

OFFICIAL REPORT OF PROCEEDINGS.**Meeting of 20th May, 1959.**

PRESENT:HIS EXCELLENCY THE GOVERNOR (*PRESIDENT*)

SIR ROBERT BROWN BLACK, K.C.M.G., O.B.E.

HIS EXCELLENCY THE COMMANDER BRITISH FORCES

LIEUTENANT-GENERAL SIR EDRIC MONTAGUE BASTYAN, K.B.E., C.B.

THE HONOURABLE THE COLONIAL SECRETARY

MR. EDMUND BRINSLEY TEESDALE, M.C. (*Acting*).

THE HONOURABLE THE ATTORNEY GENERAL

MR. ARTHUR RIDEHALGH, Q.C.

THE HONOURABLE THE SECRETARY FOR CHINESE AFFAIRS

MR. JOHN CRICHTON McDOUALL.

THE HONOURABLE THE FINANCIAL SECRETARY

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

THE HONOURABLE PATRICK CARDINALL MASON SEDGWICK

(Commissioner of Labour).

THE HONOURABLE ALLAN INGLIS

(Director of Public Works).

DR. THE HONOURABLE DAVID JAMES MASTERTON MACKENZIE, C.M.G., O.B.E.

(Director of Medical and Health Services).

THE HONOURABLE COLIN GEORGE MERVYN MORRISON

(Director of Urban Services).

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

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

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

THE HONOURABLE KWOK CHAN, O.B.E.

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

THE HONOURABLE JOHN DOUGLAS CLAGUE, C.B.E., M.C., T.D.

THE HONOURABLE HUGH DAVID MacEWEN BARTON, M.B.E.

MR. ANDREW McDONALD CHAPMAN (*Deputy Clerk of Councils*).**ABSENT:**

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

MINUTES.

The Minutes of the meeting of the Council held on 6th May, 1959, 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>
Supreme Court Ordinance.	
Code of Civil Procedure (Amendment) Rules, 1959	A. 29.
Pearl Culture (Control) Ordinance, 1958.	
Pearl Culture (Control) Regulations, 1959	A. 31.
Dutiable Commodities Ordinance.	
Dutiable Commodities (Amendment) (No. 2) Regulations, 1959	A. 32.

**LANDLORD AND TENANT ORDINANCE (AMENDMENT
OF FIRST SCHEDULE) RULES, 1959.**

THE ATTORNEY GENERAL moved the following resolutions: —

Resolved that the Landlord and Tenant Ordinance (Amendment of First Schedule) Rules, 1959, made by the Chief Justice on the 25th day of April, 1959, under sections 29(1) and 31(8) of the Landlord and Tenant Ordinance, Chapter 255, be approved.

He said: I rise to move the resolution standing in my name, which seeks the approval of this Council to rules made by the Chief Justice under the Landlord and Tenant Ordinance. The object of these rules is to ensure closer control over costs in the Tenancy Tribunal in exemption cases in which, I would remind honourable Members, costs are borne by the applicant in any event. The main provisions of the rules are as follows. Counsel's fees will only be allowed where the tribunal has certified that the case is fit for counsel, and costs will be taxed on one of two scales related to the annual rent of the premises for which exemption is sought. Further, where counsel is instructed by one solicitor for more than one opponent and the cases are dealt with at a combined hearing, only one retainer fee and one brief fee will be allowed. Finally, in no case will a fee be allowed for leading counsel as well as for junior counsel.

THE COLONIAL SECRETARY seconded.

The question was put and agreed to.

**SUPPLEMENTARY PROVISIONS FOR THE QUARTER
ENDED 31ST MARCH, 1959.**

THE FINANCIAL SECRETARY moved the following resolution: —

Resolved that the Supplementary Provisions for the quarter ended 31st March, 1959, as set out in Schedule No. 4 of 1958/59, be approved.

