35 of the Magistrates Ordinance (Cap. 227) or section 108 of the Criminal Procedure Ordinance (Cap. 221), and bind him over to keep the peace. There is no power in the courts to subject the offender to supervision over a period.

2. In the drafting of this Bill the relevant provisions of the English Criminal Justice Act, 1948, have been closely followed. The result will be to bring the law of this Colony into line with modern legislation in the United Kingdom. The Juvenile Offenders Ordinance (Cap. 226) has been amended by the repeal of section 9, which applied the probation system, modelled on the provisions of the English Probation of Offenders Act, 1907, only to persons not exceeding 21 years of age. The English Probation of Offenders Act, 1907, has now been repealed and incorporated in the English Criminal Justice Act, 1948, which provides for a uniform probation system applicable to offenders of all ages. Similarly this Bill will apply a uniform system of probation to offenders irrespective of age, and provides as follows—

Clause 3 provides that where a court, having regard to all the circumstances of the case (the offence not being one for which the sentence is fixed by law) and the character of the offender, is of the opinion that it is not expedient to imprison or fine him, may make an order requiring him to be under the supervision of a probation officer for a period of not less than one year nor more than three years. The order may require the offender to comply with such requirements as the court considers necessary for securing his good conduct or for preventing a repetition of the same offence or the commission of other offences. The order may also include requirements relating to the place of the offender's residence in cases where his home surroundings are such as to indicate

that step to be desirable provided that if the court directs that he shall live in an approved institution he shall not be required to live therein for more than twelve months from the date of the order. The clause further provides that the offender be allocated to the supervision of a particular probation officer, allocated to the area in which the offender lives, and gives power to the principal probation officer to alter the allocation in his discretion. This is designed to promote continuity of contact between probationer and probation officer and to stimulate personal interest and understanding. Female probationers are required to be supervised only by female probation officers.

Clause 4 provides for amendment by the court of probation orders.

Clauses 5 and 6 deal with breaches of probation orders and the commission of further offences. Briefly they enable the court to deal with an offender not only in respect of the offence constituting the breach of the order, but also for the original offence in respect of which the order was made, in the same manner as if no order had been made. Where a probationer is charged before a court, other than the court which made the order, with an offence constituting a breach of the order, a power has been included in clause 5 to enable the court before which the probationer is charged to refer the case to the court which made the order, to deal, not only with the offence constituting the breach, but also with the fact of the breach. This power of transfer back to the first court is not to be found in the English law but it has been inserted in this Bill because in this Colony distances between courts are such that there is no physical difficulty, and need be no delay, involved in sending an offender from one court to another, and because it is clearly advantageous that the same court which made the order should deal with a breach of it.

Clause 7 enables persons interested in an offender to give security for his good conduct in cases where it seems to the court expedient. This provision is additional to the making of a probation order under this Bill or the granting of a conditional discharge under section 35 of the Magistrates Ordinance or section 108 of the Criminal Procedure Ordinance. The clause also provides that the court may order the offender

to pay reasonable damages for injury or compensation for loss where such may have resulted from the probationers default.

Clause 8 provides that where the court instead of sentencing an offender for an offence makes a probation order or an order of conditional discharge under the Magistrates Ordinance or the Criminal Procedure Ordinance, such an order shall not count as a conviction so as to be registered against the offender's record, but if as the result of a breach of the order, the offender is subsequently sentenced in respect of the offence for which the order was made, then it shall become so recorded and shall thereafter rank as a previous conviction.

Clause 9 provides for the appointment by the Governor of a principal probation officer.

Clause 10 provides for the appointment by the Governor of probation committees as may be necessary.

Clause 11 provides for the approval by the Governor of premises to be used as approved institutions for the reception of probationers ordered to reside therein.

Clause 12 provides power in the Governor to make rules.