He said: Sir, as is usual with the Fourth Schedule of supplemental expenditure for the financial year, many of the items are accompanied by the remark "underestimated" or "increased activity". Both of these really mean the same thing; that is, that Government's activities in many spheres are increasing rapidly, and are increasing at a greater rate than was expected when the estimates were approved. Particularly is this the case with Social Welfare and with Medical Services. It will be noticed that an additional three-quarters of a million dollars is required for relief, and almost one million dollars extra are needed for drugs and dressings for the Medical Department, due to the increased number of clinics and the increased number of people attending those clinics. New drugs, and costly drugs, are also in part responsible.

The reorganization of the Preventive Service is reflected in the Schedule, another measure necessarily following on growth and expansion, and there is provision for the expenses of the Salaries Commission which is now sitting.

It will be noticed also that progress is better than expected on certain public works, notably two schools. The cost of the new Connaught Road subway, which has recently been completed, proved to be \$2 millions instead of the \$1 provided, and expenditure last year was \$1,600,000, necessitating supplementary provision of \$600,000.

All the items in the Schedule, Sir, have been agreed by Finance Committee and the covering approval of this Council is now required.

THE COLONIAL SECRETARY seconded.

The question was put and agreed to.

POLICE FORCE (AMENDMENT) BILL, 1959.

THE ATTORNEY GENERAL moved the First reading of a Bill intituled "An Ordinance to amend the Police Force Ordinance, Chapter 232."

He said: Sir, this Bill adds to the Police Force Ordinance a new section which provides for the punishment of persons who knowingly make false statements or accusations to the Police.

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: —

Every year, the Police Force receives a large number of false allegations that criminal offences have been committed and police officers have often been misled by false information, statements or accusations. The more serious consequences of such action are twofold. It results in Police Officers devoting to the investigation of such false reports time and services which can be ill spared, and considerable public funds are thus wasted. It may also place innocent persons under suspicion, however temporarily.

2. This Bill seeks, therefore, to add to the Police Force Ordinance (Chapter 232) a new section which will make it an offence to make a false report of the commission of an offence or to mislead a police officer by giving false information or by making false statements or accusations.

FIRE BRIGADE (AMENDMENT) BILL, 1959.

THE ATTORNEY GENERAL moved the First reading of a Bill intituled "An Ordinance to amend the Fire Brigade Ordinance, 1954."

He said: Sir, this Bill adds to the Fire Brigade Ordinance a new section providing for the punishment of persons who knowingly give false alarms to the Fire Brigade.

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: —

This Bill seeks to add to the Fire Brigade Ordinance, 1954, a new section which will make it an offence to give a false alarm of fire.

2. These provisions, which are adapted from section 31 of the Fire Services Act, 1947, are necessary in view of the considerable number of such false alarms received from time to time by the fire brigade.

DUTIABLE COMMODITIES (AMENDMENT) BILL, 1959.

THE FINANCIAL SECRETARY moved the First reading of a Bill intituled "An Ordinance to amend the Dutiable Commodities Ordinance, Chapter 109."

He said: Sir, honourable Members will recollect that the duty on proprietary medicines and toilet preparations was abolished with effect from 2 p.m. on Wednesday, the 25th February last. But although the duty has been abolished, proprietary medicines and toilet preparations technically still remain dutiable commodities under the law, and as such are subject to all the controls applicable to dutiable commodities. On import into the Colony they must be landed into bond and may only be withdrawn from bond tinder permit. Similarly no one may import these commodities, or deal in them or retail them, without a licence. The purpose of this Bill is therefore formally to remove as from the date and time the duty was abolished, the restrictions on import and movement of toilet preparations and proprietary medicines, which in the past were necessary to ensure that duty was collected, but are now no longer necessary.

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: —

By a resolution of the Legislative Council under section 4 of the principal Ordinance, the duty on proprietary medicines and toilet preparations was abolished with effect from 2 p.m. on Wednesday, 25th February, 1959. This Bill seeks to amend the principal Ordinance retrospectively to that time and date, to remove therefrom all reference to proprietary medicines and toilet preparations which are no longer dutiable.

CLEAN AIR BILL, 1959.

MR. P. C. M. SEDGWICK moved the First reading of a Bill intituled "An Ordinance to make provision for restricting pollution of the air and for matters connected therewith."

He said: During the past century much has been done throughout the world to see to it that the water we drink is safe and pure but it is only in recent years that the need to ensure that the air we breathe is not unduly contaminated has been accorded equal importance. The cost of air pollution is high. Thousands of lives have been lost as a result

of smog in industrialized countries. In addition to causing illness and death, air pollution can affect crops and livestock, cause serious damage to buildings and imperil aircraft and other forms of transport by reducing visibility. Fortunately much of this damage can be avoided without undue cost by careful town planning and the proper siting of industrial and residential areas, by the use of smoke free fuels, by the better design of furnaces and other equipment and by the employment of properly trained staff to operate such equipment. Excessive smoke is not only unnecessary and harmful, it is more often than not a sign that fuel is being wasted.

Although heavy industry is comparatively limited as yet in Hong Kong, light industry is developing here at astonishing speed in close proximity to heavily congested residential areas and it is clearly to our advantage to set up machinery for the control of smoke and other forms of air pollution before the resulting dangers and discomforts become too complex and too costly to be dealt with other than by drastic methods.

The short title of the Bill before Council is the Clean Air Bill. Its drafting commenced before the United Kingdom Clean Air Act of 1956 was enacted and although the main objects of the two measures are identical and some of the definitions and provisions of the Act have been reproduced in this Bill, the Bill is in general designed to meet the situation as it exists in Hong Kong, where there are three main problems. The first concerns the safety of the airport. Hong Kong is fortunate in that its main airport is considerably closer to the centre of its built up area than are most of the major airports of the world. This in turn makes it essential to ensure that the approaches to the airport are not obscured by smoke concentrations, which under certain weather conditions can seriously endanger aircraft landing or taking off. The second problem is to guard against the general health dangers which can arise from the volume of smoke emitted from crowded industrial or residential areas. The third is to ensure that nowhere in the Colony is smoke emitted unnecessarily in such quantity as to constitute a nuisance to anyone living nearby.

The first problem is already covered by the Air Navigation (Abatement of Smoke Nuisances) Ordinance, 1955, which this Bill seeks to replace. The present Bill, however, applies to the whole Colony, whereas the Air Navigation (Abatement of Smoke Nuisances) Ordinance is restricted to the protection of aircraft using Kai Tak. Under the Bill a competent authority may, if the safety of aircraft is involved, impose a total prohibition on the making of smoke anywhere in the Colony. As a general rule the danger period during which total prohibition of smoke is ordered in any individual case will be comparatively short and the existing machinery for appeals to be made either to the Governor or to the Governor in Council is retained.

The second problem of reducing the emission of smoke in areas where it is likely to be a danger to health is met by empowering the Colonial Secretary to designate areas as smoke control areas or as scheduled areas. Within any area designated as a smoke control area dark smoke may not be emitted for more than 6 minutes in any period of 4 hours or for more than 3 minutes continuously and any furnace installed must be capable of being operated continuously without emitting smoke darker than a prescribed shade. In other words, only a minimum amount of smoke may be made in any smoke control area. This provision will be of particular value when new industrial and residential townships are being planned and will make it possible to ensure from the outset that properly designed and relatively smoke free furnaces are installed. Hong Kong industry has, however, become an indispensable part of our economy and there are industries which cannot be operated without the emission of a certain amount of smoke. To cater for such industries the Colonial Secretary is empowered to designate certain areas as scheduled areas and in these a reasonable amount of smoke will be permissible. Although the owner of a factory in a scheduled area will not be permitted to make unnecessary smoke, he is given in Clause 9(a) of the Bill a number of special defences in any proceedings which may be taken against him in respect of a smoke nuisance. In general he cannot be proceeded against, if he can show that his furnace was properly operated and maintained and that he was not making more smoke than was necessary in the circumstances. If, however, the smoke he makes endangers aircraft, a competent authority can order him to stop making smoke, if necessary by ceasing operations while the order is in force.