3. The following reasons are advanced for the introduction of this legislation. The probation system is designed to provide for supervision over the conduct of an offender during a period of time, and to allow the courts to impose conditions and restrictions upon his actions, during that time, with the object of preventing his falling a prey again to the same influences which gave rise to the offence in the first instance or otherwise reverting to crime. It is probably true to say that such a system saves many offenders against the law from imprisonment because there are many cases in which a court may well feel that it would be justified in allowing them to go free provided their conduct was under supervision, but not otherwise. There can be no doubt but that the introduction of this system in the United Kingdom was an important step in penal reform and that it has saved many persons from becoming habitual criminals and has led them instead to become decent and honest citizens. It is felt that a similar advance in the criminal law of this Colony is now appropriate.

WATCHMEN BILL, 1956.

THE ATTORNEY GENERAL moved the First reading of a Bill intituled "An Ordinance to provide for the registration and regulation of watchmen."

He said: —Sir: The statement of objects and reasons explains the various provisions of this Bill, but I would like to add a word or two in explanation of the necessity for this legislation. There are, Sir, several hundred watchmen legitimately employed by business houses, godown companies, dockyards, banks and the like. Furthermore, Kaifong Associations have also organized and employed watch forces for duty within the areas for which they have a measure of responsibility. On the whole, such watchmen and watch forces have behaved with propriety in the discharge of their functions. In the past two years, however, much trouble has been caused by unscrupulous persons, who have themselves selected areas in the Colony, set up watch forces, and collected fees from residents for services they claim to have rendered. It is known that these so-called watchmen and watch forces are "Triad" inspired, and residents reluctantly pay their demands for fear of reprisals should they fail to do so. In addition, there have been disputes between rival gangs over their respective preserves, which have led to gang fights. Sir, the Police have done all in their power to discourage such organizations but, unfortunately, they still persist. Under these circumstances, it is considered necessary to provide by statute for a measure of control.

THE COLONIAL SECRETARY seconded.

The question was put and agreed to.

The Bill was read a First time.

Objects and Reasons.

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

The Watchmen Ordinance, 1928, was repealed in 1950, and since then the Commissioner of Police has not concerned himself with private watchmen and their associations.

2. In the past year or so, trouble has been caused by unscrupulous individuals forcing their services on house-holders, sometimes much against their will. In spite of police action it has not been possible to eradicate completely the undesirable attentions of self-appointed watchmen. It is, therefore, considered advisable to enact legislation for the registration and regulation of watchmen.

3. Clause 4 provides for the establishment of a register.

4. Clause 5 prohibits, subject to the provisions of clause 3, the employment of, and performance of duties by, unregistered watchmen.

5. Besides the general exemption contained in clause 3, it is considered unnecessary to apply the provisions of the Bill to certain well-conducted establishments and well-disciplined watchmen. Clause 6, therefore, empowers the Commissioner of Police to grant the exemption mentioned therein.

6. Power is given to the Commissioner by clauses 7 and 8 respectively to refuse to enter the name of any person in the register and to remove the name of any watchman from it.

7. Clause 9 empowers the issue of search warrants and searches by police officers designated by the Commissioner.

8. Clause 10 prohibits the wearing of uniform by watchmen without the written permission of the Commissioner.

9. Clause 11 is inserted in order that the Commissioner may at any time call for further and better particulars.

10. Clause 12 empowers the Governor in Council to make regulations.

11. Clause 13 creates penalties.

CO-OPERATIVE SOCIETIES (AMENDMENT) BILL, 1956.

THE ATTORNEY GENERAL moved the Second reading of a Bill intituled "An Ordinance to amend the Co-operative Societies Ordinance, Chapter 33."

THE COLONIAL SECRETARY seconded.

The question was put and agreed to.

The Bill was read a Second time.

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

Clauses 1 and 2 were agreed to.

Council then resumed.

THE ATTORNEY GENERAL reported that the Co-operative Societies (Amendment) Bill, 1956 had passed through Committee without amendment and moved the Third reading.

THE COLONIAL SECRETARY seconded.

The question was put and agreed to.

The Bill was read a Third time and passed.

ADJOURNMENT.

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

THE ATTORNEY GENERAL: —May I suggest this day fortnight?

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