It is obviously desirable from the public health viewpoint that as much of the heavily built up area as possible should be made into smoke control areas and that scheduled areas where smoke may be emitted more freely should be restricted to areas from which the resultant smoke is likely to have the least adverse effect on surrounding areas. It will however take time before the necessary adjustments can be made and the first areas to be designated smoke control areas are likely to be areas not yet developed, areas containing only low density residential housing, or areas in which land has already been disposed of on condition that only the minimum of smoke will be made. An example of the latter is the Kwun Tong Industrial Area, immediately up wind of the new airport runway, smoke from which might easily obscure the runway approaches. To avoid hardship which might arise from the designation of an area as a smoke control area, provision is made for objections to be lodged and for the Governor in Council to grant such individual modifications or exemptions as he may think fit.

Outside smoke control or scheduled areas the criterion in regard to smoke will be whether or not it is in such quantity as to cause a smoke nuisance, that is, any emission of smoke which either alone or in conjunction with any other such emission is a nuisance to the inhabitants of the neighbourhood or imperils or is likely to imperil the safety of aircraft using or being about to use any airport within the colony. A competent authority appointed by the Governor for this purpose may serve a notice upon the occupier of any premises from which a smoke nuisance arises calling upon him to reduce the emission of smoke. If the furnace is defective or excessively old and worn, however, the competent authority will instead serve a notice on the occupier requiring him to repair, clean or replace the defective plant within a reasonable time.

Due recognition is given in the Bill to the fact that in certain circumstances some emission of smoke is inevitable and clause 9 of the Bill makes appropriate allowance for extenuating circumstances by providing persons against whom proceedings for smoke nuisances are instituted with special defences. A certain amount of smoke will be emitted from any furnace when it is first lit up after being cold. Again, smoke may be due to the accidental and unforeseen failure of some smoke preventing device.

An interesting feature of the Bill is contained in Clause 13 under which competent authorities may issue free of charge codes of advice designed to encourage and assist furnace owners to keep the amount of smoke produced by their plants as low as possible.

To provide a standard for assessing the density of smoke the Bill prescribes the use of the Ringelmann Smoke Chart, which has been adopted by the United Kingdom and many other countries for this purpose. This chart consists of a series of "tints", four inches square, formed by ruled grids, which can be mounted on a vertical board. When smoke is to be viewed, the operator sets up this board about 50 feet away between himself and the smoke to be viewed and then compares the smoke visually with the various tints on the chart.

The provisions of this Bill have been discussed in detail with the Hong Kong General Chamber of Commerce, the Employers Federation, the Chinese Manufacturers Association, the Chinese General Chamber of Commerce and the major oil companies, all of which have supported the introduction of this measure. A number of suggestions made by these bodies have been incorporated into the text of the Bill.

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: —

At present smoke control legislation in the Colony is contained (i) in the Air Navigation (Abatement of Smoke Nuisances) Ordinance, 1955, which is concerned only with the abatement of smoke nuisances when the safety of aircraft using Hong Kong (Kai Tak) Airport is endangered, and (ii) in section 17(19) of the Public Health (Sanitation) Ordinance, 1935, which provides that any chimney (not being the chimney of a private dwelling house) or any furnace sending forth smoke in such quantity as to be a nuisance shall be a statutory nuisance which may be abated under that Ordinance.

2. The purpose of this Bill is to amend and consolidate the law relating to smoke control by introducing effective measures for the general control of smoke (including dust and noxious vapours) in the Colony before, by reason of continuous industrial development, the matter becomes a serious and expensive problem to solve.

3. The general scheme of control proposed is briefly as follows—

(a) If the safety of aircraft is directly involved, a competent authority may impose a total prohibition on the making of smoke anywhere in the Colony on the same lines as under the Air Navigation (Abatement of Smoke Nuisances) Ordinance, 1955.

(b) The Colony will be divided into three kinds of areas for the purpose of general smoke control; namely, smoke control areas, scheduled areas and the rest of the Colony. The two former kinds of area will be declared by the Colonial Secretary under clause 7 after administrative consideration has been given to any objections raised by persons affected. A Ringelmann Chart will be used for measuring the density of smoke. A smoke control area will be an area in which the permissible minimum amount of smoke may be made at any time and in which total prohibition may be imposed by order when the need arises. The areas to which these special control measures will be applied will be those in the vicinity of airfields or in which a heavy concentration of smoke harmful to health or general amenities might be expected to arise if no control measures were taken. A scheduled area is the opposite kind of area, namely one in which the greatest permissible quantity of smoke may be made at any time subject to the total prohibition of smoke by order when the safety of aircraft is directly involved. This kind of area is designated to meet the needs of those industries which cannot be operated without

producing smoke in some volume. The areas designated as scheduled areas will be sited where smoke emission has the least harmful effect on the general health and amenities of the Colony. Then there remains the rest of the Colony in which the amount of smoke which may be made, subject always to total prohibition by order when the safety of aircraft is directly involved, is conditioned by the need to preserve residential amenities. It will be noted that the power to impose total prohibition against the making of smoke applies to all areas. This provision is dictated by the small size of the Colony and its peculiar configuration.

- (c) In general the means by which control of smoke will be effected will be by service of notice by a competent authority under clause 4 upon the occupiers of the sources of the nuisance requiring the reduction or the elimination, as the case may be, of the emission of smoke. Clause 4 also requires that every notice served for the purpose of preserving the safety of aircraft must contain a declaration to that effect. Except in the case of clause 8, which will be mentioned later, the system of control is one of abatement of nuisance; consequently, emission of smoke will not of itself constitute an offence but, by virtue of clause 6, failure to comply with the notice will. The recipient of the notice is provided, by clause 9, with certain defences applicable respectively to scheduled areas and to the rest of the Colony. Before a notice other than one relating to the safety of aircraft is served, the competent authority concerned will have to satisfy himself that the smoke nuisance complained of does not arise from any of the causes which constitute grounds of defence. If a notice is issued, the effect will be that any person upon whom it is served under clause 4 may if he is dissatisfied refuse to comply with it and if he is prosecuted under clause 6 he may rely on the defences applicable to his particular area. It will be noted that thereafter the same defences apply to smoke control areas as to the rest of the Colony, but that the defences applicable to scheduled areas are somewhat wider. The purpose of the provision in clause 4 relating to declarations as to the safety of aircraft is that only in the case of notices containing such a declaration must the recipient comply with it forthwith without question; and in this case clause 5 provides for an appeal by way of petition to the Governor or to the Governor in Council at the option of the appellant on the lines of the existing provision in the Air Navigation (Abatement of Smoke Nuisances) Ordinance, 1955.

(d) Clause 8 applies only to smoke control areas. In these areas it will be an offence irrespective of the service of notice, for the occupier of any premises—

(i) to install or operate a furnace which is not capable of being operated continuously without emitting smoke darker than shade 1 on a Ringelmann Chart; or

(ii) to operate a furnace in such a manner that any dark smoke (namely smoke as dark or darker than shade 2 on a Ringelmann Chart) is emitted for more than six minutes in any period of four hours or for more than three minutes continuously at any time.

In this case there are no special defences provided for an infringement of (i) above but in the case of (ii) above the same general defences provided in paragraph (b) of clause 9 apply as apply in the case of any other part of the Colony except scheduled areas. The defences provided in paragraph (b) of clause 9 closely follow those contained for a similar purpose in subsection (3) of section 1 of the United Kingdom Clean Air Act, 1956, but those contained in paragraph (a) of clause 9 have been drawn on a wider basis to suit local requirements.

(e) Finally clause 14 covers the preventive aspect of smoke control by enabling the competent authority to require the modification, replacement, or repair of furnaces which by reason of defective design, construction or maintenance are incapable of being operated without making excessive smoke. Again the system is by service of notice specifying the remedy, and provision is made for an appeal similar to that provided in clause 5.

4. The provisions of sub-clause (2) of clause 6 relating to persistent offenders are novel. It provides, in addition to the usual penalties of fine and imprisonment prescribed in sub-clause (1) of that clause, that persons three times convicted of having failed to obey notices to abate smoke issued under clause 4 may, if their premises are not situated in a smoke control area, be required to comply with the restrictions applicable to premises which are so situated, and, in any case, if they are persons licensed under the Factories and Industrial Undertakings Ordinance, 1955, to carry on an industrial undertaking, to be three times so convicted will constitute a ground for the cancellation of the licence.

5. Clause 10 provides for the appointment by the Governor of competent authorities and smoke abatement officers. It may be found convenient to have more than one competent authority.

6. Clause 11 enables a competent authority to require information regarding furnaces and closely follows the provisions of section 8 of the Clean Air Act, 1956.

7. Clause 12 provides powers of entry and inspection.

8. Clause 13 provides for the issue free of charge of codes of advice. These codes will not have the force of law in themselves but may be relied upon in criminal proceedings by either party thereto as tending to establish or negative any relevant liability which is in question in those proceedings. This clause has been adapted from section 6 of the Road Traffic Ordinance, 1957, relating to the effect of the Highway Code and is considered a useful expedient, and equally applicable to the codes of advice provided for in this Bill.

9. Clause 15 provides for the making of regulations generally for the promotion of smoke reduction and the better control over the emission of such smoke as is unavoidable.

10. In the preparation of this Bill the United Kingdom Clean Air Act, 1956, has not been taken in any sense as a model except in so far as it has inspired the scheme.

SOCIETIES (AMENDMENT) BILL, 1959.

THE ATTORNEY GENERAL moved the Second reading of a Bill intituled "An Ordinance to amend the Societies Ordinance, Chapter 151."

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.

Clause 1 was agreed to.

Clause 2:

THE ATTORNEY GENERAL: —Sir, I beg to move the amendment standing in my name. The amendments have been circulated to honourable Members on a paper. I think sufficient explanation of that is made in the Remarks column of that paper.

*Proposed Amendment.***2.** In the new section 24A—

(a) leave out the first two lines of subsection (1) and substitute the following—

"24A. (1) Notwithstanding the rescission of the exemption from registration of a society under subsection (5) of section 5 or the cancellation of the registration of a society under subsection (6) of section 5 or the dissolution";

(b) after the word "Registrar", wherever it occurs, add the following—

“or an assistant registrar”.

Clause 2, as amended, was agreed to.

Council then resumed.

ATTORNEY GENERAL: —Sir, I beg to report this Bill from Committee with two amendments which I consider material within the meaning of Standing Order 28. If Your Excellency is of that opinion I seek Your Excellency's leave to move the suspension of Standing Orders to the extent necessary to allow the Bill to be read a Third time today.

H. E. THE GOVERNOR: —I agree with your interpretation and I grant permission accordingly.

ATTORNEY GENERAL: —I therefore beg to move accordingly that Standing Orders be suspended.

THE COLONIAL SECRETARY seconded.

The question was put and agreed to.

THE ATTORNEY GENERAL moved the Third reading of a Bill intituled "An Ordinance to amend the Societies Ordinance, Chapter 151."

THE COLONIAL SECRETARY seconded.

The question was put and agreed to.

The Bill was read a Third time and passed into law.

ADJOURNMENT.

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

THE ATTORNEY GENERAL: —May I suggest this day two weeks?

H. E. THE GOVERNOR: —Council stands adjourned until this day two weeks.